

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7655 OF 2024

Rupesh Balchandra Sapkale .. Petitioner

Versus

The Union of India & Ors. .. Respondents

**WITH
WRIT PETITION NO. 11730 OF 2024**

Dani Ram Sinha & Anr. .. Petitioners

Versus

The Union of India & Ors. .. Respondents

**WITH
WRIT PETITION NO. 17213 OF 2024**

Eramma Sinthala Uppal & Anr. .. Petitioners

Versus

The Union of India & Ors. .. Respondents

**WITH
WRIT PETITION NO. 17207 OF 2024**

Gunjan Bharti & Anr. .. Petitioners

Versus

The Union of India & Ors. .. Respondents

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Mr. Abdulrajjak I. Bhatkar for the petitioners in all WPs.

Mr. Rui A. Rodrigues a/w Mr. Prashant Khosla, Advocates for the
Respondent Nos.1 to 4 in all WPs.

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**CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.**

DATE : 8th SEPTEMBER 2025.

PER, SHREE CHANDRASHEKHAR, CJ :-

Aggrieved by the order dated 25th November 2021 passed in Original Application Nos. 618 of 2019, 624 of 2019, 678 of 2019, 679 of 2019, 681 of 2019, 682 of 2019 and 683 of 2019, these writ petitions have been filed by the employees, seven in number, who were working as boot-maker, tradesman (mate), carpenter, tailor etc.

2. The Tribunal in its order dated 25th November 2021 held that the applicants were not identically placed with the other employees specified for Naval Hospitals/Medical Establishments who are entitled for Hospital Patient Care Allowance (in short, HPCA)/Patient Care Allowance (in short, PCA). The Tribunal also found that the applicants in Original Application No. 228 of 2008 were not such employees who were in regular, continuous and routine contact with the patients suffering from communicable diseases. The Tribunal made a distinction on the ground that the applicants' primary duty did not involve any continuous or regular contact with the patients infected with communicable diseases and they were not handling infected materials, instruments and equipments.

3. In its order dated 25th November 2021, the Tribunal has discussed threadbare the duties performed by the applicants and referred to the decisions of the Hon'ble Supreme Court in Civil Appeal No. 852 of 2020 titled "*Chairman/Managing Director, U.P. Power Corporation Ltd. & Others v. Ram Gopal*" and Civil Appeal No.5849 of 2014 titled "*State of U.P. & Ors. v. Arvind Kumar Srivastava & Ors.*" to come to a conclusion that the applicants are not entitled to the similar benefits which are extended to the employees falling under the list appended to

Government of India, Ministry of Defence letter dated 17th November 2005.

4. The Tribunal held as under:-

“4(a) I have carefully considered the submissions in these Oas, rejoinders and arguments of the applicants’ counsel as well as reply and arguments of counsel of the respondents.

4(b) The main issue involved in these Oas is about eligibility of the applicants for grant of HPCA/PCA as per policy decision of the Ministry of Defence contained in letter dated 17.11.2005. The eligibility of non-ministerial Group ‘C’ and ‘D’ staff working at Armed Forces Hospitals and medical establishments is as per the policy decision of Ministry of Defence, Government of India in their letter dated 17.11.2005. The applicants’ contention is that since other categories of non-ministerial staff are covered for payment of HPCA/PCA, they should also be held eligible in view of decision of this Tribunal in O.A.228/2008 dated 08.12.2008, challenge to which in the High Court has been rejected.

In order to appreciate the relief sought by the applicants, it is necessary to refer to the eligibility for HPCA/PCA under the Ministry of Defence letter dated 17.11.2005. In Para 2 (iii) and (iv) of that letter it has been specified that only those Group ‘C’ and ‘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 may be considered for grant of HPCA. The 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.

4(c) This policy decision issued by the respondents is not under challenge in these Oas. The main reliance of the applicants in these Oas is on the decision of this Tribunal in O.A.228/2008 by which certain other categories of non-ministerial staff were declared to be eligible for payment of HPCA/PCA. However, the policy decision of the respondents dated 17.11.2005 on the subject of grant of Hospital Patient Care Allowance/Patient Care Allowance to Group ‘C’ and ‘D’ non-ministerial employees of Armed Forces Hospitals or medical establishments is neither challenged in these Oas nor it was challenged in O.A.228/2008.

4(d) The applicants have not been able to explain as to how they are identically placed with those for whom payment of HPCA/PCA has been allowed by the above policy decision or with those non-ministerial employees covered in O.A.228/2008. In appendix to the letter of Ministry of Defence dated 17.11.2005, nine categories of employees specified in Hospitals/Medical Establishments in Navy are Ward Sahayika/Sahayak, Safaiwala/Safaiwali, Washerman, Barber, Medical Attendant, Dresser, Ayah, Ward Lady/Boy Hospital and Masalchi.

