

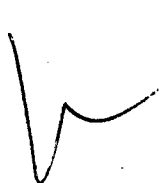
CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 58/2002

Monday, this the 7th of July, 2003.

C O R A M

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. M. Zainalabid,
Lab Technician,
Government Hospital,
Minicoy.
 2. P.P. Cheriyaakoya,
Pharmacist,
Government Hospital,
Minicoy.
 3. M. Salim,
Pharmacist,
Primary Health Centre,
Kalpeni.
 4. H.B. Ibrahim,
Pharmacist,
Government Hospital,
Minicoy.
 5. Shafi K.K,
Radiographer,
Government Hospital,
Minicoy.
 6. K.V. Moosa,
Water Pump Operator,
Government Hospital,
Minicoy.
 7. K.K. Moosa,
Lab Technician,
Government Hospital,
Minicoy (Now working as
Technical Assistant,
AIDS Cell, Government
Hospital, Minicoy).
 8. A. Pookoya,
Dental Technician,
Government Hospital,
Minicoy.
 9. K.P. Ameerudheen,
Health Inspector,
Government Hospital,
Minicoy.
 10. A. Hassan,
Field Worker,
Government Hospital,
Minicoy.
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11. A. Rahumudheen
Health Inspector
Government Hospital,
Minicoy.
12. T. Fathima,
'Ahya', Government Hospital,
Minicoy.
13. S.G. Aysha,
Cook, Government Hospital,
Minicoy.
14. A.C. Ahamed,
Dhobi, Government Hospital,
Minicoy.
15. K.K. Koya,
Laboratory Technician,
Primary Health Centre,
Chethalath Island.
16. M. Azeez,
Pharmacist,
Primary Health Centre,
Kiltan.

..Applicants.

[By Advocate Mr. P.V. Mohanan]

Vs.

1. The Administrator,
Union Territory of Lakshadweep,
Kavarathi.
2. Union of India represented by
the Under Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.

..Respondents.


[By Advocate Mr. S. Radhakrishnan for R-1 and Mr. T.A. Unnikrishnan, for R2]

The application having been heard on 24.6.2003, the Tribunal on 7.7.2003 delivered the following :

O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicants 16 in numbers, are working in Government Hospital, Minicoy, except the 3rd and 15th applicants, who are working in the Primary Health Centre, Kalpeni and Chethalath Island respectively. It is averred in the OA that both the Primary health Centres and Government Hospitals in Lakshadweep are governed by Central Government Health Scheme under Director

General of health Services. There are no private hospitals functioning in the Islands of Lakshadweep. In the Government Hospital, Minicoy, 20 beds are provided and in Primary health Centres at Kalpeni and Chathalath, 10 beds each are provided. In this OA, the applicants are praying for payment of "Patient Care Allowance" with effect from 29.12.1998 or the date of joining duty in the respective hospitals, whichever is later. The applicants also furnished their career particulars. It is further averred that the Government of India, Ministry of Health and Family Welfare, vide order Annexure A/1 dated 25.01.1988 sanctioned "Hospital Patient Allowance" to Group 'C' employees (non-ministerial) working in Central Government Hospital and Hospitals under the National Capital Territory of Delhi and other Union Territory at the rate of Rs. 80/- and Rs. 75/- per month with effect from 1.12.1987 subject to the condition that no night weightage allowance will be admissible to them. By Annexure A/2 proceeding dated 30.10.1989, the benefits were extended to Hospitals under Union Territory of Lakshadweep having 30 or more beds and "Hospital Patient Care Allowance" had been disbursed to the staff working in Indira Gandhi Hospital, Kavarathi (50 bedded) and Community Health Centres, Androth, Amini and Agatti (30 bedded) with effect from 1989. The Government of India vide proceeding dated 02.01.1999 (Annexure A/3) sanctioned "Patient Care Allowance" to Group 'C' and 'D' (non-ministerial) employees working in CGHS Dispensaries @ Rs. 690/- per month with effect from 29.12.1998 subject to the conditions stipulated in the Ministry's orders Annexure A/1 and A/2 respectively. It is further averred that vide Annexure A/4 order dated 2.1.1999, the Ministry extended the benefit of "Patient Care Allowance" to the Group 'C' and 'D' employees working in Port/Airport Health Organisations, subject to the condition that (i) no night allowances and risk allowances will be admissible to them and (ii) the Patient Care Allowances would be admissible to those



