

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: September 25, 2013*
Judgment Pronounced on: October 21, 2013

+ **WP(C) NO. 4973/2013**

UNION OF INDIA & ORS. Petitioners
Represented by: Mr.Sachin Datta, Advocate with
Mr.Vikram Aditya Naryan, Advocate

versus

PRABHU NATH PRASAD & ORS. Respondents
Represented by: Mr.Sachin Chauhan, Advocate

WP(C) NO. 4974/2013

UNION OF INDIA & ORS. Petitioners
Represented by: Mr.Sachin Datta, Advocate with
Mr.Vikram Aditya Naryan, Advocate

versus

N.JAYMMA & ORS. Respondents
Represented by: Mr.Sachin Chauhan, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. A common order dated January 30, 2013, allowing OA No.4611/2011, filed by the respondents in W.P.(C) No.4974/2013 and OA No.4612/2011 filed by the respondents in W.P.(C) No.4973/2013 is challenged in the two captioned writ petitions.
2. The respondents in the two writ petitions who were the claimants

before the Central Administrative Tribunal were aggrieved by the fact that Patient Care Allowance was not being paid to them.

3. The fact on which the claim was predicated was that the respondents were working against Group 'D' posts such as Peon/Daftari at the National Institute of Communicable Diseases at Sham Nath Marg and that during discharge of their duties they were handling infected materials, instruments and equipments which can spread infection. The petitioners had denied the claim, taking a stand that Patient Care Allowance is admissible to non-ministerial Group 'C' and Group 'D' employees working in Health Care Delivery Institution/Establishment (other than hospitals) having less than 30 beds.

4. With reference to a policy circular dated February 04, 2004, the issue was debated before the Central Administrative Tribunal, which has taken the view that the work performed by the respondents carry an equal degree of risk of being infected in a hospital and hence they would be entitled to the Patient Care Allowance.

5. Unfortunately, the Tribunal has not recorded the duties performed by the respondents, and thus we do so.

6. Working as Peons/Daftaris at the National Institute of Communicable Diseases, the respondents are deputed to perform wide and varied duties, some of which do not expose them to the risk of infection and some do. Required to deliver a Dak from desk to desk or carry a file from one desk to another, the respondents are not exposed to any risk of infection, but required to pick up bio samples from the shelves in the laboratory and hand over the same to the Pathologist and additionally required to wash dishes in which the culture of samples is grown as also wash test tubes and other glass/ceramic equipment in laboratories, the respondents do expose

themselves to the risk of infection. Now, the National Institute of Communicable Diseases is not a Health Care Delivery Institution, in that, it does not admit any patient for primary, secondary or tertiary health care, but admittedly it receives samples of stool, urine, blood, sputum, pus, skin tissues etc. for pathological analysis. Thus, those working at the institute run the risk of being exposed to infection.

7. In our decision dated July 08, 2013, disposing of W.P.(C) No.5268/2012, pertaining to the Chowkidars working at the National Centre for Disease Control, we had reasoned as under:-

1. Having heard learned counsel for the parties we are of the opinion that the writ petition has to be allowed.

2. A reading of the impugned order dated February 28, 2012 passed by the Central Administrative Tribunal would reveal that the Tribunal has principally agreed with the petitioners that the Circular dated February 4, 2004 disentitles the respondent to receive 'Patient Care Allowance' but has granted the relief on grounds of parity observing that documents filed by the respondents (claimants before the Tribunal) would reveal that Chowkidars working in Institutions such as (i) National Vector Borne Disease Control Programme (NVBDCP), (ii) RHTC, Najafgarh, (iii) Raj Kumar Amrit Kaur College of Nursing and (iv) LRHS, Najafgarh were being paid the Patient Care Allowance and the petitioners, impleaded as respondents before the Tribunal, could give no reason why said organizations were paying Patient Care Allowance to Chowkidars but the National Centre for Disease Control under whom respondents were working as Chowkidars was not paying Patient Care Allowance.

