

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****OA. 060/00375/2014****(Reserved on 19.11.2014)****Chandigarh, this the 2nd day of December, 2014**

...
CORAM:HON'BLE MRS.RAJWANT SANDHU, MEMBER(A)
HON'BLE DR. BRAHM A.AGRAWAL, MEMBER(J)
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1. Permil Lata, Clerk, Red Cross Family Welfare Centre, District Red Cross Branch, Yamuna Nagar, Haryana.
2. Usha Rani, ANM, Red Cross Family Welfare Centre, District Red cross Branch, Yamuna Nagar, Haryana.
3. Saroj Bala, ANM, Red Cross Family Welfare Centre, District Red Cross Branch, Yamuna Nagar, Haryana.

...Applicants

BY ADVOCATE: MS. SANGITA DHANDA**VERSUS**

1. Union of India through Secretary, Ministry of Health and Family Welfare, New Delhi.
2. State of Haryana, Health and Family Welfare Department, Civil Secretariat, Haryana, Chandigarh through its Commissioner cum Secretary.
3. Director General Health Services, Sector 6, Panchkula.
4. Deputy Commissioner Cum President, District Red Cross Society, Yamuna Nagar.



5. Secretary, District Red Cross Society, Yamuna Nagar.

...Respondents

BY ADVOCATE: **MR. SURESH VERMA FOR RESPDT.NO.1.**
MR. DHIRENDER SHUKLA FOR
RESPDTS. NO. 2&3.
MR. M.S. SINDHU FOR RESPDTS. NO. 4 &
5.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

- “(i) Issuance of a direction to respondents No. 4 & 5 to grant service benefits of installments of dearness allowance and annual salary increments, benefit of C.P.F. alongwith G.I.S. deductions, ACP-1, ACP-2 and pay revision as per 6th Pay Commission recommendations to the applicants as they are fully eligible for the same.
- (ii) Issuance of a direction to respondent No. 2 and 3 to release grant in aid for further releasing the arrears of applicants from the dates same are becoming due to them as the applicants are regular employees of respondent society presently working in Family Welfare Centre of District Red Cross Society, Yamunanagar as is clear from their appointment letters dated 29.6.1991, 18.6.1991 and 28.4.1994 (Annexures A-1 to A-3 respectively).”

2. It has been stated in the OA that the applicant No. 1 was appointed as Clerk in Family Welfare Centre run by District

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Red Cross Society against a substantive vacant post, in the regular pay scale of Rs. 950-1500 vide appointment letter dated 29.6.1991 by respondent No. 5 (Annexure A-1). The applicants No. 2 & 3 were appointed as ANM in Family Welfare Centre run by District Red Cross Society against substantive vacant pots, in the regular pay scale of Rs. 950-1500 vide appointment letters dated 18.06.1991 and 28.4.1994 respectively (Annexures A-2 and A-3). The applicants have been associated with the respondent society since more than 20 years and they have been paid their salaries on the pattern of pay scales as provided by the Haryana Government which included revision of their pay scales upto 5th Pay Commission.

3. Averment has been made in the OA that the Respondent Society vide their Resolution No. 5 dated 07.07.1970 (Annexure A-4) had specifically resolved/accepted that all benefits of salary (including pay revision), leave would be given to the employees of the Red Cross Society as are available to the employees under Haryana Government. In the year 2004, the Director General Health Services, Haryana, Panchkula vide Memo No. 31/1 counter FW-04/1532 dated 30.11.2004 allowed the ACP



scales to all the employees of "The District Red Cross Society", Ambala as per ACP rules, 1998 with effect from 01.01.1998.

4. In support of the claim of the applicants, it has been stated that the matter regarding pay scales was considered by the Executive Committee meeting held on 1.8.2011 under the Chairmanship of the President, District Red Cross Society, Ambala when it was decided that ACP scales would be provided to all the employees of the District Red Cross Society, Ambala (Annexure P-5). In another case titled Raj Kumari Vs. District Red Cross Society, Civil Suit No. 448-CS of 2005 was decreed and the learned Judge directed the respondent Society to pay the arrears of her ACP Scales w.e.f. 01.01.1998 to 31.05.2004, the date of her retirement in accordance with law alongwith interest @ 6% per annum from the date it became due till its realization (Annexure P-6). Despite clear and specific rules and instructions regarding granting benefits of instalments of dearness allowance and annual salary increments, benefit of C.P.F. alongwith G.I.S. deductions, ACP-1, ACP-2 and pay revision as per 6th Pay Commission recommendations to its employees who have completed requisite number of years for becoming eligible for grant of said benefit the

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applicants have been denied the same till date despite the fact that they have already completed requisite number of years in the service of District Red Cross Society. The similarly situated employees of the District Red Cross Society are getting all these benefits. The applicants had submitted several representations in this regard but to no avail (Annexure A-7).

