

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00086/2019

Date of order: 08.03.2019

Present : Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Shri Asit Sil,
Son of Haradhan Seal,
Date of birth 14.10.1972,
Working as LDC,
Present pay Rs. 34,000 (scale 21,700-69,100),
Residing at 11G, Sashibhuson Ghosh Lane,
P.O. Mahesh, District- Hooghly,
Pin- 712 202,
West Bengal.
2. Shri Kali Sankar Maity,
Son of late Rajeshwar Maity,
Date of birth 1.06.1962,
Working as Head Clerk,
Present pay Rs. 55,200 (scale 35,400-1,06,400)
Residing at Sahanapally,
P.O. Kenduadihi, Dist- Bankura,
Pin- 722 102,
West Bengal.
3. Shri Bidhan Chandra Haldar,
Son of Madan Mohan Halder,
Date of birth 1.03.1971,
Working as Junior P.A.,
Present pay Rs. 53,600/-,
Residing at K- 117, Bosepara,
P.O. Garia,
Kolkata- 700 084,
West Bengal.
4. Shri Sakti Pada Mudi,
Son of late Ruplal Mudi,
Date of birth 05.04.1963,
Working as Accountant,
Present pay Rs. 44, 900,
Residing at Vill- Dumdumi,
P.O. Kharbona, P.S. Chhatna,
Dist- Bankura,

hch

Pin- 722137,
West Bengal.

5. Shri Ashim Kumar Karmakar,
Son of Nemai Chandra Karmakar,
Date of birth 30.12.1970,
Working as LDC,
Present pay Rs. 35,000 (scale 21,700-69,100),
Residing at Vill- Panapukur, P.O. Bhangar,
P.S. Kashipur, Dist- South 24 PGS,
Pin—743 502,
West Bengal.
6. Shri Satinath Saha,
Son of late Sagar Chandra Saha,
Date of birth 24.07.1966,
Working as Cashier,
Present pay Rs. 40, 400 (scale 29,200-92,300),
Residing at 12 Rai Mohan Banerjee Road,
Kolkata- 700 108.
7. Shri Bhaskar Ch. Ghatak,
Son of late Krishna Pada Ghatak,
Date of birth 30.11.1960,
Working as Driver Gr. I,
Present pay Rs. 53,600/-
(scale 35,400- 1,12,400)
Residing at Vill- Anchuri, P.O. Salbani,
P.S. Bankura, Dist- Bankura.
8. Shri Anarul Haque,
Son of late Md. Ismail,
Date of birth 30.12.1960,
Working as Driver Gr. II,
Present pay Rs. 50,500 (scale 35,400-1,12,400),
Residing at Vill & P.O. Gouripur,
Dist- Bankura,
Pin- 722 132,
West Bengal.
9. Shri Madan Mohan Sardar,
Son of late Garachand Sarkar,
Date of birth 1.07.1960,
Working as Driver,

Uns

Present pay Rs. 42,800 (scale 29,200-92,300),
 Residing at Vill- Kurmura, P.O. Keshiakul,
 Dist- Bankura,
 West Bengal.

10. Shri Aditya Layek,
 Son of Late Basudeb Layek,
 Date of birth 24.11.1964,
 Working as Statistical Assistant,
 Present pay Rs. 66,000
 (scale 44,900-1, 42,400)
 Residing at Village - Lohadihi,
 P.O. Keshabandi, P.S - Chhatna,
 District - Bankura, Pin 722136,
 West Bengal.

11. Shri Dulal Chandra Dhua,
 Son of late Shudhansa Dhua,
 Date of birth 2.05.1962,
 Working as Lab. Assistant,
 Present pay Rs. 39,800
 (scale 25,500-81,100),
 Residing at Village - Banshi, P.O. Rajagram,
 P.S Bankura Sadar, District - Bankura,
 Pin 722146, West Bengal.

12. Shri Modan Mohan Mondal ,
 Son of late Amar Chandra Mondal,
 Date of birth 24.01.1959,
 Working as Mâli,
 Present pay Rs. 38,600
 (scale 25,500-81,100),
 Residing at Village & P.O. Salbedia,
 P.S G-Ghanti, District - Bankura,
 Pin 722203,
 West Bengal.

