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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.181 OF 1995

Cuttack, this the 28th day of January, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

...

1. B.C.Rout,
Working as Physiotherapist
2. B.B.Mohanty,
Senior Laboratory Technician
3. K.P.Mahapatra,
Laboratory Technician
4. S.K.Pattanaik,
Laboratory Technician
5. L.D.Das,
Pharmacist
6. K.C.Swain, Pharmacist
7. B.K.Dey,
Pharmacist
8. N.Panda, Sanitary Inspector
9. B.D.Behera, Sanitary Inspector
10. T.Rout, Sanitary Inspector
11. P.K.Paikray, Sanitary Inspector
12. C.G.K.Murthy, Senior Radiographer
13. N.C.Behera, Senior Radiographer
14. Kumar Beura, Tailor
15. J.N.Bindhani, Carpenter
16. N.Routray, Dresser
17. K.C.Behera, Dresser
18. S.N.Nayak, Dresser

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19. Y.Appana, Cook
 20. K.Pati, Cook
 21. G.N.Sethy, Dhobi
 22. Jaikishan, Dhobi
 23. Mrs.Sandhya Mukherjee, Dhobi
 24. Mrs.Martha Mallick, Ayah
 25. K.T.Kunju Kunju, Ayah
 26. Damayanti Devi, Ayah
 27. D.Luxmi, Sweepress
 28. J.Luxmi, Sweepress
 29. Narahari Naik, Sweeper
 30. Guna Naik, Sweeper
 31. P.K.Naik, Sweeper
 32. N.Mohanty, Ward Boy
 33. K.C.Maharana, Ward Boy
 34. N.K.Sahoo, Ward Boy
 35. Hari Naik, Sweeper

All are working in A.R.C.Hospital, At/PO-Charbatia, Dist.Cuttack

.....Applicants

By the Advocates

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M/s A.Deo, B.S.Tripathy,
D.K.Sahoo, R.Rath & M.P.J.Roy.

Vrs.

1. Union of India, represented by the Secretary, Ministry of Health & Family Welfare, Govt. of India, New Delhi.
2. Director General of Health Services, Nirman Bhavan, New Delhi
3. Deputy Director, C.G.H.S., Central Govt. Health Services, Bhubaneswar, Dist. Khurda.
4. Director General of Security, Cabinet Secretariat, Block-V(East), R.K.Puram, New Delhi.
5. Deputy Director, Administration, Aviation Research Centre, At/Po-Charbatia, Dist.Cuttack.
6. Assistant Director, Office of the Director General, Security, Cabinet Secretariat, Block V(East), R.K.Puram, New Delhi

.....Respondents

Submitted for
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By the Advocate - Mr. Akhaya Kumar Mishra,
Addl. Central Govt. Standing Counsel.

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O R D E RSOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the thirty-five applicants working in A.R.C. Hospital, Charbatia, have prayed for a direction to the respondents to grant Hospital Patient Care Allowance to the applicants with effect from 1.12.1987 within a specific time period.

2. The applicants' case is that applicant nos. 1 to 13 are holders of Group-C posts. They are Physiotherapist, Senior Laboratory Technician, Laboratory Technician, Pharmacist, Sanitary Inspector and Senior Radiographer. Applicant nos. 14 to 35 belong to Group-D category. They are Tailor, Carpenter, Dresser, Cook, Dhobi, Ayah, Sweepress, Sweeper, and Ward Boy. According to the applicants, Ministry of Health & Family Welfare in order dated 25.1.1988 vide Annexure-1 granted Hospital Patient Care Allowance to Groups C and D (Non-ministerial) employees excluding Staff Nurses on the condition that no Night Weightage Allowance would have been sanctioned and would be admissible to such employees. In another circular dated 30.10.1989 (Annexure-2) Hospital Patient Care Allowance was made admissible to Groups C and D (Non-ministerial) employees excluding nursing personnel of certain Hospitals and institutions mentioned in that order. The applicants further state that office of Director-General, Security in their note dated 15.4.1993 (Annexure-3) moved the Cabinet Secretariat for payment of Hospital Patient Care Allowance to Groups C & D (Non-ministerial) employees of A.R.C. Hospital.

