

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.1843 of 2018

Orders reserved on : 27.09.2019

Orders pronounced on : 09.10.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Non-Medical Scientist Forum (Gr. B&C)
Forum NCDC,
National Centre for Disease Control,
22-Sham Nath Marg Delhi-110054
Though its Secretary,

1. ANILA RAJENDRAN, age 49 years
S/o Sh. R. Chandra Sekharan Nair,
R/o Flat No. 416, GH-2,
Bhagban Apartment, Sector-28
Rohani, Delhi.
2. DR. SWATI CHAVHAN, Age 31 years
D/o Sh. Sudhir Kumar,
R/o House No.234, Lane No.10
South Vanasthali, Ballupur Chowk,
Dehradun, Uttrakhand.
3. CHARAN SINGH, age 52 years
S/o Sh. Lakhraj
R/o RZ-19B, O Block, Gali No.-2,
New Roshan Pura, Najafgarh,
New Delhi-110043.
4. SASMITA KAR, age 48 years
D/o Sh. Dibakar Kar
R/o House No.-B5/45,
Paschim Vihar, New Delhi.
5. MEENA DUTTA, age 55 years
D/o Late Sh. F.C. Nag,
r/o Flat No.74, Bannu Enclave,
Road No.42, Pitampura,
Delhi-34.
6. SUMAN GUPTA, age 46 years
D/o
R/o D-8, Bhagat Singh Road,
Adarsh Nagar, Delhi-33.

7. MADHUSUDAN CHATURVEDI, age 26 years
S/o Sh. Vinod Kumar Sharma
R/o Flat No.2, Honey Apartment,
Ward No.6, Mehrauli
Delhi-110030.
8. REKHA JAISWAL, age 44 years,
D/o Sh. Balbir Singh,
R/o C-7/10, Yamuna Vihar,
Delhi-110053.
9. NASRESH CHAND SHARMA, age 50 years
S/o Sh. Kurey Singh Sharma,
R/o B-331-A, Ashok Nagar,
Shahdara, Delhi.
10. UDAIVEER SINGH, age 46 years
S/o Sh. Sukhpal Singh,
R/o House no.279/1
Roshan Vihar, Sadatpur,
Karawal Nagar, Delhi-94.
11. MANORANJAN MISHRA, age 38 years
S/o Late Sh. Nilanchal Mishra
R/o F-21, 1st Floor,
Om Vihar Extension, Uttam Nagar
Delhi-110059.
12. RAM KISHOR MEENA, age 52 years
S/o Sh. R.S. Meena,
R/o 151 Type-III, Timarpur,
Delhi-110054.
13. SAROJ BALA, age 59 years
D/o Sh. Harikeshi
R/o E-302, Sector-17,
Vasundhara, Ghaziabad (U.P.)
14. GIRRAJ SINGH, Age 45 years
S/o Shri Radm Kishan
R/o Village-Dallupura
P.O. Vasundra Enclave
Delhi – 110 096.
15. RAM KUMAR PANDEY, Age 54 years
S/o Late Shri G.S. Pandey
Sector-1, House No.-32
Vasundhara
Ghaziabad, UP-201012.

16. Harendra Bhagat, Age-54 years
S/o Shri Thakur Bhagat
R/o B-2/204, New Kondali, Vasundhara
Enclave, Delhi -96.
17. Mr. Vijayanath.P., Age 29 years
S/o Sh. Pavadi.K.
R/o C/o Ajay Kumar Tokas
202 C Room No.4, Munirka,
New Delhi -67.
18. DR. ISHWAR SINGH, Age 32 years
S/o Shri Laxman Singh
R/o A-246, Janta Flats
Jahangirpuri, Delhi-54.
19. VINAY SINGH, Age 36 years
S/o Shri Jagdish Singh
R/o House No.852, Sunderpuri
Ghaziabad, UP.
20. Surabhi Mahajan, Age 40 years
D/o Dr. S.D.Sharma
R/o C-111, Vikaspuri
New Delhi -18.
21. Renu, Age 24 years
D/o Shri Kishan Singh Bisht
R/o Shiv Park, Khanpur
New Delhi -62.
22. Poonam, Age 37 years
D/o Sh. Mool Chand
R/o TF-05, Sankrite Apartment
Burari, Delhi-84.
23. Preeti Diwakar, Age 34 years
D/o Mr. K.S. Sagar
R/o House No.71/B/H
Street No.8
East Chander Nagar
Delhi – 110 051.
24. Priyanka, Age 28 years
D/o Dr. Pawan Kumar Gupta
R/o Flat No.14
3rd Floor, Plot No.65
Kakrola Housing Complex, Dwarka
Delhi – 110 078.