All working in the office of Director, RLTRI at
 Gouripur, Bankura, West Bengal.

Petitioners/Applicants

-vs-

1. Union of India,
 Through the Secretary,

Abd

Department of Health & Family Welfare,
 Ministry of Health & Family Welfare,
 Govt. of India,
 Nirman Bhawan,
 New Delhi- 110011.

2. Director,
 Regional Leprosy Training & Research
 Institute,
 Gouripur, Bankura,
 West Bengal- 722 132.
3. Director (Administration),
 Directorate General of Health Services (Leprosy
 Division),
 Nirman Bhavan,
 New Delhi- 110011.
4. Deputy Director Administration (D),
 Directorate General of Health Services (Leprosy
 Division),
 Nirman Bhavan,
 New Delhi- 110 011.

.....Respondents.

For the Applicant : Mr. B.R. Das, Counsel
 Mr. K.K. Ghosh, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

O R D E R

Dr. Nandita Chatterjee, Administrative Member:

Aggrieved with orders of recovery of their Hospital Patient Care Allowance (HPCA) for the period from April, 2013 to March, 2015, and, from April, 2015 to March, 2018, the applicants have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:-

[Signature]

"i) Rescind, recall, withdraw and/or cancel the order Annexure -A1 directing recovery of the amount duly paid on account of HPCA for the periods from April 2013 to March 2015 and April 2015 to March 2018.

ii) Certify and transmit the entire records and papers pertaining to the applicants' case so that after the causes shown thereof consonable justice may be done unto the applicants by way of grant of reliefs as prayed in (I) above.

iii) Pass such other order/orders and/or direction/directions as deemed fit and proper.

iv) Costs."

2. Heard both Ld. Counsel, examined pleadings and documents on record. As no complicated question of law is involved, this matter is taken up, with the consent of the parties, for disposal under Appendix VIII of Rule 154 of the Central Administrative Tribunal Rules of Practice, 1993.

3. Applicants' prayer for joint prosecution had been allowed under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987, vide this Tribunal's orders dated 21.1.2019.

4. Ld. Counsel for the applicant would submit that the applicants are all regular employees in the Regional Leprosy Research & Training Institute at Gouripur, Bankura and, that, they all belong to Gr. 'C' non- Ministerial cadre. The applicants had been receiving Hospital Patient Care Allowance (HPCA) per month in consonance with orders dated 28.10.1991 and 21.5.1992 (Annexure A-3 to the O.A.).

That, an objection was raised by Audit for payment of HPCA to the applicants during the period from 1.4.2013 to 31.3.2015 and from 1.4.2015 to 31.3.2018. Such observations were disputed by the Director of the Institute, who had justified the eligibility of the applicants to draw HPCA as per terms and conditions of orders dated 4.2.2004. An Office Order, however, was issued on 8.1.2019 (Annexure A-1 to the O.A.)

hah

directing recovery of such HPCA paid during the period April, 2013 to March, 2015 and from April, 2015 to March, 2018 respectively.

Being aggrieved with such order of recovery, citing the settled ratio in **State of Punjab v. Rafiq Masih (White Washer) & ors.** reported in (2015) 2 SCC (L&S) 33, and, consequent instructions of DOPT O.M. dated 2.3.2016 thereon, the applicants have approached this Tribunal praying for the aforementioned relief.

The applicants would furnish the following grounds, inter alia, in support of their claim:-

- (i) That, the applicants were allowed the HPCA in accordance with notifications and orders issued from time to time.
- (ii) That, the applicants are serving in an Institute that deals with Leprosy Training and Research, and, that they were in regular contact with such patients brought from indoor ward and OPD to the administrative building.
- (iii) That, as the applicants are all Gr. 'C' non-Ministerial cadre employees, some of them being on the verge of superannuation, such recovery is impermissible in law in accordance with the ratio settled in **Rafiq Masih (supra)** and consequent DOP&T O.M. dated 2.3.2016.
- (iv) That, the authorities have acted arbitrarily without advancing any reasons justifying such recovery. Hence, such recovery order, being illegal and arbitrary, ought to be quashed.

