
(2010) 01 DEL CK 0291

In the Delhi High Court

Case No : Writ Petition (C) No. 418 of 2010

Sh. V. Stephen

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0291

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : J.S. Mann, for the Appellant; Subhash C. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner challenges the order dated 16th September, 2009 passed in O.A No. 1732/2008 titled V. Stephen v. Union of India through the Secretary, Ministry of Defense and Ors dismissing his plea for grant of patient care allowance at Rs. 160/- per month with effect from 1st August, 1997 and Rs. 700/- per month with effect from 29th December, 1998 and arrears of patient care allowance along with interest at the appropriate rate.

2. The plea of the petitioner before the Tribunal was that he was absorbed in Indian Air force and has been working as Pharmacist-cum-clerk. He contended that pursuant to implementation of 5th Pay Commission with effect from 1st August, 1997 he has become entitled for patient care allowance at the rate of Rs. 700/- per month with effect from 29th December, 1998 in terms of Ministry of Health and Family Welfare letter dated 2nd January, 1999.

3.The claim of the petitioner was contested by the respondents contending inter-alia that as per the Government of India (Ministry of Defense) circular dated 17th November, 2005 grant of patient care allowance/HPCA is now admissible only to Group C and D employees of the Armed Forces Hospital/medical establishment to the selected three broad categories of such group employees. According to the respondents Pharmacist-cum-Clerk are not within nine types of employees

notified in the circular and consequently the petitioner is not entitled for patient care allowance/HPCA. The claim of the petitioner was also contested on the ground of delay and latches. The respondents also contended that the petitioner was receiving the patient care allowance at the old rate of Rs. 80/- per month on account of mistake and even the payment already made to him was not justified.

4. The Tribunal has noted the Appendix to the Government of India letter dated 17th November, 2005 entitling nine categories of Group C and Group D employees eligible to get patient care allowance/HPCA. The 9 categories of Group C and D employees are as under:-

S. No.

Categories

1.

Lady Attendant

2.

Safaiwala/Safaiwali

3.

Washerman

4.

Barber

5.

Cook

6.

Mess Waiter

7.

Water Carrier

8.

Washer Up

9.

Laskar/Laskar Tindal

5. It has been noticed that patient care allowance is admissible to those employees whose regular duty involves continuous routine contact with the patients affected with communicable diseases or who have to handle infected materials, instruments and equipments which can spread infection as their

primary duty working in health care delivery institutions. It has been held that Pharmacist-cum-Clerk does not fulfill the condition by which the controlling department would be in a position to continue them to get patient care allowance.

6. The plea of the petitioner that he was getting patient care allowance/HPCA under the old scheme and by letter dated 17th November, 2005 the provision for patient care allowance has only been extended to additional categories of employees of hospital/medical establishment in Air Forces has been declined on the ground that patient care allowance scheme has undergone restructuring at regular intervals and, therefore, the new scheme supersedes the old scheme and, therefore, the conditions to be fulfilled to be eligible for claim of patient care allowance has also undergone changes and, therefore, the petitioner is not eligible for the same.

7. The only plea raised by the learned counsel for the petitioners is that by letter dated 17th November, 2005 the scheme has been extended to additional nine categories of employees and not only to nine categories of employees. The scheme stipulated in Government of India, Ministry of Health and Family Welfare letter No. Z-28015/24/2001-H dated 4th February, 2004 and 5th May, 2005 has been extended only to eligible Group C and D categories of the hospital/medical establishment in Air Force with effect from 8th November, 1995 that is the date from which patient care allowance was introduced to AMC units. The learned counsel for the petitioner is unable to show that petitioner was entitled for patient care allowance even under the scheme dated 4th February, 2004 and 5th May, 2005. The plea of the petitioner is that he had been getting the allowance at the rate of Rs. 80/- since long which has been categorically refuted by the respondents by filing an affidavit of Sh. A.S. Bhonsle, Air Commandor, Air Officer Commanding, 412, Air Force Station, Race Course Road, New Delhi contending that patient care allowance was paid to the petitioner on account of mistake and the payment made to him was wrong. It has not been established that the petitioner was entitled for patient care allowance under the scheme dated 4th February, 2005 and 5th May, 2005 which had been further extended to nine other categories of employees by circular dated 17th November, 2005. In the circumstances, it cannot be held that the petitioner is entitled for patient care allowance in terms of letter dated 17th November, 2005.

8. In any case the learned counsel for the petitioner is also unable to satisfy that the petitioner as Pharmacist-cum-Clerk performs such duties which involve continuous and routine contact with the patients infected with communicable diseases or that the petitioner is handing patients with communicable diseases as his primary duty. In the circumstances, the petitioner has not been able to make out a case for grant of patient care allowance in the facts and circumstances and the order dated 16th September, 2009 of Central Administrative Tribunal, Principal Bench declining patient care allowance to the petitioner cannot be faulted. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed.