

Central Administrative Tribunal Principal Bench, New Delhi



O.A. No. 939/2020
M.A. No. 1159/2020

Reserved on: 19.02.2021
Pronounced on: 09.03.2021

Hon'ble Mr. Mohd. Jamshed, Member (A)

1. All India Jawahar Navodaya Vidyalaya,
Staff Nurse Association (Regd.),
Village Quazi Pur, Post Office Ujwa, New Delhi – 73,
Through its President,
Smt. Raj Bala, aged 58 years,
W/o Sh. Shri Bhagwan Yadav,
Working as Staff Nurse in JNV, Jaffarpur Kalan,
New Delhi – 73.
R/o JNV Campus, Jaffarpur Kalan, New Delhi – 73.
2. Shaileshwar Singh, aged 55 years,
S/o Sh. Jaggan Ram Singh,
Working as Staff Nurse in JNV Modi Nagar,
Ghaziabad (UP),
R/o JNV Modi Nagar, Ghaziabad (UP).

..Applicants

(Mr. Yogesh Sharma, Advocate)

VERSUS

1. Union of India through the Secretary,
Ministry of HRD, Department of School Education & Literacy,
Govt. of India, Sastri Bhawan, New Delhi.
2. The Secretary,
Ministry of Finance,
Department of Expenditure,
Govt. of India, New Delhi.
3. The Commissioner, Navodaya Vidyalaya Samiti,
B-15, Institutional Area, Sector – 52, Noida (UP).

..Respondents

(Mr. Anil Kumar Singh, Advocate)

ORDER

Hon'ble Mr. Mohd. Jamshed, Member (A):



The applicant No. 1 is a registered Association of Staff Nurses working in various schools of Jawahar Navodaya Vidyalaya Samiti and has filed the present OA for which the Association has authorized Mrs. Raj Bala, President of the Association. There have been many rounds of litigation in this matter. The applicants are Staff Nurses working in Jawahar Navodaya Vidyalaya Samiti, an autonomous body under the Ministry of Human Resource Development. These Staff Nurses are posted in residential co-educational schools run by the Samiti. These staff nurses have been claiming parity with the Staff Nurses posted elsewhere not only in hospitals and dispensaries, but also in similar schools run by Ministry of Railways and Ministry of Defence. It is contended that the applicants are not being provided the nursing allowance and 10% special allowance at par with other Staff Nurses in other organizations.

2. The applicants are aggrieved by the fact that whereas the Staff Nurses perform similar duties as are being performed by other Staff Nurses posted in Hospitals and Dispensaries, and residential schools, nursing allowance is not being paid to them. In addition the 10% special allowance which is being paid to the teachers of JNV and other staff as per the recommendation of the 06th CPC is also not provided to them. Aggrieved by such

anomaly, the applicants had earlier filed OA No. 2945/2009. Their claim was subsequently considered and rejected by the Anomaly Committee. Another OA No. 2967/2013 was filed by the applicants once again seeking extension of benefit of nursing allowance and also the special allowance. All these aspects were duly considered by the Tribunal and vide its order dated 23.01.2019, the respondents were directed to reconsider the issue. The respondents accordingly reconsidered the same and vide impugned order dated 19.09.2019, conveyed the Government's approval for grant of a Compensatory Allowance to Staff Nurses of JNV @ Rs. 3600/- per month. The claim of the nursing allowance and special allowance was, however, rejected. The applicants, in the meanwhile, also filed a contempt petition against the respondents for non compliance. However, in terms of the order passed by the respondents dated 19.09.2019, the contempt petition was closed. The applicants are not satisfied by the impugned order dated 19.09.2019 and have filed the present OA. The relief sought in this OA is as under:-

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 19.9.2019 (Annex.A/1) only to the extent by which the respondents have not considered and not granted the Nursing Allowances and Special Allowance to the applicants, declaring to the effect the same is illegal, arbitrary and discriminatory and consequently, pass an order directing the respondents to grant the Nursing allowances to the applicants as per the Govt. of India prescribed for the same from the date of their appointment, with all consequential benefits with arrears of difference allowances.

(ii) That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to grant 10% special allowances to the Govt. of India prescribed for the same from the date of their appointment, with all consequential benefits with arrears of difference allowances.

(iii) That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to grant 10% special allowances to the applicants w.e.f. 1.1.2006 with all consequential benefits including the arrears of special allowances with interest.



