

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 040/00175 of 2017

Date of Decision: 15.03.2019

THE HON'BLE MRS. MANJULA DAS, JUDICIAL MEMBER
THE HON'BLE MR. N. NEHSIAL, ADMINISTRATIVE MEMBER

1. Mrs.Meenakshi Devi
Wife of Paragjyoti Saikia, C-10-C, NEIGRIHMS
Shillong – 793018.
2. Mrs.Hima Das
Wife of Dr.RajuSaikia, C-10-B, NEIGRIHMS
Shillong – 793018.
3. Mrs.JuleeBharali
Wife of Mr.MantuKalita, C-10-D Quarters,
NEIGRIHMS, Shillong – 793018.
4. Ms.Banbetlin Hynniewta
Daughter of Mr. R.O.L Nongbri, Jaiaw Lumsyntiew
Shillong – 793002.
5. Mrs.Purabi Devi (Bharali)
W/o Ramen Kumar Bharali, C-9 B NEIGRIHMS
Shillong – 793018.
6. Mrs.AlilaJamir
W/o Syed MujadidHussain, C-10 B, NEIGRIHMS
Shillong – 793018.
7. Mrs.Rakhi Roy
W/o Diganta Borah, C-9 D, NEIGRIHMS, Shillong – 18.
8. Mrs.Jyotima B Handique
W/o Jyoti Prasad Handique, C-10 A, NEIGRIHMS
Shillong – 793018.
9. Mrs.Erbatmon Pyngrope
C-2 B, NEIGRIHMS, Shillong – 793018.

10. Mrs.Kalpana Newar
W/o Binoy Kakati, C-9C, NEIGRIHMS
Shillong – 793018.
11. Mrs.Karung RosemaKom
W/o John Kerketta,
C- 9A, NEIGRIHMS
Shillong – 793018.
12. Mrs.Junu V Kumar
W/o R. Vijay Kumar,
C-7C, NEIGRIHMS
Shillong – 793018.
13. Mrs. Salam Premila Devi
W/o Y. Dinamani,
C-2C, NEIGRIHMS
Shillong – 793018.
14. Mrs.NaoremRashi Devi
W/o N. Mangoljao Singh,
C-8 C, NEIGRIHMS
Shillong – 793018.

By Advocate: Mr.U.K.Nair, assisted by
Mr.H.K.Das

-Versus-

1. Union of India
Represented by the Secretary,
Government of India
Ministry of Health and Family Welfare,
Department of
Health, NirmanBhawan,
New Delhi – 110011.
2. The Director
North Eastern Indira Gandhi Regional
Institute of Health
& Medical Sciences [NEIGRIHMS],
Mawdiangdiang,
Shillong – 793018.

ORDER (O R A L)

Per Mr.N.Neihzial, Member (A):

The applicants have filed this O.A. under Section 19 of the Administrative Tribunals Act 1985, with the following reliefs:-

“8.1 To direct the respondents to grant grade Pay of Rs. 5,400/- in P.B. i.e. Rs. 15,600-39,100 to the applicants w.e.f. 01.01.2006 in the rank of Tutor/Clinical Instructor, College of Nursing, NEIGRIHMS with all consequential benefits.

8.2 To direct the respondents to make consequential correction in the current grade pay after grant of relief 8.1 in terms of recommendation of the 7th pay commission with all consequential benefits.”

2. Mr.U.K.Nair, learned counsel for the applicants submitted that the applicants are presently serving as Tutor/Clinical instructor in the College of nursing, North Eastern Indira Gandhi Regional Institute of Health and Medical Sciences, (in short NEIGRIHMS) Shillong. The NEIGRIHMS is an autonomous institute situated at Shillong under the Ministry of Health and Family Welfare, Govt. of India. The service particulars of the applicants are given in a chart below:

Sl. No .	Name & Address	Designation	DOB	Date of appointment	Date of Joining	Date of confirmation
1	Meenakshi Devi	Tutor/Clinical Instructor	31.12.76	11.03.05	11.03.05	11.03.07
2	Hima Das	Tutor/Clinical Instructor	21.09.77	18.03.05	21.03.05	21.03.07
3	Julee Bharali	Tutor/Clinical Instructor	12.11.75	22.03.05	24.03.05	24.03.07
4	Banbetlin Hynniewta	Tutor/Clinical Instructor	18.02.77	13.07.06	14.07.06	14.07.08
5	Purabi Devi (Bharali)	Tutor/Clinical Instructor	01.03.77	12.07.06	17.07.06	15.10.06
6	AlilaJamir	Tutor/Clinical Instructor	13.03.78	24.07.06	02.08.06	02.08.08
7	Rakhi Roy	Tutor/Clinical Instructor	13.11.77	13.07.06	03.08.06	03.08.08
8	Jyotima B Handique	Tutor/Clinical Instructor	28.02.76	24.07.06	07.08.06	07.08.08
9	Erbatmon Pyngrope	Tutor/Clinical Instructor	01.08.72	03.08.06	17.08.06	17.08.08
10	KalpanaNewar	Tutor/Clinical Instructor	02.09.64	12.07.06	11.08.06	11.08.08
11	Karung Rosema Kom	Tutor/Clinical Instructor	16.11.74	04.08.06	18.08.06	16.08.08
12	Junu V Kumar	Tutor/Clinical Instructor	26.01.75	13.09.07	14.06.07	24.11.06
13	Salam Premila Devi	Tutor/Clinical Instructor	01.03.78	04.11.08	26.05.08	26.05.10
14	Naorem Rashi Devi	Tutor/Clinical Instructor	10.02.80	30.10.08	03.12.08	03.12.10

3. Learned counsel further submitted that NEIGRIHMS and AIIMS are the two autonomous institutes among others under the Ministry of Health & Family Welfare, Department of Health & Family Welfare, Government of India. As per Regulation 35 of the AIIMS Regulations 1999 and NEIGRIHMS bye-laws section 21, the pay and allowances of the Central Government employees of a similar status shall be

applicable to the employees of the Institute. Accordingly, the pay scales of AIIMS were granted based on MOHFW orders applicable to all central institutes. The duties and responsibilities and recruitment qualification for the post of Tutor in the other autonomous institutes are akin to the duties and responsibilities of NEIGRIHMS. The AIIMS and all other institutes granted the pre-revised pay scale of Rs.6,500-10,500/- to the Tutor as per MOHFW order dated 9th September 1999. However, the authorities in NEIGRIHMS causing serious illegality granted pre-revised pay scale of Rs. 5,500-9,000/- to the applicant. At the very inception there was discrimination towards the applicants by the respondents and from the date of joining the applicants were granted lesser scale of pay vis-a-vis their counterparts in other similar institutes.

4. Learned counsel for the applicant further submitted that the action on the part of the respondents in negating the Grade Pay of Rs.5,400/- to the applicants is in clear violation of Article 14, 19 and 21 of the Constitution of India. The respondents acted in clear opposition to the O.M.

dated 10.02.2009 denying Grade Pay of Rs.5,400/- to the applicant in line with the Tutor/Clinical Instructor of AIIMS. The respondents were fully aware that parity of pay scales of various faculty posts in NEIGRIHMS was maintained to similar kind of posts in AIIMS, Therefore, unreasonable breaking of such parity in granting grade pay to Tutor/Clinical Instructor is arbitrary. The applicants being Tutor/Clinical Instructor of an Autonomous Institute likewise AIIMS, PGIMER are entitled to get the Grade Pay of Rs.5,400/- w.e.f. 01.01.2006 in terms of the recommendation of the 6th Central Pay Commission.

5. Learned counsel further submitted that the Government of India has already extended the Grade Pay of Rs.5,400/- to the Tutor/Clinical Instructor of College of Nursing, AIIMS. Therefore, denial of similar benefits to the similarly situated persons is discriminatory and arbitrary in the eye of law.

6. Learned counsel further submitted that the Educational Qualification and Experience of Tutor/Clinical

Instructor, College of nursing in AIIMS are akin to the Educational qualification & Experience of Tutor/Clinical Instructor in NEIGRIHMS as per the Recruitment Rules of 2004. As such no differentiation can be made between the applicants vis-a-vis the Tutor/Clinical Instructor of AIIMS and PGIMER. Hence, the respondents do not have any legally justified reasons to deny the Grade Pay of Rs.5,400/- to the applicants.

