

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1628/93

199

T.A. No.

DATE OF DECISION 3-5-99

10

Smt.S.E.David

....Petitioner

Sh.B.S. Maine

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors.

....Respondent

Sh.B.S. Jain

....Advocate for the
Respondents.

CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman (A)

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

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. 1628/93

(11)

New Delhi this the 3rd day of May, 1999

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Smt. S.E. David,
wife of Shri Suresh Chand Verma,
Midwife,
Northern Railway,
Central Hospital,
Connaught Place,
New Delhi.

... Applicant.

By Advocate Shri B.S. Maine.

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
 2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
 3. The Chief Hospital Superintendent,
Northern Railway Central Hospital,
Connaught Place,
New Delhi.
- ... Respondents.

By Advocate Shri B.S. Jain.

O R D E R

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

The applicant has filed this application stating that the respondents have discriminated against her in not granting Special Pay of Rs.35/- per month and also not fixing her in the pay scale of Rs.975-1540, although her juniors have already been given the Special Pay and they have been placed in this pay scale.

2. The applicant states that she had passed the Auxillary Nurses and Midwives (ANMs) course and obtained a certificate from St. Stephen's Hospital, New Delhi in 1961. She

12

has also stated that she was registered as ANM with Punjab Nurses Registration Council. She was appointed with the respondents on 16.9.1964 as Mid-Wife in the pay scale of Rs.260-350. According to her, in terms of Railway Board's letter dated 26.6.1985, it was decided that the ANMs in the scale of Rs.260-350 as also the non-functional scale of Rs.320-400 may be granted special pay of Rs.35/- per month w.e.f. 1.1.1985. She has stated that she has also been working with the respondents and relies on the certificate issued by the DMO, Central Hospital, dated 28.12.1987. She states that after her appointment under the DRM, Lucknow, she was transferred under DRM, New Delhi in 1969 and thereafter transferred to Central Hospital. Shri B.S. Mainee, learned counsel, has submitted that the applicant is entitled for the higher grade, after the recommendations of the 4th Pay Commission were accepted and also the special pay of Rs.35/- as her juniors have been given this benefit. The applicant has stated that she had made a representation in October, 1991 followed by other representations to the General Manager, Northern Railway, which has not been agreed to by them which, according to the learned counsel, is illegal and arbitrary. Learned counsel has submitted that as the applicant passed the ANMs course from a recognised institution and has been performing the duties of ANMs since her appointment, she is entitled to be paid the special pay of Rs.35/- per month and for placement in the higher pay scale of Rs.975-1540.

3. The respondents in their reply have controverted the averments made by the applicant. According to them, the applicant was appointed as temporary Mid-Wife in the grade of Rs.110-155 and not in grade Rs.260-350 and she joined service on 14.9.1964. They have contended that under the Railway Board's letter only ANMs are entitled for special pay and not Mid-Wives

13

and hence the applicant was not entitled to the special pay. Shri B.S. Jain, learned counsel for the respondents has also submitted that the certificate relied upon by the applicant which was issued by the Divisional Medical Officer is the Central Hospital, New Delhi dated 28.12.1987 is not in order and his contention is that the applicant was working only as Mid-Wife and not as ANM. However, in reply to paragraphs 4.9 and 4.10, the respondents have stated that the posting and transfers of the applicant are matter of record. The applicant has stated that while she was first posted under DRM, Lucknow, later transferred to New Delhi in 1969 where she worked upto 1973, she was thereafter transferred to Central Hospital out of the staff mentioned in Annexure A-6. The respondents have submitted that the seniority is Division-wise and while she may have the qualification of ANMs, she was only recruited as Mid-Wife and as such she is not entitled to the benefit of special pay which was applicable to ANMs.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. In the Railway Board's letter dated 26.6.1985 which was circulated by letter dated 12.7.1985 to the General Managers, All India Railways, the decision of the President was conveyed that the ANMs in the scale of Rs.260-360 and those in the non-functional selection grade of Rs.320-400 may be granted a special pay of Rs.35/- p.m. w.e.f. 1.1.1985. It was mentioned therein that the orders will, however, not apply to the ANMs in the Family Welfare Organisations in the Railways. However, later by Railway Board's letter dated 10.11.1987, the revised pay scales for ANMs were extended for those working in Family Welfare Organisations. The applicant has contended that after her appointment in the Northern Railway in September, 1964 as Mid-

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Wife, she was in the pay scale of Rs.260-350 after the 3rd Pay Commission which has not been effectively controverted by the respondents. In the Bikaner Division, certain other Mid-Wives who were working in the grade of Rs.260-350 (RS) and also in the pay scale of Rs.320-400 (RS) were designated as ANMs and granted the special pay of Rs.35/- per month w.e.f. 1.1.1985. We note that although the respondents have submitted that the applicant may have the qualification of ANMs since she was recruited only as Mid-Wife, no special pay could be granted to her. The respondents have nowhere explained as to why certain other Mid-Wives/ANMs working in Bikaner Division of the Railways were designated as ANMs and entitled to the special pay which has been denied to the applicant who was transferred to the Central Hospital, New Delhi. We find from the reply filed by the respondents that no reasonable or tangible reasons as to why the applicant, who apparently has the qualification for ANM, and who states that she was in the grade of Rs.260-350 (RS) could not also have been similarly designated as ANM, as done by the respondents in their Delhi Division and Bikaner Division. In the absence of any reasonable criteria followed by the respondents in excluding the applicant, we see no good reason to deny the applicant the special pay of Rs.35/- while working in the Central Hospital, New Delhi ~~under RS~~ as given to other similarly situated persons, ^{working under RS} ~~under RS~~ the respondents in Delhi Division and Bikaner Division, including some juniors to her while she was in Bikaner Division earlier. It is also relevant to note that while the applicant has stated that she was working as Mid-Wife in the scale of Rs.260-350 after the 3rd Pay Commission, there is no specific denial of this fact in the reply.

6. Therefore, taking into account the totality of the facts and circumstances of the case, this application is entitled to succeed. The respondents are directed to grant the special pay.

18-

(15)

of Rs.35/- along with a revision of pay scale in terms of Railway Board's letters dated 26.6.1985 and 10.11.1987. However, since the applicant has filed this O.A. only on 27.7.1993, she will be entitled to arrears of special pay of Rs.35/- per month w.e.f. 1.10.1993. The revision of pay scale shall be done in accordance with the relevant rules and instructions treating her as ANM, but she will not be entitled to any arrears before the same date i.e. 1.10.1993 but will be entitled to notional fixation as on that date. The respondents shall take necessary action within a period of three months from the date of receipt of a copy of this order. No order as to costs.

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

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

'SRD'