employees only who are involved in patient care. Similarly placed employees working in the Cochin Port Trust, which do not have 30 beds, were granted the benefit of "Patient Care Allowances". Therefore, the applicants contended that it is not necessary to have 30 beds in the hospitals for granting "Patient Care Allowances". The applicants were denied this benefit on the ground that they are not working in a 30 bedded hospital. Therefore, the first applicant submitted Annexure A/5 representation dated 30.10.2000 to the Administrator for grant of "Patient Care Allowance". All other applicants submitted their representations on the same date, but the claim of the applicants was rejected. Thereafter, they filed OA No. 304/2001 before this Tribunal, which was disposed of vide Annexure A/6 order dated 3.4.2001 directing the first respondent to consider the representation in the light of the order Annexure A/4 in that OA dated 2.1.1999. Vide Annexure A/7 order, the respondents denied the claim of the applicant stating that "it is not possible to grant Hospital Patient Care Allowance to the employees working in Government Hospital. The applicants averred that the claim put forth by them is for "Patient Care Allowances" and not for Hospital Patient Care Allowances. The first respondent was mistaken to understand the claim of the applicant and issued Annexure A/7 order without application of mind, which is apparent on the face of the record. Annexure A/8 dated 10.7.1990 is the order issued by the Ministry by which Patient Care Allowances were granted to the incumbents working in all other hospitals. Therefore, the applicants submitted that they are entitled to the said benefit and sought following reliefs in this OA.


- "(i) To call for the records leading to Annexure A7 and set aside the same.
- (ii) To declare that the applicants are entitled to get "Patient Care Allowance" at the rate of Rs.690/- per month as stipulated in Annexure A3 order with effect from 29.12.1998 or with effect from the date on which they joined duty in respective Dispensaries/Hospitals whichever



is later to direct the respondents to grant the benefits of Patient Care Allowance with arrears thereof.

- (iii) Any other appropriate order or direction as this Hon'ble may deem fit in the interest of justice."


2. The first respondent has filed a reply statement contending that the applicants are not entitled to get "Patient Care Allowances" as stipulated in Annexure A/3 order. Annexure A/3 is an order issued by the second respondent by which Hospital Patient Care Allowances is payable to Group 'C' and 'D' employees working in the Dispensaries coming under the Central Government Health Scheme (CGHS, for short). The second respondent has granted Hospital Patient Care Allowances to employees working in the Dispensaries coming under CGHS and for other employees working in other Government Hospitals on satisfaction of certain conditions. The prayer of the applicants to grant them Patient Care Allowances is only applicable to the employees working in the Dispensaries coming under CGHS. The Hospital Patient Care Allowances, which is not claimed by the applicants, is granted subject to the condition that the hospital is having 30 inpatient beds. No condition is stipulated for granting Patient Care Allowances in the CGHS Dispensaries. Therefore, for granting Patient Care Allowances, the first condition to be established by the applicants is that they are working in the dispensaries coming under the CGHS. The applicants are working in the Government Hospital, Minicoy, Primary Health Centre, Kalpeni, Primary Health Centre, Chetlat and Kiltan respectively. None of these institutions are governed by the CGHS Scheme. The Medical Officers under the Central Health Services posted in the Union Territory of Lakshadweep and other Grade 'A' doctors under Lakshadweep Administration are appointed by the Ministry of Health & Family Welfare, Government of India. All other staff are appointed by the Administration as per the specific Recruitment Rules framed for each post by the Administration.



Appointment to all Group 'C' and 'D' posts are made by the Union Territory of Lakshadweep Administration only. Therefore, it is wrong to mention that the Hospitals/Community Health Centres/Primary Health Centres in the Union Territory are governed by CGHS Scheme under the Director General of Health Services. Annexure A/1 is made applicable to the Hospitals under those Union Territories having a bed strength of 30 or more as per Ministry's orders at Annexure A/2. Annexure A/3 is the letter issued by the Ministry of Health and Family Welfare addressed to the Director General of Health Services and to the Director, CGHS, revising the rate of Hospital Patient Care Allowance and Patient Care Allowance to the employees already drawing the same in accordance with the earlier orders. All these hospitals are covered by the CGHS Scheme. The benefit has been granted to the staff working under the CGHS Hospitals etc. and the said order is not made applicable to the Union Territory for staff working in the Hospitals/Primary health Centres having bed strength below 30. Annexures A/1 to A/4 did not prove that the Patient Care Allowances is payable to the staff working in Hospitals/Primary Health Centres or Hospital patient Care Allowance is applicable to hospitals having bed strength below 30 in the Union Territory as at Annexure A/2.