25. Rajesh Kumar, Age 48 years
S/o Shri Gopal Parsad Gupta
R/o E-138, Gali No.11
Bhajanpura, Delhi.
26. Dr. Abhay Kumar Sharma, Age 42 years
S/o Shri Ajay Kumar Sharma
R/o WZ-245, Inderpuri
New Delhi -12.
27. Sattender Kumar, Age 44 years
S/o Late Shri Mitra Sain
R/o House No.138/11
Block-A Bhajanpura
Delhi-53.
28. Chetan Prakash, Age 39 years
S/o Shri Satya Pal Singh
R/o 512, Shastri Nagar
Meerut (U.P.).
29. Jyoti, Age 33 years
D/o Shri Gajjit Singh
R/o Village P.o.-Dehkora
Bahadurgarh, Jhajjar
Haryana.
30. Shashi Kant Sharma, Age 45 years
S/o Sh. Ram Dekhan Singh
R/o D-2/531, CPWD, M.S. Flat
Dev Nagar, Delhi – 05.
31. Ramesh Sharma, Age 47 years
S/o Shri R.S. Sharma
R/o I-42, Arya Samaj Road
Uttam Nagar, New Delhi-59.
32. Sachin Khandelwal, Age 36 years
S/o Shri Mahesh Chand Rajoria
R/o 78, Bank Colony, Alwar
Rajasthan.
33. Krishana Swaroop Pandey, Age 34 years
S/o Shri Girraj Sharan Pandey
R/o ID-1/9, Nehra Vihar
Karawal Nagar, Delhi -94.
34. Mamta Rav, Age 26 years
D/o Late Shri Ram Prasad
R/o S-Block, Pandav Nagar-110 92.

35. Sameer Kerketta, Age 58 years
S/o Shri R.S. Kerketta
R/o F-89, S-2, S.F.
Dilshad Colony, Delhi.
36. Vikram Jeet Yadav, Age 46 years
S/o Shri J.N.Yadav
R/o 7.Y, Chitragupta Road
Paharganj, Delhi.
37. Karamvir Verma, Age 60 years
S/o Late Shri Mehar Chand
R/o H.No.-59, Gali No.1
New Basti, Narela
Delhi-40.
38. Anil Kumar, Age 57 years
S/o Shri Mohal lal Kalra
R/o House No.-1695, Sector-7
E-Block, Faridabad, Haryana.
39. Dr. Priyanka Singh, Age 38 years
D/o Shri Rajender Singh
R/o House No.220
Sector 10A, Vasundhara
Ghaziabad, UP.
40. Uma Sharma, Age 42 years
D/o Late Shri B.N.Sharma
R/o B-117, Sector-55
Noida.
41. Dr. Ved Prakash, Age 41 years
S/o House No.1056
Street No.1, Shiv Mandir Colony.
Alipur, Delhi – 110 036.
42. Harmanpreet Kaur, Age 28 years
D/o Shri Sohan Singh
R/o C-365, Sector-19-C
Noida, UP.
43. Priyanka Yadav, Age 29 years
D/o Shri Yoginder Pal
R/o A-9/G-I Rampuri
Surya Nagar, Ghaziabad.

44. Pritam Singh, Age 42 years
 S/o Late Shri Jaswant Singh
 R/o F-95D, Pocket-F
 GTB Enclave, Nand Nagri
 Delhi – 110 093.

