

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.269/2020

CORAM:

HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)
HON'BLE MR. ANAND MATHUR, MEMBER(A)

Gulab, aged about 33 years, S/o Sundar Lal of Plot No.284 (P), Aiginia, Patrapada, Bhubaneswar Dist-Khurda.

.....Applicant

VERSUS

1. Union of India represented through the Secretary to Government of India in the Ministry of Health and Family Welfare, (PMSSY) Division. Nirman Bhawan, Maulana Azad Road, New Delhi-110011.
2. All India Institute of Medical Sciences (AIIMS) represented through it's Director, At-Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda-751019.
3. Deputy Director, All India Institute of Medical Sciences (AIIMS), At-Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda-751019.
4. Administrative Officer, All India Institute of Medical Sciences (AIIMS), At-Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda-751019.
5. Assistant Administrative Officer, All India Institute of Medical Sciences (AIIMS), At-Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda-751019.
6. Medical Superintendent, All India Institute of Medical Sciences (AIIMS), At-Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda-751019.
7. Member Secretary, Grievance Committee, All India Institute of Medical Sciences (AIIMS), At-Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda-751019.

.....Respondents.

For the applicant : Mr. T. Rath

For the respondents: Mr. G.R. Verma

Heard & reserved on : 10.12.2020

Order on :

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

The applicant has approached this Tribunal seeking the following relief(s):-

- a. The Original Application may be allowed.
- b. The order at Annexure-A/8 be quashed.
- c. The respondents may be directed to implement the DOP&T instructions dt.04.09.2019.

- d. The respondents may be directed to extend the benefit of enhancement of consolidated remuneration to the applicant from 2018 onwards.
- e. The arrear differential remuneration from 2018 may be directed to be cleared with interest within a time to be stipulated by this Hon'ble Tribunal.
- f. Such other Order(s)/Direction(s) may be given in giving complete relief to the applicants."

2. The facts of the present O.A. are that the applicant who has been continuing as Staff Nurse-Grade-II (Contractual) at the All India Institute of Medical Sciences (AIIMS), Bhubaneswar for the last several years has filed this OA challenging the actions of the respondents in not extending the enhancement of pay although the same has been done in case of other similarly situated employees including the Staff Nurse Gr-II who have been appointed by way of outsourcing.

3. It is further submitted that the applicant being found suitable and with the approval of the Director, offer of appointment order was issued to the applicant vide order dated 09.09.2015 (Annexure-A/6) for Staff Nurse Grade-II on Contract basis for 11 months in AIIMS, Bhubaneswar. It is submitted that on expiry of the period of 11 months, the services of the applicant was extended from time to time with consolidated remuneration. Thereafter, respondents vide advertisement dated 05.05.2017 invited online applications for some non-faculty posts (Gr-B) on direct recruitment basis in which 800 posts of Staff Nurse Gr-II were notified to be filled up including the ones held by the applicants. Challenging the said advertisement dated 05.05.2017, several OAs were filed in which this Tribunal has issued notice and granted interim order directing the authority to maintain status-quo of the applicants. It is further submitted that similarly situated several Staff Nurse Gr.II (Contractual) approached this Tribunal in O.A. No.178/2018 in which this Tribunal has issued status-quo order. Since the applicant did not file any case claiming regularization and interim protection, the authorities were bent

upon to dispense with his services and communicated the decision of the authority that who-so-ever has not approached the Tribunal and in whose favour there is no status-quo order, their tenure of contractual engagement as Staff Nurse Gr.II cannot be extended.

4. Challenging the aforesaid illegal action of the respondents, the applicant being a contractual employee (Staff Nurse Gr.II/Nursing Officer) who was not allowed extension of employment unlike others, had filed O.A. No.570 of 2018 before this Hon'ble Tribunal. This Tribunal vide order dated 11.12.2018 has passed an interim order directing the respondents to maintain status-quo in respect of the services of the applicant. Against the action of the respondents to fill up posts of Staff Nurse Gr.II before considering the cases of contractual employees for regularization, several cases were also filed. In those cases, this Tribunal was passed status-quo order as a result of which those contractual Staff Nurse Gr.II/Nursing Officers including the applicant have been allowed to continue.

