

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

(Reserved on 29.03.2017)

Date of decision- 07.04.2017

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)

(i) OA No. 060/00818/2014

1. Rachpal Singh S/o Sh. Jagmail Singh working as Technical Helper.
2. Ajit Singh S/o Sh. Ram working as Beldar.
3. Mohd. Suleman S/o Rasul Baksh working as Technical Helper.
4. Avtar Singh S/o Atma Singh working as Chowkidar Gopal Singh S/o Prem Singh working as Chowkidar.
5. Gopal Singh S/o Prem Singh working as Tech. Helper.
6. Gurdeep Singh S/o Rattan Singh working as Tech. Helper.
7. Shamser Singh S/o Bhajan Singh working as Chowkidar.
8. Som Nath S/o Maharaj Din working as Beldar.
9. Anil Kumar S/o Laxmi working as Chowkidar.
10. Mangal Singh S/o Budh Singh working as Beldar.
11. Surinder Dutt S/o Uday Singh working as Technical Helper.
12. Sabir Hussain S/o Dhan Raju Din working as Beldar.
13. Darbara Singh Banarsi Das working as Chowkidar.
14. Surinder Kumar S/o Ram Tirath working as Chowkidar.
15. Dial Ram S/o Soarn Ram working as Chowkidar.
16. Surinder Singh S/o Charan Singh working as Chowkidar.
17. Santosh Kumar S/o Tulka Ram working as Helper.
18. Gurcharan Singh S/o Ajaib Singh working as Helper.
19. Dhani Ram S/o Ranju Ram working as Helper.
20. Rajiv Kumar S/o Ajaib Singh working as Helper.
21. Sidpat Rai S/o Harbhajan Singh working as Helper.
22. Kanwar Paul S/o Makhan Singh working as Chowkidar.
23. Jawala Parshad S/o Ram Saran working as Helper.

All the applicants are working under the Chandigarh Public Health Wing of the respondents under office of the Superintending Engineer, Project Public Health Circle, Chandigarh.

...APPLICANTS

BY ADVOCATE : Mr. K.B. Sharma.

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Home Affairs, New Delhi.
2. Chandigarh Administration through Home Secretary, Chandigarh.
3. Finance Secretary, Chandigarh Administration, Chandigarh.
4. Chief Engineer, Union Territory, Chandigarh.
5. Superintending Engineer, Project Public Health Circle, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. Ram Lal Gupta, counsel for respondent no. 1. Sh. Rakesh Verma, counsel for respondents no. 2 to 5.

(ii) O.A No. 060/00750/2015

1. Satnam Singh S/o Late Sh. Amarjit Singh, Chowkidar.
2. Mohinder Singh S/o Late Sh. Gurdev Singh, Chowkidar.
3. Manjit Singh S/o Late Sarja Singh, Chowkidar.
4. Jaspal Singh S/o Late Sh. Harbhajan Singh, Chowkidar.
5. Tarsem Lal S/o Late Sh. Bhangi Ram, Chowkidar.
6. Kulwant Singh S/o Sh. Wassan Singh, Chowkidar.
7. Gandhi Ram S/o Late Sh. Ronki Ram, Chowkidar.
8. Avtar Singh S/o Late Sh. Dayal Singh, Chowkidar.
9. Gurmail Singh S/o Sh. Babu Singh, Chowkidar.
10. Surinder Singh S/o Sh. Balwant Singh, Helper.
11. Jaswinder Singh S/o Sh. Ram Singh, Helper.
12. Satpal Singh S/o Sh. Sada Ram, Helper.
13. Jaswinder Singh S/o Sh. Ram Lal, Helper.

(All the applicants are working in the O/o Executive Engineer Project, Municipal Corporation, Public Health Division No. 1, Chandigarh on deemed deputation basis).

...APPLICANTS

BY ADVOCATE : Mr. Barjesh Mittal.

VERSUS

1. U.T, Chandigarh Administration through Secretary Engineering, U.T, Secretariat, Sector 9, Chandigarh.
2. Chief Engineer, U.T, Chandigarh Administration, Engineering Department, U.T, Civil Secretariat, Sector 9, Chandigarh.
3. Commissioner, Municipal Corporation, Sector 17, Chandigarh.
4. Chief Engineer, Municipal Corporation, Sector 17, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. Rakesh Verma, counsel for respondents no. 1 to 2. Sh. Arvind Moudgil, counsel for respondent nos. 3 to 4.

