

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No. 029/00013/2014

Jodhpur, this the 12th day of February, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

1. Virendra Jodha s/o Shri Kiran Singh, aged 36 years, r/o M-43D, Railway Medical Colony, Jodhpur.
2. Daluram Chaudhary s/o Shri Balaram Chaudhary, aged 32 years, r/o T-180D Railway Medical Colony, Jodhpur (both posted as Nurse A, at Railway Divisional Hospital, Jodhpur).
3. Dullaram s/o Shri Sawal Ram, aged 32 years, r/o Quarter No. T-11A, Traffic Colony, Merta Road, Dist. Nagaur (Raj.).

(Posted as Nurse A, at Railway Health Unit, Merta Road, Nagaur)

.....Applicants

By Advocate: Mr. Jog Singh

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur (Raj.)
2. The Divisional Railway Manager, North Western Railway, DRM Office, Jodhpur.
3. The Chief Medical Superintendent, North West Railway, DRM Office, Jodhpur
4. The Senior Divisional Personnel Officer, North Western Railway, DRM Office, Jodhpur.

.....Respondents

By Advocate : Mr. Salil Trivedi



ORDER (ORAL)

The applicants in this OA have challenged the order dated 23.12.2013 (Ann.A/1) by which two increments given to them on account of B.Sc. degree qualification have been stopped by the respondents, therefore, they have prayed for the following reliefs:-

“In view of above submissions it is most respectfully prayed that this Original Application may kindly be allowed with costs and the impugned order of deduction/stoppage of two advance increments (annex.A/1) dated 23.12.2013 and annex.5 dated 25.10.2013 may kindly be quashed and set aside. It is further prayed that by issuance of an appropriate order or direction the respondent authorities to continue the benefit of two advance increments as per provisions of item (iii) of Para 160 of Indian Railways Establishment Manual (IREM) qua the applicants. Any other relief which this Hon’ble Tribunal deems just and proper in the case may also please be awarded.”

2. A Misc. Application No. 290/00006/2014 for pursuing the remedy jointly was filed by the applicant and the same was allowed by the Tribunal vide order dated 08.01.2014.

3. Brief facts of the case, as stated by the applicants, are that the applicants have been appointed through Railway Recruitment Board under different categories hence they are direct recruits. The requisite qualification for the post of Staff Nurse is Diploma in Nursing whereas the applicants have acquired B.Sc. (Nursing) Degree. Hence, vide item (iii) of Para 160 of the IREM, they are entitled for the benefit of two advance increments. Appointment letter of applicant No. 3 is at Annex. A/2. The other applicants approached the respondent authorities and after considering their representations, the respondents have issued orders for grant of two advance increments

along with their basic pay (Annex. A/3), which was revised to 3% of the basic pay as per RBE No. 33/2012 letter dated 14.03.2012 (Ann.A/4). Thereafter the respondents continued granting two increments but after more than a year of passing of Ann.A/4, respondent No.3 issued impugned order dated 25.10.2013 ordering stoppage of two increment of the applicants while mis-interpreting Ann.A/4 and at his own interpretation that the Railway Board has directed them to stop the increments of personnel who are appointed after 01.01.1996. The respondents deducted two increments and issued amended pay determination from the date of their appointment (Ann.A/5) and the applicants were directed to file objection/representation, if they feel aggrieved of the deduction, else it will be assumed they are satisfied by the same. Being aggrieved, they have filed representation and also approached their forum, National Federation of Indian Railwaymen and requested that the matter be taken up with the Railway Board for clarification. After receipt of representation, without considering the same and without consulting the situation with higher ups, respondent No.4 issued letter of stoppage and deduction of increments to the respective headquarters of the applicants and given interpretation to Ann.A/4 stating that it is direction in Ann.A/4 that the minimum qualification given in Recruitment Rules for Staff Nurse is Diploma in Nursing or B.Sc. Nursing, therefore, additional increments are not admissible, hence deduction from salary will be made to those B.Sc. Nursing staff recruited after 1996 (Ann.A/1). Therefore, feeling aggrieved of stoppage of two advance increments, the applicants have filed this OA praying for the reliefs as extracted above.



