

Original Application No: 580/2005.

This, the 2nd day of March 2006.

HON'BLE SHRI J.K.KAUSHIK MEMBER(J)

1. Abhimanyu Prasad Force No. 680331403 Pharnasist/A. S.I. aged about 57 years, Son of Sri Sidhu Prasad.
2. Kanhu Sethi, Force No. 960080026, Pharnasist/A.S.I 8 Battalian, aged about 31 years. Son of Shri Deenbandhu Sethi.
3. Prakash Chandra Force No. 9709200016, Pharnjasist/A.S.I aged about 33 years, son of Late Sri Mohan Chandra Tiwari.
4. Rajeev Chaturvedi, Force No. 973230011, Pharnasist/A.S.I. aged about 34 years, son of Sri Chandra Shekhar Chaturvedi.
5. Uma Shanker shukla Force No. 980820023 Pharnasist/A.S.I. aged about 32 years, son of Sri
6. Smt. Babita Kolita, Force No. 009080068, Ward Girl, aged about 28 years, wife of Sri Narayan Das.
7. Ravindra Singh, Force No. 015184175, Cook Hospital, aged about 31 years, son of Late Sri Pheru Singh.
8. Smt. Usha Rani, Force No. 015264329, Cook Hospital, aged about 28 years, wife of Sri Ram Kumar.

Above all person/applicants presently posted in Group Center Hospital,
Central Reserve Police Force, (G.C.C.R.P.F.) Lucknow.

Applicants.

BY Advocate: Shri D.N. Pandey

VERSUS

1. Union of India through Secretary Government of India, Ministry of Home affairs, North Block, New Delhi
2. Director General of C.R.P.F., C.G.O. Complex Lodhi Road, New Delhi.
3. Director Medical, Directorate General, C.R.P.F., R.K. Puram, New Delhi.
4. Additional Deputy Inspector General of Police Group Central, CRPF, Bijnaur town, Lucknow.

Respondents.

By Advocate Shri Manoj Singh

ORDER (ORAL)

By Hon'ble Shri J.K.Kaushik, Member (J)

Shri Abhimanyu Prasad and 7 others have filed this O.A. U/S 19 of the Administrative Tribunal Act, and have sought the following relief:-

“ This Hon'ble Tribunal may graciously be pleased to direct the opposite parties to grant and sanctioned the Hospital Patients Care Allowances/ Patient Care Allowances w.e.f. the date of appointments of the applicants and make payment of the arrears along with interest @ 18% per annum from the due date from which each of the applicant is legally entitled till the date of its payments.”



2. The case was heard in piecemeal and arguments have been concluded today. I have carefully perused the pleadings and records of this case.

3. The applicants are holding the Group 'C' and 'D' posts as indicated in the cause title as Combatized Hospital Staff (Non-Ministerial Staff) in Group Central Hospital, C.R.P.F., Lucknow. It has been averred that as per the Government of India instruction dated 25.1.1988 as well as 28.2.90, those employees of the C.C. R.P.F. Hospital working in India are entitled to get Hospital Patient Care Allowance/ Patients Care Allowance w.e.f. 1.12.1987 subject to the condition that no night weightage allowance is sanctioned by the Central Government will be admissible to those employees working in the Central Hospital and Hospital under the Delhi Hospital. Number of persons employed on the post of Group 'C' and 'D' as Combatized Hospital Staff (Non Ministerial staff) or para-medical staff have been granted the Hospital Patients Care Allowance. Such allowances have been granted only to those persons who were filed cases/petitions before the competent court of law. Representations in the matter were moved to the competent authority and the matter was taken up with the higher authority. Reference has been made to certain judgments which have been passed in the similar matter by which the benefits were allowed to the similarly situated persons. As indicated in succeeding paragraphs, the O.A. has been filed on diverse grounds mentioned in para 5 and its sub paras of the Original Application.

4. Respondents have contested the case and have filed the detailed exhaustive reply to the O.A. In reply, an objection has been taken that this bench of the Tribunal has no jurisdiction to entertain the Original Application for the reason that the petitioners /applicants are combatized members of the force. The defence of the respondents set out in the reply is that the Patients Care Allowance/ Hospital Care Allowance has been allowed only to those combatized Group 'C' and 'D' Hospital staff who were petitioners in courts cases. The orders were issued in respect of them. However, the case has been referred to the Ministry of Home Affairs for grant of such allowances to the other staff and the matter is still pending consideration with the Ministry of Finance. The ground raised in the O.A. have been generally denied.

The applicants have not chosen to file any Rejoinder Reply.




5. A separate Misc. Application No. 3062/2005 has been filed for condonation of delay in filing the Original Application. It has been pleaded that the matter relating to grant of Patients Care Allowance/ Hospital Care Allowance is still pending consideration with the respondents/ Department. Further the matter also gives rise to recurring cause of action since the payment is made every month, therefore, the delay if any in filing the Original Application deserves to be condoned.