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In this note, the office of Director-General, Security, specifically mentioned that Hospital employees of A.R.C. are eligible to get this allowance as they do not get Night Weightage Allowance and Risk Allowance. The applicants' case is that in spite of the above clear-cut position, the allowance has not been sanctioned to them and that is how they have come up with the aforesaid prayer.

3. Respondents in their counter have taken the stand that the applicants are not entitled to Hospital Patient Care Allowance because according to the Government order, the applicants should be serving in a thirty-bedded Hospital so as to be eligible to get the allowance. These applicants are not working in a thirty-bedded hospital and therefore, the allowance is not payable to them. Besides, the respondents have pointed out that applicant nos. 19, 20, 27 to 31 and 35 are holding Common Cadre posts and they are liable to be transferred to units other than Hospital like Officers' Mess, Estate Cell, etc. and therefore, they are not entitled to such allowance. The respondents have based their case on the circular dated 25.1.1988, also relied upon by the applicants, and the subsequent circular dated 5.3.1990 (Annexure-R-2).

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4. I have heard the learned lawyer for the applicants and the learned Additional Standing Counsel, Shri Akhaya Kumar Misra appearing on behalf of the respondents and have also perused the records.

5. Before proceeding further, it has to be mentioned that the circular dated 30.10.1989 relied on by the applicants is not applicable to the present case at all, because in this circular Hospital Patient Care Allowance has been given to certain specific Central Government Hospitals and institutions, and hospitals

under Union Territories having thirty or more beds. As regards the circular of 25.1.1988, this speaks of Central Government Hospitals and Hospitals under Delhi Administration. In this circular, Hospital Patient Care Allowance has been ordered to be paid from 1.12.1987. This circular has been modified in circular dated 5.3.1990 (Annexure-R/2) in which it has been stated that Groups C and D (Non-ministerial) employees excluding nursing personnel of Central Government Hospitals in Delhi and outside Delhi and Hospitals under Union Territories Administrations having thirty beds or more would be given Hospital Patient Care Allowance from 1.4.1987 instead of 1.12.1987 subject to the condition that no Night Weightage or Risk Allowance would be admissible to those employees. Learned lawyer for the applicants has submitted and has also mentioned in his written submission that Director-General, Security, in his note dated 15.4.1993 has recommended sanction of Hospital Patient Care Allowance to the employees in A.R.C.Hospitals. He has mentioned in this note that Hospitals of A.R.C. at Charbatia, Doom Dooma and Sarswa are Central Government Hospitals. He has also mentioned that stipulation of Hospitals having 30 beds or more is no more there and this has been confirmed by Deputy Director, C.G.H.S., in his letter dated 13.7.1992. It has been mentioned that even the staff in C.G.H.S.Dispensaries having no bed at Delhi and outside are in receipt of Hospital Patient Care Allowance. Learned lawyer for the applicants in course of his submissions has pointed out that C.G.H.S. employees in C.G.H.S.Dispensary at Bhubaneswar, which does not have any bed are also getting Hospital Patient Care Allowance as is

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seen from letter dated 20.6.1991 of Deputy Director (A),
 New Delhi,
 C.G.H.S., addressed to Deputy Director, C.G.H.S., A.G.Colony,
 Unit-IV, Bhubaneswar (Annexure-A/4). At Annexure-A/3 is another
 order granting Hospital Patient Care Allowance to Groups C and D
 (Non-ministerial) employees excluding nursing personnel of C.G.H.S.
 Organisation with effect from 1.4.1987. Learned lawyer for the
 applicants has also referred me to the decision of Division
 Bench of the Tribunal in O.A.No.299 of 1989 - decided on 8.5.1990
 (Suresh Prasad Sinha and others v. Union of India and others) in
 which direction was issued to pay Hospital Patient Care Allowance
 to certain employees of Group Centre Hospital, C.R.P.F.
 While sanctioning this allowance to two of the applicants, the
 Tribunal did not consider the question of availability of thirty
 beds. This decision was followed by a Division Bench of the Tribunal
 at Patna Bench in O.A.No.264 of 1994, decided on 30.6.1995 and
 (Rajendra Prasad & others v. Union of India and others).
 reported in (1996) 32 ATC 276. In this case, the Tribunal had
 referred to the decisions of Cuttack Bench in O.A.No.299 of 1989
 (supra) and of Principal Bench in O.A.No.931 of 1993, decided on
 3.2.1994 and have allowed the Hospital Patient Care Allowance
 to Para-medical staff working in C.R.P.F. Hospitals subject to
 the conditions referred to above. I find from Annexure-3
 that this is a note from Director General of Security seeking
 sanction of competent authority for payment of Hospital Patient
 Care Allowance to Groups C and D (Non-ministerial) employees
 of A.R.C.Hospitals excluding nursing staff. From this note,
 it appears that an earlier proposal to sanction Hospital Patient
 Care Allowance to such staff was rejected by the Integrated Finance.
 of Security's
 This note only gives the view of Director-General's office and