However, the present applicants are employed with the respondents as Boot Maker, Ortho Fitter, Tinsmith (HSK)I, Tradesman

(Mate), Carpenter, Painter (MCM) and Tailor. Thus they are not employees of the INHS Ashvini Hospital falling under those 9 categories of non-ministerial employees specified to be eligible for HPCA/PCA in the Ministry of Defence letter dated 17.11.2005 issued with reference to Ministry of Health & Family Welfare letter dated 04.02.2004.

4(e) In view of these facts, the limited issue for consideration in these Oas is whehter the applicants can be accepted as identically placed with respect to their duties with the nine categories of employees specified for Naval Hospitals/Medical Establishments in the above mentioned policy decision. Since the applicants are working as Boot Maker, Ortho Fitter, Tinsmith (HSK)I, Tradesman (Mate), Carpenter, Painter (MCM) and Tailor, the apprehension/risk of infection while working at INHS Ashvini articulated by applicants is exaggerated. It is necessary to understand that INHS, Ashvini is a tertiary care command hospital and it is not a hospital dealing exclusively with patients of communicable diseases. Not all diseases are infectuous and communicable. Therefore, all patients coming to INHS, Ashvini are not of only communicable diseases such as Hepatitis A, B, C, Measles, Tuberculosis, Covid-19, (infection of which can occur at any place), etc. The patients suffering from non-communicable diseases such as Heat disease, cancer, Asthama, mental health conditions, and injuries of various kinds also come to INHS, Ashvini for treatment. In fact in general, the number of persons suffering from communicable diseases is relatively much less than those suffering from non-communicable diseases. Therefore, patients with communicable diseases visiting the INHS, Ashvini hospital must be less in number as compared to those suffering from non-communicable diseases. Therefore, the claim of the applicants that they are working under an infectuous environment of communicable disease is highly exaggerated and not acceptable.

4(f) After implementation of 7th CPC pay scales, for payment of various allowances, the Department of Expenditure, Ministry of Finance issued its OM dated 06.07.2017 in which HPCA/PCA (item no.83) was retained and rationlised and it has been stated that the HPCA and PCA are admissible to only those employees who come in continuous and routine contact with patients or have to handle infected materials, instruments or equipments. The claim of the applicants that as per the decision of the Tribunal in O.A.228/2008, after challenge to it by the respondents in the High Court was dismissed, payment of HPCA or PCA has been made in 2018 to the applicants in that O.A. also is not fully correct. While the respondents in their reply contend that the issue is still under examination at integrated headquarters of Ministry of Defence (Navy) and as per letter of 21.01.2019 information has been sought from various units for extending benefits of HPCA/PCA to similarly placed non-petitioners, based on the High Court decision in Writ Petition No. 1958/2010 the letter dated 16.02.2018 from Admiral Superintendent to PCDA (N) mentions that approval has been given by the Competent Authority to implement the High Court order conditionally.

4(g) In fact in O.A.228/2008 the applicants were working as Pharmacist, X-Ray Technician, Laboratory Technician, Cook, Ambulance

Driver, etc. However, the present applicants working as Book Maker, Ortho Fitter, Tinsmith (HSK)I, Tradesman (Mate), Carpenter, Painter, Tailor, etc., are not functionally identically placed with the applicants in O.A.228/2008. The present applicants neither come in regular, continuous and routine contact with patients suffering from communicable diseases nor their primary duty involves continuous and regular contact with the patients infected with communicable diseases or handling of infected materials, instruments and equipments. Therefore, the level of risk of getting infected is much lower for the applicants as they come only in occasional contact with the patients and not necessarily patients suffering from communicable diseases. Therefore, the claim of the applicants that they are identically situated to those covered in the Item 2 in Appendix to Ministry of Defence letter dated 17.11.2005 and the applicants in O.A.228/2008 is not justified. I would also like to emphasize that the instructions of the Ministry of Defence in letter dated 17.11.2005 are a policy decision and based on functionally related reasonable classification of the non-ministerial staff working in the Armed Forces hospitals/medical establishments. For the Naval Hospitals/medical establishments, only nine categories of such staff have been accepted as eligible for payment of HPCA/PCA. For covering additional categories of the non-ministerial staff such as the present applicants, the proposal has already been rejected as per the decision by the Ministry of Defence communicated through the impugned orders. The applicants have thus failed to make out a case against the impugned orders dated 08.11.2017 and 23.05.2018. Hence the Oas have no merits. The claim of discrimination raised by the applicants is baseless.”

5. It seems that subsequently, guidelines for implementation were issued vide Office Memorandum dated 04th February 2004 but, later on, certain categories of employees were excluded. As per paragraph 2(i) of the said letter, HPCA is admissible only to Group ‘C’ and ‘D’ (non-Ministerial) employees, excluding nursing personnel, working in Armed Forces Hospitals with 30 or more beds and Super Specialty Hospitals with 10 or more beds but the employees receiving Night Weightage Allowance or Risk Allowance sanctioned by the Central Government are not entitled to HPCA. Paragraph 2(iii) of the letter stipulates that HPCA shall be granted exclusively to those Group ‘C’ and ‘D’ (non-Ministerial) employees whose regular duties involve “continuous and routine contact” with patients infected with communicable diseases or whose primary duty involves handling infected materials, instruments and

equipment capable of spreading infection and the employees whose contact or exposure is occasional are expressly excluded from eligibility.