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ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

This order shall dispose of both the above captioned O.As as the law point and issue involved in these cases is common in nature. Merely facts are here and there will not change the law. For convenience, facts are taken from O.A No. 060/00818/2014 titled

Rachpal Singh & Ors. Vs. U.O.I & Ors.

2. The applicants are aggrieved against the order dated 21.05.2014 (Annexure A-1) whereby the respondents have rejected their claim for grant of medical allowance as available to their counterpart in State of Punjab. They further sought issuance of direction from this Court to the respondents to allow all the applicants (work charged employees) of the Project Public Health Circle, Chandigarh, the medical facility from the date when it was stopped at par with the work-charged employees of the Irrigation Department of the Punjab Government as services of the work charged employees are governed by the Punjab Civil Services Rules.

3. Brief facts are that all the applicants are working as Work Charged employees on different posts like Technician, Helper, Beldar, Chowkidar. Their service particulars are given in Annexure A-1/ A of the O.A. They joined the Chandigarh Administration on various dates during 1985 to 2001. They have been working under the Chandigarh Public Health Wing for the last more than 25 years in different divisions. The appointment letter annexed as Annexure A-2 makes it further clear that their services are governed by the Punjab Civil Services Rules. Earlier the applicants were getting fixed medical allowance but the same was stopped when the State of Punjab stopped the same benefit to the employees working in the Kandai Canal Project, SYL Project, Mukerian Hydel Project under Irrigation

Department of the State of Punjab. The employees of State of Punjab approached the Hon'ble jurisdictional High Court by filing CWP No. 4930/1995 titled **SYL (Sutlej Yamuna Link) Workers Union, Punjab Vs. State of Punjab etc.** challenging the inaction of the State of Punjab for not granting the fixed medical allowance and said writ petition was allowed vide judgment dated 19.07.1996 holding that the petitioners therein are entitled for grant of fixed medical allowance t w.e.f. 01.01.1983, the date from which it was stopped. When the applicants came to know about the decision in the above referred case, they immediately submitted a representation dated 09.01.2012 for grant of fixed medical allowance which was followed by legal notice dated 09.05.2013. When the same was not decided then they approached this Tribunal by filing O.A. No. 1636-GH-2013 which was disposed of on 16.12.2013 with a direction to the competent authority to decide the representation followed by legal notice. Even when the respondents did not pay any heed, they filed an execution application before this Tribunal. Pending execution application, the respondents rejected the claim of the applicants by passing the impugned order dated 21.05.2014 against which the applicants are before this court by filing the present O.A.

4. The respondents resisted the claim of the applicants by filing detailed written statement wherein they submitted that though their service condition governed by notification dated 13.01.1992 are same as that of work charged employees working in the State of Punjab. Since State of Punjab had already stopped benefit of fixed medical allowance to their work charged employees, therefore, Chandigarh Administration had also stopped that benefit. They have also submitted that in furtherance to the judgment passed by the Hon'ble jurisdictional High Court in case of SYL employees (supra), the Government of Punjab has not issued any notification for restoring the

benefit, therefore, they have also not issued any notification granting/restoring the benefit to their employees working under the work charged establishment.

5. The applicants have also filed rejoinder wherein it is submitted that as per the information received under RTI, it has been informed by the State of Punjab that they are paying the fixed medical allowance to their work charged employees. It is also submitted that it is not that other employees working under work charged establishment are not getting the fixed medical allowance, it was only denied to SYL Work Union which has already been restored after the judgment passed by the Hon'ble High Court in their favour. Since, work charged employees working under State of Punjab are getting the benefit of fixed medical allowance, therefore, they are also entitled to get the same benefit.