5. It has also been stated that the Hon'ble Punjab and Haryana High Court passed order dated 8.11.2012 in CWP No. 16721 of 2011 in case titled Saroj Kumari & Ors. Vs. State of Haryana & Ors. regarding payment of salaries to the employees of the Handicapped Centre working under Red Cross Society, Rohtak and it was held therein that the respondent State was required to make payment in the first instance and thereafter the State was allowed to adjust the same from the amounts of grant-in-aid etc. to be paid to the District Red Cross Society (Annexure A-8).

6. It has further been stated that since no action was being taken by the respondents on the representations of the applicants, the applicant No. 1 filed an OA No. 1470 of 2013 before this Tribunal and the same was decided vide order dated 29.10.2013 directing the respondents to decide the representations

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of the applicant No. 1 within a period of two months (Annexure A-9). After receiving the orders passed by the Tribunal, the respondent No. 4 decided the representation of the applicant No. 1 by passing the impugned order dated 20.2.2014 and denied the service benefits due to the applicant (Annexure A-10).

7. In the OA, reference has also been made to the case of Shanno Devi who was a co-employee of applicant regarding having been granted all service benefits of ACP scale as per order dated 18.3.2014 in TA No. 61/HR/2013 (Annexure A-11). This matter was decided in terms of Dr. Swaran Sharma's case in CWP No. 12339 of 2005 decided on 29.8.2007 (Annexure A-12)

8. In the written statement filed on behalf of respondents No. 2 & 3, it has been stated that the respondents implemented the National Family Welfare Programme in their State in public interest. The answering respondents after receiving the grant in aid from Union of India, respondent No. 1, allocated the same to District Red Cross Societies on the basis of their achievements. The applicants are working in Urban Family Welfare Centre. These Centres are being run with 100% grant from Govt. of India, Ministry of Health & Family Welfare through Director General

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Health Services, Haryana, respondent No. 3. The matter regarding granting the benefits of ACP and 6th Pay Commission was considered by the Government of India. The Under Secretary to the Government of India, Ministry of Health & Family Welfare, New Delhi vide their letter No. 12012 dated 17th June, 2009 conveyed as follows:-

“promotion of any kind cannot be granted to the staff working in Urban Family Welfare Centres/Urban Health Posts run by voluntary organizations/NGO under National Family Welfare Programme.

It is further informed that the recommendations of 6th CPC are not applicable to the staff working in UFWC/UHP run by Voluntary Organizations/NGO running UFWC/UHP under National Family Welfare Programmes.

It is also informed that Government of India reserves the right to change or modify the nature, scope and pattern of salary, staffing and funding of the existing UFWCs/UHPs run by Vol. Organization/NGOs at any point of time.”

Moreover, the Civil Suit of Smt. Bhagwati, who was working as ANM in Family Planning Centre, Ambala Cantt. was dismissed on 20.9.2012. The operative part of decision is reproduced hereunder for ready reference:-

“the defendant has placed on record the instruction Ex.D2 (the letter No. 12012 dated 17th June, 2009 mentioned above) issued by Government of India to the Director General Health Services whereby specific directions have been issued by the Government of India to the Director General Health Services Haryana that promotion of any kind



of recommendation of 6th CPC i.e. grant of ACP scales are not applicable to the staff working in the Urban Family Welfare Centre run by Voluntary Organization/NGOs. As such, the defendant organization would be covered under these instructions as the plaintiff has failed to show the defendant organization as a Government organization and not a voluntary organization."

Therefore, the applicants are not entitled for the grant of ACP scales and the benefits of 6th Pay Commission. Hence, the impugned order dated 13.2.2014 was passed in accordance with the rule of law, which is sustainable in the eyes of law.

