
(2008) 02 DEL CK 0239

In the Delhi High Court

Case No : Civil Writ Petition No. 1181 of 2008

Sunil Kumar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Citation : (2008) 6 ILR Delhi 32 Supp

Hon'ble Judges : J.M. Malik, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Rajeev Anand, for the Appellant; Maneesha Dhir with Mr. Sumit Attri, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—Rule D.B. Ms. Maneesha Dhir, counsel for the respondents, states that no counter affidavit is required and both the parties are agreeable to argue the matter finally at this stage. We have accordingly heard counsel for both the parties.

2. The petitioners, who are Group C and D Combatised Hospital Staff working with the CRPF, seek the grant of the patient care allowance/hospital patient care allowance (hereinafter referred to as "the hospital allowance"). The Group C and D Hospital Staff in the Respondent Department is divided into two categories viz. "Combatised" and "Non Combatised". However, the said hospital allowance was sanctioned by the Government only for Non combatised staff and it was denied to the Combatised staff. The case set up by the petitioners is that there is no difference between the two categories, insofar as their real nature of duties, etc. is concerned. The only difference is that the hospital staff recruited after 1989 are Combatised and the pre-1989 recruits other than those who opted to be Combatised, are all Non Combatised. Otherwise there is no difference in their role and nature of duties except that the Combatised staff are trained in combat and wear uniform while the Non Combatised are the civilian staff with no training of combat and work in civil dress. Therefore, it is submitted that, in fact, it is the

Combatised staff which has got the better training than Non Combatised staff. Further, submission of the petitioners is that, as hospital staff, they discharge their duties in the same manner as Non Combatised staff and there is hardly any difference between the two and therefore, the grant of the hospital allowance to the Non combatised staff and denying the same to the Combatised staff amounts to hostile discrimination.

3. It is pointed out by the petitioners in this petition that their colleagues belonging to Group C and Group D Combatised Hospital Staff had filed an application before the Principal Bench of Central Administrative Tribunal for directions to the authorities to grant the hospital allowance, which was allowed. Against this order of the Principal Bench of Central Administrative Tribunal, the Union of India has filed a Civil Appeal No. 11966/1996 titled as "Union of India Vs. T.M. Jose & Others" before the Supreme Court, which was dismissed on 17th October, 2001. The said order of the Supreme Court is annexed as Annexure P 3 with this petition.

4. The petitioners have also pointed out that other writ petitions filed by similarly situated persons have been allowed by various High Courts. Particulars of two writ petitions are as under. CWP No. 08/2004 titled as "Paramjit Singh and Ors. Vs. UOI and Ors." decided on 28th April, 2005, whereby the said J&K High Court had directed the respondents to start paying the hospital allowance to the Para Medical Staff Combatised at par with Group C and D Civilian (Non Combatised) Hospital Staff. The Indore Bench of Madhya Pradesh High Court took a similar view in CWP No. 6883/2004 titled as "Surajbhan and Ors. Vs. Union of India and Ors." decided on 22nd November, 2004.

5. Ms. Maneesha Dhir, learned counsel appearing for the respondents, fairly conceded the above-said factual position and submitted that the aforesaid judgments have been complied with by the CRPF. The petitioners in those cases have been granted the benefit and are in receipt of the hospital allowance as is given to Group C and D Civilian (Non Combatised) Hospital Staff.

6. In view of the aforesaid, we put a query to Ms. Maneesha Dhir as to why the respondents have not passed general orders granting this benefit to all such Group C and D Combatised Hospital Staff. She submitted that the CRPF has received communication from the Ministry of Home Affairs to the effect that the Ministry of Finance has referred the matter to VIth Central Pay Commission and the report of the said Commission is still awaited. That may be so, however, when there are authoritative judicial pronouncements conferring such benefit and the respondents/Government have accepted and implemented those judgments, we fail to understand as to why all such similarly situated Group C and D Combatised Hospital Staff are not extended the same benefit. The respondents, who are supposed to act as a role model, cannot force each and every person to approach this Court in order to get his legitimate dues. It is expected that the respondents should have acted on the basis of equality. The legal proposition in this regard is settled by the Hon''ble Supreme Court in the judgment titled as

Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and Others, , wherein it was observed as under:

When a citizen aggrieved by the action of the Government Department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given benefit of this declaration without need to take their grievances to the Court.

We, therefore, make the rule absolute and allow this petition with the direction to the respondent to grant the hospital allowance to the petitioners being Group C and D Combatised Hospital Staff. We also direct to extend this benefit to other similarly situated, namely, all such Group C and D Combatised Hospital Staff working in the CRPF.