5. The respondents, per contra, would argue mainly on the following lines:-

h.c.f.

(i) That, the Auditor General (Central) had earlier raised objections to the payment of Hospital Patient Care Allowance (HPCA) to such office staff of Regional Leprosy Training and Research Institute (RLTRI) in Gouripur, Bankura, West Bengal for the period 1.4.2013 to 31.3.2015 and, in terms of such observation, payment of Hospital Patient Care Allowance (HPCA) was stopped vide Office Order No. RKTRI/HPCA/461 dated 28.6.2016.

(ii) That, the Auditor General (Central) again raised objections for payment of Hospital Patient Care Allowance (HPCA) to such office staff of Regional Leprosy Training and Research Institute (RLTRI) in Gouripur, Bankura, West Bengal for the period 1.4.2015 to 31.3.2018, in terms of which, an Office Order No. RLTRI/Audit/2015-16/14/1 (15) dated 08.01.2019 was issued for effecting recovery of irregular payment of Hospital Patient Care Allowance paid during April, 2013 to March, 2015 & from April, 2015 to March, 2018 either in lump sum or through a maximum of 36 monthly instalments.

(iii) That, payment of Hospital Patient Care Allowance/Patient Care Allowance to Group C & D (Non-Ministerial) employees working in hospitals, dispensaries and organization is regulated and admissible as per the instructions contained in Ministry of Health and Family Welfare's letter No. Z.28015/24/2001-H dated 04th February, 2004.

lehr

The said instructions dated 04th February, 2004 (Annexure 2/2 to the O.A.) had specified the categories of staff eligible to receive HPCA as follows:-

"Only persons (Group C & D, Non-Ministerial employees) whose regular duties involve continuous and routine contact with patients infected with communicable diseases or those who have to routinely handle, as their primary duty, infected materials, instruments and equipments which can spread infection as their primary duty may be considered for grant of Hospital Patient Care Allowance. It is further clarified that Hospital Patient Care Allowance (HPCA) shall not be allowed to any of those categories of employees whose contact with patients or exposure to infected material is of an occasional nature."

Further, in compliance with the Tribunal's directions dated 19.1.2021, the respondents have further clarified as follows:-

"Order No. Z.28015/24/2001-H dated 04.02.2004 was issued by the Ministry of Health & Family Welfare laying down, inter alia, eligibility for payment of HPCA to officials working in healthcare units/dispensaries/hospitals. The employees, from whom recoveries were made, were not eligible for HPCA in terms of this order.

2. Till the year, 2012, 06 (six) teams of Audit Party visited the Institute for audit purpose and no party raised any objections regarding payment of HPCA to the aforesaid staff, who were drawing HPCA regularly despite the order dt. 4.2.2004 being in force.

3. Order of recovery of HPCA from the aforesaid staff was made during the period from April, 2013 to March, 2015 and April, 2015 to March, 2018 on account of Audit objections by a subsequent audit party.

4. Payment of HPCA was resumed w.e.f. 1.7.2017 as per provision made by the 7th CPC."

5. Ld. Counsel for both sides would agree to submit that the payment of HPCA has resumed w.e.f. 1.7.2017 as per provisions made in the 7th CPC and as directed by the respondents' Office Order dated 7.8.2017 (Annexure A-4 to the O.A.).

6. Upon hearing the submission of both Ld. Counsel & having examined annexed documents, it transpires as follows:-

(i) Admittedly, the applicants were in receipt of HPCA in terms of orders dated 28.10.91 and 21.5.1992 (Annexure A-3 to the O.A.).

Abh

(ii) That, vide Office Order dated 15.1.2001 (Annexure A 2/1 to the O.A.) such HPCA was allowed to be granted to Gr. 'C' and 'D' Non-Ministerial Employees as per the classification contained therein.

(iii) Vide orders dated 4.2.2004 (Annexure A2/2 to the O.A.), the following eligibility conditions were introduced for consideration for grant of Hospital Patient Care Allowance:-

"(iii) The condition which an organization must satisfy before its employees can be considered for grant of Hospital Patient Care Allowance.

Only persons (Group C & D Non-Ministerial employees) whose regular duties involve continuous and routine contact with patients infected with communicable diseases or those who have to routinely handle, as their primary duty, infected materials, instruments and equipments which can spread infection as their primary duty may be considered for grant of Hospital Patient Care Allowance. It is further clarified that HPCA shall not be allowed to any of those categories of employees whose contact with patients or exposure to infected materials is of an occasional nature."

Xxxxxx

The Hospital Patient Care Allowance/Patient Care Allowance is payable to Group C & D (Non-Ministerial) employees working in the hospitals/dispensaries etc. This Allowance is not admissible to Group C & D (Non-Ministerial) employees working in the Headquarters Office dealing with such Healthcare Units/Dispensaries/Hospitals as long as they work there. The HPCA or PCA will be admissible to such employees only in the event of their transfer from Headquarters to the Healthcare Units/Dispensaries/Hospitals and subject to the condition specified in (iii) and (iv) above."

The sine qua non of such conditions imply that only those Group 'C' & 'D' Non-Ministerial employees whose regular duties involve continuous and routine contact with patients infected with communicable diseases and who have to routinely handle, as their primary duty, infected materials, instruments and equipments, were eligible to receive such HPCA. The 2004 orders also clarify that those employees whose contact with patients and exposure to infected materials were only of an occasional nature were not entitled to such HPCA. Vide the said same orders, it was also

[Signature]

informed that the allowance was not admissible to those Gr. 'C' and 'D' Non-Ministerial Employees who are working in Headquarters Office dealing with such health care units/dispensaries/hospitals.

(iv) Although the embargo was in force since 2004 it was only in 2012 that the Audit raised their objections to HPCA paid to the applicants. The Director the Institute, had, in his response to such Audit Objection dated 8.6.2018 (Annexure A-6 to the O.A.), argued as follows:-

"Considering the above situations, the workers working in the administrative campus are regularly exposed to the leprosy patients (a Communicable diseases) as I am convinced & they are eligible to draw HPCA as they do now fulfilling the laid down terms and conditions vide Order No. Z 28015/24/2001-H dated 04/02/2004.

Therefore, the undersigned is not at all agreed with the audit observations made by them on the issue and very sorry to express his inability neither to stop HPCA to those staff nor to recover the HPCA from them as suggested by the said visiting audit party."

The Audit objections, however, ultimately prevailed and a recovery order was issued as at Annexure A-1 to the O.A., the same being under challenge in the instant O.A.

It is also noted that, in response to the Audit Objections, it was clarified by the Director of the Institute that all the concerned staff (including Office Staff) are eligible to get HPCA as the Institute is located in a single campus and the office staff are also exposed to the risk of getting infected by the patients.

(v) Admittedly, no notice was issued to the applicants prior to issue of the recovery order, in violation of the principle of natural justice.

7. The Hon'ble Supreme Court in the matter of **Syed Abdul Kadir vs. State of Bihar** reported in (2009) 3 SCC 475 has held as under:

h.s.

"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowances or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram v. State of Haryana*, 1995 Supp (1) SCC 18, *Shyam Babu Verma v. Union of India*, (1994) 2 SCC 521, *Union of India v. M. Bhaskar*, (1996) 4 SCC 416, *V. Gangaram v. Director*, (1997) 6 SCC 139, *Col. B.J. Akkara (Retd.) v. Govt. of India*, (2006) 11 SCC 709, *Purshottam Lal Das v. State of Bihar*, (2006) 11 SCC 492, *Punjab National Bank v. Manjeet Singh*, (2006) 8 SCC 647, *Bihar SEB v. Bijay Bhadur*, (2000) 10 SCC 99.

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.