5. It is further submitted that at the time of joining the applicant, the monthly remuneration of all contractual Nursing Officers/Staff Nurse Gr-II was Rs.27,000/- in the year 2015. It is pertinent to mention here that prior to 2015, the consolidated monthly remuneration was Rs.22,000/-. Again in the year, 2016, the monthly consolidated remuneration was enhanced from Rs.27,000/- to Rs.32,400/-. Whereas the contractual Sr. Nursing Officers were given Rs.33,600/- w.e.f. 01.11.2017 the contractual monthly remuneration of Nursing Officers/Staff Nurse Gr-II were enhanced from Rs.32,400/- to Rs.44,900/-. In the year 2018, 2019 and 2020 there has been no enhancement in the monthly consolidated remuneration of the applicant whereas some newly appointed Nursing Officers/Staff Nurse Gr-II by way of out sourcing have been allowed to draw enhanced consolidated monthly remuneration. It is pertinent to mention here that those newly appointed Staff Nurse-II by way of out sourcing have been extended the enhanced consolidated

remuneration only after a period of 2/3 months vide order dated 17.03.2020 (Annexure-A/13) which shows that the Nursing Officer Gr-II are being extended Rs.45,300/- towards monthly remuneration with effect from 01.03.2020. If that had there been enhancement of 10% consolidated remuneration extended to the applicant he would have got Rs.59,761/- towards monthly remuneration w.e.f. 01.03.2020.

6. It is further submitted that Govt. of India in the Ministry of Personnel, PG and Pensions, Department of Personnel and Training Vide Office Memorandum dated 04.09.2019 (Annexure-A/10) issued instructions regarding equal pay for equal work for casual workers wherein it has been clarified that where the nature of work entrusted to the casual workers and regular employees is the same, casual workers have been directed to be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus Dearness allowance for work of eight hours a day and in case of the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour and Employment or the State Government/Union Territory whichever is higher as per the Minimum Wages Act, 1948 and that persons on daily wages (Casual workers) should not be recruited for work of regular nature. The Government further directed all the Ministries/Department to scrupulously follow the instruction in letter and spirit.

7. It is further submitted that though the applicant is rendering the same nature of duties as that of the regular Staff Nurse Gr-II, he has been given a consolidated remuneration which has been deprecated by the Hon'ble Supreme Court in clear terms. By not extending the same benefits, the respondents are violating the provisions enumerated in and rights guaranteed under Article-14, 16, 21 and 39(d) of the Constitution of India. The applicant reserves his right to address the Tribunal on the question of law at the time of hearing of the case.

The Hon'ble Delhi High Court in the case of Suman Forwarding Agency Pvt. Ltd V. The Chief Patron/Vice President/General Secretary, Central Warehousing Corporation Majdoor Union categorically held that the direction given in the case State of Punjab V. Jagjit Singh has to be followed. Enclosing the direction of the Delhi High Court, the Ministry of Personnel and Training issued OM dated. 07.10.2019 (Annexure-A/11) requiring all the Ministries/Departments including PSUs to comply with directions of the Hon'ble Court.

8. It is submitted that by not extending enhanced pay which has been granted to others, the respondents have shown step motherly attitude to the applicant. Challenging the said action, the present Original application has been filed with the prayer as mentioned above.

9. The respondents have filed their counter, wherein it is mentioned that the respondent No.3 issued an advertisement dated 30.10.2014 for recruitment of 200 Staff Nurse Grade-II for 11 months contract basis with consolidated remuneration of Rs.27,000/- per month in accordance with the instructions issued by the Ministry of Health & Family Welfare vide letter dated 06.08.2013 with respect to engagement of persons to various sanctioned posts on contractual basis.

10. It is submitted that the offer of appointment issued to the applicant contains that respondent No.2 has approved the appointment of applicant to the post of Staff Nurse Grade-II on contractual basis and applicant will be paid consolidated remuneration of Rs.27,000/- per month. The offer of appointment dated 09.09.2015 (Annexure-R/3) issued to the applicant, at clause-1, contains following terms and conditions:-

“This appointment does not entitle you to any regular appointment unless meanwhile you are selected for appointment on a regular appointment on regular basis and your appointment is approved by the competent authority. Your appointment may be terminated at any time by giving 01 month notice to the employee and without assigning any reasons thereof.”

Further at Clause-4 of the offer of the appointment, it is provided that :-

“If you accept the offer of appointment on the above conditions, you should report for duty to the undersigned immediately, but not later than 08.10.2015, failing which the offer of appointment shall be treated as cancelled”.