6. Both the learned counsel for parties have reiterated the facts and grounds mentioned in their respective pleadings.

7. Learned counsel for the applicants has submitted that this Bench of the Tribunal has been pleased to deal with the controversy involved in the instant case and the issue including that the preliminary objection has been set out vide decision dated 16th September, 2005 at page 25 and 26 of the paper book and this was based on the judgment which came to be passed by the Hon'ble High Court of Judicature of Assam at Guwahati Bench, referred thereto and against which an SLP came to be filed in which the decision has been affirmed. Therefore, the issue does not remain res-integra and the applicants are entitled to the similar relief as has been granted in other cases. Per contra, Learned counsel for the respondents has laid emphasis on the stand of the defence that the matter is still under consideration with the Ministry of Finance and as soon as the decision is taken, the necessary action shall be taken immediately.

8. Before coming to the crux of the matter, I consider it expedient to dispose of the Misc. Application for condonation of delay. A coherent reading of the counter reply of the respondents and the other circumstances, the matter is said to be under consideration with the respondents themselves. The submissions that the payment of allowances in question gives rise to the recurring cause of action also appeals to the reason. In such circumstances, the law of limitation is not attracted and therefore, there is no obstruction in examining this case and decide it on merits.


9. Now advertent to the merits as well as legal position of the case, I have waded and carried out a close analysis of the various judgments referred to in this case and I find that case is squarely covered on all fours by the decision dated 16th September, 2005 passed by this very Bench of the Tribunal in O.A. No. 404/2003 in



K.N. Sanji Kumar and Others Vs. UOI and others. The matter has been exhaustedly discussed there and has been settled. The contents of para 2 and 3 are relevant and are extracted as under:-

“2. The objection raised by the learned counsel for respondents that para-medical staff in CRPF would not be amenable to the jurisdiction of this Tribunal as it is not notified under section 14 of the Administrative Tribunal's Act, 1985 and his resort to the decision of the Tribunal in O.A. 360/99 in R.S. Yadav Vs. UOI is misconceived. A person employed in armed force union being a civilian is amenable to the jurisdiction of this Tribunal for which no notification under section 14 of the Act is required as per sections 2 (a) and 3 (q) of the Act *ibid*. The decision of the Tribunal referred to above was in respect of a constable in CRPF. Admittedly he is a member of the armed force of the Union being para-medical staff, they are civilians. A similar order where applicants have asked for payment of hospital care allowance, the decision of the Principal Bench of this Tribunal allowed the aforesaid claim. Before the High Court of Judicature of Assam at Guwahati in Civil Rule No. 1417 /95 by an order dated 12.3.96 claim of the para-medical staff of CRPF was allowed, subject to the condition that the employee working in Central Government hospitals and hospital under the Delhi Administration, no night weightage allowance is sanctioned would be admissible. This decision was affirmed by the Apex Court in C.A. No. 11966 of 1996 by an order passed on 17.10.2001.

3. In the above view of the matter, over ruling the objection of jurisdiction taken by the respondents, applicants who are para-medical staff of CRPF are observed to be civilians and amenable to the jurisdiction of this Tribunal, as similar claim has been allowed and the applicants on all fours covered by the decision (*Supra*) which has attained finality, are also entitled to the relief prayed for. Accordingly, O.A is partly allowed. Respondents are directed, in accordance with directions issued by the Guwahati Bench of this Tribunal as affirmed by the Apex Court to accord hospital patients care allowance /patients care allowance w.e.f. the date (s) of their appointments within a period of three months from

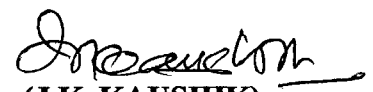


the date of receipt of a copy of this order. However, no interest is allowed. No costs."

10. The perusal of the aforesaid discussion would reveal that the decision is instructive on the subject. However, at this juncture I would only assert that independent of the aforesaid authorities, if I were to examine the matter afresh, I would have reached to the same conclusion. Otherwise also I am bound by the decision which is based on a decision of the Hon'ble High Court that has even been affirmed by the Hon'ble Supreme Court.

11. I am not impressed with the submission of the learned counsel for the respondents that the matter in respect of persons who have not gone into the litigation is under consideration by the Ministry of Finance. There cannot be a sub class like that of one litigating and another not litigating. Such classification does not have any intelligible differentia for such separate classification and there is no nexus with the object sought to be achieved. In this view of the matter, I have absolutely no hesitation in following the ratio laid down by the aforesaid decision and applying the same to the instant case and deciding the O.A. on similar lines.

12. In the premises, the O.A. is partly allowed. Respondents are directed, in accordance with directions issued by the Guwahati Bench of this Tribunal as affirmed by the Apex Court to accord hospital patients care allowance /patients care allowance to the applicants w.e.f. the date (s) of their appointments within a period of three months from the date of receipt of a copy of this order. However, no interest is allowed. No costs.


(J.K. KAUSHIK)
MEMBER (J)

HLS/