60. Learned counsel also submitted that prior to the interim order passed by this Court on 7.4.2003 in the special leave petitions, whereby the order or recovery passed by the Division Bench of the Hon'ble Court was stayed, some instalments/amount has already been recovered from some of the teachers. Since we have directed that no recovery of the excess amount be made from the appellant teachers and in order to maintain parity, it would be in the fitness of things that the amount that has been recovered from the teachers should be refunded to them."

h+h

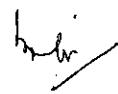
Further, the Hon'ble Apex Court, in **Rafiq Masih (supra)** has held as follows:-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in case where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

8. In the instant matter, we find that:

- (a) HPCA, which was paid to the applicants during the period under reference was not paid on account of any misrepresentation or fraud on the part of the applicants.
- (b) Such payments were made vide orders emanating as early as 1992 and further confirmed w.e.f. 1.7.2017; hence, the employer could not be faulted in applying a wrong principle in disbursing such HPCA to the applicants concerned.
- (c) The Respondent No. 3, namely, the Director of the Institute, has repeatedly justified payment of HPCA to the applicants on the grounds that they are regularly exposed to Leprosy patients and that they are subject to infection likely to arise from such communicable disease.



Hence, the embargo imposed vide Office Order dated 2004 would not be applicable in the case of the applicants whose exposure to infected materials were held to be of a continuous and not of an occasional nature by the Director of the Institute.

(d) The Office Order imposing the embargo was issued on 4.2.2004. The respondents have candidly admitted that:

“2. Till the year, 2012, 06 (six) teams of Audit Party visited the Institute for audit purpose and no party raised any objections regarding payment of HPCA to the aforesaid staff, who were drawing HPCA regularly despite the order dt. 4.2.2004 being in force.”

Hence, the objection was raised long after the grant of HPCA, whereas the employees were receiving such HPCA on the terms of orders issued as early as in 1992 and further confirmed in 2017. Hence, following the ratio in ***Syed Abdul Qadir (supra)***, judicial discretion is invoked.

(e) In ***Rafiq Masih (supra)***, the Hon'ble Court while clarifying that it is not possible to postulate all situations and hardship, had held that such recovery, if made from the employee, would be iniquitous of harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

(f) In the instant context, the respondents have repeatedly submitted that the decision to recovery was not initiated consciously by the authorities of the respondent organization per se, but, only on the basis of delayed Audit objections, vigorously disputed by respondent authorities as being inapplicable in the context of the respondent institute.

hsl

9. The payment of HPCA had been a long drawn process supported by the continuous exposure of the applicants to infection from Leprosy patients. It would hence be unreasonable to conclude that only for the period from April, 2013 to March, 2015 and from April, 2015 to March, 2018, the applicants were immune to such infection as they had continued to serve the respondent organization on the same terms and conditions and with same exposure to the Leprosy patients as earlier and also at present.

It is also an admitted fact that the 7th CPC had recognized the rights of the applicants and similarly placed employees to earn such HPCA which has been conveyed by the office of the respondent No. 3 to the Ministry of Health & Family Welfare as follows:-

"Consequent upon the recommendations of the 7th CPC HPCA (Hospital Patient Care Allowance) is allowed to all the staff of this Institute including Ministerial w.e.f. 01-07-2017 till there is further order. This order is issued in supersession of the earlier officer order No. RLTRI/HPCA/176 dt. 14/03/2016."

Such allowances which were allowed since 1992 and reconfirmed in 2017, cannot be punctured at intervals vide objections raised in 2012 citing a 2004 embargo on the office staff of a Leprosy Training & Research Institute.

10. Therefore, in the considered view of this Tribunal, the applicants are entitled to such HPCA during the period April, 2013 to March, 2015 & April, 2015 to March, 2018 as received earlier vide orders dated 1992 and as reconfirmed from 2017.

The order dated 8.1.2009 (Annexure A-1 to the O.A.) is hence quashed. The respondent authorities are directed to refund the amount

hph

recovered, if any, to the applicants, within a period of 12 weeks after receipt of a copy of this order.

11. The O.A. is, therefore, allowed. There will be no orders as to costs.

(Dr. Nandita Chatterjee)
Administrative Member

SP