

**Central Administrative Tribunal
Principal Bench**

OA No.3517/2018

Orders Reserved on 11.02.2019

Pronounced on: 27.02.2019

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

1. Joint Forum of Medical Technologists of India
Through its authorized representative
Mr. Kaptan Singh Sehrawat, S/o Sh. Balbir Singh
Sehrawat Aged about 39 years R/o Flat No.57 Type-III,
LHMC & Associated Hospitals, Bangla Sahib Marg,
New Delhi-110001 working as Technical Officer at
Kalawati Saran Children's Hospital,
New Delhi-110001.
2. Mrs. Mamta Kaushik, W/o Sh. Mohan Kaushik,
Aged about 31 years, Working as Medical Lab.
Technologist, Department of Biochemistry, VMMC &
Safdarjung Hospital, R/o H.No.586-A, Pana-Udiyan,
Narela, Delhi-110040.
3. Ms. Meena Khurana, Senior Technical Assistant,
D/o Late Sh. Deen Dayal Khurana aged about 54
years, Room No.16, Old Building, Department of
Neurology, Dr. RML Hospital, New Delhi-110001
R/o SH 1/14 First Floor New Moti Nagar,
Delhi-110015.

-Applicants

(By Advocate Shri Amit Anand)

-Versus-

Union of India through

1. The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110011.
2. The Secretary,
Department of Expenditure,
Ministry of Finance, North Block,

New Delhi-110011.

3. The Secretary, DoPT,
North Block, New Delhi-110011.
4. Director, LPMC & Associated Hospitals,
Shaheed Bhagat Singh Marg,
New Delhi.
5. Medical Superintendent,
Dr. RML Hospital,
Baba Kharag Singh Marg,
New Delhi-110001.
6. Medical Superintendent,
Safdarjung Hospital & VMMC,
Ansari Nagar, New Delhi-110029.
7. Director, AIIMS,
Ansari Nagar,
New Delhi-110029.

-Respondents

(By Advocate Shri Rajinder Nischal)

ORDER

This Original Application (OA) has been filed by Joint Forum of Medical Technologists of India through its authorized representative Shri Kaptan Singh Sehrawat, who is working as Technical Officer at Kalawati Saran Children's Hospital, New Delhi (KSCH). Along with him, two other applicants are also there, namely, Mrs. Mamta Kaushik, working as Medical Lab Technologist, Department of Biochemistry, VMMC & Safdarjung Hospital and Ms. Meena Khurana, Senior Technical Assistant, working in Department of Neurology, Dr. Ram Manohar Lohia Hospital

(RMLH). All these applicants are at present working in Group 'B'.

2. The applicant No.1, namely Joint Forum represents the Medical Technical staff working in different hospitals under the Ministry of Health & Family Welfare (MoH&FW) and they are governed by the rules and regulations of Central Government. These staff were earlier in Group 'C' and Group 'D' and were being paid Hospital Patient Care Allowance (HPCA) and Patient Care Allowance (PCA) as sanctioned vide policy letter dated 04.02.2004 issued by the Ministry of Health and Family Welfare. The relevant parts of this circular are reproduced below:

"I am directed to state that Ministry of Finance had suggested to this Ministry that a clear cut policy for payment of Hospital Patient Care Allowance/Patient Care Allowance to Group C & D (Non-Ministerial) employees working in hospitals, dispensaries and organizations to be evolved.

Accordingly, the following Guidelines for implementing Hospital Patient Care Allowance/Patient Care Allowance are consolidated in consultation with the Dte. General of Health Services".

xxx xxx xxx

"(iii) The condition which an organisation must satisfy before its employees can be considered for grant of Hospital Patient Care Allowance.

Only persons (Group C & D, Non-Ministerial 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 material, instruments and equipments which can spread infection as their primary duty may be considered for grant of

Hospital Patient Care Allowance. It is further clarified that HPCA shall not be allowed to any of those categories of employees whose contact with patients or exposure to infected materials is of an occasional nature.

