

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 329 of 2008

Wednesday, this the 1st day of April, 2009

C O R A M:

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

1. P.P. Ahammed,
S/o. Abuddala Kandai,
Purapurathupura House,
Kadamath Island
Staff Car Driver (Ambulance) (retired),
Public Health Centre, Kadamath.
2. U.C. Kasmi,
S/o. Muhammed,
Field Worker, PHC,
Kadamath (retired)
3. N.P. Cheriyaibi,
D/o. Muhammed,
Watchman, PHC, Kadamath
4. B.I. Sulthanbi,
D/o. Adima,
Safaiwala, PHC, Kadamath.
5. K. Saifulla,
S/o. Ahammadkunji,
Ambulance Driver,
PHC, Kiltan Island.
6. K.K. Kojan Koya,
S/o. Cheriyaakoya,
Watchman, PHC, Kiltan
7. P. Kidave Haji,
S/o. Ahammed Kunju,
Field Worker, PHC,
Kadamath (Retired)



8. P. Muthukoya,
S/o. Cheriyaakoya,
Field Worker, PHC,
Kadamath (Retired)
9. A.P. Khaddar,
S/o. Abdulla,
Field Worker, PHC,
Kiltan (Retired)
10. A.P. Sayed Ismail Koya,
S/o. Koya,
Field Worker, PHC,
Kiltan (Retired)
11. T.T. Koya,
S/o. Puthiyapura Attakoya,
Field Worker, P.H.C., Kalpeni
12. P.P. Syed Mohammed,
S/o. Khidav,
Watchman, P.H.C., Kalpeni
13. T.T. Syed,
S/o. Muthukoya,
Ambulance Driver,
P.H.C., Kalpeni
14. P. Mahammed Ikbai,
S/o. Muthukoya,
Field Worker, PHC, Kalpeni

(By Advocate Mr. P.V. Mohanan)

v e r s u s

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



3. The Director Medical & Health Services,
Directorate of Medical Health Services,
Kavarathy, Union Territory of Lakshadweep,
Kavarathy. ... Respondents.

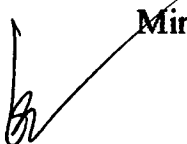
(By Advocates Mr. S. Radhakrishnan (R1&3) and
Mr. TPM Ibrahim Khan, SCGSC (R2))

The Original Application having been heard on 11.03.09, this Tribunal on 1.4.2009 delivered the following:

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicants, many of whom are now retired, are the Hospital staff belonging to Group C and D (Non Ministerial) attached to Primary Health Centres in different islands of the Lakshadweep Islands. The regular duties of these applicants involve/involved continuous and routine contact with patients infected with communicable diseases or to have to routinely handle, as their primary duty, infected material, instruments and equipments, which could spread infection. Recommendations were made by the Medical officers for Patient Care Allowance to be disbursed to the applicants pursuant to letter dated 12th January 2007, vide Annexure A-1 read with Annexure A-2 issued by the Director of Medical and Health Services.

2. The Government of India had, vide proceedings dated 02-01-1999 (Annexure A-3) afforded Patient Care Allowance to Group C and D (Non Ministerial) employees working in CGHS dispensaries at the rate of Rs 690/- per

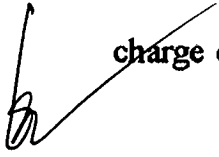


month effective from 29-12-1998. As this benefit was not available to others similarly situated, some of them approached the Tribunal through OA No. 304/2001 which was disposed of with a direction to the respondents to consider the claim of such persons and the respondents having, after consideration, rejected the same, OA 58/2002 was filed for a declaration that the applicants therein are entitled to get Patient Care Allowance at the rate of 690/- per month as stipulated in the order dated 02-01-1999 with effect from 29-12-1998 or with effect from the date on which the individuals joined duty in respective dispensaries/Hospitals whichever is later. The said OA was disposed of on 07-07-2003 directing the Union of India to take appropriate decision on the subject matter and to pass a speaking order, vide Annexure A-4.

3. In purported compliance of the order in OA No. 58/2002, the Ministry of Health and Family Welfare by order dated 04-02-2004 sanctioned Patient Care Allowance to Group C and D staff working in Hospitals and Dispensaries. Annexure A-5 refers. This decision was communicated to the Administrator by letter dated 6th February 2004 with a direction to take necessary action, vide A-6. The administrator, by proceedings dated 16-08-2004 sanctioned Patient Care Allowances to Group C Staff @ 160/- and to Group D staff @150/- per month, effective from 01-08-1997 and these rates were increased to Rs 690/- w.e.f. 29-12-1998, vide Annexure A-7. And by Annexure A-8 order dated 08-09-2004, the above order was extended to the employees working in the Hospitals, Community

Health Centres and Primary Health Centres in islands, whose regular duties involve continuous contact with patients with communicable diseases or are handling infected materials, instruments and equipments which can spread infection, as their primary duties. The Director of Medical Health Services, Union Territory of Lakshadweep, has, vide impugned order dated 02-11-2007, referring to Annexure A-5 order dated 4th February 2004, sanctioned Patient Care Allowances to applicants and other eligible Hospital staff, but only from 01-08-2007. The claim of the applicants in this OA is that the said allowance should be made available as per Annexure A-7 order, i.e. Rs 160/- and 150/- respectively to Group C and D staff w.e.f. 01-08-1997 and @ Rs 690/- per month from 29-12-1998.

