

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1828/2014

Reserved on: 21.01.2016
Pronounced on: 16.03.2016

Hon'ble Dr. B.K. Sinha, Member (A)

1. Bal Ram s/o Sh. Bachi Ram
R/o 52/16, Kandhar Line,
Delhi Cantt.
2. Ram Rattan s/o Sh. Shiv Lal
R/o RFZ-617, Rajnagar,
New Delhi-45.
3. Bachhu Ram s/o Sh. Har Chand
R/o WZ-563, Naraina,
New Delhi.
4. Balbir Singh s/o Sh. Kishan
R/o RZ-234/5D Block,
Sagarpur, New Delhi-45.
5. Kishan Lal s/o Sh. Dhana Ram
R/o WZ-126, Rajnagar-II,
New Delhi – 45.
6. RK Anand s/o Sh. Babu Lal
R/o G 45/4, Kabul Line,
Delhi Cantt-10.
7. Satya Prakash s/o Sh. Om Prakash
R/o WZ 420/48B, Shad Nagar,
Palam, New Delhi – 45.
8. Mahavir Singh s/o Sh. Tota Ram
R/o WZ-614, Nagal Raya,
New Delhi- 46.
9. Panni Lal s/o Sh. Lal Singh
R/o Poultri Farm NO.4,
Delhi Cantt – 110 010.Applicants

(By Advocate: Sh. Ranjit Singh)

Versus

1. Ministry of Defence through
Dt. Gen of Armed Forces Medical Services
Army Headquarters
'M' Block, New Delhi – 110 001.
2. Dte Gen of Medical Services (Army)
Min of Defence, AHQ
'L' Block, New Delhi – 110 001.

3. HQ Western Command (Med)
Chandimandir (Haryana)
Pin Code- 134 170.

4. Commandant,
Base Hospital, Delhi Cantt
New Delhi – 110 010. ...Respondents

(By Advocate: Sh. Subhash Gosain)

O R D E R

By Dr. B.K. Sinha, Member (A):

The applicants have filed the instant Original Application under Section 19 of the Administrative Tribunals Act, 1985 impugning order dated 24.03.2014 passed by the respondents in compliance of the Tribunal's order dated 13.01.2014 in OA No.97/2014 whereby representation of the applicants for grant of Patient Care Allowance/Hospital Patient Care Allowance [hereinafter referred to as the 'PCA/HPCA'] has been rejected.

2. The applicants have prayed for the following relief(s):-

(i) Issue an appropriate order or directions to the respondents to immediately continue/release the PCA to the applicants since November, 2005 as several other similarly placed persons are getting the PCA in similar hospitals/Medical Establishments.

(ii) Pass such other further order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

3. The case of the applicants, in brief, is that they were enrolled as Mazdoors Group 'D' cadre in Armed Forces Medical Services and were being granted PCA @ Rs.695/- per month

since 29.12.1998 onwards till 17.11.2005 when the payment of such allowances was discontinued vide order of even date. It is the claim of the applicants that on the very next date i.e. on 18.11.2005, the respondent no.1 vide OM of even date granted HPCA/PCA to the applicants including the Hygiene Cell which, however, were finally stopped w.e.f. January, 2006 as admitted by the respondents themselves (page 2 of the counter affidavit). Aggrieved, the applicants submitted a representation dated 31.10.2013 to the respondents for redressal of their grievance and when nothing was heard from them, the applicants filed OA No.97/2014 on the strength of the decision of the Hon'ble High Court of Delhi in *Union of India & Ors. Vs. Prabhu Nath Prasad & Ors. etc.* [WP(C) No.4973/2013 and 4974/2013 decided on 21.10.2013], which was disposed of by this Tribunal at the admissions stage itself vide order dated 13.01.2014 directing that the representation filed by the applicants be disposed of through a speaking and reasoned order. The respondents accordingly issued the impugned order dated 24.03.2014 on the ground that the nature of duties performed by the applicants (Mazdoors) neither involves contact with patients suffering from communicable diseases nor are they handling infected materials instruments or equipments. Hence, their non-inclusion in the order dated 17.11.2005 is justified and no injustice has been meted out to them.

