

**Central Administrative Tribunal  
Principal Bench**

OA No. 1135/2017

Order reserved on: 09.04.2019  
Order pronounced on : 07.05.2019

***Hon'ble Mr. Pradeep Kumar, Member (A)***

1. No.6968243, Umar Farooque, age 41 years  
S/o Md. Alauddin  
Working as Pharmacist in  
CVD-Delhi Cantt-110010.
2. No.6969443, Rajat Narang, age 34 years  
S/o Ashwini Kumar  
Working as Pharmacist in  
COD-Delhi Cantt-110010.
3. No.6969423, Sanjay Singh, age 34 years  
S/o Shri Harendra Singh Negi  
Working as Pharmacist in  
CASD-Delhi Cantt-110010.
4. No.6969967, Jatin Kumar, age 30 years  
S/o Sh. Rajendra Prasad  
Working as Pharmacist in  
OD-Shakur Basti, Delhi.
5. No.69692155, Surendra Kumar Yadav, age 60 years  
(retired on 31.10.2016)  
S/o Late Chhedilal Yadav  
Working as Pharmacist in  
COD-Cheoki, Allahabad.
6. No.6964255, Promod Datta Tray Joshi, age 53 years  
S/o Sh. Dattatray Joshi,  
Working as Pharmacist in  
OD, Talegaon, Pune.
7. No.6967085, Mukesh Chandra Vyas, age 53 years  
S/o Sh. Pushp Chander Vyas,  
Working as Pharmacist in  
224 ABOD, Jodhpur.

8. No.6966649, Shraddha Santosh Raut, age 50 years  
S/o Sh. Santosh Raut,  
Working as Pharmacist in  
CAFVD, Kirkee, Pune.
9. No.6968214, P.M.Katkar, age 40 years  
S/o Sh. M.K.Katkar,  
Working as Pharmacist in  
COD-Jabalpur.
10. No.6968216, Atul Kumar Dhokey, age 38 years  
S/o Sh. Warman Rao Dhokey,  
Working as Pharmacist in  
COD-Jabalpur.
11. No.6969942, Narayan Chander Pati, age 34 years  
S/o Late Shridhar Pati,  
Working as Pharmacist in  
COD-Agra.

... Applicants

(By Advocate: Ms. Prabha Sharma)

Versus

1. Union of India,  
Through Secretary,  
Ministry of Defence,  
South Block,  
New Delhi.
2. Director General of Ordnance Services,  
[OS-8C(II)], Master General Ord Branch,  
Integrated HQ of MOD (Army),  
DHQ, PO, New Delhi-110011.
3. The Director General,  
Armed Forces Medical Services,  
Integrated HQ of MOD (Army),  
DHQ, PO, New Delhi-110011.
4. The Commandant,  
AOC Records,  
Trimulgherry, Secundrabad.

... Respondents

(By Advocate: Sh. Subhash Gosain)

**ORDER**

The applicants are working as Pharmacist in Civil dispensaries functioning under various Central Vehicle Depot (CVD) under Army Ordnance Corps (AOC). These dispensaries are set up in the CVD's as they are required under Factories Act. These dispensaries have six beds each and they work during day shift only and do not have any indoor facility. Any patient or injury case is given immediate attention, medicines and thereafter shifted to a full fledged hospital for further management. These dispensaries are equipped with instruments and medicines to serve this need.

2. There was a demand that the Pharmacists and Nurses working in these dispensaries should be granted Patient Care Allowance (PCA). It was accordingly directed on 20.06.2001 to examine the justification and send a self-contained proposal. As decided in JCM, directions were again issued on 09.11.2005 to send a self-contained proposal latest by 20.12.2005. These proposals were again sought vide DG Ordnance Service letter dated 07.03.2006.