(iv)That in case of not accepting the prayer of the applicants as prayed in above paras (i) and (ii) for any reason, the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to grant the compensatory allowances to the applicants at least w.e.f. 1.1.2006 with all consequential benefits with arrears."

3. The respondents filed a counter affidavit opposing the OA and stating that the case of the applicants had already been considered in the past by the Anomaly Committee and both their demands for grant of nursing allowance and that of special pay was rejected. However, in terms of the order passed by the Tribunal on 23.01.2019 in OA No. 2967/2013 their request has been reconsidered. Vide order dated 19.09.2019, it has been decided to provide them a Compensatory Allowance of Rs. 3600/- per month. This decision has been taken in consultation with Ministry of Finance (Department of Expenditure) and Ministry of Health and Family Welfare. It has been reiterated in the counter affidavit that the nature of duties of Staff Nurses of JNV schools are not similar to that of nurses working in Government Hospitals and Dispensaries. It has been stated that the decision taken by the Government in compliance of the order of the Tribunal has been taken considering all aspects at length and it has been decided to extend a Compensatory Allowance of Rs. 3600/- per month to the nurses of JNV school. In view of the same, their claim for nursing allowance and 10% special allowance is not tenable any more.

4. Heard Mr. Yogesh Sharma, learned counsel for the applicants and Mr. Anil Kumar Singh, learned counsel for the



respondents, through video conferencing and perused the records.



5. The applicants are working as Staff Nurses in various schools of JNV. These schools are residential co-educational schools and the teachers and staff including the staff nurses are required to reside in school premises for which residential and other facilities are provided to them. The Staff Nurses posted in these schools have to attend to medical requirements of students, including providing first aid, etc. These Staff Nurses are not provided with nursing allowance as has been provided to the nurses in other Government Hospitals and Dispensaries, whose nature of work is quite different from the Staff Nurses posted in these schools. The Sixth CPC recommended provision of 10% special allowance to the school teachers and Librarian but the same did not cover the Staff Nurses working in these schools. The applicants had been raising their grievance of not getting nursing allowance and special allowance and had filed OAs in the past. The Anomaly Committees did consider their claim for both the nursing allowance and also the 10% special allowance and rejected the same. The grounds taken by the respondents in rejecting their claim is that the nursing allowance is provided only to the nurses deputed in the Hospital and Dispensaries. It was also clarified that the nurses posted in boarding schools like that of the Railways are not the employees of the schools but of the Railway Medical Department deputed to work as Staff Nurses

in the Railway School. It has also been argued that the 10% special allowance was extended to only the teachers and other teaching staff of the JNV on the recommendation of the Sixth CPC. However, this 10% special allowance is not provided to the non teaching staff including the Staff Nurses in these schools. The same is also not being provided to the Staff Nurses in railway and Military boarding schools.



6. It is evident that despite the applicants claim having been rejected by the Anomaly Committee, they further approached the Tribunal by filing OA No. 2967/2013. The relief sought in that OA was primarily for the same two aspects of non provision of nursing and 10% special allowance to the Nursing Staff of JNV. The relief sought by the applicants in OA No. 2967/2013 was considered by the Tribunal and vide order dated 23.01.2019, the Tribunal directed as under:-

“XXX

10. We are of the view that Respondent No. 1 needs to reconsider the issue duly taking into account, the proposal made by the Respondent No. 4. The fact that the applicants are required to be attentive even after the office hours and that they are not being paid the nursing allowance or the special allowance shall be taken into account. This exercise shall be done within a period of two months from the date of receipt of certified copy of this order. There shall be no order as to costs.”

7. The directions to the respondents was to reconsider the issue within a period of two months. In compliance of these orders, the 3rd respondents sent the proposal once again vide letter dated 28.03.2019 to the 1st respondent. Subsequently, the applicants filed CP No. 380/2019. The respondents in the



meanwhile passed order dated 19.09.2019 indicating that the respondents on reconsideration have decided to provide a Compensatory Allowance of Rs. 3600/- per month to the nursing staff of JNV. The respondents, however, did not agree to the proposal of providing nursing allowance and special allowance to the applicants. In view of this order passed by the respondents, the contempt petition was closed and the applicants were granted liberty to pursue the remedies in accordance with law, in case they are not satisfied. By filing the present OA, the applicants are seeking quashing of the impugned order dated 19.09.2019 only to the extent by which the respondents have not considered and not granted the nursing allowance and special allowance to the applicants. This obviously indicates that the applicants are not objecting to the grant of compensatory allowance @ Rs. 3600/- per month, but are once again seeking the same relief as was sought in the earlier rounds of litigation. The applicants have also prayed that in case the prayer of the applicants for grant of nursing allowance and special allowance is not accepted, the Tribunal may direct the respondents to grant a Compensatory Allowance to the applicant retrospectively w.e.f. 01.01.2006 with all consequential benefits including arrears.