4. Further, the learned counsel for the applicants submits that the Patient Care Allowance is being granted to the similarly

situated Ministerial Staff (Group 'C & 'D') working in various Hospital/Dispensaries/Poly Clinics' and non-grant of the same to the applicants is not only illegal but also arbitrary.

5. Per contra, the respondents in their counter affidavit denied the averments made in the Original Application taking a similar defence as has been taken in the impugned order by portraying the duties as drawn by the applicants and the actual duties, as per the respondents, being performed by them. It is, therefore, submitted that the duties being performed by the applicants do not involve in continuous routine contact with patients affected with communicable diseases or are handling infected materials, instruments and equipments which can spread infection as their primary duty. Further, it is stated that as per the directions of this Tribunal, the competent authority, after consideration of factual position on merit, passed the impugned order dated 24.03.2014. Therefore, mere recommendation does not confer any right in favour of the applicants, and grant of relief to be applicants would cause financial stress on the exchequer, involving public money.

6. The applicants have filed a rejoinder reiterating the averments made by them in the OA and rebutting the points raised by the respondents in their counter affidavit. The applicants have also added that vide Memorandum dated 18.11.2005 issued by the Govt. of India, Ministry of Defence, Deptt. Of Defence Production (page 124 of the paper book) has provided the HPCA/PCA to certain categories of staff working in

Ordnance and Ordnance Equipment Factory Hospitals which included Mazdoors as that of the applicants herein [Labourer (including Hygiene Cell]. In para 3 of the aforementioned OM it is provided as under:-

“3. The categories of staff viz. Dhobi, Labourer (including those working in Hygiene Cell) and Sweeper will be eligible only during their period of posting in the Hospital. No other category of staff working in the Ordnance Factory Hospital will be eligible for grant of the subject allowance.”

The applicants, on the basis of the above OM, have prayed that their OA be allowed.

7. I have carefully gone through the pleadings of the rival parties, documents so adduced and the law relied upon by the learned counsel on either side.

8. The sole issue for determination is that as to whether the applicants while performing the duties, as disclosed by the respondents in para no.6 of the counter affidavit (page 113 of the paper book), are entitled to grant of HPCA. The actual duties being performed by the applicants as per the disclosure of the respondents are as under:-

- (a) *To attend the morning roll call punctually, change their dress into overall combination as issued to them and leave the unit for their respective place of duty along with the mate, except for those who are given specific duties in the office premises/areas.*
- (b) *The mazdoors deployed in health section perform duties involving implementation of anti-larva measures including canalization and filling up of pits and depressions, BHC/pyrethrum spraying and all kinds of disinfection/disfestations.*
- (c) *To carry out anti fly, anti-rodent, debugging or any such duties assigned to them.*
- (d) *To check mosquito and fly breeding places and collect entomological specimens when detailed to do so.*

- (e) *The Mazdoor deployed in general duties will perform duties in stores, demonstration area, museum, office premises and unit area as and when required.*
- (f) *To be responsible for the govt. stores, equipments and clothing issued to them for the execution of their duties.*
- (g) *Collection of various stores like ordnance, ration, medicine etc. from depot and their distribution to concerned departments.*
- (h) *Maintenance like dusting, cleaning, layout etc. of various stores.*
- (i) *Shifting of stores like ordnance, medicines etc.”*

9. If the version of the respondents that the above duties are being performed by the applicants is taken to be correct, I feel that some of which may not expose the applicants to risk of infection but some may do as listed at serial nos. (b), (c), (d) & (h) above. Moreover, the duties of the applicants being inter-changeable, they can be deputed anytime to such places where there is always a risk of infection. Moreover, the respondents have not brought any record on file to justify their stand qua actual duties being performed by the applicants.

