

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 470/2016

M.A. No. 450/2016

With

O.A. No. 786/2016

M.A. No. 762/2016

And

O.A. No. 1105/2016

M.A. No. 1121/2016

New Delhi this the 30th day of August, 2016.

HON'BLE MR. P.K. BASU, MEMBER (A)

O.A. No. 470/2016

1. Manoj Kumar,
Aged 47 years,
S/o Shri Jai Bhagwan Jain,
R/o J-12 C, Ashok Vihar, Phase-I,
Delhi-110052
Post : Technical Assistant (Radiology).
2. Pawan Kumar Chhokar,
Aged 53 years,
S/o Late Shri. Sadu Ram Chhokar,
R/o D-21, MCD Flats, Banglow Road,
Delhi-110007
Post : Technical Assistant (Radiology).
3. J.B. Nischal,
Aged 62 years,
S/o Shri C.S. Nischal,
R/o A-74, Shanker Garden,
Vikaspuri, New Delhi-110018
Post : Retired as Technical Assistant (Radiology).

.. Applicants

(By Advocate : Shri Anuj Aggarwal with Shri Ashish Jha)

Versus

1. North Delhi Municipal Corporation,
Through its Commissioner (North),
Dr. S.P.M. Civic Centre,
Minto Road, New Delhi-110002.
2. The Accounts Officer/IAD,
ZAP/Civil Lines Zone,
North Delhi Municipal Corporation,
Internal Audit Department,
Room No.410, Civil Line Zone,
Delhi-110054.
3. Hindo Rao Hospital,
Through its Medical Superintendent,
North Delhi Municipal Corporation,
Malka Ganj, Delhi-110007.
4. Rajan Babu Institute of Pulmonary,
Medicine and Tuberculosis (RBIPMT),
Through its Director,
Kingsway Camp, Delhi-110009.

.. Respondents

(By Advocate : Shri Manjeet Singh Reen)

O.A. No. 786/2016

1. Mohinder Singh,
Aged 57 years,
S/o Shri Suraj Bhan,
R/o A-2, Mahipal Pur,
Near Central Bank, Delhi-110037,
Post : Technical Assistant.
2. Mool Chand,
Aged 59 years,
S/o Late Shri Sukh Ram,
R/o M-4, IInd Floor, Malka Ganj,
Delhi-110007.
Post : Technical Assistant.
3. Harish Chandra Tiwari,
Aged 59 years,
S/o Late Shri Sukh Ram,
R/o H.No.2799, Gali No.2,
Bihari Colony, Shahdara,
Delhi-110032.
Post : Technical Assistant.

4. Vijay Kumar,
Aged 59 years,
S/o Shri Girdhari Lal,
R/o H.No.707/31, Gali No.14,
Adarsh Mohila Mauzpur,
Delhi-110032
Post : Technical Assistant.
5. Sanjay Ahuja,
Aged 47 years,
S/o Shri D.R. Ahuja,
R/o H.No.16/8, Shakti Nagar,
Delhi-110007
Post : Technical Assistant.
6. Swam Nath,
Aged 46 years,
S/o Shri Chander Dev,
R/o H.No.P/30, Gali No.3,
Bihari Colony, Shahdara,
Delhi-110032.
Post : Technician.
7. Prem Chand,
Aged 42 years,
S/o Shri Sukh Ram,
R/o G-111, Medical Complex,
Gulabi Bagh, Delhi-110007.
Post : Technician.
8. Sunder Singh Rana,
Aged 43 years,
S/o Shri Ram Kisan,
R/o D 479-80, Sector-1,
Rohini, Delhi-110085.
Post : Technician.
9. Amarjeet,
Aged 42 years,
S/o Shri H.L. Sunder,
R/o D-19, Medical Complex,
Gulabi Bagh, Delhi-110085
Post : Technician.
10. Narendra Kumar,
Aged 52 years,
S/o Shri Ramachandar Sharma,

R/o Village & Post Office-Bhup Kheri,
District-Ghaziabad, U.P.
Post : Technician.

11. Laxman Singh,
Aged 46 years,
S/o Shri Babu Ram,
R/o V+P-Pharukh Nagar,
District-Ghaziabad, U.P.
Post : Technician.
12. Pankaj Sharma,
Aged 40 years,
S/o Shri C.B. Sharma,
R/o D-460, Gali No.11,
Bhazanpura, Delhi-110053.
Post : Technician.
13. Ravi Kumar Chauhan,
Aged 46 years,
S/o Shri Ram Pat Chauhan,
R/o H.No.1C, R-Block,
Jwala Puri, Sunder Vihar,
Delhi-110053.
Post : Technician.
14. Harish Chand,
Aged 50 years,
S/o Shri Durga Ram,
R/o 19/32, Paramedical Flats,
Hindu Rao Hospital Campus,
Delhi-110007
Post : Technician.
15. Suresh Kumar Rohilla,
Aged 56 years,
S/o Shri Ram Kumar,
R/o E-89, East of Kailash,
Delhi-110065
Post : Technician.
16. Bal Kishan,
Aged 60 years,
S/o Shri Mathura Dutt,
R/o H.No.428, Gali No.9,
D-Block, Bhajanpura, Delhi.
Post : Retired as Technician.

