

Central Administrative Tribunal
Principal Bench

OA 527/2016

New Delhi, this the 12th day of January, 2018

Hon'ble Mrs. Jasmine Ahmed, Member (J)

1. N.K. Popli s/o Ram Chand, Aged 52 years,
R/o A-15, New Govindpuri,
Street No.7, Delhi – 57
Working as Senior Radiographer in
Dr. Ram Manohar Lohia Hospital, New Delhi.
2. Ram Prasad s/o late Kharati Lal, Age 59 years
R/o C1/961, Dr. A. Nagar-IV,
Malviya Nagar, New Delhi – 32.
Working as Senior Radiographer in
Dr. Ram Manohar Lohia Hospital, New Delhi.
3. Arun Kr. Arora s/o Sh. Tej Bhan, Age 49 years
R/o H.No. 231/PW7-7/
Sector 24, Rohini, Delhi – 85
Working as Senior Radiographer in
Dr. Ram Manohar Lohia Hospital, New Delhi.
4. Rakesh Kr. Garg s/o late R.D. Garg, age 45 years,
R/o 3A/297, Rachna Vaisali, GZB (UP)
Working as Senior Radiographer in
Dr. Ram Manohar Lohia Hospital, New Delhi.
5. Sudhir Kumar Tiwari s/o Sampurna Nand Tiwari
Age 43 years,
R/o H.No. 479/2, Gali No.1, Vijay Park,
Maujpur, Delhi.
Working as Senior Radiographer in
Dr. Ram Manohar Lohia Hospital, New Delhi.
6. Arun Negi s/o S.S. Negi, Age 46 years,
R/o D-14, STC Colony, New Delhi – 110 017
Working as Senior Radiographer in
Dr. Ram Manohar Lohia Hospital, New Delhi.
7. Naresh Kumar s/o Chander Singh, age 47 years
R/o 235, V&PO Jaunti, Delhi – 110 081.
Working as Senior Radiographer in
Dr. Ram Manohar Lohia Hospital, New Delhi.

8. Ashok Saini s/o Sh. Sardar Singh Saini
Age 46 years,
R/o G-63, Kiran Garden, Uttam Nagar,
New Delhi
Working as Senior Radiographer in
Dr. Ram Manohar Lohia Hospital, New Delhi.
 9. Philip K.V. s/o Sh. Verghese Easow,
Age 47 years
R/o BE-102, Hari Nagar, New Delhi – 110 064.
Working as Senior Radiographer in
Dr. Ram Manohar Lohia Hospital, New Delhi.
 10. Narender Kumar s/o Sh. Jugal Kishor,
Age 46 years
R/o 9/130, Geeta Colony, Delhi-110031
Working as Senior Radiographer in
Dr. Ram Manohar Lohia Hospital, New Delhi.
 11. Hongsha Moshel Maring s/o H. Khamba Maring
Age 41 years,
R/o Q.No.161, Sector-2, R.K. Puram,
New Delhi – 110 022
Working as Senior Radiographer in
Dr. Ram Manohar Lohia Hospital, New Delhi.
 12. Sanjay Ghosh s/o Sh. C.K. Ghosh,
Age 31 years
R/o D-1/266, Sangam Vihar,
New Delhi
Working as Senior Radiographer in
Dr. Ram Manohar Lohia Hospital,
New Delhi.
- ...Applicants

(By Advocate: Shri Sudarshan Rajan)

Versus

1. Union of India through
Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.
2. The Director General Health Services,
Nirman Bhawan,
New Delhi.

3. The Medical Superintendent,
Dr. Ram Manohar Lohia Hospital,
New Delhi. ...Respondents

(By Advocate: Sh. R.K. Jain)

ORDER (Oral)

The short issue involved in this OA is that whether after 6th Central Pay Commission [hereinafter referred to as CPC], the pay scale of Senior Radiographers (Group-C post), which has been revised to PB-2 Rs.9300-34800/- with GP of Rs.4200/- and has been classified as Group-B post by the Municipal Corporation, will be an impediment for getting HPCA by the applicants or not?

