

Central Administrative Tribunal Principal Bench, New Delhi

**O.A.No.3226/2014
M.A.No.2769/2014**

Friday, this the 21st day of October 2016

Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Physiotherapy Professionals' Forum of AIIMS
Through its General Secretary
Dr. Ganesh Meena (PT)
Department of Neurology
NSC, AIIMS, Ansari Nagar, New Delhi
2. Dr. V P Gupta (PT)
President, Physiotherapy Professionals' Forum of AIIMS
Superintendent Physiotherapist
Department of CTVS
CNC, AIIMS, Ansari Nagar, New Delhi
3. Dr. Ganesh Meena (PT)
Department of Neurology
NSC, AIIMS, Ansari Nagar
New Delhi

..Applicants

(Mr. Sanjai Kumar Pathak, Advocate)

Versus

1. All India Institute of Medical Sciences
Through its Director
Ansari Nagar, New Delhi
2. Ministry of Health & Family Welfare
Through Secretary
Nirman Bhawan
Maulana Azad Road
New Delhi

..Respondents

(Mr. R K Gupta, Advocate)

O R D E R (ORAL)

M.A. No.2769/2014

M.A. seeking joining together in a single petition is allowed.

O.A. No.3226/2014

The applicant Nos. 2 and 3 are Physiotherapists working under respondent No.1 – All India Institute of Medical Sciences (AIIMS), whereas

applicant No.2 is a representative body of Physiotherapists of AIIMS. They have prayed for the following relief:-

“That this Hon’ble Tribunal may graciously be pleased to allow this O.A. and direct the respondents to grant PCA to the applicants since January 1996 which is being granted to the Physiotherapy professionals in other Government institutions and Hospitals.”

2. The applicants’ case is that they are entitled for Patient Care Allowance (PCA), as they belong to Group ‘C’ category, in terms of the Recruitment Rules. Respondent No.1 and so also the other Central Government hospitals had discontinued payment of PCA to the Physiotherapists in the year 1996. The Physiotherapists of Jawaharlal Institute of Postgraduate Medical Education & Research (JIPMER), Pondicherry filed O.A. No.818/2003 before the Madras Bench of this Tribunal claiming therein that they are entitled for PCA. The said O.A. was allowed by the Tribunal vide order dated 22.06.2004. The JIPMER, Pondicherry challenged the said order dated 22.06.2004 passed by the Madras Bench of the Tribunal before the Hon’ble High Court of Judicature at Madras by filing W.P. No.30973/2004, which was dismissed vide order dated 17.08.2007. A Review Application No.15/2009 was also dismissed by the Hon’ble High Court. JIPMER, Pondicherry went in SLP (C) CC No.8550/2011 before the Hon’ble Supreme Court, which too was dismissed by the Apex Court vide order dated 13.05.2011.

3. Learned counsel for the applicants submits that the applicants in the instant O.A. are identically placed with the applicants in O.A. No.818/2003 filed before the Madras Bench of the Tribunal, and as such are entitled for the same relief.

4. *Per contra*, learned counsel for respondents submits that the applicants are in Group 'B' category and as such in terms of the Office Memorandum dated 17.12.2012 (page 101 of the paper book), they are not entitled for PCA.

5. I have considered the arguments of learned counsel for the parties and have also perused the records. Admittedly, the applicants are in the pay scale of Group 'B', but they continue to be in Group 'C' in terms of the Recruitment Rules. The Madras Bench of this Tribunal has considered this issue in great details in O.A. No.818/2003 and vide its order dated 22.06.2004 has held that the applicants therein (Physiotherapists of JIPMER, Pondicherry) are entitled for PCA. The relevant extracts from the said order of this Tribunal are reproduced below:-

"8. After analysing the pleadings, the point that arises for our consideration is whether the respondents are justified in denying the PCA to the applicants on the pretext that they now belong to Gr. B Cadre, in accordance with the revision of the pay scales in pursuance of the recommendations of the 5th Central Pay Commission. On the face of it, we do not find any substance in the light of argument put forward by the respondents for the following reasons. The Govt. of India – vide letter dated 10.5.2001 on the subject relating to norms for categorisation of posts and the relevant portion is extracted for a better appreciation of the entire case in a proper perspective:-

"In many cases higher pay scales are allowed on expiry of the specified length of service even while they continue to hold the same post, such as Assured Career Progression Scheme. In all such schemes the classification to 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 that point of time"."

6. The said order of the Tribunal has attained finality, as the Writ Petition and the SLP filed against the same, have been dismissed by the Hon'ble High Court of Judicature at Madras and the Apex Court

respectively. It is also seen from the records that the said order has also been implemented by the Central Government vide Annexure A-8 letter dated 19.12.2011.

7. Under these circumstances, I have no hesitation in holding that the applicants in the instant O.A. are also entitled for the relief granted to the applicants in O.A. No.818/2003 filed before the Madras Bench of the Tribunal, as all these applicants belong to category of Physiotherapists. Although the Physiotherapists are drawing the pay scale of Group 'B' employees and yet are being declared entitled for PCA, which is available only to Groups 'C' and 'D' employees. But the fact remains that as per the Recruitment Rules, the Physiotherapists have been classified as Group 'C' employees and the Recruitment Rules have the force of law and, therefore, as long as the Rules are not amended and the Physiotherapists continue to be shown as Group 'C' employees in the Recruitment Rules, they would be entitled for PCA as has already been held so by the Madras Bench of the Tribunal and duly endorsed by the Hon'ble High Court of Judicature at Madras and the Apex Court.

8. In the conspectus of discussions in the foregoing paragraphs, the O.A. is allowed. The respondents are directed to restore PCA to the applicants. No costs.

**(K.N. Shrivastava)
Member (A)**

October 21, 2016
/sunil/