

# Union Of India And Ors vs Surendra Pal Singh And Ors on 29 January, 2019

**Author: Vipin Sanghi**

**Bench: Vipin Sanghi, Yogesh Khanna**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 10702/2018, C.M. Appl.No.41688/2018  
UNION OF INDIA AND ORS. .... Petitioner  
Through: Mr.Ruchir Mishra, Adv.

versus

SURENDRA PAL SINGH AND ORS. .... Respondent  
Through: None

CORAM:  
HON'BLE MR. JUSTICE VIPIN SANGHI  
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% 29.01.2019

1. The Union of India has preferred this writ petition to assail the order dated 28.04.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.4086/2015. The tribunal has allowed the said application preferred by the respondent holding that the denial of Hospital Patient Care Allowance (HPCA)/Patient Care Allowance (PCA) to the respondents was arbitrary. The respondents have been granted the relief and have been directed to the arrears for a period of three years immediately preceding the date of filing of the original application.

2. The submission of Mr.Mishra is that the eligibility for grant of HPCA was amended by the memorandum dated 17.11.20005. He submits that the eligibility condition laid down in the said memorandum reads as follows :

(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 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 allowed to any Group 'C' & 'D' (Non-Ministerial) employees whose contact with patients or exposure to infected materials is of occasional nature.

Based on the above guidelines, categories of Group 'C' & 'D' employees as per Appendix to this letter will be eligible for grant of HPCA/PCA. These employees when posted to the Headquarters office dealing with such hospitals / medical establishments will cease to be eligible for HPCA/PCA.

3. He further submits that based on the aforesaid criteria the categories of Group C and Group D non-ministerial employees eligible for grant of HPCA/PCA in hospital/medical shops in the army was drawn up which reads as follows :

I Hospitals/Medical Establishment in Army S.No. Categories

1. Ward Sahayika
2. Safaiwala/Safaiwali
3. Washerman
4. Barber
5. Female Attendant
6. Cook
7. Ward Boy

4. He submits that the respondents were 'malis' working in the Base Hospital Delhi Cantonment and they do not fall in any of the aforesaid categories and are therefore not entitled to HPCA/PCA.

5. The tribunal has allowed the original application by placing reliance on Union of India and Ors Vs. Prabhu Nath Prasad and Ors. Writ Petition (Civil) No.4973/2013. The submission of Mr.Mishra, Advocate is that the said case related to the peons/daftaris working in National Institute of Communicable Diseases. He submits that in that case the Court had examined the nature of the duties performed by the respondents (original applications) and had concluded that the nature of their duties exposed them to risk of infection since they were involved in a variety of duties such as deliveries of dak from desk to desk; carrying of files form one desk to another; taking samples from the shelves in laboratories and handing over the same to the pathologists, and; washing dishes in which the culture samples are grown. They were also involved in washing of test tubes and other glass/ceramic equipment in the laboratories which expose them to the risk of infections. Mr.Mishra submits that the case of malis working in the Base Hospital, Delhi Cantonment is materially different and the same yardsticks cannot be adopted in this case which was adopted by the Court in Prabhu Nath Prasad (supra). He further submits that the High Court in the said decision itself has

observed that the said decision would not serve as a precedent in other cases since it is a matter of fact which needs examination in each case.

6. Having perused the impugned order and the record, including the decision in Prabhu Nath Prasad (supra), we are not inclined to interfere with the impugned order since we do not agree with the submissions advanced by Mr. Mishra. Firstly, we may observe that the tribunal has undertaken the exercise of examining the nature and scope of duties and responsibilities performed by the respondent/malis in the Base Hospital, Delhi Cantonment. From the same it is evident that the respondents are exposed to risks of catching infections from patients who visit the Base Hospital, Delhi Cantonment for treatment and who wait in the lawns to meet the attendant doctors. The discussion in the impugned order on this aspect reads as follows :

4. The respondents also challenge the contention that the applicants have ever drawn HPCA. The matter of grant of HPCA has been considered by the Tribunal in OA 4611/2011 and OA 4612/2011 which was filed by employees working in MMEP, NICD, RAK College of Nursing, LRHS, RHTC-

Najafgarh, Post/Airport Health Organization and allowed. The Tribunal in its order had observed that there can be no distinction in the matter of grant of HPCA only on the basis of casual or continuous contact of the employees with patients. Hence such a classification was held to be unsustainable and not permissible in law. The applicants in this OA are also Malis who come into contact patients who would be using the garden maintained by them as a place of rest while visiting the hospital, or as a seating place while waiting to be attended by the doctor, or waiting to visit patients admitted thereon. The contact or exposure of the applicants to infected patients would not be as much as, persons who spent their entire duty hours within the confines of the hospital. However, there is no doubt that the applicants would also be exposed, though the contact would be of a lower degree than persons serving inside the hospital. It was held by the Tribunal in the above cited OA 4611/2011 that the respondents cannot discriminate in the matter of grant of HPCA only on the ground of casual or continuous contact. This would be particularly so when provision of other facilities like holiday, leave, compensentary off, duties hours etc. would be identical. The respondents other than summarily denying the contention of the applicants, provide no substantial argument for denying this benefit to the applicants who are working in the hospital.

5. The purpose of the allowance is to provide compensation to employees who are exposed to the infection of sick persons. There is no doubt that air borne infection would not be confined to the four walls of a hospital and nor would the applicants be insulated from the same. The risk though not continuous, would however be present. It is seen that the Applicant has filed OA in November, 2015, making the claim w.e.f. November, 2005. This is a belated service claim which attracts rejection on the ground of delay, laches and limitation. However, one exception made by the Apex Court in UOI and Another Vs. Tarsem Singh (2008) 8 SCC 648) is relating to a continuing wrong and added a rider restricting the relief relating to arrears to only three years before the date of writ petition.

7. The decision in Prabhu Nath Prasad (supra) also points out that even chowkidars of the National Centre for Disease Control were allowed to HPCA/PCA in terms of the decision in W.P.(C) No.5268/2012 decided on 8th July, 2013. The fundamental test is to consider whether an employee serving in a hospital - which is visited by patients suffering from communicable diseases, is exposed to the risk of catching the infections from the patients. Para 8 of the decision in Prabhu Nath Prasad (supra) reads as under :

"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." (emphasis supplied)

8. We do not find any reason to disagree with the finding returned by the tribunal that the respondents fall in the category of employees who are regularly exposed to patients affected by communicable diseases. It is not uncommon for patients to leave waste materials, semi-eaten food, garbage etc. at the place where they sit and wait in lawns and gardens. Malis were also to be required to handle all such materials which could carry infections of communicable diseases. This is apart from the fact, that they directly come in contact with all persons visiting the hospital who sit and rest in the lawns and wait for their turn, or who are present as attendants of patients, who are admitted in hospital. Hence, the petition is dismissed along with pending application.

VIPIN SANGHI, J YOGESH KHANNA, J JANUARY 29, 2019 VLD