

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 3341/92

T.A.No.

Date of decision 14-9-98

Smt.S.Bedi & Ors

... Petitioner

Sh.S.K.Gupta

... Advocate for the
Petitioner(s)

VERSUS

UDI & Ors

... Respondents

Sh.K.R. Sachdeva

... Advocate for the Respondents

CORAM

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

The Hon'ble Shri K.Muthukumar, 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)

Central Administrative Tribunal
Principal Bench

O.A. 3341/92

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New Delhi this the 14 th day of September, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

1. Smt. S. Bedi, (nee Bawa),
W/o Shri Banarsi Dass,
R/o D-626, Mandir Marg,
New Delhi.
2. Mrs. Paramjeet Kaur,
W/o Sh. Vikram Khosla,
B-208, Majlis Park,
Azadpur,
Delhi-110033.
3. Mrs. Elveena Jatana,
W/o Sh. Ashok Jatana,
H-18, West Patel Nagar,
New Delhi-110008.
4. Mrs. Snehlata Dhingra,
W/o Sh. S.K. Dhingra,
G-8C, Harinagar, Jail Rd.,
Delhi.
5. Mrs. Golden,
W/o Sh. Wilfred Anderson,
A-378B, New DDA Flat,
New Ranjeet Nagar,
New Delhi.
6. Mrs. Chander Kanta,
W/o Sh. Kewal Kishore,
H.No. 9394/B4 Multani
Dhand, Paharganj,
New Delhi.
7. Mrs. Pharing,
W/o Mr. I.A. Waring,
173, Malviya Nagar,
New Delhi.
8. Jasbir Nagpal,
W/o Sh. S. Daljit Singh Nagpal,
H.No. 10158/10171, Block 15,
Gali No. 2, Abdul Aziz Road,
Sunder Singh Building,
Karolbagh, New Delhi.
9. Mrs. Sudesh Kumari Bawa,
W/o Sh. Banarsi Dass,
D-626, Mandir Marg,
New Delhi.

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10. Mrs. Usha Rani Verma,
W/o Sh. Nand Lal,
H.No. 816, Prem Nagar,
Near Lodi Colony Rly. Stn.
New Delhi-110003.

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11. Mrs. R. Sardana,
W/o Sh. Y.P. Sardana,
B-A-49-A, Ashok Vihar,
Phase-I,
Delhi-110052.

12. Mrs. Rajwinder Kaur,
W/o Sh. S.P. Singh,
Flat No. 21, B.I.
Rohini, Sector-18,
New Delhi.

13. Mrs. Snehlata Taneja,
W/o Sh. Vijay Taneja,
D/490, Mandir Marg,
New Delhi.

14. Mrs. Nishi Bhalla,
W/o Sh. Inderjeet Bhalla,
Hastal Village, House No. 200.

15. Mrs. Neelam Kapoor,
Flat No. 46, Pocket-D,
Mayur Vihar, Phase-II,
Delhi.

16. Mrs. Manju,
W/o Sh. S.P. Dhondhiyar,
74B/D2, DDA Flats,
Janakpuri, New Delhi.

17. Sh. L. Abraham,
Mayur Vihar, Phase-II,
Delhi.

... Applicants.

By Advocate Shri S.K. Gupta.

Versus

Union of India through

1. The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110 011.

2. The Secretary,
Ministry of Finance,
Department of Expenditure,
New Delhi.

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

... Respondents.

By Advocate Shri K.R. Sachdeva.

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O R D E R

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

The applicants who are working in the category of Non-Resident Staff Nurses are aggrieved by the action of the respondents in not granting them the revised pay scale by the impugned orders dated 8.5.1992 and 1.9.1992. They have also sought a direction to the respondents to merge the cadre of Non-Resident Nurses with that of Staff Nurses and they may be made eligible for promotion to the next higher grades.

2. According to the applicants, even though they are Non-Resident Nurses, they perform similar duties as Staff Nurses, particularly, those employed under the CGHS as they relate to patient care. They have also submitted that, in fact, they have to perform additional and higher duties to those performed by the Staff Nurses. The applicants state that from the initial date of appointment, they are given the pay scale of Rs. 1200-1800, as revised w.e.f. 1.1.1986. The other main grievance submitted by Shri S.K. Gupta, learned counsel for the applicant, is that as Non-Resident Nurses, the applicants have no avenues of promotions even after putting in more than 20-25 years of service. This, he submits, is against the accepted principles of good administration which should, therefore, be rectified. He has relied on the judgement of the Supreme Court in *Raghunath Prasad Singh Vs. Secretary (Home), Police Department, Government of Bihar & Ors.* (1988 SCC (Supp) 519, *CSIR & Anr. Vs. K.G.S. Bhatt and Anr.* (1990 (Supp) SCC

