

**Central Administrative Tribunal  
Principal Bench**

OA No. 2924/2018

and

OA No. 3156/2018

Order reserved on: 28.02.2019

Order pronounced on : 11.03.2019

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

**OA No.2924/2018**

1. Nandan Singh (E Beldar) Group 'C'  
Aged about 42 years,  
S/o Sh. Prem Singh,  
R/o C-220/5, Paravatiya Anchal,  
Sant Nagar, Burari, Delhi-110084.
2. Narain Dutt, (E Beldar) Group 'C'  
Aged about 49 years,  
S/o Late Sh. Chotu Ram,  
R/o 177 Kateora Gaon, Delhi.
3. Sagir Ullaha Khan(E Beldar) Group 'C'  
Aged about 47 years,  
S/o Late Sh. Shafi Ullaha Khan,  
R/o WZ-156, Ravi Nagar, New Delhi-110018.
4. Satyender Kumar, (E Beldar), Group 'C'  
Aged about 55 years,  
S/o Late Sh. Ram Prashad Singh,  
R/o H.No. 431, Gali No.9A,  
Lakpat Colony, Part-I  
Meetha Pur Ext., Badarpur, N.Delhi-110044
5. Ramendra ( E Beldar), Group 'C'  
Aged about 52 years,  
S/o Late Sh. Ghan Shyam  
R/o H-35, MCD Flat, near Dhakka Chowk  
Block-H, Kingsway Camp, Delhi-110009
6. Mohd Hashim (E Beldar), Group 'C'  
S/o Mohd Jakki  
Age around 44 yrs.

R/o 2761, Mohalla Nihariyan  
Ajmeri Gate, Delhi-110006

7. Bhario Ram Saini (E Beldar), Group 'C'  
Aged about 50 yrs  
S/o Rameshwar Lal Saini  
R/o L-97, Gali No.7, Shastri Nagar,  
Delhi-110052
8. Kalu Ram Yadav, ( E Beldar). Group 'C'  
Aged about 44 yrs  
S/o Gheroo Ram  
R/o 33/369, Trilok Puri,  
Delhi 110091
9. Naresh Kumar, (E Beldar), Group 'C'  
Aged about 42 yrs  
S/o Vinkram Singh R/o B-991, DDA Flats,  
East Road, Shahdra 110098
10. Duli Chand, (E Beldar), Group 'C'  
Aged about 46 yrs  
S/o Mool Chand,  
R/o RC, 374, Shiv Park,  
Khoda Colony, Gzb, Up
11. Pitwas Shahu, (E Beldar), Group 'C'  
Aged about 46 yrs  
S/o Yudhistar Shahu  
R/o M.No. 86, Block, A Gali No.3  
Kamal Vihar, Kamal Pur,  
Delhi 110084
12. Prakash Chand (E Beldar), Group 'C'  
Aged About 45 yrs  
S/o Shri Mam Chand,  
R/o Village Behta Hazirpur,  
P.O. Uni, Distt: Ghaziabad.
13. Shafaqat Ali, (E Beldar) Group 'C'  
Aged About 44 yrs  
S/o Sujat Ali,  
R/o Mohlla Nihariyan, Ajmeri Gate  
Delhi-110006.
14. Pawan Kumar, EB, Group 'C'  
Aged around 44 yrs

S/o Shri Ramkishan  
R/o 398, RPS, DDA Flats, Mansarovar Park,  
Shahdara, Delhi 110032

15. Narnder Kumar, (E Beldar), Group 'C'  
Aged around 46 yrs  
S/o Shri Sardari Lal  
R/o 4c, 361, Varta Lok Apartment, Vasundra,  
Ghaziabad
16. Mukesh Kumar, (E Beldar), Group 'C'  
Aged around 48 yrs  
S/o Shri Prem Nath,  
R/o 270, Fhatak Karod,  
Chawri Bazar, Old Delhi
17. Virpal Singh, (E Beldar), Group 'C'  
Aged about 46 yrs  
S/o Kunjal Singh  
R/o K-139/1, New Shanti Nagar,  
Vijay Nagar, Ghaziabad, UP
18. Budhi Bahadur Thapa, (E Beldar), Group 'C'  
Aged about 44 yrs  
S/o Shri Tek Bahadur Thapa,  
R/o G-135, Gali No. 4a,  
Paschim Karawal Nagar, Delhi.
19. Naunihal, (E Beldar), Group 'C'  
Aged about 45 yrs  
S/o Shri Sunder Lal  
R/o C-96/83, Gandhi Market, Minto Road,  
Delhi – 110002
20. Rahul Sharma , (W. Man), Group 'C'  
Aged about 43 yrs  
S/o V.K. Sharma  
R/o B-34 A,  
New Modern Shahdara,  
Delhi 110032
21. Jagtar Singh (W.Man), Group 'C'  
Aged about 45 yrs  
S/o Shri Kirpal Singh  
R/o G-121, New Seelam Pur, Delhi.