45. Chandan Singh, Age 43 years
 S/o Late Shri Kundan Singh
 R/o H-1308, Ajnara Integrity
 Raj Nagar Ext.
 Ghaziabad, UP.

46. A. Anbarasan, Age – 44 years
 S/o Shri R. Andi,
 R/o 1631, Laxmi Nagar
 New Delhi-23.

47. N.Muthukrishnan, Age 59 years
 S/o Shri A. Narayana, Chettiyar
 R/o -60, E 2A, Santhi Nagar
 Mettupalayam, Tamil Nadu -641301.

48. P.Chandrasekaran, Age 52 years
 S/o Shri Mr. Ponnah
 R/o 46, Main, Alwarpet
 Coonoor, Tamil Nadu-1.

49. Anupam Kaushik, Age 27 years
 S/o Shri Rakesh Kumar Kaushik
 R/o A-96, Azad Marg, Moradabad
 UP-244001.

50. Ravi Shankar P. Goswami, Age 25 years
 S/o Shri K.P.Goswami
 R/o Village-Patuwani
 Post-Bijwani, The-Bidwani
 Distt-Katni, M.P.

51. Vijay Kumar Singh, Age 61 years
 S/o Late Shri Purab Singh
 R/o Z-524, Timarpur
 Delhi – 110 054.

52. Mukesh Kumar, Age 48 years
 S/o Shri Ram Kishan
 R/o C-59, Preem Vihar
 Shiv Vihar, Delhi-94.

53. Dr. (Mrs.) Alice Verghese, Age 55 years
 D/o Late Baby Vaidyan
 R/o A3, Tagore Garden Ext.
 New Delhi -27.

54. Devendra Kumar Saxena, Age 58 years
S/o Shri Gyan Prakash Saxena
R/o 937/20, Baba Kharak Singh Marg
New Delhi -110 01.
55. Ms. Shilpi Dhan, Age 50 years
D/o Late Shri Surender Dhan
R/o House No.790, S-Type
Timarpur, Delhi.
56. Dr. Sunita Patel, Age 41 years
D/o Dr. Harihar Singh
R/o 72, DDA Flat (SFS)
Mukharjee Nagar
Delhi – 110 009.
57. Mahesh Chandra, Age 48 years
S/o Shri Jay Ram
R/o 1/52, MIG, Vasundhara
Ghaziabad, UP.
58. Dr. Pramod Kumar, Age 45 years
S/o Late Shri Raghunath
R/o C-16 B, 2nd Floor
Parasnath Paradise, Mohan Nagar
Ghaziabad, UP.
59. Yosman, Age 41 years
S/o Shri Kanwar Krishan Dhar
R/o 282, Ground Floor
Shalimar Garden Extension
Ghaziabad, UP.
60. H.L.Meena, Age 55 years
S/o Shri Bhorey Lal Meena
R/o Quarter No.23, Multi Story
Timarpur, Delhi – 110 054.
61. Rajendra Singh Rautela, Age 58 years
S/o Late Shri Narayan Singh Rautela
Ghaziabad, UP.
62. Neeru Kakkar, Age 53 years
S/o Shri P.P. Babbar
R/o Flat No.31
Capital Green (DLF)
Shivaji Marg, Delhi -15.

