
(2019) 09 DEL CK 0503

In the Delhi High Court

Case No : Civil Writ Petition No. 10306 Of 2019

Umar Farooque & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 24-09-2019

Acts Referred:

Citation : (2019) 09 DEL CK 0503

Hon'ble Judges : G.S. Sistani, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Deepak Anand, Suparna Srivastava, Sanjana Dua

Final Decision : Dismissed

Judgement

Anup Jairam Bhambhani, J

1. The petitioners, who are pharmacists working in civil dispensaries in the Army Ordnance Corps (AOC), impugn order dated 07.05.2019 passed by the learned Central Administrative Tribunal Principal Bench, New Delhi in O.A. No. 1135/2017 whereby their prayer for grant of Patient Care Allowance (PCA) was declined. The O.A. was filed impugning order dated 02.07.2015 made by respondent No. 4, which had turned down the petitioners' request for grant of PCA.

2. The eligibility conditions for receiving PCA are contained principally in the policy directives issued by the Ministry of Health & Family Welfare on 04.02.2004 ; in which the relevant instructions in regard to PCA are the following :

" (iv) The conditions which an organization 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 be allowed to any Group "C" & "D" (Non-Ministerial) employees whose contact with patients or exposure to infected materials is of occasional nature."

(Emphasis Supplied)

For completeness, it may be recorded that the aforesaid policy directives have been adopted by the Ministry of Defence vide letter dated 17.11.2005.

3. The petitioners are posted at various Central Vehicle Depots (CVDs) as pharmacists and their duties as described in Appendix C to the proposal/recommendation dated 16.05.2006 sent by the CVD, Delhi Cantt to the Directorate General of Ordnance Services for grant of PCA to medical staff of AOC are the following :

"CHARTER OF DUTIES : MEDICAL STAFF

(i) Pharmacist - Providing necessary treatment as per direction of Sr Med Offr.

(ii) xxxxx

(iii) xxxxx "

4. The basis of recommendation for the grant of PCA is also contained in the said proposal/recommendation dated 16.05.2006 and is put in the following words :

"(b) Under the provision of Factories Act and Factories Rules, the Dispensary, Medical Room/Hospital is supposed to maintain 06 beds. These rules are complied with in toto.

(c) This depot is carrying on hazardous process, frequent movement of vehicles (incl AFVs) for receipt/issue, maintenance, inspection etc. and thus not ammuned from accident and serious sickness during its working hours, hence the dispensary involves in handling of toxic and infected material frequently. Therefore the patients are hospitalised and relieved from the dispensary on satisfactory treatment basis and serious/accident case and other serious patient are evacuated immediately after first aid and necessary treatment to nearby Govt Hospital in the fully equipped ambulance which is always kept standby for this purpose. Since the dispensary functions during working hours admission of patients round the clock is not permissible.

(d) As explained in the above sub para accident/serious patients are kept in dispensary for first aid/adequate medical treatment and if necessitated they are evacuated to nearby Govt Hospital for specialist treatment. However, the yearly record of such patients is attd as Appendix "A" to this letter.

(f) Charter of duties of Pharmacist, Hospital Orderly and Hospital Safaiwala/wali for whom patient care allowance is recommenced are attached as Appendix "C" to this letter. These categories of employees involve in continuous routine contact with patients affected with communicable disease and handling infected

materials, instruments and equipments which can spread infection."

(Emphasis Supplied)

In response to the proposal contained in communication dated 16.05.2006 as quoted above, the Directorate General of Ordnance Services responded vide letter dated 21.08.2006 with the following observations :

"1. The case for grant of Patient Care Allowances to Medical staff of AOC has been examined in consultation with MOD. MOD has made following observations:-

(i) AOC Depots as the name suggests, do not seem to be either hospitals or health care delivery institutions. Moreover, as seen from the statement of cases, the medical staff provides medical care to their civilian employees during working hours. Instances of employees getting sick or injured during working hours in a particular depot cannot be matter of daily occurrence. Also, these depots do not seem to be equipped to attend to patients suffering from communicable diseases. Hence, the eligibility conditions do not seem to be fulfilled in this case.

(ii)

(iii)"

(Emphasis Supplied)

The above observations notwithstanding, the Directorate General of Ordnance Services did request the CVD to give convincing justifications in support of their proposal for grant of PCA. In response dated 15.09.2006 to the aforesaid communication dated 21.08.2006, in addition to reiterating the earlier basis of its recommendation, the CVD additionally stated as under :

"6. The staff authorized and posted to this Depot is not getting any allowance whereas their counterparts is Group "C" and "D" employees (Non-Ministerial) employed in Armed Forces Hospitals/Establishments, Central Govt Hospitals including CGHS and Hospitals under National Capital Territory of Delhi and other Union Territories are getting Patient Care Allowance under the authority of Govt policy envisaged in the letters referred to in para 3 above."

5. Apart from the official communication as quoted above, petitioner No. 1 also sent written requests/applications for grant of PCA to the Directorate General of Ordnance Services on various dates.

6. In an earlier round of litigation, some of the petitioners had approached the Tribunal by way of O.A. No. 859/2013 seeking the exact same relief of being considered for grant of PCA ; and by order dated 26.02.2015 made in the said O.A., the Tribunal had directed the respondents to pass appropriate, reasoned and speaking order on the plea raised in the O.A. In compliance of order dated 26.02.2015, the respondent/CVD, Delhi Cantt. had passed a final order dated 02.07.2015, reiterating the earlier view, denying PCA to the petitioners on the following essential reasoning:

"(g) Now, the case is further re-examined in the light of Hon"ble CAT (PB) order dated 26 Feb 2015.