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692) and Dr. Ms. O.Z. Hussain Vs. Union of India (1990 (Supp) SCC 688). Shri S.K. Gupta, learned counsel, has very vehemently submitted that the applicants are stagnating in their posts. He has relied on these judgements of the Supreme Court to show that the respondents are bound to provide some promotional opportunities to the applicants without causing frustration and stagnation to them in their service career. He has also submitted that if reliance is placed on the recommendations of the 5th Pay Commission on Para 54.64, they will get the benefit of Assured Career Progression (ACP) Scheme, then the respondents may be directed to take a decision in this regard within a period of three months on the recommendations. For this, he relies on an earlier order of the Tribunal dated 13.1.1998 in **Rajbir Sharma Vs. Union of India (OA 1136/97)**.

3. We have seen the reply filed by the respondents and heard Shri K.R. Sachdeva, learned counsel. They have submitted that Non-resident Nurses cannot compare their pay scale with that of Staff Nurses posted in Hospitals. They have stated that the applicants have opted for change of their posting from Staff Nurses to Non-resident Nurses. They have, therefore, stated that since most of applicants who were staff Nurses have opted for posting as Non-resident Nurses in the scale of Rs.1200-1800 on their own volition, they do not now have any cause of action as set out in the O.A. Shri K.R. Sachdeva, learned counsel, has also submitted that Non-resident Nurses is a dying cadre as noted by the 5th Pay Commission

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✓ in Para 52.64 of their recommendations (copy placed on record). He has, therefore, submitted that the O.A. may be dismissed.

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4. From the additional affidavit filed by the parties, it is seen that two of the applicants have since retired from Government service; two have shifted to the cadre of Staff Nurses from the cadre of Non-resident Nurses. According to the official respondents, there are only 13 Non-resident Nurses remaining in position on that date. It is seen from the affidavit filed by the applicants themselves, that seven of them were appointed as Staff Nurses and later on changed their cadre to Non-resident Nurses.

5. From the above, it is seen that a sizeable number of applicants though appointed as Staff Nurses, have voluntarily opted to change to lower a scale of pay of Rs.1200-2040, when they opted to come to the cadre of Non-resident Nurses. The averments made by the respondents that the hours of duty, nature and volume of work, etc. are different between the Staff Nurses and Non-resident Nurses, have not been shown to be in any way incorrect by the applicants, by placing any documents on record. In the circumstances, the claim of the applicants for parity in pay scales with that of Staff Nurses w.e.f. 1.1.1986 is not tenable in law or justified and is accordingly rejected. It is also settled law that the Court or Tribunal should not normally interfere in the matter of

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pay scales which should be left to expert bodies like the Pay Commissions, unless it is totally arbitrary, which is not the case here.

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6. With regard to promotional avenues, we find that the 5th Pay Commission has specifically dealt with the case in paragraph 52.64 which reads as follows:

"52.64. There is a category of non-resident nurses in the Central Government Hospitals viz. Safdarjang, Ram Manohar Lohia and JIPMER Hospitals. There were only 46 such posts at the time of the Fourth CPC, as against 87 at the time of the Third. At present there are 20 posts of non-resident nurses in Safdarjang Hospital, 13 in JIPMER and 22 in RML Hospital, totalling 55. Their qualifications are those of staff nurses, but they work only for 6 hours without break, in the Out-patient Department. They have demanded upgradation to the level of Staff nurses, adequate promotion opportunities and reintroduction of the selection grade granted earlier. Though the educational qualification of the non-resident nurses is similar to that of staff nurses, the administrative Ministry has advised that the cadre of non-resident nurses is a dying one and is being phased out. We do not recommend upgradation in view of the difference in the nature of duties. As regards grant of the benefit of Selection Grade the ACP scheme will take care of career progression".

7. We are not aware of the decision taken by the Government on the basis of the recommendations of the 5th Pay Commission. The submissions made by Shri S.K. Gupta, learned counsel, that a direction may be given to the respondents to take a decision on the ACP Scheme within three months based on our earlier decision in OA 1136/97 is also without any basis. In the order dated 13.1.1998 in OA 1136/97 in which one of us (Smt. Lakshmi Swaminathan) was ~~also~~ a Member, the

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4 O.A. was disposed of calling upon the respondents to examine the applicant's case in the light of the Government decisions on the aforesaid recommendations of the 5th Pay Commission and take a final decision in the matter as expeditiously as possible.

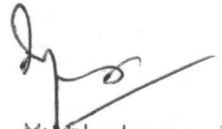
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8. In the result, DA is disposed of as follows:-

(i) the claim of the applicants for higher pay scale is rejected;

(ii) Respondents to examine the applicants' case with regard to the recommendations of the 5th Pay Commission for career progression and take a decision in the matter as expeditiously as possible.

No order as to costs.


(K. Muthukumar)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

"SRD"