63. Dr. Ravi Kumar, Age 51 years
S/o Late Shri V. Ranga Swamy
R/o 1707, C/o Shri R.P.Singh
Janta Flat, G.T. Enclave
Nand Nagari, Delhi -93.
64. Anand Singh, Age 41 years
S/o Shri Desh Raj Singh
CC-414, Sector-18, Millennium
Apartment, Sector-18, Rohini
Delhi -18.
65. Harish Chander Gahlot, Age -58 years
S/o Lt. Shri Ramphal Gahlot
House No.416, VPO-Kakrola
New Delhi -78.
66. Raishuddin, Age 55 years
S/o Lt. Kaim Ali Khan
House No.798, F Type
Timarpur, Delhi -54.
67. Charanjeet Singh, Age 55 years
S/o Lt. Mohinder Singh
H.No.-147, Plot No.135
Ram Nagar, Delhi-18.
68. Dinesh Rani, Age 33 years
D/o Shri Devi Singh
H.No.634
Type-II, Sector-IV
Timarpur, Delhi -54.
69. Kalu Ram Yadav, Age 46 years
S/o Shri Sugan Lal
CC-Behind B-104
Near Malviya Nagar
Plot No.51-52
Old Roopbass, Alwar
Rajasthan-301001.
70. W. Tamizharasu, Age 39 years
S/o Late Shri M.A. Williams
R/o Qtr. No.32, GPRA
CPWD Complex, M.S. Baburaj Road
Kallai, Kozhikode
Kerala-673003.

71. P. Satya Babu, Age 46 years
 S/o P. Mrutyanjaya Rao
 R/o D. No.2-18, Main Road
 Dowlaishwaram – 533125
 East Godavari District
 Andhra Pradesh.

72. Suresh Chandra, Age 49 years
 S/o Shri Jay Ram, IIB-247
 Vaishali, Ghaziabad, UP -201010.

.... Applicants

(By Advocate : Shri Sachin Chauhan)

VERSUS

1. Union of India
 Through its Secretary
 Ministry of Health and Family Welfare
 Nirman Bhawan, New Delhi – 110 011.

2. The Director General of Health Services
 Directorate General of Health Services
 Nirman Bhawan, New Delhi – 110 011.

3. The Director
 National Centre for Disease Control
 22-Shamntha Marg, Delhi-54.

..... Respondents

(By Advocate : Shri J.P. Tiwary)

O R D E R

By filing this OA, the applicant is seeking the following reliefs:-

8.1 That the applicant be granted the benefit of judgment of Hon'ble Tribunal (Madras Bench) in OA No.818/2003 (titled Banumathy Mohana Krishan & Ors. Vs. Secretary, Ministry of Health & F.W.) which is further being affirmed by Hon'ble High Court in Review Application No.15/2009 and further being affirmed by Hon'ble Apex Court in SLP (C) No.CC-8550/2011 vide order dated 13.5.2011 Hon'ble Tribunal Judgment dated 30.1.2013 in OA No.4611/2011 titled N.Jayamma vs. UOI & ors., Hon'ble Tribunal (Mumbai Bench) in O.A. No.2027/2007 and OA No.2031/2007 decided on 29.02.2008.

8.2 To direct the respondents that applicants be granted the HPCA/PCA w.e.f. the implementation of 5th Pay Commission and 6th Pay Commission irrespective of re-classification or classification of their posts to Group -B with all consequential benefits including arrears thereof.

Or/and

(i) Any other relief which this Hon'ble court deems fit and proper may also be awarded to the applicant.

2. The sole issue raised in this case is with regard to the decision of the respondents denying Patient Care Allowance to the posts of Research Assistant, Technician and Assistant Research Officer as the said posts, according to the applicants, were re-classified from Group-C to Group-B pursuant to recommendations of 5th CPC in respect of the post of Research Assistant which was in Group-C before 5th CPC and pursuant to recommendations of 6th CPC in respect of the post of Technician, which was in Group-C before 6th CPC.

3. However, so far as some of the applicants who are holding the post of Assistant Research Officers, they themselves stated in the OA that the post of Assistant Research Officer was in Group B before and after the implementation of 5th and 6th CPC and PCA was never sanctioned to this post on the ground that PCA is applicable only for Group C and D cadre and not for Group B. As such their cases are not at par with the cases of other applicants in

this OA holding the posts of Research Assistant and Technician as only these two posts were reclassified from Group C to Group B by virtue of recommendations of CPCs. As such the claim of applicants holding the post of Assistant Research Officers, who were never granted Patient Care Allowance even before and after the 5th CPC, is not sustainable and tenable in the eyes of law. Therefore, instant OA qua those applicants, who are holding the posts of Assistant Research Officer, is dismissed being not similar to those applicants who are holding the post of Research Assistant and Technician.