... Applicants

(By Advocate: Sh. Yogesh Kumar Mahur)

## Versus

1. The Commissioner,  
North Delhi Municipal Corporation  
SPM Marg, Civic Centre,  
New Delhi.
2. The Chief Medical Officer, CMO,  
Legal Cell,  
Member Secretary, Health Department,  
North Delhi Municipal Corporation  
SPM Marg, Civic Centre,  
New Delhi.
3. The Executive Engineer,  
North Delhi Municipal Corporation  
Asif Ali Road, Car Parking  
New Delhi.
4. The Director, Hospital Administration,  
North Delhi Municipal Corporation,  
SPM Marg, Civic Centre,  
New Delhi.

... Respondents

(By Advocate: Sh. M.S.Reen)

**OA No.3156 /2018**

1. Sh. Sant Ram, aged 54, (Wireman)  
S/o Sh. Mohar Singh,  
(ID/BM No. 10020692)  
Group C
2. Sh. Amardeep Singh, aged 55, Wireman  
S/o Sh. Ajit Singh,  
(ID/BM No. 10020557)  
Group C
3. Sh. Shiv Kumar, aged 43, (E/B)  
S/o Sh. Sri Bhagwan,  
(ID/BM No. 10020523)  
Group D
4. Sh. Deepak Kumar, aged 42 (E/B)  
S/o Sh. Bhagwan Dass,  
(ID/BM No. 10020542), Group D

5. Sh. Pramod Kumar, aged 44, (E/B)  
S/o Sh. Satya Prakash,  
(ID/BM No. 10020539)  
Group D
6. Sh. Rajender Kumar, Aged 40 (E/B)  
S/o Sh. Bhagwat Saroop,  
(ID/BM No. 10020697)  
Group D
7. Sh. Hari Dutt, aged 41 (E/B)  
S/o Sh. Bhawani Dutt,  
(ID/BM No. 10099700)  
Group D
8. Sh. Uma Shanker, aged 53 (E/B)  
S/o Sh. Budhu Thakur,  
(ID/BM No. 10099710)  
Group D
9. Sh. Vinod Kumar, aged 56, (E/B)  
S/o Sh. Ayodiya Prasad Sharma,  
(ID/BM No. 10099711)  
Group D
10. Sh. Naresh Kumar, aged 57, (E/B)  
S/o Sh. Bhagwat Saroop,  
(ID/BM No. 10020697)  
Group D
11. Sh. Mahender Singh, aged 38, (E/B)  
S/o Sh. Kashmira Singh,  
(ID/BM No. 10020522)  
Group D
12. Sh. Ram Singh, aged 56, (G/O)  
S/o Sh. Shobha Ram,  
(ID/BM No. 10020503)  
Group C
13. Sh. Shiv Kumar, aged 53, (G/O)  
S/o Sh. Rameshwar,  
(ID/BM No. 10020504)  
Group C
14. Sh. Ram Asray, aged 56, (EMD)  
S/o Sh. Bhagwat Saroop

(ID/BM No. 10020505)  
Group C

15. Sh. Harender Kumar, aged 56, (EMD)  
S/o Sh. Sukhbir,  
(ID/BM No. 10020510)  
Group C
16. Sh. Harkesh Lal, aged 54, (EMD),  
S/o Sh. Inder Narayan,  
(ID/BM No. 10020506)  
Group C
17. Sh. Manmohan Gulati, aged 53, (EMD)  
S/o Sh. Harbans Lal,  
(ID/BM No. 10020508)  
Group C
18. Sh. Ram Phool, aged 54, (L/O)  
S/o Sh. Shera,  
(ID/BM No. 10020501)  
Group C
19. Sh. Suresh Kumar, aged 57, (L/O)  
S/o Sh. Net Ram,  
(ID/BM No. 10020502)  
Group C
20. Sh. Narender Kumar, aged 49, (L/O)  
S/o Lt. Sh. R.L. Sharma,  
(ID/BM No. 10020644)  
Group C
21. Riyasat Ali, aged 51, (AC Operator)  
S/o Sh. Liyakat Ali,  
(ID/BM No. 10020497)  
Group C

All working under  
Chief Engineer (Electric)  
Hindu Rao Hospital Civil Line Zone,  
NDMC Delhi.