17. Harbans Lal,
Aged 61 years,
S/o Shri Bichter Singh,
R/o H.No.1072, Doctor Mukeerjee Nagar,
Delhi-110009
Post : Retired as Technical Assistant.

18. Goverdhan Parshad,
Aged 61 years,
S/o Shri Chander Mani,
R/o Village Rampur, P.O. Pandrola,
Sub P.O. Tilwara, District Rudra Prayag,
Uttarakhand.
Post : Retired as Technician.

.. Applicants

(By Advocate : Shri Anuj Aggarwal with Shri Ashish Jha)

Versus

1. North Delhi Municipal Corporation,
Through its Commissioner (North),
Dr. S.P.M. Civic Centre,
Minto Road, New Delhi-110002.

2. The Accounts Officer/IAD,
ZAP/Civil Lines Zone,
North Delhi Municipal Corporation,
Internal Audit Department,
Room No.410, Civil Line Zone,
Delhi-110054.

3. Hindo Rao Hospital,
Through its Medical Superintendent,
North Delhi Municipal Corporation,
Malka Ganj, Delhi-110007.

4. Rajan Babu Institute of Pulmonary,
Medicine and Tuberculosis (RBIPMT),
Through its Director,
Kingsway Camp, Delhi-110009.

.. Respondents

(By Advocate : Shri Manjeet Singh Reen)

O.A. No. 1105/2016

1. Ved Prakash,
S/o Late Shri Bhoop Lal,
R/o B-2/52, Yamuna Vihar,
Delhi-110053
Aged 54 years,
Post : O.T. Technician.
 2. Vihal,
S/o Shri Prem Chand,
R/o H.No.130, Nehru Kutia,
Malka Ganj, Delhi-110007.
Aged 42 years,
Post : O.T. Technician.
 3. Ramesh Sharwan,
S/o Late Shri Prem Chand,
R/o Flat No.7-C, I.D. Hospital,
Kingsway Camp, New Delhi-110009.
Aged 56 years,
Post : O.T. Technician.
- .. Applicants

(By Advocate : Shri Anuj Aggarwal with Shri Ashish Jha)

Versus

1. North Delhi Municipal Corporation,
Through its Commissioner (North),
Dr. S.P.M. Civic Centre,
Minto Road, New Delhi-110002.
 2. The Accounts Officer/IAD,
ZAP/Civil Lines Zone,
North Delhi Municipal Corporation,
Internal Audit Department,
Room No.410, Civil Line Zone,
Delhi-110054.
 3. The Medical Superintendent,
Kasturba Hospital,
North Delhi Municipal Corporation,
Near Jama Masjid, Darya Ganj,
Delhi-110002.
- .. Respondents

(By Advocate : Shri Manjeet Singh Reen)

ORDER (ORAL)

MA 450/2016 in OA 470/2016, MA 762/2016 in OA 786/2016 and MA 1121/2016 in OA 1105/2016 filed for joining together are allowed.

2. As agreed by both the counsel, OA Nos. 470/2016, 786/2016 and 1105/2016 have been heard together as the issue involved and prayer is the same and are being disposed of by a common order. However, we have culled out the facts from O.A. No.470/2016 for convenience.

3. The Govt. of India had introduced a scheme through circular dated 02.08.1996 of granting Patient Care Allowance to Group 'C' and 'D' (Non-Ministerial) employees. The current rate at which this allowance is paid is Rs.2100/- per month.

3. Applicants are Technical Assistants/Technicians/OT Technicians working in the hospitals of North Delhi Municipal Corporation (NDMC). They were in the pay scale of Rs.5000-8000 w.e.f. 01.01.1996 vide office order dated 12.04.2006. Ministry of Health and Family Welfare vide letter dated 04.02.2004 issued detailed guidelines regarding Hospital Patient Care Allowance (HPCA)/Patient Care Allowance (PCA). These guidelines stipulate that only Group 'C' and 'D' (Non-Ministerial) employees would be granted this allowance. This allowance was granted to those

employees whose regular duties involve continuous routine contact with patients affected with communicable diseases or those who are routinely handling infected material, instruments and equipments which can spread infection as their primary duty. In this circular, Group 'C' post is defined as Central Civil posts carrying a pay scale with maximum of over Rs.4000 but less than Rs.9000. The applicants being in the scale of Rs.5000-8000 clearly came within the purview of the Group 'C' defined in this circular and, therefore, were eligible for HPCA and had been drawing that allowance as such.