4. In view of the above factual position, the claim of only those applicants who are holding the posts of Research Assistant and Technician is required to be adjudicated by this Tribunal.

5. During the course of hearing, learned counsel for the applicants drew our attention to the decision of Madras Bench of this Tribunal in OA 818/2013 (**Banumathy Mohanakrishnan and another vs. UOI and others**) decided on 22.6.2004 in which this Tribunal held as under:-

“9... Therefore, merely because the applicants have been given a higher pay scale in accordance with the Fifth Central Pay Commission would not ipso facto mean that there is a change of their grade viz. from Gr.C to Gr.B automatically. Such a view is erroneous and is without any basis and cannot be sustained.

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 10.7.2002, to which one of us was a party. Applying the ratio of this decision to the case in 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 within four weeks of receipt of a copy of this order by the respondents."

The aforesaid order was challenged by the Union of India before the Hon'ble Madras High Court by filing Writ Petition No.30973 of 2004 which was dismissed by the High Court vide Order dated 17.8.2007. Thereafter the UOI preferred Review Application No.15/2009 in the said Writ Petition and the High Court also dismissed the same vide Order dated 21.9.2010 upholding the decision of the Madras Bench of this Tribunal. For the sake of convenience, relevant portion of the judgment is reproduced hereunder:-:-

"9. Patient Care Allowance was granted to the 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. In the case on hand it is not the case of the Administration that with the implementation of V Pay Commission Recommendations and with the upgradation of the pay scales, the nature of duties of the respondents 1 and 2 got changed and that their duties no more involve any

contact with patients infected with communicable diseases and that they are not handling any infected materials, instruments and equipments which can spread infection.

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 WP 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.

Therefore, for all the above reasons, this Review Application is dismissed. No costs."

The aforesaid decision of the Hon'ble High Court of Madras was also challenged by the respondents before the Hon'ble Apex Court by way of SLP (CC) No.8580/2011, which was also dismissed vide order dated 13.05.2011. Meaning thereby, the order of the Madras Bench of this Tribunal dated 22.06.2004 passed in OA No.818/2003 (supra) attained finality.

6. Counsel for the applicants submitted that applicants submitted several representations on 17.2.2011, 25.10.2012, 9.4.2013. Counsel further submitted that OA 3123/2013 was filed through an Association, namely, Non-Medical

Scientist Forum (Group B and C), NCDC, s a sole applicant by its Secretary raising the grievance relating to grant of HPCA/PCA. But the said OA was dismissed by this Tribunal vide Order dated 21.12.2017 being not maintainable. However, in the said Order, it has specifically mentioned by this Tribunal that “However, this order shall not preclude any aggrieved individual employee from availing the remedies in respect of identical reliefs in accordance with law.”

7. Counsel also submitted that in the above facts and circumstances the applicants have filed this OA seeking the reliefs which is quoted at para 1 of this OA.

8. Counsel in support of the claim of the applicants also placed reliance on the decision of this Tribunal in OA 470/2016 (***Manoj Kumar and others vs. NDMC and others***), OA 786/2016 (***Mohinder Singh and others vs. NDMC and others***) and OA 1105/2016 (***Ved Prakash and others vs. NDMC and others***) which were decided by common Order dated 30.8.2016 with the following observations:-

“8. As stated above, the HPCA had been introduced for Group ‘C’ and ‘D’ (Non-Ministerial) employees who come in continuous routine contact with patients affected with communicable diseases or handling infected material, instruments and equipments etc. The applicants were in the pay scale of Rs.5000-8000 which was within the definition of Group ‘C’ employees in the scheme. The distinction that has to be understood is that in the scheme notified vide order dated 04.02.2004, the applicants were clearly in the Group ‘C’ category. In

fact, as pointed out by the learned counsel for the applicant, vide letter dated 11.11.2003, it has been clarified that even those in the pay scale of Rs.5500-9000 (revised scale PB-2 + GP Rs.4200) under ACP Scheme should be considered as Group 'C' employees for the purpose of HPCA. Moreover, as has been pointed out, the Ministry of Railways, which is one wing of Govt. of India, has granted HPCA to Physiotherapists/Pharmacists, which are also in the scale of PB-2 + GP Rs.4200.