(iv) The conditions which an organisation 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 and routine contact with patients affected with communicable diseases or are handling infected materials, instruments and equipments which can spread infection as their primary duty 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 an occasional nature”.

xxx xxx xxx

“Group ‘C’ Posts

“A Central Civil post carrying a pay or a scale of pay with a maximum of over Rs.4000/- but less than Rs.9000”.

“Group ‘D’ Posts

“A Central Civil post carrying a pay or a scale of pay with a maximum of over Rs.4000/- or less ”.

Department of Personnel & Training vide their Office Memorandum No.35034/1/97-Estt.(D)(Vol.iv), dated 10.02.2000 further clarified that the classification of the post held by the officer should be with reference to the scale of pay of the post held by the Government servant under Assured Career Progression (ACP) Scheme. In view of the Department of Personnel & Training’s clarification, the Group ‘C’ employees who have been granted the pay scale of Group ‘B’ post under the ACP scheme would continue to be entitled to the payment of Hospital Patient Care Allowance/Patient Care Allowance”.

2.1 Subsequently, the applicable rates of HPCA and PCA were doubled vide MoF&FW OM dated 04.09.2013 and this was applicable w.e.f. 01.09.2008.

2.2 In due course of time, even though some of the posts of Medical Technical Staff were upgraded from Group 'C' to Group 'B', the work content remained the same. However, the payment of HPCA/PCA was stopped on such upgradation to Group 'B' vide MoH&FW letter dated 05.05.2005, which reads as under:

"I am directed to refer to this Ministry's letter of even number dated the 4th February, 2004 circulating the details guidelines for payment of Hospital Patient Care Allowance/Patient Care Allowance to Group C & D (Non-Ministerial) employees working in hospitals, dispensaries and organizations and to re-iterate that Hospital Patient Care Allowances/Patient Care Allowance is payable only to Group 'C' & 'D' (Non-Ministerial) employees working in the hospitals/ dispensaries and this allowance is not admissible to employees holding Group 'B' posts. Thus Group 'C' & 'D' (Non-Ministerial) in their promotion to Group 'B' posts will cease to be entitled for this allowance."

The concerned staff had felt aggrieved and they had approached the Tribunal in a catena of such cases. The plea for payment of HPCA/PCA was upheld as the underlying condition for exposure to the patients and risk to staff, continued to be true.

2.3 Despite this, the grant of HPCA/PCA is being allowed to only those cases of Group 'B', where the applicants have been approaching the Tribunal/Courts and seeking orders. In this connection, the applicants have also drawn attention to MoF&FW OM dated 17.05.2018, which reads as under:

“Consequent upon the decision taken by the Government on the recommendations of the 7th CPC, the approval of Competent Authority is conveyed for payment of HPCA/PCA to those staff who were in receipt of HPCA/PCA as on 30th June, 2017”.

2.4 It is pleaded that despite this, the grant of HPCA/PCA to those Medical Technical Staff, who are in Group ‘B’ now, are being refused. The applicants are feeling aggrieved by such rejection and the same has been ventilated in the instant OA.

3. The applicants had brought out the background of adjudication in this matter in various Judicial Fora in the past as under:

3.1 Certain Physiotherapists, working in Jawaharlal Institute of Postgraduate Medical Education and Research (JIPMER) who were earlier in Group ‘C’ and were placed in Group ‘B’ and hence, were not paid the PCA w.e.f. 20.04.1998. Feeling aggrieved this was agitated in Chennai Bench of the Tribunal vide OA No.818 of 2003. Following directions were passed by the Tribunal on 22.06.2004:

“10. In so far as the other point relating to the need for payment of the PCA, continuance of the same and justification of the same have all been discussed in detail in the order of this Bench of the Tribunal rendered in OA No.84 and 462 of 2002, decided on 10.07.2002, to which one of us was a party. Applying the ratio of this decision to the case on hand, we are of the considered view that the applicants are entitled to succeed and the ends of justice would be met if the following orders are passed:-

- (a) The impugned orders are quashed.
- (b) The respondents are directed to restore the payment of PCA to the applicants with immediate effect and any recovery made in this behalf relating to excess payment shall be refunded to the applicants”.