8. The impugned order dated 19.09.2019 passed by the respondents in compliance of the order of Tribunal dated 23.01.2019 in OA No. 2967/2013 clearly specifies that in terms of the order of the Tribunal, the proposal for grant of 10% special allowance and nursing allowance to JNV staff nurses has been

reconsidered by the 1st respondent in consultation with the Ministry of Finance and Ministry of Health and Family Welfare and the same has not been agreed to. However, approval was conveyed for grant of a fixed allowance - Compensatory Allowance to Staff Nurses of JNV @ Rs. 3600/- per month subject to specific conditions. The Navodaya Vidyalaya Samiti on 03.10.2019 conveyed the approval for grant of a Compensatory Allowance to the Staff Nurses.



9. It is evident that the Nursing Staff of JNV were aggrieved by the fact that they are not granted nursing allowance as was being granted to the other Staff Nurses working in Government Hospitals and Dispensaries and other residential schools. They were also aggrieved by the fact that after the recommendations of the Sixth CPC were accepted, the teachers of JNV were provided 10% special allowance which was also not extended to the nursing staff working in the schools. Their claim was primarily based on the fact that as nursing staff performs similar duties that are being performed by the nursing staff elsewhere. Their claim for 10% of special allowance is based on the premise that they are also at par with teaching staff of these schools.

10. It is not in dispute that the job assigned to the nursing staff in Hospitals and Dispensaries is different from the staff nurses deployed in JNV Schools. It is also a fact that the service conditions in other organizations in terms of deployment of nursing staff, their recruitment and career progression like in

Railways or in defence establishment are quite different from those of JNV. Grievances of the applicants were subsequently addressed by the Anomaly Committee and both their demands of nursing allowance and special allowance were rejected. The matter was brought before the Tribunal twice in the past and in the present OA the relief sought is more or less the same as was in the previous OAs.



11. The respondents passed the impugned order dated 19.09.2019 making a special provision of Compensatory Allowance to Staff Nurses of JNV @ Rs. 3600/- per month as an outcome of the order passed by the Tribunal in OA No. 2967/2013. This was also considered by the Tribunal in the contempt petition filed by the applicants and the contempt petition was closed in view of the compliance made by the respondents. The present OA seeks similar relief of nursing allowance and 10% special pay. However, the applicants have also indicated that they will be satisfied in case the compensatory allowance as provided vide order dated 19.09.2019 is provided with retrospective effect from 01.01.2006. This claim of the applicants is not tenable as the compensatory allowance is a special measure taken by the respondents and is different from the nursing allowance or the 10% special allowance. The relief sought in this OA for nursing allowance and 10% special allowance is only a reiteration of relief sought by the applicants in earlier OAs. That issue has already been settled and the respondents have also taken action by considering the same



through the Anomaly Committee and, thereafter, by reconsidering the same in terms of Tribunal order. This was noted by the Tribunal and the Contempt Petition was closed. The respondents although rejected the claim of the applicants for nursing allowance and special allowance, agreed to make a special provision of a fixed Compensatory Allowance of Rs. 3600/- per month with conditions that the same shall be applicable from the date of issue of the order dated 19.09.2019. In the present OA, the applicants, however, seek direction from the Tribunal that this Compensatory Allowance should be applicable with retrospective effect from 01.01.2006. As the Compensatory Allowance is a special provision, it is neither part of any previous order or the recommendations of the Pay Commission and, therefore, it cannot be provided with retrospective effect as claimed by the applicants. This claim is simply untenable.

12. In the facts and circumstances of the case and the orders passed in the previous OA, I do not find any merit in applicants claim for Nursing and Special Allowance. Their claim of declaring the compensatory allowance with retrospective effect is also not tenable. The OA being devoid of merit is accordingly dismissed. Pending MA also stands disposed of. There shall be no order as to costs.

**(Mohd. Jamshed)
Member (A)**

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