3. Meanwhile, policy directives were issued by MOH&FW on 04.02.2004 which govern the eligibility in respect of payment of PCA. The relevant instructions in this policy circular read as follows:

“(ii) Eligibility for Patient Care Allowance:

The Patient Care Allowance is admissible to the Group C & D (Non-Ministerial) employees excluding nursing personnel @ Rs.690/- per month working in the health care delivery institutions/establishments (other than hospitals) having less than 30 beds, subject to the condition that no Night/Weightage Allowance and Risk Allowance, if sanctioned by the Central Government, will be admissible to these employees (Copies of this Ministry's Orders No. Z.28015/26/98-MH(H), dated 28.9.1998 and Z.28015/41/98-H(i), dated 2.1.1999 are enclosed).

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(iv) The conditions which an organization must satisfy before its employees can be considered for grant of Patient Care Allowance.

The persons (Group C & D, Non-Ministerial) employees whose regular duties involve 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 working in health care delivery institutions other than Hospital (30 beds for General Hospital: 10 beds for Super Speciality Hospital) may be considered for grant of Patient Care Allowance, PCA shall not be allowed to any Group 'C' & 'D' (Non-Ministerial) employees whose contact with patients or exposure to infected materials is of occasional nature.”

4. These policy directives were adopted by Ministry of Defence also vide their letter dated 17.11.2005.

5. The proposals referred in para 2 above, were sent by various CVD's but the same were found lacking in detail for which revised proposals were again sought on 18.04.2006. CVD, Delhi sent the revised proposal on 16.05.2006. It was advised that the CVD, Delhi had come into being in the year 1961. It has a qualified medical officer Assistant Surgeon Grade-I, one Pharmacist Grade-III, one Hospital Orderly and

one Safaiwala to man the dispensary which was set up under Factories Act. It had six beds. In respect of work content following was advised:

“(c) This depot is carrying on hazardous process, frequent movement of vehicles (incl AFVs) for receipt/issue, maintenance, inspection etc. and thus not ammuned from accident and serious sickness during its working hours, hence the dispensary involves in handling of toxic and infected material frequently. Therefore the patients are hospitalised and relieved from the dispensary on satisfactory treatment basis and serious/accident cases and other serious patients are evacuated immediately after first aid and necessary treatment to nearby Govt. Hospital in the fully equipped ambulance which is always kept standby for this purpose. Since the dispensary functions during working hours admission of patients round the clock is not permissible.

(d) As explained in the above sub para accident/serious patients are kept in dispensary for first aid/adequate medical treatment and if necessitated they are evacuated to nearby Govt. Hospital for specialist treatment. However, the yearly record of such patients is attd as Appendix ‘A’ to this letter.

(f) Charter of duties of Pharmacist, Hospital Orderly and Hospital Safaiwala/wali for whom patient care allowance is recommended are attached as Appendix ‘C’ to this letter. These categories of employees involve in continuous routine contact with patients affected with communicable disease and handling infected materials, instruments and equipments which can spread infection.

3. Group ‘C’ and ‘D’ employees working in the dispensary of this depot are discharging their regular duties involving continuous and routine contact with the patients infected with communicable disease and handling infected materials, instruments and equipments thus they fulfil all the conditions for grant of Patient Care Allowance.

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5. In view of the above it is strongly recommended that the Pharmacist and other staff employing in CVD dispensary may please be granted Patient Care Allowance. Statement of Case on the subject forwarded vide letter No.2685/A/Ett-NI dated 24 March 2006 is also attached for perusal and favourable consideration please.”

6. This was examined by the office of DGOS and following directions were issued on 21.08.2006:

“1. The case for grant of Patient Care Allowances to Medical staff of AOC has been examined in consultation with MOD. MOD has made following observations:

(i) AOC Depots, as the name suggests, do not seem to be either hospitals or health care delivery institutions. Moreover, as seen from the statement of cases, the medical staff provides medical care to their civilian employees during working hours. Instances of employees getting sick or injured during working hours in a particular depot cannot be matter of daily occurrence. Also, these depots do not seem to be fulfilled in this case.