4. Respondents have contested the O.A. According to them, as per guidelines contained in Government of India letter dated 4th February 2004, the eligibility condition has been prescribed for sanctioning HPCA or PCA viz., the employees should be working in a Hospital having more than 30 beds; and the employees should have continuous and routine contact with infected patients of communicable diseases or should have handled infected materials or instruments as their primary duty, which can spread infection etc., The intention for the grant of PCA is that the patient infected with communicable diseases should not be neglected from society and they should get proper care and attendance in respective hospitals. Grant of allowance is also based on the certificates furnished by the Medical Officers in-charge of Hospitals/PHCs/CHCs in various islands. Since the grant of allowance



with retrospective effect to these staff involve huge amount, only prospective effect was given with effect from 01-08-2007. Cut off date are fixed by the Executive Authority keeping in view economic conditions, financial constraints and many other administrative and other attending circumstances and fixing cut off dates is within the domain of the executive authority and court should not normally interfere with the fixation of cut off date by Executive Authority unless such orders appear to be on the face of it blatantly discriminatory and arbitrary, vide Apex Court judgment in 2008(2) KLT 681 SC (Govt. of A.P. vs Subbarayadu)

5. Counsel for the applicants submitted that prescription of a different date by the respondents for extending the benefits of the provisions of the Ministry of Health and Family Welfare orders dated 4th February 2004 which is universally applicable, is irrational, arbitrary, and illegal and is against the equality clause of the Constitution. He has argued that as per the terms of the above orders dated 4th February 2004 (Annexure A-5), of the Ministry of Health and Family Welfare as contained in the penultimate paragraph, the date of eligibility for payment of Hospital Patient Care Allowance/Patient Care Allowance would be notified in consultation with the Ministry of Finance in all cases of grant of Hospital Patient Care Allowance/Patient Care Allowance. Thus, the authority to fix the date for entitlement to the said allowance being Ministry of Finance, prescription of the date as 01-08-2007 by the Lakshadweep Administration is without jurisdiction. Such a prescription affects the equality clause of the Constitution of India and as



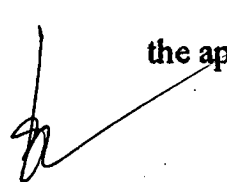
regards financial constraints, the counsel argued that financial constraints cannot be a ground for denying fundamental rights.

6. Counsel for the respondents submitted that the prescription of the date by the UT administration cannot be faulted with, especially in view of the Apex Court judgment in the case of Subbarayadu (*supra*).

7. Arguments were heard and documents perused. The admitted fact is that the applicants are hospital staff. Para 3 of the counter refers. Earlier, the Tribunal in its order dated 07-07-2003 in OA No. 58/2002 directed as under:-

"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..."

From the above direction, it is amply clear that the second respondent i.e. the Union of India, Secretary Ministry of Health and Family Welfare was to decide the policy matter first and the decision shall be communicated to the applicants. The latter part of the order of course pertains to the Island authorities, under which the applicants in the said OA were serving.

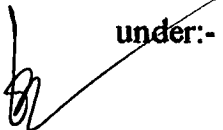


8. The Second respondent in the above O.A., thus finalized the policy matter, by bringing out order dated 4th February 2004, vide Annexure A-5. This order has been addressed to as many as 48 authorities, and addressee No. 20 is the Administrator, UT of Lakshadweep, Kavaratti. This policy decision was also separately communicated to the Administrator, UT Administration of Lakshadweep, Kavaratti, by letter dated 6th February 2004 stating as under:-

"You may now take necessary action for determining the specific categories of Group 'C' & 'D' Non Ministerial employees working in the Health sector under the UT Administration who are eligible for grant of HPCA/PCA under the terms and conditions indicated in the enclosed letter. The Central Administrative Tribunal, Ernakulam Bench may be informed of the decision taken by the Ministry through the Government Counsel and also applicants in the above O.As be suitably replied to in the matter...."

9. Thus, on the basis of the orders dated 4th February 2004 and 6th February 2004, the U.T. Administration had taken action and also specified the dates of admissibility of the Hospital Patient Care Allowance/Patient Care Allowance as notified by the Ministry of Health & Family Welfare, which is from 01-08-1997 at a particular rate and from 29-12-1998 at an enhanced rate as contained in para 3 above.

10. The UT has also, vide the penultimate para of Annexure A-7 stated as under:-



"All these Medical officers in charge in the peripheral institutions submitted the details of eligible employees for sanctioning the Patient Care Allowance. The details of employees received from various islands have been scrutinized and it is hereby ordered that the categories of Group C & D Non Ministerial employees working in health Institutions other than Hospitals in the Union Territory in the attached Annexure are eligible for Patient Care allowance as their duties involve continuous and routine contact with common cable (sic communicable) disease."