6. The learned counsel for the petitioners contends that there was no denial by the employer in its reply-affidavit filed before the Tribunal that the applicants are not discharging duties which would involve their contact with the patients having communicable diseases. The learned counsel for the petitioners referred to the decision of High Court of Delhi in Writ Petition (Civil) No. 10702 of 2018 titled "*Union of India & Ors. v. Surendra Pal Singh & Ors.*" to submit that the HPCA/PCA is required to be paid to all employees who are exposed to the risk of infection and no categorization can be made between Ministerial and non-Ministerial employees performing regular duty involving continuous contact with the patients affected with communicable diseases. However, on facts, we do not find any semblance of similarity between the duty performed by the applicants and the employees who come in regular contact with the patients suffering from communicable diseases. It is quite not understandable how a boot-maker, carpenter, tailor or a painter can claim that he comes in regular contact with the patients affected with communicable diseases. The benefits of HPCA/PCA were extended in the year 2005 and there was a subsequent attempt to involve some more categories of employees in the list but that was not accepted by the Ministry of Defence.

7. The Ministry of Health & Family Welfare by its order dated 10th July 1990 granted HPCA/PCA to Group 'C' and 'D' employees under the Central Government Health Scheme. The Ministry of Defence by its Office Memorandum dated 08th November 1995 identified specific categories of Group 'C' and 'D' employees eligible for HPCA/PCA and extended the same benefit to its Group 'C' and 'D' employees at the rates initially fixed at Rs.80/- and Rs.75/- per month respectively

which have since been revised to Rs.4100/- per month effective from 01st January 2016.

8. Now a question arises whether the Court can go beyond the list of employees included under the appendix to the letter dated 17th December 2005 of the Government of India, Ministry of Defence. The another issue which also arises is whether the writ Court is having such jurisdiction to decide the parity of post or the parity of duty discharged by two sets of employees. In our opinion, the writ Court does not possess such powers. The Tribunal made sufficient distinction between two sets of employees and arrived at the right conclusion that the applicants are not entitled for HPCA/PCA. The Tribunal also reflected on the delay in moving the representation by the applicants seeking benefits of HPCA/PCA and held that original applications were liable to be dismissed on the ground of delay and laches.

9. An employee who does not approach the Court within a reasonable time seeking payment of monetary benefits and approaches the Court after a couple of years when a similarly situated employee gets relief from the Court cannot get a similar order. In *“Rup Diamonds v. Union of India”* (1989) 2 SCC 356, the Hon’ble Supreme Court observed that those persons cannot seek discretionary relief from the writ Court if they were sitting on the fence till somebody else took up the matter to the Court and got relief.

10. The learned counsel for the petitioners referred to the decisions in *“Union of India & Ors. v. Tarsem Singh”* (2008) 8 SCC 648 and *“State of Madhya Pradesh & Ors. v. Yogendra Shrivastava”* (2010) 12 SCC 538 and submits that a continuing wrong occurs on denial of benefits of pay revision, pay scale or other service linked benefits. In *“Tarsem Singh”* the issue involved was whether the payment of disability pension to the

applicant only for 38 months prior to the filing of the writ petition was justified. In that context, the Hon'ble Supreme Court observed that one of the exceptions to the rule relating to delay and laches is the case where continuing wrong has been caused to the government employee. In "*Yogendra Shrivastava*" the issue was arbitrary payment of lump sum amount of non-practising allowance to certain categories of medical officers belonging to the State Insurance Service. In paragraph no.4 of the decision in "*Yogendra Shrivastava*", the Hon'ble Supreme Court noted the fact to the effect that the State Government was revising the fixed lump sum NPA whenever there were revisions in the pay scales by issuing executive orders. It was in course of the discussions in the said case that the Hon'ble Supreme Court observed that the issues relating to payment or fixation of salary or allowances are not barred by limitation or the doctrine of laches may not deprive the government employee of the benefits as the denial of such benefits occurs every month when the salary is paid.

11. In our opinion, the decisions in "*Tarsem Singh*" and "*Yogendra Shrivastava*" turn on their peculiar facts and the observations made thereunder and do not apply in the fact-situation of this case. It is well remembered that a decision is an authority to what it actually decides and every observation made in a decision does not form part of *ratio decidendi* and that shall not be the precedent which is binding to all Courts under Article 141 of the Constitution of India.

12. While so, Writ Petition Nos.7655 of 2024, 11730 of 2024, 17213 of 2024 and 17207 of 2024 are dismissed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]