11. It is further submitted that the applicant having accepted the offer of appointment with full knowledge of the terms and conditions of the appointment regarding contract period and consolidated monthly remuneration, joined the institute. It is further submitted that on the expiry of the contract period, the service of the applicant was extended by competent authority periodically for a period of six months (after 01 day break, on completion of the contractual period of engagement), as per the terms and conditions of initial offer of appointment basing on her request for further extension. The extension of services of the applicant was made as per “Clause-11 of the “General Conditions” of Advertisement dated 30.10.2014 (Annexure-R/1). Simultaneously, the consolidated monthly remuneration of the applicant along with other contractual Staff Nurses Grade –II was enhanced to Rs.32,400/- with effect from 01.09.2016 and subsequently to Rs.44,9000/- w.e.f. 01.11.2017, with approval of competent authority. The applicant also accepted the revised monthly consolidated remuneration, during the extended period of contractual engagement as Staff Nurse Grade-II in the institute.

12. It is submitted that in the meantime, for better administration of health care services, the Institute (AIIMS Bhubaneswar) decided to proceed with process of recruitment of Staff Nurses Grade-II, on regular basis. The applicant, apprehending her disengagement from contractual service in the Institute, filed O.A. No.570/2018 along with others before this Tribunal. This Tribunal vide order dated 11.12.2018 directed that “in case the applicants are continuing in the services as on date, the status quo shall be maintained by the Respondents till the next date”. In obedience to the Tribunal’s order the contractual engagement of the

applicant was extended periodically and the applicant is still continuing in the services of the Institute with revised consolidated monthly remuneration, as the matter is still sub justice before the Tribunal and the status quo order is still in force and as the matter is pending for adjudication from the year 2018 along with status quo in respect of engagement of applicant in the Institute, hence the matter relating to pay of the contractual staff nurses including applicant, has not been taken for consideration by the Institute.

13. It is submitted that the applicant is claiming enhanced pay in this OA, where as the matter relating to contractual engagement of the applicant is still pending for adjudication and any decision regarding the service conditions of the applicant including pay, will be hit by the doctrine of Lis Pendens. Hence the OA is not maintainable in the present form for the reasons stated above. So far the formation of Selection of Committee methodology for selection and filling up the posts including Staff Nurse Grade-II are concerned it is provided in the guidelines contained in the letter dated 04.04.2013 (Annexure-R/5) issued by the Ministry of Health and family Welfare. However, the selection and appointment of applicant for contractual engagement as Staff Nurse Grade-II for a period of 11 months with consolidated monthly remuneration of Rs.27,000/- was made as per terms and conditions of the Advertisement dated 30.10.2014 (Annexure-R/1). Further Ministry of Health and Family Welfare vide circular No.11 PMSSY – of 2014, clarified that till framing of rules and regularizations for each new AIIMS including AIIMS Bhubaneswar, Rules and Regulations of AIIMS, New Delhi would apply. Later the Institutional Body ratified the said process and methodology, the composition of Ad Hoc Selection Committee which has attained finality (Copy of circular dated 10.12.2014 issued by the Ministry is enclosed as Annexure-R/6).

14. It is further submitted that the applicant having accepted the purely temporary and contractual nature of the post with consolidated monthly remuneration, to which she was appointed, now cannot claim enhanced pay similar to other Staff Nurses Grade-II, appointed by way of outsourcing, since the monthly remuneration of the applicant has already been revised twice as per Ministry's letter dated 01.05.2015 (Annexure-R/7). It is submitted that the recommendation of the applicant for appointment to the post of in question on contractual basis has been made by the Selection Committee as per Para-10(j) of letter dated 06.08.2013(Annexure-R/2) and Para-11 (xii) of letter dated 01.05.2015 (Annexure-R/7) of Ministry of Health & Family Welfare which provides for recommendation only against a regular, sanctioned and unfilled post, after following all methodologies as applicable for selection of regular posts. Further, the advertisement against which applicant applied for the selection of the post clearly provided that the engagement is on contractual basis for a period of 11 months. The period can be extended further on the approval of the competent authority. Similarly, the offer of appointment has also specifically mentioned that "This appointment does not entitle them to any regular appointments at AIIMS, Bhubaneswar in any manner". On accepting of these terms and conditions, the applicant has joined the post on contractual basis.

15. It is further submitted that no statutory right has accrued to the applicant for regularization/absorption in sanctioned regular post merely because her appointment to contractual staff nurse is made after following selection process involving written test, interview and medical test. There is no statute or scheme framed by government providing for regularization/absorption of contractual staff in regular sanctioned post unless they are recruited through selection process in respect of advertised regular posts. Hence the claim of applicant for regularization on the ground that she has been engaged against a sanctioned

vacant post having come out successful in a process of selection, is not acceptable in view of settled position of law.