2. The brief factual matrix of the case is that the applicants, who are working as Senior Radiographers in Dr. Ram Manohar Lal Hospital and were being granted Hospital Patient Care Allowance [hereinafter referred to as HPCA], have suddenly been denied the same and recoveries of the HPCA amount already granted to them have also been ordered to be made by the respondents. It is the contention of the counsel for the applicants that the applicants, who are holding the post of Senior Radiographer (Group-C post), which is part of Para-Medical Staff as termed by the Government as also by various Pay Commissions, are discharging their duties in various Hospitals across the

country. It is further submitted that this post has been brought under Group-B by the respondents as per the latest amendment in the Recruitment Rules published by Notification dated 28.05.2013. It is the contention of the counsel for the applicants that the HPCA is a special allowance afforded to various para medical staff like Senior Radiographers, Physiotherapist, etc. for interacting with patients and for the special care that they extend to the patients, who come to the hospitals/para medical centres for treatment. He also contended that this HPCA is given for the high risk involved in the working of this category of employees due to direct interaction with patients wherein there is always a high risk of being affected by the direct handling of the patients. Counsel for the applicants states that the HPCA was introduced vide order dated 25.01.1998 for granting the same to all the beneficiaries who are holding Group 'C' and Group 'D' posts (Non-ministerial employees).

3. It is also argued by the counsel for the applicants that by virtue of recommendations of the 6th CPC, only the category of the post of Senior Radiographers from Group 'C' to Group 'B' has been changed but the duties and responsibilities attached to the said post have not been at all changed. He also argued that the similar and identical

issue as involved in the instant OA has already been dealt with by the Madras Bench of this Tribunal in the matter of ***Banumathy Mohanakrishnan & Anr. Vs. Union of India & Ors.*** [OA No.818/2013 decided on 22.06.2004] wherein the matter was discussed in detail and it was observed that *‘Therefore, merely because the applicants have been given a higher pay scale in accordance with the Fifth Central Pay Commission would not ipso facto mean that there is a change of their grades, viz. from Gr.C to Gr.B automatically. Such a view is erroneous and is without any basis and cannot be sustained’*. Accordingly, the OA was allowed with a direction to the respondents to restore the payment to the applicants therein with immediate effect and any recovery made on that behalf relating to excess payment of HPCA was ordered to be refunded to the applicants.

4. The said order of the Madras Bench of this Tribunal was challenged by the respondents before the Hon’ble High Court of Madras by filing Writ Petition No.30973/2004, which was dismissed vide judgment dated 17.08.2007. Against the aforesaid judgment of the Hon’ble High Court of Madras, the respondents preferred a Review Application bearing RA No.15/2009, which was considered and dismissed by the High Court vide order dated 21.09.2010 upholding the decision of the Madras Bench of this

Tribunal. For the sake of convenience, relevant portion of the judgment is reproduced hereunder:-

“9. Patient Care Allowance was granted to the employees whose regular duties involve continuous and routine contact with patients infected with communicable diseases or those who have to routinely handle, as their primary duty, infected materials, instruments and equipments which can spread infection. In the case on hand it is not the case of the Administration that with the implementation of V Pay Commission Recommendations and with the upgradation of the pay scales, the nature of duties of the respondents 1 and 2 got changed and that their duties no more involve any contact with patients infected with communicable diseases and that they are not handling any infected materials, instruments and equipments which can spread infection.

10. In this view of the matter, when the upgradation of the pay scale has not at all changed the nature of duties and when the Administration itself has clarified the position by the OM dated 10.05.2001 that the classification of the post shall be determined with reference to the grade in which the post is originally sanctioned irrespective of the grade/pay scale in which the officer may be placed at any point of time, we see no merit in the contentions raised on the part of the Administration and these aspects, thus, do not, in any manner, tilt the balance in favour of the Administration. In fact, on the other hand, they fortify the decision arrived at by the Division Bench in WP No.30973 of 2004, dated 17.08.2007, to dismiss the claim of the Administration against the order of the Tribunal, which has considered all the facts and circumstances of the case in their proper perspective and has arrived at an irresistible conclusion of rejecting the claim of the Administration.