(i) That the Ministry of Defence/D(Medical) and Directorate General Armed Forces Medical Services are specialized functionaries who are experts in understanding the charter of duties of pharmacists, and the implication and scope of the letter dated 04 Feb 2004 of Ministry of Health and Family Welfare.

(ii) That the AOC Depots are not either Hospitals or Health Care Delivery Institutions. Moreover, the medical staff provide medical care to their civil employees during working hours. Instances of employees getting risk or injured during working hours in a particular depot cannot be daily occurrence and depots are not equipped to attend to patients suffering from communicable disease. Hence, the eligibility conditions are not fulfilled in this case.

(iii) The Civil Dispensaries in AOC Depots are invariably not full fledged Hospitals.

(iv) The charter of duties of the pharmacists, who are the applicants in the instant OA, itself, suggests that they are entitled (sic, entrusted) with distribution/upkeep medicines and are not even remotely connected with direct "Patient Care".

4. AND WHEREAS, in view of the above, after considering of all aspects mentioned above, and viewing it is against the representation submitted by the applicants, regarding granting of "Patient Care Allowances" cannot be acceded to being devoid of merit."

(Emphasis Supplied)

7. It is this order of 02.07.2015 that was taken-up in challenge before the Tribunal by way of the O.A., which has now been dismissed.

8. Upon a conspectus of the foregoing facts and circumstances, it would appear that on point of fact, civil dispensaries have been set-up by the respondents in CVDs in the Delhi Cantonment and in various other places. Such depots are covered by the provisions of the Factories Act, 1948 and the rules framed thereunder, which requires that a dispensary/medical room/hospital be provided in such premises. Such legal requirements notwithstanding, after considering the charter of duties of pharmacists, in the opinion of the Directorate General, Armed Forces Medical Services (DG, AFMS), civil dispensaries at CVDs are neither hospitals nor health care delivery institutions and are meant only to provide immediate first-aid and other primary medical facilities to persons who may get injured or sick. In the opinion of the DG, AFMS, such dispensaries are not even equipped to attend to patients with any serious illness, much-less patients suffering from any communicable diseases. As recorded in order dated 02.07.2015, which is the genesis of the proceedings before the Tribunal, as per the charter of duties, in actual fact, pharmacists such as the petitioners are entrusted with distribution and upkeep of medicines and are not even remotely connected with direct patient care. In that view of the matter, the question of the

petitioners engaging in duties that involve "continuous routine contact with patients affected with communicable diseases" or "handling infected materials, instruments and equipments which can spread infection", which are the criteria for availing PCA, does not arise.

9. Counsel for the petitioners however also claims parity with other persons, who, according to the petitioners, are working at other health care institutions under the Government or other State Institutions and are similarly situated. To this end, the petitioners rely upon order dated 08.12.2008 made by the Central Administrative Tribunal, Bombay Bench in O.A. No. 228/2008, whereby pharmacists working with the Indian Navy under the Ministry of Defence were granted the benefit of PCA on the ground that they could not be discriminated against vis-à-vis other categories of employees like washer man, ward boys, barbers etc. In the said decision, the Bombay Bench of the Tribunal has in fact relied upon earlier decisions by the same Bench, interpreting Office Memorandums dated 08.11.1995 and 17.11.2005. This decision of the CAT, Bombay Bench was upheld by a Division Bench of the Bombay High Court by order dated 26.07.2016 in W.P.(C) No. 1958/2010, by dismissing the writ petition on the following basis:-

"3] The Tribunal has observed that two other orders were passed by the Tribunal, viz. in original application no. 764 of 2004 and 393 of 2007 which were both decided on 29 February 2008. It was pointed out that the issue involved in the original application was squarely covered by the two decisions of the Tribunal. By taking into consideration that aspect as well as the other submissions which were made by the respondents/applicants, original application was allowed.

4] We do not see any reason to interfere with the said order. Moreover counsel for the petitioner is also absent and it appears that the Union of India is not keen in pursuing this petition. On both these counts, petition is dismissed."

Whereby it would appear that the considerations that weighed with the Bombay High Court in not interfering with the Tribunal's order in that case were somewhat different ; and issues were not thrashed-out vigorously before the High Court.

10. Moreover, nothing on record suggests that the actual role and responsibility of the petitioners employed at civil dispensaries at CVDs under the Army Ordnance Corps are the same as those of the pharmacists who had approached the Bombay Bench of the Tribunal and had obtained relief of grant of PCA at par with other employees such as washer-man, ward-boy, barbers etc.

11. What the record of the present proceedings shows is that after a detailed and reasoned consideration of the issue, pursuant to orders made in the last round of proceedings before the Tribunal, the DG, AFMS has on point of fact, come to the conclusion that civil dispensaries at CVDs where the petitioners are employed are not hospitals or even health care delivery institutions and are in fact not equipped to attend the patient suffering from any communicable diseases. The

DG, AFMS has concluded that the petitioners are in fact entrusted with the distribution and up-keep of medicines and are not even remotely connected with direct patient care. It is important to note that these conclusions have been arrived at after due examination of the issue by the Ministry of Defence/D (Medical) and the DG, AFMS at the Army Headquarters, who are specialist functionaries and experts in understanding the charter of duties of pharmacists as also the implication and scope of the policy circular/directives dated 04.02.2004 issued by Ministry of Health & Family Welfare for grant of PCA.

12. In view of the above, we are of the considered opinion that the eligibility conditions for grant of PCA, which is by no means a gratuitous payment but in the nature of a "hazard allowance", are not met insofar as the role, responsibilities and employment of the petitioners is concerned.

13. We accordingly find no error in impugned order dated 07.05.2019 whereby the Tribunal has dismissed the O.A.; and no merit in the present petition, which is dismissed, without however any order as to costs.

14. Pending applications, if any, also stand disposed of.