3.2 The respondents challenged it before the Hon’ble High Court of Madras and thereafter a Review Petition was also filed vide RP No.15/2009. Following orders were passed on 21.09.2010:

“Review Application filed under Order 47 Rule 1 read with Section 114 of C.P.C., praying to review the order dated 17.08.2007 made in W.P. No.30973 of 2004.

xxx xxxx

“5. However, there is no denying of the fact by the review petitioners/Administration that the order passed by the Tribunal in O.A. Nos. 84 and 464 of 2002, dated 10.07.2002, which has been relied on by the Tribunal while passing the order in O.A. No.818 of 2003, connected to the present writ proceedings, has become final, being not challenged by the Administration. In these circumstances, we must see as to whether these aspects will tilt the balance of the at any time.

xxx xxx

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 W.P. 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”.

3.3 These orders were thereafter challenged by the respondents in Hon’ble Apex Court vide SLP No.8550/2011. This SLP was dismissed vide orders dated 13.05.2011.

3.4 With this, the orders by the Tribunal in OA No.818/2003 attained finality. Thereafter, MoF&FW vide orders dated 19.12.2011 issued directions to JIPMER for implementation in toto, which were subsequently implemented by JIPMER vide orders dated 16.01.2012.

4. Certain Medical Technologists working in various Institutions were also denied payment of HPCA/PCA which they were getting earlier as Group ‘C’ employees, but which was denied to them when they became Group ‘B’. These Medical Technical Staff had approached the Ernakulam Bench of the Tribunal in OA No.300/2015 (**R. Santosh Kumar and others v. Union of India & Others**). This was decided on 01.06.2017. The observations and the directions of Tribunal are as under:

“11. The paramount factor to decide grant of HPCA/PCA is the nature of work and the environment of work. Those who are exposed to an infections environment loaded with virulent and drug resistant bacterias and other micro organisms would be a befitting and eligible category for receiving the grant of HPCA/PCA. This is

not a case that the virus or bacteria would choose to affect Group C employees and not Group B employees. Infection is in the environment of work and not restricted to a class of employees. Duties involving 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 as their primary duty are to be considered for grant of Hospital Patient Care Allowance. Earlier the Hospital Patient Care Allowance/Patient Care Allowance was payable to Group C and D (Non-Ministerial) employees working in the hospitals/dispensaries. To now say that by recategorizing Group C as Group B will remove the risk of infections and entitlement to HPCA, appears to be an illogical argument. Infected materials, instruments and equipments do not choose whom they will infect. Their risk lies with all those who are exposed, irrespective of their class of classification which has been upgraded by VIth CPC. VIth CPC has upgraded the employees and pay scales across the Government of India but not removed the applicants' risk of infection by a magic wand, which existed in the past and still exists in the hospital environment.

xxx

xxxx

xxx

19. In the light of the above discussions the OA is allowed. We direct the respondents to restore the HPCA/PCA from the date of its discontinuance and grant all consequential arrears within a period of three months from the date of receipt of a copy of this order”.

5. Certain Senior Radiographers working in Dr. RMLH were in receipt of HPCA and this was denied to them when their posts were upgraded to Group 'B' as per 6th Central Pay Commission (CPC). Feeling aggrieved, they had approached the Principal Bench of the Tribunal in OA No.527/2016. This was decided on 12.01.2018. The Tribunal relied upon the judgments by the Hon'ble High

Court of Madras in Writ Petition No.30973/2004 and SLP No.8550/2011 in the Hon'ble Apex Court (para 3 to 3.4 supra). The observations and the decision by the Tribunal are as under:

“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?

xxx xxx

“13. In view of the above discussion, I am satisfied that the instant OA is fully covered by the decision of the Madras 10 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”.

In compliance thereof, MoH&FW issued orders dated 28.08.2018 to Dr. RMLH for payment of HPCA/PCA to the twelve applicants in this O.A.

