

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA No.4086/2015
MA 3725/2015**

Reserved on: 27.04.2017
Pronounced on: 28.04.2017

Hon'ble Mrs. P. Gopinath, Member (A)

1. Surender Pal Singh (aged about 48 years)
S/o Late Mohinder Pal Singh,
Dt. Of enrollment 08.10.1988
R/o B-10D, Tilak Nagar, New Delhi.
 2. Shyam Singh (aged about 48 years)
S/o Sh. Mohar Singh,
Dt. Of enrollment 12.10.1988
R/o A-15C, Tilak Nagar, New Delhi-110018
 3. Hasla Prasad (aged about 51 years)
S/o SH. Badri Prasad,
Dt. of enrollment 25.09.1989
R/o A 198, A Block Phase-1,
Qutab Vihar, New Delhi-110071
 4. Smt. Hansi Devi
W/o Late Sh. Tara Chand (aged about 45 years)
S/o Sh. Bhisani Ram
Dt. of enrollment 1990
R/o 685 Gali No.5, Sector-11
Mohan Garden, Delhi-110059.
 5. Kashi Nath Pal (aged about 36 years)
S/o Sh. Mathur Chander Pal
Dt. of enrollment 17.01.2002
R/o T ¾ Poultry Farm Delhi Cantt-110010
 6. Arjun Ram (aged about 36 years)
S/o Sh. Duar Ram
Dt. of enrollment 30.08.2004
R/o T 4/3 Poultry Farm,
Delhi Cantt. 110010
 7. Ishwar Singh (aged about 35 years)
S/o Sh. Jaswant Singh
Dt. of enrollment 30.08.2004
R/o Base Hospital, Delhi Cantt,
QM, Complex, Delhi-110010
 8. Shiv Charan (Aged about 45 years)
S/o Umrao
Dt. of enrollment 2013.
R/o Base Hospital, Delhi Cantt.
QM Complex, Delhi-110010
- ... Applicants

(By Advocate: Mr. Ranjit Singh)

VERSUS

Ministry of Defence Through

1. Dte. General of Medical Services (Army),
Adjutant General's Branch,
Army Headquarters,
'L' Block, New Delhi-110001
 2. Dte. Genl of Armed Forces Medical Services,
Min. of Defence, AHQ,
'M' Block, New Delhi
 3. Commandant,
Base Hospital,
C/o 99 APO
- ... Respondents

(By Advocate: Mr. R.K.Sharma)

ORDER

The applicants in this OA are working as Malis in the Base Hospital, Delhi Cantt. Applicants were in receipt of Hospital Patient Care Allowance (HPCA) since 1998. The respondents amended the eligibility list of HPCA and deleted the name of the applicants, i.e. Malis working in Army Hospital, vide Memorandum dated 17.11.2005.

2. Applicants argue that the Ministry of Health in the Annexure A-2 OM dated 2.01.1999 include Mali as a category eligible for Patient Care Allowance. Vide Annexure A-3 OM dated 4.04.2004 issued by the Ministry of Health and Family Welfare, the condition for grant of HPCA is cited as, those Group C and D (Non-ministerial) employees whose 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. Applicants in support of his contention cited Writ Petition (Civil) 4973/2013 -**Union of India and Others Vs. Prabhu Nath Prasad and Ors**, wherein the High Court of Delhi had

allowed the allowance for similarly placed persons at the National Institute of Communicable Disease (NICD), Delhi. On a reading of the order it is very apparent that NICD is an Institute of Communicable Disease, and such an allowance would obviously be allowed for all persons discharging duty in the Institute. The relief sought by the applicants is for payment of HPCA/PCA with effect from November, 2005.

3. The respondents argue that the admissibility or otherwise of allowances based on the nature of duties performed is for the Pay Commission to determine. The Group C and D employees eligible for HPCA includes Ward Sahayika, Safaiwala/Safaiwali, Washer man, Barber, Female Attendant, Cook and Ward boy and does not include the category of Mali. Hence applicants have no cause to claim this allowance.

4. The respondents also challenge the contention that the applicants have ever drawn HPCA. The matter of grant of HPCA has been considered by the Tribunal in OA 4611/2011 and OA 4612/2011 which was filed by employees working in MMEP, NICD, RAK College of Nursing, LRHS, RHTC-Najafgarh, Post/Airport Health Organization and allowed. The Tribunal in its order had observed that there can be no distinction in the matter of grant of HPCA only on the basis of casual or continuous contact of the employees with patients. Hence such a classification was held to be unsustainable and not permissible in law. The applicants in this OA are also Malis who come into contact patients who would be using the garden maintained by them as a place of rest while visiting the hospital, or as a seating place while waiting to be attended by the doctor, or waiting to visit patients admitted thereon.

The contact or exposure of the applicants to infected patients would not be as much as, persons who spent their entire duty hours within the confines of the hospital. However, there is no doubt that the applicants would also be exposed, though the contact would be of a lower degree than persons serving inside the hospital. It was held by the Tribunal in the above cited OA 4611/2011 that the respondents cannot discriminate in the matter of grant of HPCA only on the ground of casual or continuous contact. This would be particularly so when provision of other facilities like holiday, leave, compensatory off, duties hours etc. would be identical. The respondents other than summarily denying the contention of the applicants, provide no substantial argument for denying this benefit to the applicants who are working in the hospital.

5. The purpose of the allowance is to provide compensation to employees who are exposed to the infection of sick persons. There is no doubt that air borne infection would not be confined to the four walls of a hospital and nor would the applicants be insulated from the same. The risk though not continuous, would however be present. It is seen that the Applicant has filed OA in November, 2015, making the claim w.e.f. November, 2005. This is a belated service claim which attracts rejection on the ground of delay, laches and limitation. However, one exception made by the Apex Court in **UOI and Another Vs. Tarsem Singh** (2008) 8 SCC 648) is relating to a continuing wrong and added a rider restricting the relief relating to arrears to only three years before the date of writ petition.

6. In view of facts and circumstances of the case, I find that denial of HPCA to the applicants is arbitrary. Hence, prayer of the applicants is, therefore, allowed. The application having been filed in year 2015,

as per Apex Court judgment in **UOI and Another Vs. Tarsem Singh** (2008) 8 SCC 648, referred above, the relief regarding arrears should be confined to three years immediately prior to the date of filing of the OA. OA stands disposed of accordingly.

(Mrs. P. Gopinath)
Member (A)

`sk'

..