Therefore, for all the above reasons, this Review Application is dismissed. No costs.”

5. The order of the High Court of Madras was also challenged by the respondents before the Hon’ble Apex Court by way of SLP (CC) No.8580/2011, which was also dismissed vide order dated 13.05.2011. Meaning thereby, the order of the Madras Bench of this Tribunal dated

22.06.2004 passed in OA No.818/2003 (supra) attained finality.

6. Pursuant to the above, three sets of similarly situated employees approached this Tribunal by filing OA No.470/2016 [**Manoj Kumar & Ors. vs. NDMC & Ors.**]; OA No.786/2016 [**Mohinder Singh & Ors. vs. NDMC & Ors.**]; and OA No.1105/2016 [**Ved Prakash & Ors. vs. NDMC & Ors.**] and the Tribunal, after thoroughly examining the issue involved in these matters and taking a view that the action of the respondents is arbitrary, allowed all the three OAs by a common order dated 30.08.2016 with a direction to the respondents to restore the payment of HPCA to the applicants therein from the date it was discontinued. It was further directed that no recovery could be made from the retired employees as well as for period beyond five years prior to the date of decision of the Apex Court in the matter of **State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc.** [2014 (8) SCALE 613].

7. In view of the averments made in the OA and the arguments advanced, learned counsel for the applicants submits that the instant OA deserves to be allowed.

8. Per contra, respondents have filed their counter affidavit denying the averments of the applicants. They

have submitted that the applicants are not entitled for grant of HPCA on the ground that the post of Senior Radiographer, which was earlier Group-C post, has now been classified as Group-B post. They have also tried to convince that the HPCA is granted to the employees holding the post of Group-C and Group-D only as per the guidelines of the Ministry of Health & Family Welfare as amended from time to time. It is further contended that by upgradation of the post of Senior Radiographer, the duties and responsibilities of the post have also been changed and, therefore, the applicants are not entitled to the HPCA allowances. It was also contended that the decision of the Madras Bench of this Tribunal, which has attained finality, is not applicable to the facts of this case as the recovery in that case was made without asserting to the recruitment rules whereas in this case the respondents have started recovery after due amendment in the recruitment rules.

9. The applicants have filed the rejoinder reiterating the averments made in the OA.

10. I have carefully gone through the pleadings of the case, judicial pronouncements relied upon by the applicants and heard the arguments so advanced by the counsel on either side.

11. As has already been noted above, the sole issue involved in this case is that whether the applicants, who are holding the post of Senior Radiographer (Group-C post) which has now been upgraded to Group-B post, are entitled to the HPCA as has been granted to them prior to upgradation of the post to Group-B.

12. I have gone through the decision of the Madras Bench of this Tribunal in the matter of ***Banumathy Mohanakrishnan & Anr. Vs. Union of India & Ors.*** (supra) wherein similar and identical issue was involved and the said decision has attained finality after travelling upto the Hon'ble Apex Court. It is seen that the ground taken by the respondents in this OA to deny the HPCA to the applicants has already been taken care by the Madras Bench of this Tribunal and held that mere grant of higher pay scale in accordance with the recommendations of the Pay Commission would not ipso facto mean that there is a change of grade from Group-C to Group-B automatically and the action of the respondents in denying the HPCA was held to be erroneous. The said decision was upheld even upto the Hon'ble Apex Court.

13. In view of the above discussion, I am satisfied that the instant OA is fully covered by the decision of the Madras

Bench of this Tribunal and the OA deserves to be allowed on parity. Accordingly, the OA is allowed and the impugned order dated 11.05.2015 passed by the respondents is quashed and set aside. The respondents are directed to restore the payment of HPCA to the applicants forthwith and no recovery shall take effect and if any recovery made in this behalf relating to excess payment shall be refunded to the applicants within four weeks from the date of receipt of certified copy of this order. There shall be no order as to costs.

(Jasmine Ahmed)
Member (J)

/AhujA/