9. In the written statement filed on behalf of respondents No. 4 & 5, apart from the preliminary objections, it has been stated that it is clear from the appointment letters that applicants were appointed in Family Welfare Planning Centre, Yamunanagar and not as employees of the Red Cross Society. As far as Resolution No. 5 dated 07.07.1970 is concerned that is applicable to the employees of the District Red Cross Society and not to the employees of the Family Welfare Centre. During the year 2002-2003, Government of India imposed 50% cut in the financial aid provided for running this project/scheme, as intimated by the Directorate Health Services, Haryana to the answering respondents vide letter No. Cashier/Pk/2/1305, Panchkula dated

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20.6.2012. Consequently by giving one month notice, services of the applicants and one Smt. Shanno Devi, ANM were retrenched and its intimation was given to the Director General, Health Services, Haryana. After that applicants and Smt. Shanno Devi got served a legal notice through her counsel to which reply was given by the Red Cross Society. The applicant Smt. Permil Lata approached the Hon'ble Punjab and Haryana High Court by filing CWP No. 11230 of 2002 which was disposed of by the Hon'ble High Court on 09.10.2003. After that, pursuant to the orders received from the Director General, Health Services, Haryana vide Memo No. 4PK-03/1311-1314 dated 16.7.2003, the applicants were again taken in service. In this letter, it was clarified that in case the staff appointed in the Urban Family Welfare Centres run by the voluntary organizations fulfill the objectives of the Government of India, then in future 100% grant-in-aid will be provided by the State Government. Keeping in view the aforesaid directions, the applicants No. 2 & 3 and Smt. Shanno Devi were taken in service again in the month of August, 2003 and it was made clear that no pay and allowances will be paid to the applicants for the period they remained out of service. At that time, the applicants No. 2

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and 3 gave an affidavit that they will not claim back wages and service benefits. Therefore, keeping in view their affidavit as well as instructions from the Health Department, Haryana applicants and Smt. Shanno Devi were engaged at Family Welfare Planning Centre, under the scheme run by the Government of India for which grant was given by the State Government every year. Applicant No.1, Smt. Permil Lata Devi who had filed CWP No. 11230 of 2002 however joined on 29.12.2003 pursuant to the orders passed by the Deputy Commissioner and President, District Red Cross Society, Yamunanagar in which it was made clear to her that:-


“You will not be given benefit of any past service to which you have not worked. You will continue in service till the grant-in-aid is received from Director, Health Services, Haryana, Chandigarh or your service are not dispensed with on account of any other grounds. The grant-in-aid for the time being has been received from Director, Health Services upto 31st March, 2004. That if you are desirous to join the duties on the above terms you may report for duties immediately within a week's time from the receipt of this communication failing which it shall be considered that you are not willing to join as such.”

Pursuant to the above letter, applicant No. 1 joined on 29.12.2003.

Therefore, now she cannot back out from the undertaking given by her at the time of her joining. As _____

10. In the rejoinder filed on behalf of the applicants, the main point has been taken regarding discrimination and it has been stated that while some employees of the Red Cross Society are being released ACP and salary on the basis of 6th Pay Commission recommendations, similar treatment had been denied to the applicants working in the Family Welfare Centres.

11. Arguments advanced by learned counsel for the parties were heard. Learned counsel for the applicants reiterated the facts and grounds taken in the OA and also referred to the judgements cited in the OA relating to the case of Dr. Swaran Sharma and Smt. Shanno Devi. She stated that no promotions had been allowed to the applicants in the course of their service with the respondent society and hence they were entitled to the benefit of ACP as per Haryana Government's own letter dated 30.11.2004 issued by the DGHS (Haryana) to the Secretary, Red Cross Society, Ambala. Learned counsel also stated that the letter dated 17.6.2009 issued by the Ministry of Health and Family Welfare regarding entitlement of persons working in the Urban Family Welfare Centres to the benefits of ACP and 6th Pay Commission, could at best have prospective effect. The same could not be given



retrospective effect. Learned counsel also referred to judgement dated 1.4.2014 in Suresh Kumar & Ors. Vs. UOI & Ors., TA No. 62/HR/2013 which had been decided keeping in view the decision of the Hon'ble High Court rendered in CWP No. 12339/2005 titled Dr. Swaran Shgarma Vs. State of Haryana & Ors. wherein the following directions were given:-

“Hon'ble Division Bench in the order dated 20.5.2008 has observed that the writ court will consider the claim in the light of judgement of M.P. Singh's case i.e. L.P.A. No. 54 of 1992 decided on November 18, 2005 has also been filed on the record as Annexure A-3. In the aforesaid judgement, Hon'ble Delhi High Court directed the Delhi Admiistration, which was funding the Red Cross Socetty to pay the salary etc. of the staff deployed by the Red Cross Society. Complying the ratio/principle of the aforesaid judgement in the present case, the financial aid is provided by the Central Government, however, it is the State of Haryana, the nodal Agency which, in fact is responsible for disbursing the amount to the various Red Cross Society Branches in the State of Haryana.

Under the given circumstances, the State of Haryana will disburse the amount to the Red Cross Society for complying the judgement. However, the State of Haryana shall be entitled to seek reimbursement of the amount from the Central Government. The judgement dated 29.8.2007 is accordingly clarified/modified in the above manner. Application is disposed of as such.”