10. It is no more res integra as the Hon'ble High Court of Delhi in *Union of India & Ors. Vs. Prabhu Nath Prasad & Ors.* etc. (supra) has taken care of this issue observing that the respondents in that case were deputed to perform wide and varied duties, some of which did not expose them to the risk of infection but some did. For the sake of better clarity, the

relevant para no.6 of the decision is being extracted hereunder:-

“6. Working as Peons/Daftaris at the National Institute of Communicable Diseases, the respondents are deputed to perform wide and varied duties, some of which do not expose them to the risk of infection and some do. Required to deliver a Dak from desk to desk or carry a file from one desk to another, the respondents are not exposed to any risk of infection, but required to pick up bio samples from the shelves in the laboratory and hand over the same to the Pathologist and additionally required to wash dishes in which the culture of samples is grown as also wash test tubes and other glass/ceramic equipment in laboratories, the respondents do expose themselves to the risk of infection. Now, the National Institute of Communicable Diseases is not a Health Care Delivery Institution, in that, it does not admit any patient for primary, secondary or tertiary health care, but admittedly it receives samples of stool, urine, blood, sputum, pus, skin tissues etc. for pathological analysis. Thus, those working at the institute run the risk of being exposed to infection.”

Keeping in view the above referred facts, the Hon'ble High Court finally dismissed both the writ petitions holding that the view taken by the Tribunal in respondents Original Applications was correct.

11. We take note of the fact that the respondents also issued a communication No.18(1)/204/D(Fy.I) dated 18.11.2005 granting HPCA/PCA to Group 'C' & 'D' (Non-Ministerial) covering Labourers (including Hygiene Cell) and resultantly the applicants, who are performing similar duties being performed by the Mazdoors working in Hygiene Cell, were granted the same benefits but stopped w.e.f. January, 2006 in violation of the afore communication thereby discriminating the applicants within the class. We are convinced by the contention of the applicants that

similarly situated employees are getting the HPCA/PCA in other hospitals. Therefore, it gives an impression that the applicants have been singled out in the matter of grant of the afore allowances even when they are also performing the same and similar duties as is being performed by the Mazdoor in Hygiene Cell. It is an axiomatically accepted legal principle that no distinction can be drawn within the same class of employees unless it be ordained by some tangible criteria. Here, we find that while allowances under consideration have been allowed to the employees of hygiene cell and admittedly the applicants are performing the similar duties, the applicants are entitled to the same.

12. We also take note of the decision of this Tribunal in *Smt. N. Jaymma etc. V/s. Union of India & Ors.* [OA No.4611/2011 and 4612/2011 decided by common order dated 30.01.2013] wherein similar issue was involved and the Tribunal allowed the same by directing the respondents to consider and grant the PCA to the applicants. Relevant portion of the afore decision is extracted hereunder for the sake of clarity:-

"We, after analyzing the said two orders, note that there cannot be any distinction in the matter of grant of PCA only on the basis of casual or continuous contact of the employees therein. This is so because a single contact of a Daftry, Peon or Chowkidar or for that reason, of any other category, with an infected person carrying germs of any dangerous communicable disease may be fatal and sufficient. Therefore, the employees cannot be classified on the only basis that they come in contact on casual basis or they remain in continuous contact with the patient infected with communicable diseases."
[Emphasis supplied].

13. In totality of facts and circumstances of the case, I dispose of the instant Original Application with the following directions:-

- (1) The impugned order dated 24.03.2014 is quashed and set aside;
- (2) The respondents are directed to re-consider the claim of the applicants for grant of HPCA in view of the observation of the Hon'ble High Court made in para 6 of its decision in *Union of India & Ors. Vs. Prabhu Nath Prasad & Ors. etc.* (supra) and if found fit, grant them arrears thereof;
- (3) The exercise, as ordained above, be completed within a period of two months from the date of receipt of a certified copy of this order;
- (4) There shall be no order as to costs.

(Dr. B.K. Sinha)
Member (A)

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