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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI**

O.A. No. 2904/97

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T.A. No.

4.8.2000

DATE OF DECISION 12-8-2000

Nrs. Angela Fabian

....Petitioner

Sh.E.M.S.Natchiappan learned  
counsel through proxy counsel  
Ms.Yamuna Natchiappan )  
....Advocate for the  
Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Sh.S.K.Gupta

....Advocate for the  
Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Sh.S.A.T. Rizvi, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other  
Benches of the Tribunal No.

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan  
Member (J))

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

OA No. 2904/1997

New Delhi this the 4th day of August, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)  
Hon'ble Shri S.A.T. Rizvi, Member (A)

Mrs Angela Fabian,  
W/O Mr. Fabian Ekka,  
H.No.A-45 B, DDA Flats,  
Munirka, New Delhi.

.. Applicant

(By Advocate Sh.E.M.S.Natchiappan,  
learned counsel through proxy  
counsel Ms. Yamuna Natchiappan )

versus

1. Union of India through  
its Secretary,  
Ministry of Health & F.W,  
Nirman Bhawan, New Delhi.

2. The Director General of Health  
Services, Nirman Bhawan,  
New Delhi.

.. Respondents

3. Medical Superintendent,  
Safdarjung Hospital, New Delhi-91

(By Advocate Shri S.K. Gupta )

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant has filed this application following  
the order of the Hon'ble Supreme Court dated 22.10.1997 in  
CC 8115-8116/97 in which their Lordship have dismissed  
the SLP, leaving it open to the petitioner to assert before  
an appropriate forum if she has any money claims.

2. The applicant had also filed an earlier application  
(OA 72/93) before this Tribunal, which was disposed of  
by order dated 2.7.1996, against which she had filed an SLP  
in the Apex Court which has been disposed of by the  
aforesaid order.

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3. The brief relevant facts of the case are that the applicant, who was appointed as Public Health Nurse (PHN) in March, 1969 states that she has been working as Tutor from 8.11.1978 and has been taking classes for the Nursing students on health programmes till her date of retirement in April, 1994. This fact is also evident from the respondents own letter dated 5.4.90 (Annexure P-4 to the rejoinder).

4. Ms. Yamuna Natchiappan, learned proxy counsel for the applicant, has submitted that in view of the facts that the respondents have themselves admitted that the applicant had in fact, been working as Public Health Nurse Tutor (PHNT) from 1978 till her retirement in 1994, she will be entitled for promotion to the post of PHNT and payment in the higher scale of Rs. 2000-3200, which has not been <sup>18</sup> given by the respondents. Learned counsel has also submitted that as the applicant has since retired from service with the respondents, she should also be entitled to revision of pensionary benefits, taking into account the pay scale of Tutor w.e.f. 8.11.78 i.e. the date from which she has been performing the higher duties and responsibilities of Tutor till the date of her retirement. Learned counsel has also relied on the judgement of the Hon'ble Supreme Court in State of UP Vs. Pramod Bhartiya (1993(1)SCC 539) in which it has been held that " it is the duty of the State to see that the underprivileged or weaker section get their due. Even if they have voluntarily accepted the employment on unequal terms, the State should not deny their basic rights of equal treatment."

5. The respondents in their reply have submitted that the application is not maintainable as the applicant is claiming arrears of pay etc. w.e.f. 8.11.78 in the post of Tutor whereas she has never been promoted in that post and had only been appointed to the post of PHN. They have submitted that she continued in that post till her retirement from service w.e.f. 30.4.1994. We have also heard Shri S.K.Gupta, learned counsel for the respondents. They have also referred to the order of the Hon'ble Supreme Court dated 20.10.97 giving the applicant liberty to assert before an appropriate forum for her money claims. Learned counsel has submitted that as the applicant was never promoted to the post of Tutor, she cannot be paid any amount in the higher pay scale of Rs.2000-3200/-as PHNT.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. The relevant portion of the letter issued by Respondent 3 dated 5.4.90 in respect of applicant reads as follows:-