12. Sh. Dhirender Shukla, learned counsel for the respondents No. 2 & 3 stated that the Family Welfare Centres were run through the grant-in-aid released by the Ministry of Health

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and Family Welfare and the Ministry had clarified vide letter dated 17.6.2009 that promotion of any kind cannot be granted to the staff working in Urban Family Welfare Centres run by voluntary organizations, NGOs under the family welfare programmes. It has also been conveyed that the recommendations of the 6th CPC were not applicable to the staff working in these centres. Learned counsel stated that in view of this clarification, the staff working at the Family Welfare Centres were only entitled to salary payments as per the norms prescribed under the National Family Welfare Programme for which the grant was received from the Government of India. There was no source from which additional payments could be made to the staff of these centres as these Centres were being run only as per the National Family Welfare Programme and District Red Cross Society did not have the resources to supplement the salaries of the staff working under the Family Welfare Centres. .

13. Written arguments were submitted on behalf of Sh. M.S. Sindhu, learned counsel for respondents No. 4 & 5. Learned counsel has reiterated the content of the written statement filed on behalf of respondents No. 4 & 5. It has also been clarified that the

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case of Dr. Swaran Sharma related to non-payment of salary for the period from 1.11.1994 to 10.2.2005 as well as gratuity and no relief of ACP was granted in that case. Smt. Shanno Devi's case was disposed of in terms of Dr. Swaran Sharma's case and thus in none of these cases, the controversy regarding non-payment of ACP and pay revision on the basis of 6th Pay Commission was involved.

15. We have given our thoughtful consideration to the matter. Order dated 20.3.2009 in CWP No. 18396 of 2007 titled as Resurgence India Vs. UOI which has been referred in the impugned order dated 20.2.2014 is very relevant. In the order of 20.2.2014, it has been stated that persons appointed in the Family Welfare Centres run by the District Red Cross Society are paid from 100% grant-in-aid given by State Government. The Red Cross Society is only the medium to hand over the 100% grant given by the Government of India/State Government for the salaries of the employees of the Family Welfare Centres. Hence, it is clear that the staff of the Family Welfare Centres cannot have any additional claim against the District Red Cross Society. Further, directions have been given to the Red Cross Societies as a

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sequel to decision in CWP No. 18396 of 2007 that the District Red Cross Societies in Haryana are to stop all projects to generate income through them and they are not to take in hand any such projects for which no grants are received for generating income for the Society. Hence, in the present case, the salaries of the staff of the Welfare Centres cannot be supplemented by the District Red Cross Society itself. Besides, since the Ministry of Health and Family Welfare, Government of India has clearly conveyed vide letter dated 17.6.2009 that the staff working in the Family Welfare Centres are not entitled to promotions or the 6th Central Pay Commission scales of pay and it is also seen that in the past when the quantum of grant was reduced, some of the staff had to be retrenched and they were taken back in service without the period of retrenchment being paid for in any manner, it must be concluded that the persons working in the Family Welfare Centres are only entitled to wage payments as per the norms fixed under the National Family Welfare Programme and any claim beyond this cannot be accepted. We also note that the FWCs are funded by Government of India and the funds are channelized through the State Government and then the District Red Cross Societies

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16. Hence, we conclude that the case law cited on behalf of the applicants is not material to the claim of the applicants in the present case. While the employees of the District Red Cross Society are entitled to benefit of Resolution No. 5 dated 7.7.1970 (Annexure P-2) and letter of DGHS Haryana dated 30.11.2004 (Annexure A-5), a claim for similar benefit by the applicants who are employees of the Family Welfare Centres being run by DRCS, a voluntary organization, under the National Family Welfare Programme is not maintainable keeping in view the content of letter No. 12012 dated 17.6.2009. Moreover, the applicants who had been retrenched from the Family Welfare Centre in 2002 due to paucity of funds, were taken back in service in 2003 and it was clarified to them that they would not be paid for the period that they were not in service. Applicant No. 1 was reinstated on the directions of the Hon'ble High Court when only the claim for reinstatement was allowed and it was mentioned that she would continue in service till grant in aid is received. Obviously therefore, the applicants cannot claim anything beyond the scope of the grant in aid released by Government of India under the National Family Welfare Programme. M —

17. In view of the above discussion, the OA is rejected. No costs.


(RAJWANT SANDHU)
MEMBER(A)


(DR. BRAHM A. AGRAWAL)
MEMBER(J)

Dated: December 2 , 2014
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