6. One more petition was filed by the Joint Forum of Medical Technologists of India in Principal Bench of Tribunal vide OA No.264/2018 on the same issue of non-payment of HPCA/PCA based on the recommendations of the 7th CPC. The Tribunal vide its order dated 19.01.2018

had directed the respondents to pass a reasoned and speaking order.

These orders were passed on 04.06.2018 and it was brought out that through an OM issued by MoF&FW on 17.05.2018 the decision has already been communicated (para 2.3 supra). Accordingly representation of the applicants in OA-264/2018 was disposed off in terms of OM dated 17.05.2018.

7. The applicants also drew attention to the recommendations of the 7th CPC on Allowances for which a Resolution was issued in Gazette on 06.07.2017. Specific attention was drawn to Item-11 thereof, which reads as under:

(1) S. No.	(2) Name of the Allowance	(3) Recommendations of the 7 th CPC	(4) Modifications accepted by the Government
11.	Hospital Patient Care Allowance (HPCA)/Patient Care Allowance (PCA)	<p>Retained.</p> <p>Rationalised. To be paid as per Cell R1H3 of the newly proposed Risk and Hardship Matrix.</p> <p>HPCA and PCA are admissible to ministerial staff as well on the premise that the entire hospital area carries the risk of communicable diseases. This practice should be stopped and HPCA/PCA should be admissible to only those employees who come in continuous and routine contact with the patients.</p>	<p>Ministerial Staff to continue to get HPCA/PCA as per R1H3 (Rs.4100 for level 8 and below and Rs.5300 for level 9 and above) of Risk and Hardship Matrix</p>

7.1 It was pleaded that while the Pay Commission had retained HPCA/PCA and rationalised it to be paid as per Cell R1H3 of the newly proposed Risk and Hardship Matrix but had recommended it to only those staff who come in continuous and routine contact with the patients. On consideration of these recommendations the Government has decided that HPCA/PCA will continue in respect of even ministerial staff also.

The applicants thus pleaded that all staff working in hospitals, non-ministerial as well as ministerial, irrespective of their being in any level, are eligible for payment of HPCA/PCA as per the decision by the Central Government. However, it was being denied under the pretext of upgradation to Group 'B' as per OM dated 05.05.2005 (para 2.2 supra) and now under the pretext of OM dated 17.05.2018 it is being restricted only to those who were in receipt of HPCA/PCA as on 30.06.2017 (para 2.3 supra). This is not justifiable.

8. It was further brought out that due to various litigations at various stages, the position as it has emerged now is as follows:

8.1 The staff, including those in Group 'B' in Lady Hardinge Medical College and Kalawati Saran Children Hospital, were getting HPCA/PCA. However, vide orders dated 18.01.2018 it has been directed to recover the same from those in Group 'B'.

8.2 The three hospitals, namely Dr. RMLH, Safdarjung Hospital and AIIMS are not paying HPCA/PCA to Group 'B' Medical Technical staff. However, the Senior Radiographers in Group 'B' who are working in Dr. RMLH are being paid HPCA/PCA vide orders dated 28.08.2018 which was issued in compliance of directions issued by the Tribunal in OA-527/2016 (para-5 supra).

9. The applicants thus pleaded that a situation has now emerged wherein even though payment of HPCA/PCA has been found justified even upto the Apex Court level (para 3 to 3.4 supra) and it was approved also by the Government while approving the recommendations of 7th CPC (para 7 supra), yet it is now being paid only to those staff who are approaching the Tribunal/Courts and where directions are being issued. It was pleaded that this situation is not correct and similarly placed staff are required to be dealt with similarly without there being need to take recourse to the judicial adjudication.

10. The respondents opposed the OA, pleading that as per orders dated 05.05.2005 issued by MoF&FW, HPCA/PCA is not admissible to Group 'B' staff (para 2.2 supra) and in follow up of 7th CPC recommendations, the payment of the same is now been regulated as per OM dated 17.05.2018 (para 2.3 supra), even where the payment of HPCA/PCA to such staff was upheld by Tribunals.