... Applicants

(By Advocate: Sh. S.P.Gairola)

## Versus

1. North Delhi Municipal Corporation  
Through Commissioner  
SPM Civic Centre,  
Minto Road, New Delhi-110002.
2. The Director Hospital (Health Department)  
Through Commissioner  
North Delhi Municipal Corporation,  
SPM Civic Centre,  
Minto Road, New Delhi-110002.

... Respondents

(By Advocate: Sh. M.S.Reen for Ms. Rakhi Budhiraja)

**ORDER**OA No.2924/2018

Certain staff of Electrical Department, who are working as Beldar/Wireman in various hospitals of NDMC, are aggrieved that even though they were getting Hospital Patient Care Allowance (HPCA), the same was stopped and thereafter it was restored vide respondents letter dated 13.07.2006. It has been paid regularly upto March 2018, however, the same has been stopped again with effect from April 2018 and onwards. Being aggrieved, this OA has been filed.

OA No.3516/2018

A similar grievance has been raised by some other staff of Electrical Department, who are working in various hospitals of NDMC as Lift Operator and AC Operator.

2. Since the grievance in above two OAs is similar and respondents are same, a common order is being passed.

3. The applicants are working in Electrical Department and providing services of electrical maintenance, in various hospitals of NDMC. They were being paid HPCA, however, the same was stopped at some stage and thereafter Assistant Commissioner, Engineering Department issued a circular on 13.07.2006 and restored this payment. This letter reads as under:

“The Adl. Commissioner (Engg) has been pleased to restore the Hospital Patient Care Allowance to those eligible Category (C’ & ‘D’ (Non-ministerial) staff of Electrical Department of MCD, who perform their duty and posted exclusively in TB Clinics, School Health Schemes, ICDs Projects and other Medical Institutions only as per direction & instructions contained in circular No.F.4(32)/CA/F&G/2000/1133 dated 13.7.2000.”

4. With these orders, the payment of HPCA was resumed and it continued up to the salary of March 2018. However, the payment of HPCA was stopped with effect from the salary of April 2018 and onwards.

5. When the applicants tried to ascertain the reason, it came to light that directions were issued by Health Department of NDMC on 21.02.2018 to the effect that HPCA is not admissible to the applicants and other staff who are similarly placed.



The applicants made a representation dated 16.03.2018 to the CMO, NDMC. However, there has been no response to the same.

The applicants also plead that before stopping the payment of HPCA, they were not issued any show cause notice also. In this connection, the applicants relied upon a judgment by Hon'ble Apex Court in CA No.5447/1994 titled **Bhagwan Shukla vs. Union of India & ors.**, wherein Hon'ble Apex Court, vide their judgment dated 05.08.1994, have held that any order visiting the employee with civil consequences without granting opportunity to Show Cause, cannot be sustained in law.

6. The applicants plead that in the course of their normal duties they have to visit the wards for carrying out repairs of electrical instruments or to operate the lift or to operate AC etc. and as such they are exposed to the dangers of diseases and as such they are entitled for HPCA. Since their grievance has remained unheard, OA has been preferred.

7. The applicants relied upon a decision by the Tribunal in OA No.470/2016 wherein order was passed on 30.08.2016 and payment of HPCA/PCA was allowed.

8. The respondents opposed the OA. It was pleaded that instructions in respect of HPCA were issued by Ministry of

Health and Family Welfare, Government of India vide instructions dated 04.02.2004. The relevant part of these instructions is reproduced below:

**“iii) The condition which an organization 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 materials 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 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 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 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 of occasional nature.”