3. The learned counsel for the first respondent has also filed additional reply statement reiterating the same contention.

4. The applicant has filed rejoinder contending that in the matter of appointment to Group 'C' and 'D' employees in the Directorate of medical Health Service, the power is delegated to the Administrator. Thus, the Administrator is the appointing authority of Group 'C' and 'D' staff though the posts are sanctioned and approved by the Government of India. The Medical Officer working in the Dispensary and Group 'C' and 'D' staff as




well are governed by Central Civil Service Pay Rules based on the recommendation of the Pay Commission. The scale of pay granted to Group 'C' and 'D' staff in those Dispensaries are equivalent to the scale of pay sanctioned to all Group 'C' and 'D' staff in other Central Government Dispensaries throughout the Country. The only distinction so far as the Primary Health Centre and Dispensaries located in the Union Territory of Lakshadweep is that the power of appointment of the Group 'C' and 'D' staff is delegated to the Administrator under Article 239 of the Constitution of India. Therefore, the contention that the applicants are not working in the CGHS Dispensaries and thereby disentitling Patient Care Allowances to them, is without any basis.

5. I have heard Shri P.V. Mohanan, learned counsel for the applicant, Shri S. Radhakrishnan, learned counsel for the respondent No. 1 and Shri T.A. Unnikrishnan, learned counsel for the respondent No. 2. .

6. When the matter came up for hearing, the learned counsel for the applicant submitted that the claim of the applicants is for getting "Patient Care Allowance" and not for "Hospital Patient Care Allowance" and since vide Annexure A/4 order the benefit was extended to the similarly placed employees, the applicants are also entitled for the same. The learned counsel for the respondents, on the other hand, submitted that the applicants are not entitled to the "Patient Care Allowances" since they will not come under the CGHS Scheme.

7. I have given due consideration to the pleadings and arguments advanced by the learned counsel for the parties and have also perused the evidence and material place on record.



8. In Paras 9 and 10 of the reply statement, the first respondent has stated as follows:

"9. xxxx As the Administrator is not competent to grant "Patient Care Allowance" to the Group 'C' and 'D' staff working in Hospital/Primary Health Centres in the Islands where the bed strength is below 30, the Administration has taken up the matter with the Ministry vide letter F.No.5/14/89-DMHS/1454 dated 3.6.2001. A true copy of the letter dated 3.6.2001 is produced as Annexure R1. The Ministry vide letter No. Z.28016/37/98-H dated 13.7.2001 has intimated that the Ministry of Finance has directed the Ministry of Health and Family Welfare to evolve clear cut policy regarding Hospital Patient Care Allowance/ Patient Care Allowance to the employees working under various Ministries/Departments and intimated that the proposals have been referred to the DGHS and the matter is under active consideration and final decision is awaited. A true copy of the letter dated 13.7.2001 is produced herewith and marked as Annexure R2. Thereafter, several reminders have been sent to the Ministry and no final orders received so far.

10. As no orders from the Ministry on the matter was received in time and the Administration had to issue orders within the time schedule as per this Hon'ble Tribunal's direction, the Administrator was left with no other alternative except to issue final orders vide Annexure A7. The present Original Application is filed challenging Annexure A7 order. From the above, it may be seen that the Administrator is not competent to implement the orders at Annexures A1, A3 and A4 to the staff working in the Hospitals/Primary Health Centres in this Union Territory covered under CGHS where bed strength is below 30."

