

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR**

Date of Decision : 25.07.03

O.A. No.319/2002.

1. Vishva Deo S/o Shri Sukhram, R/o House No.154, Subhash Chowk, Ratanada, Jodhpur, Ex-serviceman at present posted at Nursing Orderly where as working on the post of Staff Nurse in Post & Telegraph Dispensary, Jodhpur (Rajasthan).

... Applicant.

V e r s u s

1. Union of India through The Secretary, (P&A) & Pensions (department of Personnel and Training), New Delhi.
2. The Deputy Director General (Medical), Lucknow, C.P.M.G. Compound, Lucknow.
3. Senior Superintendent of Post Office, Jodhpur Division, Jodhpur.
4. Chief Medical Officer, Post & Telegraphs Dispensaries, Ajmer & Jaipur (H.Q.), Jaipur (Raj.).

... Respondents.

Mr. P.R.Singh, counsel for the applicant.
Mr.D.S.Rajiv, counsel for respondents.

CORAM

Hon'ble Mr.Justice G.L.Gupta, Vice-Chairman,
Hon'ble Mr. R.K.Upadhyaya, Administrative Member.

: O R D E R :

PER Mr. JUSTICE G.L. GUPTA:

Through this application the applicant seeks regularisation/promotion on the post of Staff Nurse on the ground that he has been continuously working on the post w.e.f. 1.5.96. He also claims salary of the post of Staff Nurse from 1.5.96.

G.L.Gupta

2. Applicant is posted as Nursing Orderly in the P&T Dispensary Jodhpur. He had earlier served in the Indian Army as Nursing Assistant and retired from there on 1.12.1988 on completion of 20 years active service. After his retirement the applicant was re-employed in the P & T Dispensary, Jodhpur on the post of Nursing Orderly. It is averred that from 1996 onwards the applicant has been performing the duties of Staff Nurse. He made representation to the respondents for giving him promotion on the post of Staff Nurse and also to make payment of the salary of the post of Staff Nurse but nothing has been done. Hence, this O.A.

3. In the counter, the respondents' case is that the post of Nursing Orderly is not the feeder post for the post of Staff Nurse as per the recruitment rules and therefore the applicant cannot be promoted to the post of Staff Nurse nor can he be regularised on that post. It is stated that the applicant was never posted as Staff Nurse and even if the Chief Medical Officer utilised his services on the post of Staff Nurse it does not entitle the applicant to the salary of the post of Staff Nurse. It is also stated that the case of the applicant was examined for the grant of honorarium but in view of the provisions under FR-46 honorarium could not be granted to him.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. The contention of Mr. Singh was that two inspection reports Annexure A/11 and Annexure A/12 clearly show that the applicant has been working as Staff Nurse and therefore he is



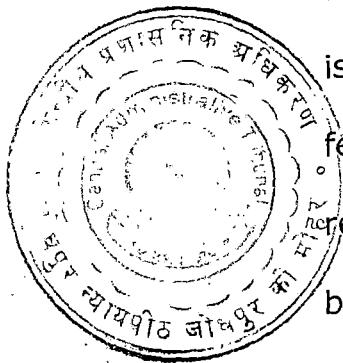
entitled to the salary of the post of Staff Nurse. His further contention was that the applicant has performed the duties of Staff Nurse in addition to his own duties and therefore he has at least a right to get extra remuneration either under FR-49 or FR-46.

6. On the other hand, the learned counsel for the respondents contended that the request of the Chief Medical Officer for appointing the applicant as Staff Nurse was turned down way back in the year 1996 vide Annexure R/1 and R/2 and therefore the respondents are not liable to pay anything to the applicant.

He pointed out that the competent authority never asked the applicant to perform the duties of Staff Nurse.

7. We have given the matter our thoughtful consideration. It is not in dispute that the post of Nursing Orderly is not the feeder post for promotion to the post of Staff Nurse as per the recruitment rules and the post of Staff Nurse can be filled only by way of direct recruitment in accordance with the procedure prescribed under the Recruitment Rules of 1964. As the Nursing Orderly post is not the feeder post for the post of Staff Nurse this Court cannot give direction to the respondents to give promotion to the applicant to the post of Staff Nurse or to regularise his services on the post of Staff Nurse.

8. It is, however, seen that the applicant has performed the duties of Staff Nurse in the years 1998 and 1999. This fact is evident from the two inspection notes Annexure A/11 and A/12 which had been recorded by none else than the officer of the rank of Postmaster General. It is seen that before the Inspecting Officers the applicant had raised his plea for higher



remuneration for the extra work performed by him but his request was not accepted as it was not covered under FR-46. Be that as it may, this fact cannot be denied that the applicant has performed the duties of Staff Nurse at least in the years 1998 and 1999.

9. According to the applicant, he has performed the duties of Staff Nurse in the year 1996, 1997 and even after 1999 also. It is seen that the Chief Medical Officer who took the work of Staff Nurse from the applicant did so without obtaining the orders of the Competent Authority. Rather the CMO had been restrained from taking work from the applicant of the post of Staff Nurse vide communications Annexure R/1 and R/2.

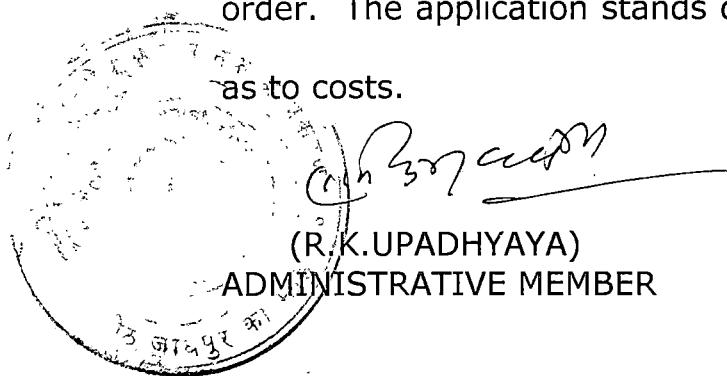
10. In any case the applicant has performed the duties of Staff Nurse in addition to his duties. It may be that his case is not covered under FR-46, yet the matter requires serious consideration by the highest authority. The matter may be considered after seeking relaxation of the rules on the subject. If the then Chief Medical Officer without obtaining the orders from the higher authorities had taken the work of the post of Staff Nurse from the applicant, action should have been taken against him. The applicant cannot be said to be at fault when he performed the duties of Staff Nurse. It is evident that he performed the duties under the orders of Chief Medical Officer who was his immediate higher officer.

11. Consequently, this application is disposed of with directions to the respondents to consider the case of the applicant for the grant of honorarium under FR-46 or under the Government of India orders issued under the said FR or under



FR-49 (iii). If relaxation of the rules is required for this purpose the highest authority may consider the same in this regard. A conscious decision is directed to be taken in the matter within a period of six months from the date of communication of this order. The application stands disposed of accordingly. No order

as to costs.



(R.K.UPADHYAYA)
ADMINISTRATIVE MEMBER


(G.L.GUPTA)
VICE-CHAIRMAN

SVS

Copy of order sent to the counsel
for Respondent video 215
16 19-8-03

AD found with
sign

M
15/8/03

Part II and III destroyed
in my presence on 25-3-09
under the supervision of
Section officer () as per
order dated 13-1-2009

Section officer (Record)

Recd copy
Govt of India
15/8/03