6. On 08.03.2017, we directed the Chandigarh Administration to file a specific affidavit indicating therein whether employees working under work charged establishment in the State of Punjab are getting the fixed medical allowance or not? The Chandigarh Administration has now filed an affidavit wherein they have not clarified the position. In para 3, they have averred as under:-

"3. That in the letter issued by the Punjab Govt. letter no.5/52-92-FP/5666 dated 05.08.1996 duly adopted by the Chandigarh Administration vide letter no.10507 dated 23.08.1996 and letter no.6806 dated 03.11.2016 attached with the MA filed by the applicant, it has nowhere been mentioned that the fix medical allowance is admissible to work charged employees. Moreover, the applicants have been engaged on purely work charged basis against a work to which their wages are debited and are not appointed against any sanctioned post, as such the scales of pay / allowances so revised or granted by the State of Punjab to the regular employee are not directly applicable to the purely work charged employees of U.T. Chandigarh Administration."

7. We have Sh. D.R. Sharma, Sh. Barjesh Mittal, learned counsel for the applicants and Sh. Rakesh Verma, counsel for

respondents no. 2 to 5, Sh. Ram Lal Gupta, counsel for respondent no. 1 and Sh. Arvind Moudgil, counsel for respondent no. 3 to 4 in connected O.A.

8. Sh. D.R. Sharma, learned counsel for the applicants vehemently argued that action of the respondents firstly in withdrawing the benefit of fixed medical allowance and then not extending the same despite there being judicial pronouncement passed in case of SYL work charged employees wherein Hon'ble High Court rejected the action of the Punjab Government for withdrawing the benefit of fixed medical allowance, is totally illegal, arbitrary and colourable exercise of power. Once the basis of decision for withdrawing the fixed medical allowance has been vanished, then the same benefit may also be restored to the work charged employees working under the Chandigarh Administration. He also argued that merely no notification issued by the State of Punjab in furtherance to judgment passed in case of SYL Workers Union (supra), the Chandigarh Administration cannot be allowed take shelter of same to deprive them from granting the same benefit. To buttress his submission, he placed reliance upon the decision passed by this Court in O.A No. 060/00744/2015 titled **Parminder Pal Vs. Chandigarh Administration & Ors.** decided on 03.01.2017.

9. Per contra, Sh. Rakesh Verma, learned counsel for respondents no. 2 to 5 has reiterated what has been stated in the written statement. However, he submitted that the authorities be given chance to reexamine the matter to pass a fresh order.

10. We have given our thoughtful consideration to the entire matter and have perused the pleadings as available on record with the able assistance of the learned counsel for the parties.

11. The core question that arose for our consideration is as to whether the applicants who are working under the work charged

establishment of Chandigarh Administration are entitled for fixed medical allowance as available to their counterpart working in the State of Punjab or not?

12. In case of **U.T. Chandigarh Vs. Rajesh Kumar Basandhi** 2004(2) SLJ 17 (SC), the Hon'ble Apex Court while interpreting the notification dated 13.01.1992 held that if there are no rules governing the service conditions of employees of Chandigarh Administration then their service condition will be the same as applicable to corresponding posts in the State of Punjab. Admittedly, the applicants were getting the fixed medical allowance which was available to the work charged employees working in State of Punjab. But when it was stopped by the SYL Project, then their action was challenged before the Hon'ble High Court and the same was set aside the Hon'ble High Court. In furtherance thereto, employees working as work charged under the Project were granted the fixed medical allowance. Once the action of the SYL Project in declining the benefit of fixed medical allowance in favour of the work charged employees of State of Punjab has been struck down and same benefit has also been restored in their favour then the Chandigarh Administration is duty bound to restore the same benefit to their employees working under the work charged establishment. Despite there being a specific direction, Chandigarh Administration failed to file any plea/stand that the applicants are not entitled for the benefit but in the interest of justice, we deem it appropriate that let High Power Committee be constituted in the respondent department to come to the conclusion, whether employees like applicants working under the work charged establishment of the Chandigarh Administration, are entitled for fixed medical allowance, if the same is admissible to the employees working under the State of Punjab on the corresponding posts. While deciding the same, the applicants are also allowed to participate in that

meeting. The respondents are under obligation to take necessary information from the respective departments and if similarly situated employees like applicants working under the State of Punjab are getting the same benefit then same be also restored in the case of the applicants too, otherwise reasoned and speaking order be passed. Let the above exercise be carried out within a period of four months from the date of receipt of a certified copy of the order.

In view of the above, both the O.As are disposed of in above terms. No costs.