9. During the course of hearing on 26.3.2003, the learned counsel for the second respondent was directed to take instructions from the Ministry of Health and Family Welfare as to the position regarding grant of "Patient Care Allowances" to the applicants and other similarly situated employees. Accordingly, when the matter was finally heard on 24.6.2003, he submitted that the matter is under active consideration of the Ministry of Health and Family Welfare and since it being a policy matter, the Ministry alone can take a decision in the matter. He further submitted that till date, no decision has been taken by the Ministry on the subject. It is also on record that vide Annexure R1 communication dated 3.6.2001 of Administration of the Union Territory of Lakshadweep addressed to the Secretary to the

Government of India, Ministry of Health and Family Welfare, requesting to consider the representations filed by the applicants and other similarly situated employees regarding "Patient Care Allowances" and pass a final order in the matter. They have also quoted the Tribunal's directions dated 3.4.2001 in OA No. 304/2001 for taking immediate action at Ministry's level. The reply sent by the Ministry of Health & Family Welfare vide letter No. Z.28016/37/98-H dated 13.7.2001, is as follows:-

"

IMMEDIATE
COURT MATTER

No.Z.28016/37/98-H
Government of India
Ministry of Health & Family Welfare

Nirman Bhawan, New Delhi
Dt. the 13th July, 2001.

To:

Director of Medical & Health Services,
(Dr. P. Kunhiseethi Koya),
Administrator of Lakshadweep,
Kavaratti - Via Kochi : 682 555

Sub: Grant of Patient Care Allowance to Gr.C & D employees (Non-Ministerial) working in the Hospital and Primary health Centres - OA No. 304/2001 filed by M. Zainulabid and Others - regarding.

Sir,

I am directed to refer to your letter No.5/14/89-DMHS dated 3.6.01 on the subject and to say that the Ministry of Finance, New Delhi, had directed this Ministry to evolve clear cut policy regarding HPCA/PCA to the employees working under various Ministries/Departments (copy enclosed). According to these instructions, a proposal has been referred to the Directorate General of Health Services to evolve a clear cut policy and the matter is under active consideration and the final decision is awaited.

In view of the above, the UT Administration is requested to seek three months extension from the Hon'ble CAT, Ernakulam Bench, in the matter through the Government counsel and a copy of which may also be sent to this Ministry alongwith latest position of the case from time to time.

Yours faithfully,


Sd/-
(D.R. SHARMA)

UNDER SECRETARY TO THE GOVT. OF INDIA "



10. On going through the above aspects and the submission made by the learned counsel for the second respondent that it is purely a policy matter and the concerned Ministry alone can take a decision thereof, this Court takes notice that the matter is pending before the Ministry atleast right from 8.7.2000 when the Administration had sent a letter in this respect and vide Annexure R2 letter dated 13.7.2001 of the Ministry, the Administration was directed to seek three month's extension from this Court to take a decision in the matter. But the three months time sought for by the Ministry has already been elapsed long back and now we are in the middle of 2003. Despite the fact that the Ministry instructed to take extension of three months vide their letter dated 13.7.2001, they did not take a decision in the matter till date. It is a matter in which this Tribunal is not happy about. However, this being a policy matter, the decision has to be taken by the Government and keeping in mind the judgement of Hon'ble Supreme Court reported in (1997) 1 SCC 253, Commissioner, Corporation of Madras vs. Madras Corporation Teachers' Mandram and Others, that the Court/Tribunal is not justified in interfering with the policy matter as it should be left within the domain of the administration, this Court directs the concerned Ministry to take a decision in the matter within the time frame.

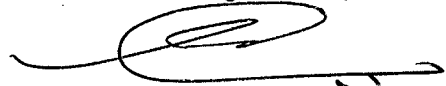
11. In view of the fact that it being a policy matter and also considering the submission made by the learned counsel for the second respondent that the matter is under active consideration of the Government, this Court directs the second respondent to take appropriate decision on the subject and pass a speaking order as expeditiously as possible, but in any case within four months from the date of receipt of a copy of this order. The



decision shall be communicated to the applicants immediately on passing the final order in the matter. This Court makes it clear that the time granted will be strictly adhered to by the respondents.

12. The OA is disposed of as indicated above with no order as to costs.

(Dated, the 7th July 2003)

A handwritten signature in dark ink, consisting of a large, stylized 'S' followed by a horizontal line.

K.V. SACHIDANANDAN
JUDICIAL MEMEBR

CVR.