7. In response to the O.A., the Respondent No.2 i.e. the Director of NEIGRIHMS filed his written statement dated 20.11.2017 wherein he pointed out in para 6 that the NEIGRIHMS as a Medical Institution came into existence as per Memorandum of Association, Rule and Bye Laws approved by the Ministry of Health & Family Welfare. The Institute is also bound by the provisions of the requirement of Medical Council of India. But AIIMS is an Institution created by a statute by the Parliament of India and guided by the regulations framed under the said statute by the Competent Authority/legislations. Therefore, comparisons between the two is ab initio incorrect, although NEIGRIHMS

is bound by the provisions, contained in Rule 21 of the bye laws of the Institute as amended from time to time by the concerned authority of Government of India. However, in Para 10, the respondents it was stated that the proposal to revise Pay Scale/Grade Pay of the applicant was placed before the Anomaly Committee Meeting held on 16.11.2011. The Anomaly Committee decided that it is a matter to be rectified by Administrative order with change of nomenclature of the posts in respective recruitment Rule of the institute. Accordingly, vide letter No.NEIGR-E.II/3/2002 dated 22.5.2012 a proposal had submitted for changing in nomenclature of the post of Tutors/Clinical Instructor to Tutor wherein it had also stated that the Tutor/Clinical Instructors in NEIGRIHMS meet all the qualifications and experience required for the post of Tutor in AIIMS, New Delhi and other Nursing Colleges under the Govt. of India. Infact, the essential qualification and experience of Tutor/Clinical Instructor in NEIGRIHMS in comparisons, is higher to that to the post of Sister Tutor in AIIMS and RAK, CON respectively.

8. We have gone through the copies of the documents and records submitted by Respondent No.2 alongwith written statement. It is seen from the records that the demand and proposal for upgradation of Clinical Instructor was placed before the Anomaly Committee Meeting held on 16.11.2011 as stated by the respondent No.2, Wherein it is recorded that this issue is not anomaly but to be rectified by administrative order with change of nomenclature of the post in the respective Recruitment Rules of the Institute for which the action would be taken by Nursing Division. This observation/decision of the Anomaly Committee was conveyed to the Deputy Director (Admn) NEIGRIHMS Shillong by the Ministry vide letter No.U.12012/7/2009-NE(Pt.I) dated 3rd January, 2012 with a request to sent proposal for changing nomenclature of the posts.

9. The NEIGRIHMS vide letter dated 22.5.2012, sent detail proposal for changing of nomenclature of the posts in the respective Recruitment rules of the institute, with detail justification for parity with Sister Tutor in AIIMS and RAK,

Nursing College, New Delhi. The Ministry returned the proposal vide their letter No.U.12012/7/2009-NE dated 05.06.2012 with advise to send the proposal with the comments of the Institute alongwith justification. NEIGRIHMS vide letter No.NEIGR-E.II/3/2002dated 24.09.2012, submitted again details proposal with justification and comments. This was followed up by another letter dated 24.09.2012 wherein they specifically informed that the proposal has been placed before Standing Financial Committee held on 24.02.2012. The respondents also indicted the financial implications of the proposal. Since then, no further progress

seems to happen on the proposal effectively denying the demands of the applicants.

10. We have gone through all the records, correspondences and documents made available before us. It is observed that the applicants are basically demanding for pay parity with similarly situated other employees. In fact, employees of other institutes are less qualified than required qualification for the post which are held by the applicants. Since the Institute (NEIGRIHMS) is also Autonomous Organization like the other Institutes and also the required Educational Qualification and experience are higher than those of other Institutes, there is no reasons to deny them the benefits enjoyed by those similarly situated employees. As such, we found that the applicants are able to clearly establish their case.

11. Accordingly, we hereby direct the respondents, particularly Respondent No.1, to give the benefits of changing nomenclature of the rank of Tutor/clinical Instructor, College of Nursing, NEIGRIHMS along with grade

Pay of Rs. 5,400/- in the PB of Rs. 15,600-39,100. This may be complied with within a period of 4(four) months from the date of receipt of this order.

12. Accordingly, O.A. is disposed of. There is no order as to costs.

(N.NEIHSIAL)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

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