11. The matter has been heard at length. Shri Amit Anand, learned counsel represented the applicants and Shri Rajinder Nischal, learned counsel represented the respondents.

12. HPCA/PCA was being paid vide OM dated 04.02.2004, to those Group 'C' and 'D' non-ministerial staff whose regular duty involves continuous and routine contact with patients infected with communicable diseases or those who have to handle, as their primary duty, infected materials, instruments and equipments which can spread infection.

It was also specified in this OM that if some of these staff get upgradation to Group 'B', this does not change the working environment of these staff and as such their risk proneness continues to be the same and as such they will continue to be paid this allowance (para 2 supra).

Denial of HPCA/PCA to such staff on the plea that they have now been upgraded to Group 'B' is, therefore, not justifiable.

Moreover, this aspect has already been gone into by the Chennai Bench of the Tribunal in OA No.818/2003 and thereafter it was adjudicated by the Hon'ble High Court of Madras as well as by the Hon'ble Apex Court (para 3 to 3.4 supra). Many other OAs have also since been decided by the Tribunal, e.g. Ernakulam Bench in OA No.300/2015 (para 4 supra) and by the Principal Bench in OA No.527/2016 (para 5 supra).

The ratio of these judgments is applicable in the instant OA also as mere change of status from Group C to Group B, has not made any difference to their exposure to the risk of contaminated atmosphere as their duties remain same.

13. In view of the foregoing, the plea of the applicants for payment of HPCA/PCA to be continued even after their upgradation from Group 'C' to Group 'B', as the underlying condition of their contact with the patients holds true, is finding acceptability and the same needs to be implemented.

14. Moreover, the 7th CPC recommendations had proposed to rationalise HPCA/PCA as per R1H3 of the risk and hardship matrix, only to the staff other than ministerial, as seen from Resolution dated 06.07.2017 (para 7 supra). However, it was instead decided that ministerial staff will also continue to get HPCA/PCA and for this, the rate of payment was linked to level of pay without any mention of their being in Group 'B' or otherwise and irrespective of whether they were in receipt of same as of a particular date.

15. Therefore, the OM dated 17.05.2018 which is said to be in the context of the decision taken on the recommendations of the 7th CPC but which limits HPCA/PCA to only those staff who were getting it as of 30.06.2017 (para 2.3 supra), is not in conformity with the decision of the 7th CPC as per Resolution dated 06.07.2017 (para 7 supra) as neither did this Resolution prescribe any such date nor the status of such employees. Moreover, such restrictions are not in order even on merits, as was decided by the Hon'ble Apex Court (para 3 to 3.4 supra).

Introduction of a date, leads to creation of two classes of employees, who are otherwise similarly placed. Hence such artificial distinction is not desirable.

16. In view of the foregoing, the OM dated 17.05.2018 is quashed in so far as it restricts the payment of HPCA/PCA to only those who were in receipt of HPCA/PCA as on 30.06.2017. This payment, including arrears, if any, shall be governed as per R1H3 Cell of risk and hardship matrix as was directed in Resolution dated 06.07.2017 for allowances in the 7th CPC, irrespective of status of employees, e.g., Group 'B' etc., if underlying conditions of their exposure as per MoH&FW OM dated 04.02.2004 are satisfied.

The respondents are also directed to stop any further recovery on this account and to pay back the amount already recovered within eight weeks of receipt of a certified copy of these orders. The OA is allowed in the aforesaid terms.

16.1 The respondents are also directed to consider to issue necessary directions so that the other employees, who are similarly placed, are not required to approach the Tribunal/Courts seeking similar reliefs in respect of HPCA/PCA.

16.2 The respondents have liberty to consider the matter afresh, taking all factors into account, and issue a new Policy and/or Resolution on 7th CPC and follow up OM.

However, such instructions, if and when issued, shall take effect prospectively only.

16.3 There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

‘San.’