16. It is submitted that the matter relating to engagement of applicant as contractual staff nurse Grade-II is pending for adjudication before this Tribunal. The matter relating to enhanced pay to the applicant is dependent on the outcome of the Pending O.A. No.570/2018 filed by the applicant for claim of regularization of service, being ancillary matter related to the conditions of engagement. Hence, there are no violation of the rights guaranteed under Article 14, 21 and 39(d) of the Constitution, by the respondents.

17. It is further submitted that the law declared by the Hon'ble Apex Court in State of Punjab Vs. Jagjit Singh-(2017) 1 SCC 148, is the law of the land and assumes binding character. In consonance with the judgment of Hon'ble Court, Ministry of Personnel, PG and Pensions, Department of Personnel and Training OM dated 04.09.2019 wherein it is stated that:-

“where the nature of work entrusted to casual workers and regular employees is the same, the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of relevant pay scale plus dearness allowance for work of 8 hours a day”.

AIIMS, Bhubaneswar is an autonomous organization under Ministry of Health and Family Welfare, established under an act of Parliament, as an Institute of National Eminence through All India Institute of Medical Sciences (Amendment) Act, 2012 by amending the Principal Act i.e AIIMS Act, 1956. The vision and mission of the institute is to establish it as a centre of excellence in medical education, training, health care and research imbued with scientific culture, compassion for sick and Commitment to serve the underserved. The applicant was initially engaged as contractual staff nurse Grade-II in the Institute as per advertisement dated 30.10.2014 which provided for contractual engagement for a period of 11 months on consolidated monthly remuneration of Rs.27,000/-

and subsequently the remuneration was revised w.e.f. 01.11.2017 with the approval of the competent authority. The applicant is presently engaged with consolidated monthly remuneration of Rs.44,900/-.

18. It is further submitted that the applicant has filed OA No.570/2018 before this Tribunal for regularisation of her service. When the matter is sub judice before the Tribunal, he is filing another OA for enhancement of pay. When the issue of regularization is sub judice and its consequence is yet to come, then allowing this OA may be contradictory in nature. This OA is hit by the principle of res-judicata and not maintainable for non-joinder of causes of action and hence is liable to be dismissed.

19. The applicant has filed the rejoinder to the counter filed by the respondents. It is submitted that as per the order dated 04.04.2013 under Annexure-A/1 followed by reminder dated 22.04.2013 and re-communicated order dated 30.04.2013 (Annexure-A/16) and further order communicated vide Annexure-R/2 dated 06.08.2013 of the Ministry, mischievously, in clear violation and counter to the direction of the Ministry just to frustrate and wiggle out of the possibility of adverts action to be taken by the Ministry for the inaction on the part of the AIIMS authorities of Bhubaneswar in implementing the direction of the Ministry, the present authorities of the AIIMS, BBSR published the Advertisement for appointment on contractual basis, contrary to the mandate of the Ministry to fill up the sanctioned posts on regular basis.

20. It is further submitted that although in terms of Para-3 & 4 the Ministry's letter dated 30.04.2013 communicated to AIIMS Bhubaneswar the contractual employees are allowed salary same as regular employees. But unfortunately the respondents while issuing the advertisement as well as appointment letter in favour of the applicant and others have paid monthly consolidated pay, which is not permitted by the Ministry itself. Apart from the submissions made above, it is

submitted that in the name of *lis pendens* just because the applicant is continuing by virtue of the interim order of status quo passed by this Tribunal despite the fact that the contractual engagement of the applicant has been extended periodically and the applicant is performing her duty same as the other regular employees, his remuneration which was earlier revised from Rs.27,000/- to 32,000/- w.e.f. 01.09.2016 and subsequently to 44,900/- w.e.f. 01.11.2017, thereafter it has not been revised and the method relating to be of the contractual staff nurse including the applicant has been ignored. In terms of Article 21 of the Constitution of India equal pay for equal work being a fundamental right of a citizen of India, and moreover, the respondents being the instrumentalities of state ought to revise the emoluments of the applicant by taking into consideration the enhanced wages paid to similarly placed staffs. In the present case, although a regular selection committee as prescribed under the rules has made the selection by following the regular process of selection but ironically the advertisement was made by some other authority specifying the post to be filled up on contractual basis with the fixed remuneration of Rs.27,000/- per month. The above by itself goes to show that the concerned has exceeded his jurisdiction and as taken away the role of the selection committee and the process as prescribed under Annexure-A/5 while making the advertisement under Annexure-A/7 and for that the separate original application filed by the applicant claiming regularization of her service ought to be allowed by this Tribunal.