(ii) You are, therefore, requested to give convincing justifications in support of the proposal, before the same is recommended to MoF. The exact nature and details of medical facilities provided by these depots and the staff component including Medical Officers, provided therefore, may be spelt out for better appreciation of the proposal. The annual financial implication involved in the proposal may also be indicated.

(iii) For COD Delhi Cantt only, it is requested that the reasons for asking for PCA for the non-existent post of Lab Technician may also be brought out.”

7. The CVD again recommended payment of PCA vide their letter dated 15.09.2006 indicating the following justification:

“8. Justification:- In view of the above it is strongly recommended that Pharmacist, Orderly Hospital and Safaiwala employed in CVD Dispensary may please be granted Patient Care Allowance at par with their counterparts employed in Armed Forces Hospital/Establishments, Govt. Hospitals and Dispensaries as the same is justified.”

8. However, there was no decision taken to pay PCA. The applicants felt aggrieved and made a representation on 14.11.2012, 15.12.2012 and 20.12.2012. Thereafter following decision was communicated by the office of DGOS on 02.06.2008:

“2. The case for grant of Patient Care Allowances to Medical staff of Army Ordnance Corps was examined in consultation with Ministry of Defence, MOD has not considered the case intimating that AOC Depots, do not seem to be either hospitals or health care delivery institutions. Moreover, the medical staff provide medical care to their civil employees during working hours. Instances of employees getting sick or injured during working hours in a particular depot cannot be matter of daily occurrence and depots do not seem to be equipped to attend to patients suffering from communicable disease. Hence, the eligibility conditions do not seem to be fulfilled in this case. On the advise of the MOD the case was also examined in consultation with Dir AFMS who in turn replied that unless the conditions stipulated in the Min of Health and Family Welfare letter dated 04 Feb 2004 are fulfilled, it will be difficult for them to consider the case for grant of HPCA/PCA.

3. In view of the position explained above, the case may please be treated as closed as the conditions stipulated in Ministry of Health and Family Welfare letter No.Z.28015/24/2001-H dated 04 Feb 2004 seems not to be fulfilled.”

9. Since payment of PCA was denied, the applicants preferred OA No.859/2013. This was decided vide orders dated 26.02.2015 with directions to the respondents to reconsider the case. The relevant para 6 of the judgment reads as follows:

“6. ... .. I, therefore, direct the respondent-Director General of Ordnance of Services to re-examine the Applicants' case in the light of the letter of the Ministry of Health and Family Welfare dated 4.2.2004, letter of the Ministry of Defence dated 17.11.2005 and the detailed justification given by the Commandant Central Vehicle Depot vide his letters dated 16.5.2006 and 15.9.2006 and to pass reasoned and speaking order under intimation to them individually within a period of two months from the date of receipt of a copy of this order. If they are still aggrieved by the decision of the Respondents, they will have the liberty to challenge the same before this Tribunal through filing separate Original Applications.”

10. Since orders were still not passed, the applicants preferred CP No.590/2015 for compliance. During pendency of this CP, an order was passed by the respondents on 02.07.2015 and the demand for PCA was rejected. The operative part of this speaking order reads as under:

“3. Xxx xxx xxx

(i) That the Ministry of Defence/D(Medical) and Directorate General Armed Forces Medical Services are specialized functionaries who are experts in understanding the charter of duties of pharmacists, and the implication and scope of the letter dated 04 Feb 2004 of Ministry of Health and Family Welfare.

(ii) That the AOC Depots are not either Hospitals or Health Care Delivery Institutions. Moreover, the medical staff provide medical care to their civil employees during working hours. Instances of employees getting risk or injured during working hours in a particular depot cannot be daily occurrence and depots are not equipped to attend to patients suffering from communicable disease. Hence, the eligibility conditions are not fulfilled in this case.

(iv) The Civil Dispensaries in AOC Depots are invariably not full fledged Hospitals.

(v) The charter of duties of the pharmacists, who are the applicants in the instant OA, itself, suggests that they are entitled with distribution/upkeep medicines and are not even remotely connected with direct ‘Patient Care’.