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does not give the Government decision on this. The circular dated 5.3.1990 was not brought to the notice of the Tribunal in O.A.No.299/89, decided on 8.5.1990. ~~xxxx~~ The decision of Patna Bench rendered on 30.6.1995 also did not take note of the circular of 5.3.1990. On a careful reading of the circulars 25.1.1988 and 5.3.1990, it is seen that the circular dated 5.3.1990 has been given retrospective effect. In the earlier order dated 25.1.1988 this allowance has been sanctioned with effect from 1.12.1987. But subsequently, in order dated 5.3.1990 this allowance has been sanctioned with effect from 1.4.1987 instead of 1.12.1987. This circular of 5.3.1990 gives this allowance only in those Hospitals where there are thirty beds or more. Admittedly, the A.R.C.Hospital at Charbatia, has twenty beds. Therefore, strictly in terms of the circular dated 5.3.1990, these employees of A.R.C.Hospital are not entitled to the Hospital Patient Care Allowance. The note dated 15.4.1993 of the office of Director-General of Security also does not take care of this circular of 5.3.1990 and in view of this, the statement of Director-General of Security that the requirement of thirty beds is no longer there cannot be accepted. As regards the payment made to the staff in C.G.H.S.Dispensaries, the respondents have stated that these C.G.H.S.Dispensaries are an extension of C.G.H.S.Hospitals. The statement of the respondents regarding C.G.H.S.Dispensaries cannot be accepted. In all cases where there are C.G.H.S. Dispensaries, there cannot be C.G.H.S.Hospital. Bhubaneswar is one example. But when the applicants claim for certain allowance, there must be specific Government order sanctioning such allowance to them. In terms of the Government order

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dated 5.3.1990 the allowance is not payable to the applicants because the A.R.C. Hospital at Charbatia has only twenty beds. This circular of 5.3.1990 is in modification of the circular dated 25.1.1988 and has been given retrospective effect. In view of this, I hold that the applicants are not entitled to Hospital Patient Care Allowance in terms of the circular dated 5.3.1990.

6. But at the same time it is noted that in spite of the requirement of thirty bedded Hospital, the staff in C.G.H.S. Dispensaries without any beds are getting Hospital Patient Care Allowance. This may be a special dispensation for the C.G.H.S. employees. If this be the case, there is no reason why the same consideration should not be shown to the eligible employees in A.R.C.Hospitals. But this is a matter for the departmental authorities to consider. In view of this, it is ordered that the applicants should submit a representation to the Cabinet Secretariat through the Director-General of Security stating their case and mentioning that other employees who are similarly placed have been allowed this allowance either under orders of the Tribunal or under executive orders. This representation should be filed within thirty days from the date of receipt of copy of this order. The Cabinet Secretariat should take a view on the representation within 90(ninety) days thereafter and communicate the decision to the applicants. The applicants are given liberty to approach the Tribunal again if they are dissatisfied with the order on their representation.

Approved Jm.
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7. In the result, therefore, the application is disposed of in terms of the observation and direction given in paragraphs 5 and 6 of this order. There shall be no order as to costs.

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(SOMNATH SOM)
VICE-CHAIRMAN
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AN/PS