4. After the 6th Pay Commission, the pay scale of the applicants was revised to PB-2 Rs.9300-34800 with Grade Pay of Rs.4200/-. Municipal Corporation classified them as Group 'B' when they moved into this revised scale. As such, according to the respondents, they became ineligible for grant of HPCA. The respondents, therefore, issued order dated 05.10.2015 withdrawing the payment of HPCA to the applicants as well as recovery of overpayment of HPCA. The applicants' grievance is against this order and it has been challenged.

5. Learned counsel for the applicant put forth the following arguments:

(i) Vide circular dated 11.11.2003, the MCD had clarified that if an employee moves into the scale of Rs.5500-9000 (Revised PB-2

GP Rs.4200/-) under ACP Scheme, he would be still considered as Group 'C' and eligible for HPCA.

(ii) Physiotherapists/Pharmacists have also been placed in the replacement scale of PB-2 + GP Rs.4200/- as the applicants, but the Ministry of Railways vide office orders dated 31.07.2015 and 18.04.2016 (Annexure A-1 (colly.) to rejoinder dated 03.08.2016) have been granted HPCA.

(iii) The respondents have ordered recovery in violation of judgment of Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc.**, 2014 (8) SCALE 613, as they cannot recover from employees who have retired and also for the period which is beyond five years prior to the date of order of recovery. It is stated that applicant No.3, Shri J.B. Nischal has retired from service on 30.11.2014 (applicants No.16 to 18 in OA 786/2016 have also retired).

(iv) Since the order of recovery and withdrawal of HPCA was passed without issuing any show cause notice, this has violated the principles of natural justice. In fact also because in the impugned order the calculations, according to the applicants, are wrong which could have been pointed out, if they had been given an opportunity. Moreover, the periods shown under the column 'date of promotion/effective date' is also incorrect.

6. Per contra, learned counsel for the respondents states that the applicants are clearly Group 'B' employees as per the classification as stated above and right from the beginning of the scheme of grant of HPCA, it has been made clear in successive circulars that this is payable to Group 'C' and 'D' (Non-Ministerial) employees. Since the applicants have indeed been declared as Group 'B' employees, they are not entitled for this allowance.

7. Heard the learned counsel for both sides and perused the relevant orders/judgments.

8. As stated above, the HPCA had been introduced for Group 'C' and 'D' (Non-Ministerial) employees who come in continuous routine contact with patients affected with communicable diseases or handling infected material, instruments and equipments etc. The applicants were in the pay scale of Rs.5000-8000 which was within the definition of Group 'C' employees in the scheme. The distinction that has to be understood is that in the scheme notified vide order dated 04.02.2004, the applicants were clearly in the Group 'C' category. In fact, as pointed out by the learned counsel for the applicant, vide letter dated 11.11.2003, it has been clarified that even those in the pay scale of Rs.5500-9000 (revised scale PB-2 + GP Rs.4200) under ACP Scheme should be considered as Group 'C'

employees for the purpose of HPCA. Moreover, as has been pointed out, the Ministry of Railways, which is one wing of Govt. of India, has granted HPCA to Physiotherapists/Pharmacists, which are also in the scale of PB-2 + GP Rs.4200.

9. Unfortunately, the erstwhile scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 have been replaced by PB-2 + GP Rs.4200/- and the respondents have classified them as Group 'B'. No corresponding change has been made in the original instructions dated 04.02.2004 under which the basic scheme was introduced and the applicants were very much eligible. It is also apparent that there is no change in the job contents and status of these employees, as a result of revision of pay scale. They are still doing the same job and are exposed to the same hazard for which the HPCA was introduced. In fact, the Ministry of Railways has allowed HPCA to Physiotherapists/Pharmacists. Therefore, I hold that the O.A. has merit and perhaps the respondents have taken such a stand as they missed the woods for the trees.

10. In view of the above discussion, the O.As. are allowed. Order dated 05.10.2015 is quashed and set aside and the respondents are directed to restore the payment of HPCA to the applicants from the date it was discontinued. In view of this held by me, the applicability or not of **Rafiq Masih** (supra) is no longer essential.

However, it is clear that no recovery can be made from retired employees as well as for period beyond five years prior to date of passing of order as per **Rafiq Masih** (supra). Time frame of 90 days is fixed for the respondents to comply with this order. No order as to costs.

(P.K. Basu)
Member (A)

/Jyoti/