4. AND WHEREAS, in view of the above, after considering of all aspects mentioned above, and viewing it is against the representation submitted by the applicants, regarding granting of ‘Patient Care Allowances’ cannot be acceded to being devoid of merit.”

11. Since speaking order was already passed, the Contempt Petitioner was dismissed on 18.11.2016. However, feeling aggrieved with denial of PCA, the applicants have preferred the instant OA.



12. It has been pleaded that Pharmacists in hospitals/dispensaries of organisations like Ordnance Factories, DRDO and other hospitals under Ministry of Defence are already getting PCA. Thus, not granting the same to the dispensaries under CVD is discrimination. Accordingly, relief has been sought in the form of quashing of the speaking order dated 02.07.2015 and to permit payment of PCA to the applicants.

13. The applicants relied upon the decision by the Mumbai Bench of the Tribunal in OA No.228/2008 decided on 08.12.2008 which has since been confirmed by Hon'ble High Court of Mumbai in WP (C) No.1598/2010.

14. The respondents opposed the OA. It has been pleaded that the policy directives dated 04.02.2004 issued by MOH&FW have laid down the eligibility requirement. There is no similarity in the work content and the risk in respect of Pharmacists working in the hospitals vis-a-vis the Pharmacists working in dispensaries in CVD. The charter of duties of the applicants as specified in the CVD, Delhi Cantt. letter dated 16.05.2006, reads as follows:

**“CHARTER OF DUTIES: MEDICAL STAFF**

- (i) Pharmacist – Providing necessary treatment as per direction of Sr. Med. Offr.
- (ii) Hospital Orderly – Maintenance of medicine/  
maintenance of cool room and maintenance of

emergency bed to regulate entry of patient reporting to dispensary.

- (iii) Hospital Safaiwala/wali – Cleanness and assistance in examination”

It was pleaded that the dispensaries in CVDs and the Pharmacists working there, do not satisfy the eligibility for PCA as per MOH&FW letter dated 04.02.2004 (para 3 supra).

15. It was also pleaded that the dispensaries in CVD were set up as the same are required under Factories Act and they are more in the nature of providing first aid. They work only during the day shift and the injury cases etc. during duty in CVD, are given first aid and then referred to another hospital for further treatment. Accordingly, it was pleaded that OA is required to be dismissed.

16. Per contra, the applicants drew attention to the number of patients attended, list of materials, instruments and essential medicines stored in the dispensary. They pleaded that they are exposed to the risk of contamination due to patients and they need to be covered under policy directive dated 04.02.2004 for payment of PCA. The applicants also relied upon another judgment by the Tribunal in OA No.4612/2011 which was delivered on 30.01.2013.

17. Matter has been heard at length. Ms. Prabha Sharma, learned counsel represented the applicants and Sh. Subhash Gosain, learned counsel represented the respondents.

18. The policy directive dated 04.02.2004 which has since been adopted by Ministry of Defence, clearly lays down the eligibility requirement for payment of PCA. The critical requirement is exposure to risk on a continuous basis in the normal routine duties. While examining the nature of duties being performed by the applicants in the dispensaries of CVDs, it is seen that they work during day shift only and these dispensaries are primarily meant to attend to the injury cases which might take place as a result of normal activity in the CVD. It is the Tribunal's view that the eligibility conditions laid down in policy circular dated 04.02.2004 are not satisfied in the case of instant applicants.

19. The adjudication in OA No.4612/2011, relied upon by applicants has also been scrutinised to see whether any ratio is attracted. The petitioners in OA No.4612/2011 were working as Daftry, Peon and Chowkidar in National Institute of Communicable Disease (NICD). They were not paid PCA as the respondents considered that they are not involved in patient care in any manner as NICD was not a hospital. The

petitioners felt aggrieved and filed the said OA. The respondents pleaded as under:

“4. .... Moreover, they are not involved in the patient care in any manner. Their duties are different and they do not come in continuous and routine contact with the patients infected with communicable diseases but occasionally. It is submitted that the other Organizations are separate Departments and as such the grant of PCA to the similarly situated Daftries, Peons and Chowkidars in those Organisations, ipso facto, may not make the present applicants eligible for grant of said allowance.”