21. It is further submitted that in the present counter the respondents have admitted at para 12 the selection committee constituted in terms of para-9 selected the applicant along with the others and in terms of para 10(j) of letter dated 06.08.2013 (Annexure-R/2) and para-11 (xiii) of Annexure-R/7, the Ministry of health and family welfare, recommended for appointment of the applicant against a regular, sanctioned and unfilled post. The applicant emphatically

submits para-9 of Annexure-R/2 is the only provision which describes the procedure for constitution of the selection committee for a regular selection. There is no other provision prescribing a separate selection body to be constituted for contractual appointment. For that under Annexure-R/2 para 10(j) the selection committee constituted under the same rule has been empowered to make recommendation for appointment on contractual basis, even though a candidate is selected by them by following the regular process of selection of written and other tests. Therefore, the contents and of the respondents that the applicant has been selected in terms of the terms and conditions of the advertising under Annexure-R/1 and for that he has not been subjected to a regular process of selection, is totally false and misleading.

22. Applicant's counsel relied on few citations including the following:-

- (1) Order dated 04.09.2019 DOP&T OM (Annexure-A/10).
- (2) Order dated 07.10.2019 DOP&T OM (Annexure-A/11).
- (3) In the case of Suman Forwarding Agency Pvt. Ltd. Vs. The Chief Patron/Vice President/General Secretary, Central Warehousing Corporation Majdoor Union.
- (4) State of Punjab Vs. Jagjit Singh.

23. Respondents' counsel relied on few citations including the following:-

- (1) Copy of letter dated 04.04.2013 (Annexure-R/5)
- (2) Copy of circular dated 10.12.2014 (Annexure-R/6)
- (3) Copy of Circular dated 01.05.2015 (Annexure-R/7)
- (4) Copy of Office Order dated 13.12.2017 (Annexure-R/8)

24. We have heard learned counsels for both sides, gone through the pleadings and citations relied upon by them.

25. The application of the principle of equal pay and equal work depends upon a large number of factors including equal work, equal value, source & manner of appointment, equal identity of group, educational qualifications, nature of duty, nature of responsibilities, method of recruitment etc. The principle for equal pay and equal work was also dealt by Hon'ble Supreme Court in the decision reported in State of Punjab Vs. Jagjit Singh (2017) 1 SCC 148. In this regard the exercise

that would require the application of parameters of the said principle was summarized by Hon'ble Supreme Court in paragraph 42. In the present case it is not the case of the respondents that the applicant's did not possess the required qualification prescribed for appointment to the post for regular basis. It is also not the case of the respondent that any of them would not be entitled to pay parity on the above mentioned principle as enumerated by Hon'ble Supreme Court in para 42 of the decision referred to Supra. Normally the applicability of this principle must be left to be evaluated and determined by an expert body and these are not matters where this Tribunal can interfere in the absence of factual details and opinion and views of any expert body or committee.

26. The observation and view of Hon'ble Supreme Court in Jagit Singh (supra) in para 58 is most relevant to be quoted in this case which is as follows:

“In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self work, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situated, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”

27. The fact that the applicants have not shirked their responsibilities even while the entire country has been affected by pandemic COVID 19 situation and that they are praised as frontline COVID warriors, even going to the extent of endangering their own lives should not be overlooked by respondents. The further fact that the applicants have been allowed to continue to work in the organization sincerely without any blemish for a reasonable period, should also be taken into consideration by the respondents, while taking such decision as a model employer.

28. The respondents shall also take into consideration larger interest of society. The encouragement given to applicant and similarly placed nursing staffs of

AIIMS will certainly boost their morale to work more sincerely and encourage others to come forward to join and serve this noble profession. Besides that any positive action taken in this regard by the respondents in favour of the applicant, will rise credibility and reliability of the organization in the esteem of general public at large and the poor patients in particular. Besides that the standard of treatment and other para medical support given to patients will also improve and the persons belonging to poor strata of society will not be discouraged to seek help of this organization for their treatment, without preferring to go to other hospitals causing more financial burden to them, thereby affecting the economy of this country in the long run.

29. Therefore at this stage, this Tribunal does not want to give any direction in favour of the applicant but it is directed that the respondents shall consider all the relevant factors and principle of law as quoted earlier in this order and if necessary to form a committee for consideration of the prayer of the applicant on the ground of equal pay for equal work and to take pragmatic decision in accordance with law within a period of three months hence. It is needless to say that any decision in this regard taken by the respondents shall be communicated to the applicant by giving detailed speaking and reasoned order within further period of 15 days from the date of taking decision. The disposal of this OA shall not be a bar and shall not stand on the right of the applicant to redress their grievance in accordance with law in future.

Accordingly the OA is disposed of with above observation but in the circumstances without any order to cost.

(ANAND MATHUR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)