9. Unfortunately, the erstwhile scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 have been replaced by PB-2 + GP Rs.4200/- and the respondents have classified them as Group 'B'. No corresponding change has been made in the original instructions dated 04.02.2004 under which the basic scheme was introduced and the applicants were very much eligible. It is also apparent that there is no change in the job contents and status of these employees, as a result of revision of pay scale. They are still doing the same job and are exposed to the same hazard for which the HPCA was introduced. In fact, the Ministry of Railways has allowed HPCA to Physiotherapists/Pharmacists. Therefore, I hold that the O.A. has merit and perhaps the respondents have taken such a stand as they missed the woods for the trees.

10. In view of the above discussion, the O.As. are allowed. Order dated 05.10.2015 is quashed and set aside and the respondents are directed to restore the payment of HPCA to the applicants from the date it was discontinued. In view of this held by me, the applicability or not of **Rafiq Masih** (supra) is no longer essential. However, it is clear that no recovery can be made from retired employees as well as for period beyond five years prior to date of passing of order as per **Rafiq Masih** (supra). Time frame of 90 days is fixed for the respondents to comply with this order. No order as to costs."

Counsel lastly submitted that since issue has already attained finality by the Apex Court and there are several judgments of this Tribunal, the relief claimed by the applicant is admissible in law.

9. On the other hand, counsel for the respondents by referring to the counter affidavit submitted that Patient Care Allowance (PCA) was extended to Group 'C' and 'D' employees (Non-Ministerial) of their Institution vide Ministry of Health and Family Welfare's letter No.Z.28015/41/98-H (iii) dated 2.1.1999. Thereafter, Ministry of Health & Family Welfare issued guidelines vide their letter dated 4.2.2004 regarding eligibility of Group 'C' and 'D' (Non-Ministerial) employees only. Hence, Patient Care Allowance was discontinued to Research Assistants & Technicians, who were re-classified from Group 'C' to Group 'B', after implementation of 5th and 6th CPCs respectively. Counsel further submitted that re-classification of post of Research Assistant from Group 'C' to Group 'B' was done vide Office Order No.10-1/2001-Estt. Dated 12.4.2001, which was on the basis of DOP&T Gazette Notification No.13012/1/98-Estt. (D) dated 20.4.1998 after implementation of 5th CPC and the re-classification of post of Technician from Group 'C' to Group 'B' was done vide Office Order No.10-1/2001-Estt. Dated 25.1.2010, which was on the basis of DOP&T Gazette Notification No.11012/7/2008-Estt. (A) dated 9.4.2009 for implementation of 6th CPC.

9.1 Counsel further submitted that PCA was not denied to eligible Group 'C' and 'D' employees of NCDC whereas the

applicant holding Group 'B' posts were not granted PCA due to their in-eligibility.

9.2 Counsel further submitted that although the RRs are not amended but the applicants had been granted the new revised pay scales as per the recommendations of 5th CPC and accordingly their status has also been changed.

9.3 Counsel further submitted that reliance placed by the applicants on aforesaid judgments in support of their claim cannot automatically be extended to others as the directions contained in the said judgments are always specific unless or until Government issues order for its applicability to others also.

9.4 Counsel also submitted that reliance placed by the applicants on the aforesaid common Order dated 30.8.2016 passed in three connected OAs related to Hospital Patient Care Allowance whereas the applicants in the instant OA are claiming the PCA. Further the eligibility of HPCA and PCA is totally different as per Ministry of Health and Family Welfare guidelines issued vide letter dated 4.2.2004. Counsel further submitted that the said common Order does not pertain to respondents' office being under Government of India and the respondents have no comments to offer regarding grant of PCA in other departments, as these are separate organizations with different mandate.