After hearing the petitioners and the respondents in this OA, the Tribunal observed as under:

“5. .... We have also seen the order dated 04.02.2004 issued by the Ministry of Health and Family Welfare. In that order, the Government has introduced a concept of casual and/or continuous contact. 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.

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7. Lastly, no material is placed on record by the respondents to show that the Daftries, Peons and Chowkidars working in the National Institute of Communicable Diseases do not come in contact with patients infected with communicable diseases. Therefore, we do not find any logic to distinguish between the similarly situated persons working under almost similar conditions in other Institutions and involved in similar activities under the same respondents. The said discrimination would undoubtedly be violative of Article 14 of the Constitution of India. In this connection, it is also pertinent to note that the pleadings do reveal that NICD itself has been asked by the Ministry of Health and Family Welfare to clarify about nature of duties being performed by the applicants or the categories to which they belong. It is

evident from the records that the NICD has invariably recommended the case of the applicants for grant of PCA. This is, therefore, more than clear that the applicants also carry the same risk of getting communicable diseases as the Daftries, Peons and Chowkidars in the other similar Organisations.”

The OA was thus allowed.

19.1 It can thus be seen that the petitioners in OA No.4612/2011 were not working in a hospital yet the samples from hospitals were coming to NICD for testing and in that process the petitioners were required to come in contact with the patry dishes, wash the same and the slides thereof and as such the Tribunal had viewed that the petitioners were exposed to the risk on a continuous basis in their routine duties.

19.2 As against this, the Pharmacists in the dispensary of CVD, who are the applicants in the instant OA, are not handling such samples and as such are not exposed to the risk and therefore, the ratio of this judgment is not attracted.

20. The decision in OA No.228/2008 by Mumbai Bench of the Tribunal dated 08.12.2008 has also been scrutinised. The petitioners therein were working in Group ‘C’ & ‘D’ posts under Medical Establishment and hospitals under the administrative control of the respondents in Mumbai. Those hospitals were having indoor facility. They were working in the post of Pharmacist, Radiographer, X-Ray Technician,

Laboratory Technician, Cook, Chowkidar, Ambulance Driver, Family Attendant and Lady Health Visitor in such hospitals/establishments. They had pleaded for payment of HPCA/PCA. The Tribunal relied upon the decision in two other OAs No.764/2004 and 393/2007 decided on 29.02.2008 and OA was allowed. The decision was challenged in Hon'ble High Court of Mumbai in WP (C) No.1958/2010 which was dismissed on 26.07.2016. The relevant part of the judgment reads as follows:

“4. We do not see any reason to interfere with the said order. Moreover counsel for the petitioner is also absent and it appears that the Union of India is not keen in pursuing this petition. On both these counts, petition is dismissed.”

20.1 In this case, the petitioners were working in a hospital wherein as part of their routine duty they were exposed on a continuous basis to the risk of contaminated samples as they were required to come in contact with the patients. This basic requirement is not satisfied by the applicants working in the dispensary of the CVD and as such the ratio of this judgment is not attracted.

21. The applicants are working in the dispensary set up under Factories Act in CVD. This is more in the nature of providing first aid to those workers who may get injured during activities in the CVD. Any injury or a serious patient

is given first aid and then transferred to a hospital. It is not likely that an infected patient, having a risk of exposing others including those in dispensary, will be coming for duty and especially so as the dispensary does not have indoor facility. In view of this, the applicants are not taken to be exposed to the risk as part of their routine duty in a continuous basis.

22. In view of the foregoing, the pleas put forth by applicants are not gaining acceptability. They are not satisfying the eligibility requirement as per MOH&FW letter dated 04.02.2004. The OA is dismissed being devoid of merit. No order as to costs.

**(Pradeep Kumar)**  
**Member (A)**

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