9. The respondents pleaded that the crucial consideration as to when HPCA shall be admissible is only if the staff as part of their regular duties, have to have continuous contact with patients affected with communicable diseases or they have to handle infected materials, instruments and equipments which can spread infection. With a view to

ascertain the same, a meeting involving a large number of Medical Superintendents of various hospitals were called on 20.02.2018. The decisions arrived at in this meeting were circulated by NDMC vide their letter dated 21.02.2018. The same reads as under:

“As per directions of Addl. Com. (H), an urgent meeting of Medical Superintendents was called on 20.02.18 at 3:00 pm to discuss the issue of eligibility of group C&D employees for Hospital Patients Care Allowance (HPCA). The meeting was held under the chairmanship of DHA-NDMC and was attended by the following members:

1. Dr. L.C.Sunda, Officiating MS HRH
2. Dr. S.K.Gupta, Director-cum-MS RBIPMT & MVIDH
3. Dr. Anita Gupta, MS GLMH
4. Dr. Sangita Nangia, MS KH
5. Dr. Rajneesh, MS BRH
6. Dr. Ashok Kumar, CMO Legal Cell, DHA Office
7. Mr. Harish Bhartiya, JLO (Health)
8. Mr. Ravi Kant Vats, Radiographer Legal Cell

After due deliberations, it was unanimously decided that the Malies, Beldar of Electricity department and Beldar of Civil Department are **not entitled for HPCA** because these employees neither come in continuous and routine contact with patients nor they handle infected materials, instruments and equipments, as their primary duty which can spread infection.” (emphasis supplied)

10. A corrigendum to these minutes was also issued on 06.01.2014 which reads as under:

“In continuation and partial modification of the minutes of the meeting dated 21.2.2018, the last paragraph may be read as “after due deliberations, it was unanimously decided that the Malies, Beldars and other officials of Electrical & Civil (Works) Department **are not entitled for HPCA** because the employees neither come in continuous and routine contact with the patients nor they handle infected material, instruments and equipments as their

primary duty which can spread infection.” (emphasis supplied)

11. In view of the above, the hospitals Incharge have deliberated on the issue and arrived at a decision that keeping in view the regular duties assigned, certain categories of staff listed therein, namely, Malis, Beldars and other officials of Electrical and Civil (Works) Department are not entitled for HPCA because these employees neither come in continuous contact with the patients nor they handle infected material, instruments or equipments as their regular duty which can spread infection.

12. The respondents also relied upon a decision by Hon’ble High Court of Delhi in WP (C) No.2965/2010 wherein orders were passed on 09.03.2011. The question under consideration of Hon’ble High Court and the decision thereupon is reproduced below:

“Petitioners No.1 and 2 are engaged as cooks with BSF. Petitioner No.3 is employed as a Safai Karamchari. All of them claim entitlement to receive Hospital Patient Care Allowance in terms of the policy decision dated 04.02.2004. It may be noted at the outset that after the writ petition was filed, petitioner No.3 has started receiving the said allowance and thus we need to decide the issue qua petitioner No.1 and petitioner No.2 who are working as cooks in BSF Hospitals.

Xxx xxx xxx

6. That apart , the policy under caption (iii) makes it clear that only those Group C & D (Non-Ministerial) employees would be paid the allowance 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 which can spread infection.

7. This explains the logic of the Division Bench's decision relied upon in direction Kahars i.e. Watermen to be paid the allowance for the reason in BSF Kahars not only fetch water but even wash utensils. They wash utensils, if attached to hospitals, in which patient eat food. This also explains why Safai Karamcharis in hospitals are receiving the allowance. They clean the floors of the various wards. They clean toilets attached to the wards. They come into contact with patients.

8. As regards cooks, they simply cook food in the kitchen and do no duty which makes them in contact with patients.

9. The writ petition is accordingly dismissed but noting that the respondents have themselves accepted the claim of petitioner No.3."

It can be seen that Hon'ble High Court did not allow HPCA to the Cooks working in the hospital while the same was allowed to the waterman and the Safaiwalas, for the reasons made very clear in the decision by the Hon'ble High Court as above.

13. The respondents also relied upon a judgement by Hon'ble High Court of Delhi in WP (C) No.4973/2013 and 4974/2013 wherein a common judgment was delivered on 21.10.2013. In this case, two OAs No.4611/2011 and 4612/2011 in respect of HPCA, were earlier allowed by a common order dated 30.01.2013 passed by this Tribunal. This judgment was challenged by the respondents in Hon'ble High Court of Delhi.

