

17/16

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 4/2005

Date of decision: 09.05.2007

Hon'ble Mr. Kuldip Singh, Vice Chairman,

Hon'ble Mr. R.R. Bhandari, Administrative Member.

Vishva Deo, S/o shri Sukhram, aged 58 years, r/o House No. 154, Subhash Chowk, Ratanada, Jodhpur at present posted as Nursing Orderly in P & T Dispensary, Jodhpur (Rajasthan)

: Applicant.

Mr. P.R. Singh proxy counsel for : Counsel for the applicant.
Mr. Devendra Singh

VERSUS

1. Union of India through the Secretary P&A, Government of India, Ministry of Personnel, P.G and Pensions. Deptt. Of Personnel and Training, New Delhi.
2. The Deputy Director General (Medical), Lucknow, CPMG, Compound, Lucknow.
3. Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.
4. Chief Medical Officer, Post and Telegraphs Dispensaries, Ajmer & Jaipur (HQ) Jaipur, Rajasthan.

: Respondents.

Rep. By Mr. M. Godhara proxy counsel for
Mr. Vinit Mathur : Counsel for the respondents.

ORDER

Per Mr. Kuldip Singh, Vice Chairman.

The applicant has filed this O.A seeking the following

reliefs:



" It is therefore, humbly prayed that this Hon'ble Tribunal may kindly be please to accept and allow this original application and the order dated 08.09.2004 (Annex. A/1) may kindly be quashed and set aside.

That by an appropriate order or direction the respondents may be directed to grant honorarium in accordance with the order dated 25.08.2003 passed in O.A No. 319/2002 by this Hon'ble Tribunal.

/s/

3. That the respondents may be directed to pay interest @ 24% per annum.
4. That any order which this Hon'ble Tribunal may deem just and proper, may also be passed in favour of the applicant.
5. That cost of the O.A may be awarded to the applicant.

17

2. This is second round of litigation in the same issue. The applicant had earlier filed O.A No. 319/2002, seeking similar reliefs, which was decided by this Bench of the Tribunal on 25.07.2003. The facts in brief as alleged by the applicant are that the applicant is an ex-service man and after his retirement from the active military service he was reemployed in the respondent department, vide Annex. A/4 as Nursing orderly. The applicant claims that while he was serving in the Army Medical Corps, he had all the essential qualifications for the post of Nursing Assistant.

3. It is further stated that while the applicant was working as Nursing Orderly on re-employment under the respondents, one Smt. D.R. Bella, Staff Nurse retired from service on 30.04.96 and the applicant was asked to work on the post of Staff Nurse with effect from 01.05.96 on the vacancy caused by the retirement of Smt. D.R. Bella. The said post remained vacant and the applicant had been performing the duties of Staff Nurse till the year 2002. Therefore the applicant had submitted several representations to grant him the equal pay of the post of staff nurse from 01.05.96, but to no avail.



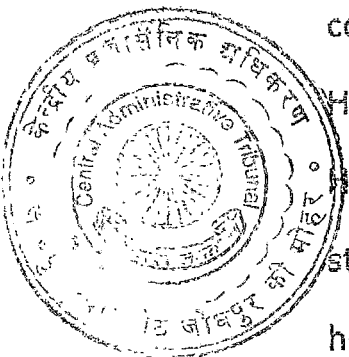
It is further stated that the applicant is still working on the post of Staff Nurse. In the inspection report of the year 1999, it

17

had been mentioned that the applicant is performing the duties of Staff Nurse. Even then the applicant has not been paid the remuneration meant for the post of Staff Nurse. The applicant, therefore, had earlier filed O.A. No. 319/2002, claiming equal pay of the post of Staff Nurse. The said O.A was disposed of vide order dated 25.07.2003. In the said order the Court had observed 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 said post can be filled only by way of direct recruitment in accordance with the procedure prescribed under the Recruitment Rules of 1964 and hence this Court cannot give direction to the respondents to give promotion to the applicant to the post of Staff Nurse and the following order was passed.

" Consequently, this application is disposed of with a direction 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."

Thereafter the case was considered by the higher authorities in consultation with the Integrated Finance Wing of the Postal department and the Department of Personnel and Training. The Integrated Finance Wing advised that the official may be considered for payment of some remuneration in the form of Honorarium in relaxation of FR 46 (b) with the approval of DOPT. However the DOPT has rejected the proposal of the department stating that no relaxation can be granted for making payment of honorarium to the applicant. Thereafter the impugned order has been passed. Challenging the same the applicant has filed the present O.A.



1
I/16/19

5. In the grounds of challenge, the applicant has stated that he served as nursing assistant in the Indian Army which is equivalent to the post of Staff Nurse and he had been performing the duties of staff nurse since 01.05.96, after the retirement of Smt. D.R. Bella, which fact has been recorded in the various inspection notes made by the department. The Court had already directed the respondents to consider case of the applicant under FR 46 or FR 49 (iii) and therefore he could have been granted the pay or honorarium and the present OA deserves to be allowed.

6. The respondents have resisted the O.A by filing a detailed reply. The respondents have stated that the applicant was not appointed to the post of Staff Nurse by any formal order and he could not be promoted to the post of Staff Nurse since the Nursing Orderly post is not a feeder post for Staff Nurse. Hence the applicant cannot be given any benefit either under F.R. 46 or FR 49 (iii). They have prayed for the dismissal of the O.A.

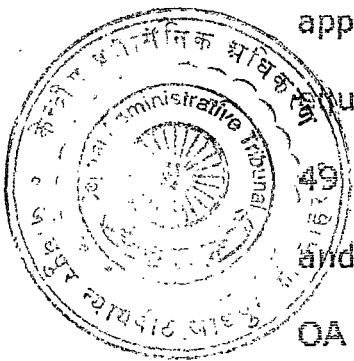


We have heard the learned counsel for both sides and carefully perused the pleadings of the case. We have also considered the rival contentions. The only question for determination is whether the applicant could be treated as performing the duties of Staff Nurse when he was ordered to look after the post of Staff Nurse by the Chief Medical Officer without the sanction of competent authority and can the applicant be paid

[Handwritten signature]

I/8
2/20

any honorarium or allowance under FR 46 or FR 49 (iii). A perusal of the both the FR 46 and FR 49 (iii) makes it clear that a person would be eligible for honorarium if he is **formally appointed** (emphasis supplied) to hold the charge of another post by the competent authority to perform the job of the higher post in accordance with the rules. Admittedly, in this case, the applicant has been directed to perform the job of Staff Nurse without any formal order issued by the competent authority and he has been asked to look after the duties of the Staff Nurse by the Chief Medical Officer, who is not the competent authority. Hence the applicant's case is not covered either under FR 46 or FR 49 (iii). Even if a person is asked to hold the charge of another post, he cannot be asked to hold the post for more than three months and if it is necessary to hold the post beyond three months the concurrence of the Ministry of Finance should be obtained. It is no doubt true that the applicant was asked to perform the duties of Staff Nurse as purely local arrangement without any formal order by the competent authority. Hence the applicant is not entitled to any special pay or honorarium or equivalent pay of the post of Staff Nurse either under FR 46 or FR 49 (iii). Therefore the prayer of the applicant is to be rejected and no interference is called for from this Tribunal. Therefore the OA is liable to be dismissed and accordingly we do so. No costs.



R.R Bhandari
(R.R Bhandari)
Administrative Member

Kuldip Singh
(Kuldip Singh)
Vice Chairman.