3. Clause No.(ii) and (iv) of the Circular dated February 4, 2004, based whereon the respondent predicated a claim to be paid Patient Care Allowance, read as under:-

(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 deliver institutions/establishments (other than hospital) 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-MHJ(H), dated 28.9.1998 and Z.28015/41/98-H (i) dated 2.1.1999 are enclosed.

(iv) The conditions which an organization must satisfy before it 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. *The Tribunal has noted only condition No.(ii) and since the National Centre for Disease Control has no beds at all; and we note does not have even an OPD, the Tribunal has held, and rightly so, that the very eligibility condition for being paid Patient Care Allowance was not fulfilled and hence under the policy Circular the claimants before the Tribunal, impleaded as respondents in the writ petition, would not be entitled to any Patient Care Allowance.*

5. *But since no explanation was given in the Counter Affidavit filed to the Original Application filed as to why*

Chowkidars employed by (i) National Vector Borne Disease Control Programme (NVBDCP), (ii) RHTC, Najafgarh, (iii) Raj Kumar Amrit Kaur College of Nursing and (iv) LRHS, Najafgarh were being paid Patient Care Allowance notwithstanding even said Institutes having no beds, holding the action to be discriminatory, relief has been granted by the Tribunal.

6. We note at this stage that the respondents who were the claimants before the Tribunal are Chowkidars at the National Centre for Disease Control. The said Institute does not afford any medical treatment whether as an In Patient or as an Out Patient to any sick person. It is a Research and a Referral Centre and operates more like a Pathological Laboratory where samples are received from scientific analysis.

7. The purpose of paying Patient Care Allowance, as per para-iv of the Circular dated February 4, 2004, is to compensate Group-C and D non-ministerial employees who come into contact with patients affected with communicable diseases in discharge of their regular duties or are handling infected material, instruments and equipments which can spread infection.

8. Neither there is an assertion in the Original Application by the respondents nor is there any evidence that, working as Chowkidars, the respondents handle infected material, instruments and equipments which can spread infection.

9. To this extent we need not bother ourselves for the reason even the Tribunal has held that the respondents are not entitled to sustain the claim under the policy Circular.

10. The Tribunal has granted relief on the principle of discrimination.

11. It is settled law that equality is a positive concept and not in the negative. There cannot be a claim for equality in the negative. Thus, if one division of the Government or an autonomous body under the Government wrongly grants a claim, another division of the Government or another

autonomous body cannot be compelled to do the same.

12. May be in the Institutions which are paying Patient Care Allowance to Chowkidars the nature of duty of a Chowkidar may be of a kind which requires a Chowkidar to handle infected materials, instruments and equipments which can spread infection. It is possible that the working of said Institutions may require stool, blood, urine or body tissues sent by way of samples to be received at the gate by the Chowkidar; to be sent to the concerned division by the Chowkidar or somebody else to receive it from the Chowkidar. If this be so, such a Chowkidar would be handling infected materials, instruments and equipments which can spread infection and thereby justifying the action by said Organization to pay Patient Care Allowance.

13. As regards the reasoning of the Tribunal that the National Centre for Disease Control did not give reasons as to why said Institutes were paying Patient Care Allowance and not National Centre for Disease Control will only have to say that if 'A' pays an allowance to his employees it is only he who would know why, and 'B' cannot be called upon to justify the reason why 'B' is not paying similar amount by using the act of 'A' in paying the amount as a referral point. Of course, 'B' can be called upon to justify his action with reference to a policy decision, rule of law or a statute applicable.

14. The writ petition is allowed. Impugned order dated February 28, 2012 is set aside and the Original Application filed by the respondents is dismissed.

15. Parties shall bear their own costs all throughout.

8. Thus, Patient Care Allowance has not to be paid only where the employees are working in the Health Care Delivery Institutions/Establishments. It is equally payable if the Group 'C' and Group 'D' non-ministerial employees, perform regular duties involving continuous routine contacts with patients affected with communicable diseases **or are handling infected materials, instruments and equipments**

which can spread infection. The same flows out from condition No.(iv) of the policy circular dated February 04, 2004.

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' non-ministerial 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.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

OCTOBER 21, 2013

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