"With reference to your letter No.A 11017/4/87-MH dated 22.1.90, on the subject cited above, I am to state that Mrs. A.Fabian, Public Health Nurse has been teaching "Community Health" subject to the nursing students since 1978 in this hospital. It has already been pointed out vide this office letter No.6-4/87-Admn.V dated 11.6.87 that the post of Public Health Nurse Tutor has not been created so far in this hospital. One Public Health Nurse (Mrs. A.Fabian) has been assigned the duties of Public Health Nurse Tutor in addition to her

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routine duties. She has been sharing this responsibility since 1978 without any additional remuneration. The present set up is temporary one and can not last for indefinite period as we can not force any one who shares additional responsibility of teaching for indefinite period without any incentive. It is also not logic as the other tutors are in higher pay scale of Rs.2000-3200.

In view of the position stated above it has become essential to transfer the post of one Public Health Nurse from Non-teaching to teaching side i.e. Public Health Nurse Tutor in the pay scale of Rs.2000-3200 for smooth functioning and better functioning of the school of nursing.

It is requested that necessary sanction to the upgradation of this post may kindly be converted as early as possible."

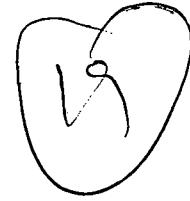
It is also seen from the letter dated 26.7.90 issued by the respondents that they have clearly stated that the applicant has been assigned the duties of PHNT, in addition to her routine duties. <sup>Further</sup> ~~Therefore~~, she has been sharing the responsibility of teaching since 1978 without any remuneration.

The respondents have stated in these letters as far back as in 1990 that the utilisation of the applicant's services in the higher post of PHNT is <sup>a</sup> ~~is~~ temporary one which cannot last indefinitely. However, it is also relevant to note that in spite of saying so, they seem to <sup>have</sup> ~~continued~~ to use the services of the applicant in the higher capacity till her <sup>full</sup> ~~2~~ retirement from service i.e. 30.4.1994, without creating or

transferring the post of one PHN from non-teaching to teaching side i.e. PHNT in the pay scale of Rs.2000-3200, which was necessary for the smooth and better functioning of the School of Nursing, as proposed by them in their letter dated 5.4.90. <sup>on record</sup>

From these letters, it is, therefore, evident that the respondents have not taken necessary action in time and it is a case of in-difference in proper administration, because ~~it appears that~~ they had asked the applicant, in addition to her own duties, to discharge and responsibilities of PHNT without giving him remuneration in the higher pay scale of Rs.2000-3200/- These facts, therefore, show that the action of the respondents cannot be held to be either reasonable or fair. Therefore, in the facts and circumstances of the case, the applicant <sup>shall</sup> be entitled to <sup>the</sup> difference in pay as PHNT for the services rendered by her/that capacity, as there is no doubt at all that she had discharged those functions in addition to her routine duties.

7. However, having regard to the provisions of Section 21(2)(a) of the Administrative Tribunals Act, 1985, and the observations of the Hon'ble Supreme Court in the order dated 22.10.1997, the claim of the applicant for payment of arrears of the difference in the amount in the scale of Rs.2000-3200/- is restricted to the period from 1.11.1982 till the date of her retirement i.e. 30.4.1994. This amount shall be paid to the applicant within a period of two months



from the date of receipt of a copy of this order. Accordingly, the applicant shall also be entitled to revision in pensionary benefits, taking into account her revised pay as above at the time of her retirement. It is made clear that she will not, <sup>JB.</sup> however, be entitled for any interest on these amounts. These amounts are granted in the particular facts and circumstances of the case, <sup>and also</sup> having regard to the order of the Apex Court dated 22.10.1997 and the judgement in M.R.Gupta Vs. UOI (1995 (5) Scale 29).

8. In the result, OA is allowed as above. No costs.

*succeeds and 8/2*

*R*  
(S.A.T. Rizvi )  
Member (A)

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Member (J)