9.5 Counsel for the respondents submitted that Patient Care Allowance is admissible to Group 'C' and '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.

10. After hearing both the parties and perusing the records, we find that Ministry of Health and Family Welfare issued guidelines vide their letter dated 4.2.2004 regarding eligibility of Group 'C' and 'D' employees, who continue to receive Patient Care Allowance. The only issue which has been argued in this OA is with regard to the pay scales of the posts of Research Assistant and Technician which were re-classified from Group 'C' to Group 'B' as shown vide Office Order No.10-1/2001-Estt. dated 12.4.2011 and Office Order No.10-1/2011-Estt. dated 25.1.2010 respectively and the same was done on the basis of DOP&T's OMs issued after implementation of recommendations of 5th and 6th CPCs respectively, but while doing reclassification of the said posts, the decision with regard to HPCA and PCA has not been discussed. As per information given by the respondents, the eligibility for Hospital Patient Care Allowance and Patient Care Allowance is totally different as per the Ministry of

Health and Family Welfare's guidelines issued vide letter dated 4.2.2014. Counsel has also drawn our attention to the fact that the applicants in this OA are those who are under the Government of India offices and hence, they have not made any comments on whether PCA is applicable to the persons working in Government of India offices, i.e., respondent's offices. Hence, quite clearly we look at the issue in view of the fact that MoF&FW vide OM dated 17.5.2018 addressed this issue 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.”

and in view of the same, the coordinate Bench of this Tribunal in OA No.3517/2018 (**Joint Forum of Medical Technologists of India and others vs. UOI and others**) vide Order dated 27.2.2019 has already directed as under:-

“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.”

11. We find that the above decision of the coordinate Bench dated 27.2.2019 in OA 3517/2018 must be followed by the respondents in this case also and accordingly we direct the respondents to pass any fresh orders in the matter as early as possible.

12. We also note the directions of the Hon’ble Supreme Court in the cases of **P.U.Joshi vs. Accountant General** (2003) 2 SCC 632, and **Indian Drugs & Pharmaceuticals Ltd. vs. Workman, Indian Drugs & Pharmaceuticals Ltd.**, (2007) 1 SCC 408. In **P.U. Joshi**, the Apex Court held as under:

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State.

Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

and in **Indian Drugs & Pharmaceuticals Ltd.**, the Apex Court held as follows:-

“When the State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize quo any matter which under the constitution lies within the sphere of the legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers”.

The courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment on

these posts, regularization, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case. The relevant case law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in Rama Muthuramalingam vs. Dy. S.P. AIR 2005 Mad 1, and we fully agree with the views expressed therein.”

13. The respondents are further directed that while passing fresh order in the matter, they should keep in mind the aforesaid decisions of the Apex Court on the said subject so that the issues raised by the applicants (Research Assistant and Technician) in this OA are finally settled with full clarity on the subject.

14. As already observed in para 3 above, some of the applicants who are holding the post of Assistant Research Officers, they themselves stated in the OA that the post of Assistant Research Officer was in Group B before and after the implementation of 5th and 6th CPC and PCA was never sanctioned to this post on the ground that PCA is applicable only for Group C and D cadre and not for Group B. As such their cases are not at par with the cases of other applicants in this OA holding the posts of Research Assistant and Technician as only these two posts were reclassified from Group C to Group B by virtue of recommendations of CPCs. As such the claim of applicants holding the post of Assistant Research Officers, who were never granted Patient Care

Allowance even before and after the 5th CPC, is not sustainable and tenable in the eyes of law. Therefore, instant OA qua those applicants, who are holding the posts of Assistant Research Officer, is dismissed being not similar to those applicants who are holding the post of Research Assistant and Technician.

15. With the above directions, the instant OA is disposed of.

No costs.

**(Nita Chowdhury)
Member (A)**

/ravi/