The applicants in OA No.4611/2011 and 4612/2012 were Peon and Daftry, who were working at National Institute of Communicable Diseases at Sham Nath Marg, Delhi. They were denied payment of Patient Care Allowance (PCA) by the respondents on the plea that the Institute was not a hospital but it was an Institute. In this case, however, the Tribunal noted that the applicants were handling the samples and were also required to wash the petri dishes where culture of patient's samples are grown, as part of their normal duties, they were being exposed to the danger of communicable diseases. The Tribunal, therefore, allowed the OA which in turn was challenged by the respondents in these WP(C)s in the Hon'ble High Court. The Hon'ble High Court made certain observations and the decision thereupon is reproduced below. The decision by Tribunal was upheld:

"9. It would thus be a matter of fact on which the claim has to be adjudicated. If the fact would be that Group 'C' and Group 'D' nonministerial employees who are not working in the Health Care Delivery Institutions but while discharging their regular duties are handling infected materials, instruments and equipments which can spread infection, they would be entitled to the Patient Care Allowance.

10. In other words, no judgment on the point would be a precedent for the reason it is a matter of fact which resolves the issue.

11. For the facts noted in paragraph 6 above we hold that the view taken by the Tribunal is correct.

12. The two writ petitions are accordingly dismissed but without any orders as to costs.”

The Hon’ble High Court has thus taken into account that, as part of their regular duties as Peon and Daftry working in said Institute, they were coming in contact with infected material and as such they are entitled to payment of PCA.

14. The respondents thus pleaded that an important principle and touch stone criteria has been defined by Hon’ble High Court to ascertain as to who are being exposed to the risks as part of their regular duties. The applicants herein are not coming in continuous contact with the patients and the infected material and this aspect has been specially gone into by a Committee consisting Medical Superintendents (para 9 and 10 supra). Accordingly, payment of HPCA is not warranted to the instant applicants.

15. Matter has been heard at length. Sh. Yogesh Kumar Mahur, learned counsel appeared for applicants in both the OAs and Sh. M.S.Reen, learned counsel appeared for respondents in OA No.2924/2018 and he represented for Ms. Rakhi Budhiraja, learned counsel for respondents in OA No.3156/2018.

16. The conditions when certain staff would be eligible for payment of HPCA were defined in the letter dated 04.02.2004 (para 8 supra).

The crucial consideration and criteria when a staff would be eligible for payment of HPCA/PCA have also been adjudicated by the Hon'ble High Court of Delhi in WP (C) No.2965/2010 and WP (C) No.4973/2013 (para 12 & 13 supra). The principle laid down is that the concerned staff as part of their regular duties should be required to come in continuous contact with the patients who are already infected and/or they should be required to handle the infected material.

17. It is admitted that the applicants are working as Electrical Maintenance staff and as part of their regular duties, the applicants are not having a continuous and regular contact with patients infected with communicable disease and neither are they required to handle infected samples, materials, instruments and equipments, which can spread infection.

As part of their regular duties, the staff concerned, the applicants herein, are required to attend to electrical installation, switches, fans, tubelights, the lift and AC equipments etc. This duty is not included in what is defined



under eligibility for HPCA and for PCA in the said circular dated 04.02.2004 (para 7 supra). On the touch stone criteria defined by Hon'ble High Court in para 12 & 13 above, the above duties do not make these applicants eligible for HPCA.

18. The nature of duties performed by various staff has also been gone into by a specially constituted committee comprising of large number of Medical Superintendents, who vide their decision dated 21.12.2018 and corrigendum thereof issued on 06.04.2018 have come to a considered view that certain categories of staff are not entitled for HPCA (para 9 & 10 supra). The applicants herein are included amongst those who are considered as not entitled for HPCA.

19. The decision by Tribunal in OA No.470/2016 (para 7 supra) is in a different context. Some of the staff were getting HPCA as Group C and Group D. Some of these posts were upgraded to Group-B as part of upgradations, even though their duties had remained the same. The respondents have, however, refused payment of HPCA as they were upgraded to Group-B. Being aggrieved, the same was ventilated in this OA, which was allowed by the Tribunal. The ratio of this judgment is not attracted in the instant two OAs.

20. In view of the foregoing, it is the considered view of the Tribunal that applicants are not entitled for payment of

HPCA. The two OAs are dismissed being devoid of merit. The Tribunal, however, adds that this decision shall be applicable prospectively only and payments made in past shall not be recovered. There shall be no order as to costs.

( Pradeep Kumar )  
Member (A)

‘sd’