11. The above order dated 16-08-2004 had been addressed in addition to the authorities, also to the applicants in OA No. 58/2002. Thus, by this communication, read with order dated 4th February 2004, the first part of the direction of the Tribunal viz deciding on the policy matter had been complied with and by way of compliance with the other direction of the Tribunal the policy decision has been communicated to the applicants in the said O.A. No. 58/2002. This policy decision cannot be held to be applicable only to the applicants in the O.A. No. 58/2002 but it is applicable to all those Group C and D Non Ministerial staff who fulfill the eligibility conditions for drawal of the Hospital Patient Care allowance/Patient Care allowance, save the excepted ones as contained in the penultimate para of order dated 16-08-2004. Order dated 8-9-2004, vide Annexure A-8, is in pursuance of the orders dated 4th February 2004, 6th February 2004 and 16th August 2004, which also confirms that the said orders are applicable to all the eligible Group C and D staff. Under such a situation, when order dated 2nd November 2007 (Annexure A-9) had been passed, different date as to the admissibility of the Patient Care Allowance has been prescribed to 32 employees

named therein, which include the applicants herein. This discrimination is inadmissible and is against the equality clause of the Constitution of India.

12. All the employees who fulfill the eligibility conditions as prescribed in the order dated 4th February 2004 form a homogeneous class. The Apex Court in the case of **Union of India vs S.R. Dhingra (2008) 2 SCC 229** has held that *what is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut off date arbitrarily thereby dividing a single homogenous class into two groups.* (That was a case of pensioners)

13. Identically situated individuals cannot be discriminated either with reference to the admissibility of quantum of pay and allowances or the date from which such pay and allowances are admissible. In this regard support could be had from the decision of the Apex Court, in the case of **Union of India v. Dineshan K.K., (2008) 1 SCC 586**, (which relates to redesignation of the rank of Havildar (Radio Mechanic) as warrant officer as recommended by the Ministry of Home Affairs to be carried out in respect of personnel in the Assam Rifles and grant of pay scale as admissible to the counterparts in Central Reserve Police Force (CRPF) and the Border Security Force (BSF) from the same date), while upholding the direction as given by the Guwahati High Court in its judgment in WP © No. 497/2001, ^{the Apex Court} has observed as under:-



" In Randhir Singh v. Union of India a Bench of three learned Judges of this Court had observed that principle of equal pay for equal work is not a mere demagogic slogan but a constitutional goal, capable of being attained through constitutional remedies and held that this principle had to be read under Articles 14 and 16 of the Constitution. This decision was affirmed by a Constitution Bench of this Court in D.S. Nakara v. Union of India. Thus, having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of "equal pay for equal work" has assumed status of a fundamental right.

16. Yet again in a recent decision in State of Haryana v. Charanjit Singh a Bench of three learned Judges, while affirming the view taken by this Court in State of Haryana v. Jasmer Singh, Tilak Raj, Orissa University of Agriculture & Technology v. Manoj K. Mohanty and Govt. of W.B. v. Tarun K. Roy has reiterated that the doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a court of law. Inter alia, observing that equal pay must be for equal work of equal value and that the principle of equal pay for equal work has no mathematical application in every case, it has been held that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. Enumerating a number of factors which may not warrant application of the principle of equal pay for equal work, it has been held that since the said principle requires consideration of various dimensions of a given job, normally the applicability of this principle must be left to be evaluated and determined by an expert body and the court should not interfere till it is satisfied that the necessary material on the basis whereof the claim is made is available on record with necessary proof and that there is equal work of equal quality and all other relevant factors are fulfilled."

14. The above decision clearly holds that the doctrine of equal pay for equal work, which initially was enjoying the status of directive principle of state policies has graduated to the status of Fundamental rights. As such, as held by the Apex Court in the case of *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1-

"It is to be noted that financial constraint cannot be a ground to deny fundamental rights."

15. In view of the above, the O.A. fully succeeds. It is declared that Annexure A-9 order is discriminatory, arbitrary and is violative of the provisions of Art. 14 and 16 of the Constitution, in so far as the same prescribes a different date (01.08.2007) of admissibility of the Patient Care Allowance to the individuals mentioned therein. It is further declared that the individuals concerned are entitled to the benefit of Patient care allowance of Rs 160 and 150 respectively in respect of Group C and D staff w.e.f. 01-08-1997 and Rs 690/- per month w.e.f. 29.12.1998 (to all the group C and D category staff named in the said order). The applicants and similarly situated are also entitled to the consequential benefits if any. The amount payable to the individuals by virtue of this order, shall be worked out and paid within a period of six months from the date of communication of this order.

16. Under the circumstances, there shall be no orders as to costs.

(Dated, the 1st April, 2009)



**(Dr. K B S RAJAN)
JUDICIAL MEMBER**

cvr.