

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 2190/90

DATE OF DECISION : 14.08.1992

Smt. Aruna Pillai & Anr.

...Applicants

Vs.

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicants

...Sh.B.S. Mainee

For the Respondents

...Sh.H.K. Gangwani

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*

2. To be referred to the Reporter or not? *Ys*

JUDGEMENT

Both the applicants working as Lady Health Visitor, Northern Railway, Health Unit, Kishan Ganj, Delhi jointly filed this application under Section 19 assailing the order dt. 1.8.1990 for which the applicants have been asked to refund the irregular payment of nursing allowance and further stoppage of the payment of that allowance @Rs.150 p.m. The applicants have also been asked to refund the amount of allowance which is Rs.6150. The reliefs claimed by the applicants are that the respondents be directed to stop the recovery and be further directed to pay the nursing allowance with a direction to reimburse the amount refunded from the applicants.

2. It is not disputed that the applicants are Lady Health visitors and have been working on these posts since 1962 and 1964 respectively having been appointed through the Railway Public Service Commission. There is a circular of the Railway Board of 1975 which was revised by the Railway Board by the letter dt. 26.7.1982 whereby the laundry allowance has been fixed at Rs.25 p.m. of Matrons, Nursing Sisters and all Nurses, Midwives and Health visitors. There is further a circular of the Railway Board dt. 13.5.1975 regarding grant of uniform allowance to nursing staff and among the category of nursing staff, Matrons, Nursing Sisters and all Nurses and lastly Midwives and Health visitors have been mentioned and the rate of the allowance has been Rs.200 p.a. On account of this and further on account of the duties performed by the Midwives and Health visitors, it is averred in the application that they have always been treated at par with the other para-medical staff employed in the hospital. It is further stated that Lady Health visitors' duties include giving pre natal and post natal care to the mothers. Thus it is stated that the duties of the applicants are akin to those of nurses and so they are entitled to the nursing allowance. It appears from the record annexed to the application also that the matter was considered and the Railway Board issued a letter

dt.18.6.1987 on the basis of an earlier letter of the Railway Board dt.26.7.1983 by which amendment has been effected and it included Matron, Nursing Sister, Midwives and Health visitors. A photocopy of the same is at p-16 of the paper book. Thus the case of the applicants is that they have been wrongly denied the nursing allowance of Rs.150 p.m. and they should be paid the same and the recovery of the paid allowance be not effected from them. On this basis on 2.12.1988, a letter was issued (Annexure A3) that Midwives and Health visitors are included in the nursing staff and the audit objection on the subject of irregular payment of nursing allowance to Midwives was over-ruled by the letter dt.30.4.1990 and the objection was dropped. However, it appears that subsequently again the matter was raised and General Manager (P) by the letter dt.1.6.1990 addressed to the Senior Medical Superintendent asked stopping of the payment of the nursing allowance to the Health visitors and Midwives. Firstly, the applicants through their association made representations on 14.7.1990 and another reminder was sent on 24.9.1990. It appears that the matter remained under consideration and no reply was given to the applicants.

3. The respondents contested the application and filed the reply that the duties of Midwives as well as Lady Health

visitors are different from the Nursing staff and they cannot be equated in any manner as per the definition of Midwife given in para 32 of the Indian Railway Medical Manual, 1981. The definition of Matron, Sister-in-Charge, Nursing Sister and Staff Nurse has also been reproduced in the counter from the Indian Railway Medical Manual, 1981. It is stated that the allowance was first introduced from 1.10.1986 and was clarified by GM(P) by the letter dt.2.5.1990 that it was admissible to Nurses only and not in case to Midwives or Lady Health visitors. Since the amount has been wrongly paid, so it was ordered to be recovered from the applicants. The Board's letter dt.5.5.1989 on the subject disallowed the grant of nursing allowance to Midwife. A copy of that letter No. E(P&A) IL-87/AL/1 has been produced at the time of the arguments by the learned counsel for the respondents. Thus according to the respondents, the applicants are not entitled to the reliefs claimed in the Original Application.

4. I have heard both the counsel at length and have gone through the record of the case. The matter stands simplified because the learned counsel for the applicants during the course of hearing has produced a letter issued by the Ministry of Railway dt.13.5.1990, RB No.77/92 on the subject of grant of

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nursing allowance, uniform allowance and washing allowance to nursing personnel-clarifications regarding para-2 thereof is material which is reproduced below :-

"The matter has been considered in consultation with the Ministry of Health and Family Welfare. It has been decided that Nursing Allowance may be made admissible to a REGISTERED nurses irrespective of their designation and level of work. In this context, it is also clarified that all REGISTERED Auxiliary Nurses-cum-Midwives, Female Health Workers, Multi-purpose Health Workers (Female), Lady Health visitors, etc. are also nursing personnel in accordance with the Indian Nursing Council Act."

When the matter has been considered by the Railway Board and the category Midwife and Health visitor has been treated at par with the nursing staff, so the grievance of the applicants that they are being discriminated is established without any further clarification. The circular of 1975, a copy of which is at p-12 and 13 of the paper book goes to show that Midwives and Health visitors were treated at par with the Nursing Sisters and Matrons etc. Subsequently also and in the letter dt.18.6.1987, it is evident that the benefit which was being given to the Nurses and Matrons was also allowed to the Midwives and Health visitors. Again in 1988, the Railway Headquarters have noted that Midwives and Health visitors also included for the grant of the laundry and uniform allowance at par with the Nursing Sisters. In the audit objection which was decided on 13.4.1990 regarding irregular payment of nursing

allowance, the matter was dropped after discussion with the Audit Department of the Railways. So it is evident that there is a practice prevalent in the Railways that the Midwives and the Health visitors were treated always at par with the Nurses and Nursing Sisters. Any discrimination in this regard on the basis of definition given in the Railway Medical Manual, 1981 would be against the principles of natural justice. In fact, the duty is performed by the applicants as Lady Health visitors as given in extenso in para-4.7 of the application. The respondents in the reply only quoted the definition of Midwife, but they have not specifically stated whether the applicants are performing the specific duties assigned by them as a part of job or not. In the rejoinder the applicants have pointed out that the definition relates only to Midwives and the applicants are working as Lady Health visitors. During the course of the arguments, the learned counsel for the respondents could not show any distinction between the various jobs performed by Lady Health visitors, Nursing Sisters and Nurses. Of course, the main duty of Nurses and Nursing Sisters is to care the patient and nurture him on the advice of the doctor and look after him during his treatment. The job of Lady Health visitor also is somewhat the

same with respect to the Gynaecological cases or in family planning cases. They also exhibit the same knowledge in giving pre natal and post natal care to the expectant mothers. Thus any discrimination of non award of nursing allowance would be against the principles of natural justice. Further the Railway Board itself by the letter dt.13.5.1992 considered the request and granted him nursing allowance to Midwives and Lady Health visitors.

5. In view of the above discussion, the application is allowed. The respondents are directed not to recover any payment made to the applicants towards the nursing allowance and if any recovery has been effected, the same be reimbursed to them and further the applicants be paid the nursing allowance at par with the Nursing Sisters, i.e., Rs.150 p.m. as also envisaged in the Board's letter dt.13.5.1992. The applicants may also be paid the arrears, if any, of the said allowance and be also paid for the period the amount has been withheld by the respondents on account of the Railway Board's letter dt.5.5.1989. The respondents shall comply with the above directions within a period of three months from the date of communication of this judgement. In the circumstances, the parties shall bear their own costs.

J. P. Sharma
14.5.92
(J.P. SHARMA)
MEMBER (J)