4. In reply to the OA, the respondents have stated that by virtue of provisions contained in RBE 33/2012 entitlement of additional two increments are admissible to those staff who possess additional qualification other than prescribed for recruitment to a particular category. The educational qualification for recruitment on the post of Staff Nurse as provided in para 160(2) of IREM Vol.I is as under:-

“Qualification: Candidatures should possess certificate as “Registered Nurse & Mid Wife having passed three years course in General Nursing and Midwifery from a school of Nursing or other institution recognized by the Indian Nursing Council or B.Sc. (Nursing).

The respondents have further stated that interpretation put forward by the applicants regarding para 160(2) is not correct as a matter of policy of any category. If a candidate is recruited on the basis of some prescribed educational qualification and in future if he acquires some higher qualification in that stream, then only the benefit of incentive is available. The subject matter has also been clarified by the General Manager (Personnel), NWR, Jaipur vide letter dated 8.1.0.2013 (Ann.R/1). Thus, in view of above, all those Staff Nurses appointed before 01.01.1996 having B.Sc. (Nursing) degree should actually be allowed to draw two additional increments and admittedly all the applicants are subsequently recruited after 01.01.1996, therefore, the advance increments were wrongly extended, and when this mistake was brought to the notice, then the same was rectified by respondents vide letter dated 25.10.2013, which is perfectly in consonance with the rules and instructions issued by the Railway Board and the same does not warrant any interference. According to the instructions, only those Staff Nurse appointed before 01.01.1996

should be allowed two advance increments and as such the increments allowed to the Staff Nurse appointed after 01.01.1996 was wrong, therefore, the same was rightly withdrawn by the respondents and the applicants are not entitled to any relief.

5. Heard. Counsel for applicant submitted that as may be seen from Annex. A/2, the applicant No. 3 Shri Dullaram S/o Shri Sawalram was appointed as Staff Nurse Grade Rs 5000-8000/- vide order dated 13.09.2005 and he was also given Rs 300/- as two advance increments for B.Sc. Nursing qualification. Further as may be seen from Annex A/3 dated 16.11.2007, the applicant No. 1 Shri Virendra Jodha appointed on 16.07.2007, and the applicant No. 2 Shri Daluram Choudhary appointed on 19.07.2007 as Staff Nurse respectively, were also granted two advance increments for possessing the qualification of BSc Nursing as they had made representation to the respondents on the basis of advance increments given to the applicant No. 3 vide order dated 13.09.2005 (Annex. A/2). Counsel for applicant drew attention to the provision of Indian Railway Establishment Manual (IREM) para 160 item (iii) (as the conditions and other benefits of the service of the applicants are governed by IREM) where under heading "Incentive" following provision is there : *"Staff Nurses, Nursing Staff, Matrons and Chief Matrons who possess at the time of recruitment or acquire subsequently a degree in Nursing will be granted two advance increments."* and further submitted that there has been no change in these provisions. Counsel for applicant further referred to Annex. A/5 dated 08.11.2013 by which the advance increments being given were withdrawn on the basis of instructions

contained in RBE No. 33/20012 dated 14.03.2012 (Annex. A/4). As the withdrawal of advance increments was in violation of para 160 (iii) of IREM all the applicants made representation on the same grounds and the representation of applicant No. 2 dated 29.11.2013 may be seen at Annex. A/6 and further even the Nation Federation of Railwaymen's wrote to the Railway Board vide their letter dated 05.12.2013 (Annex. A/7) that withdrawal of the benefits of two additional increments is not justified as per IREM. The representation of the applicants was rejected vide Annex. A/1 dated 23.12.2013 on the ground of circular RBE No. 33/2012 and clarification dated 08.10.2013 because as per Recruitment Rules for Staff Nurses, the minimum qualification is diploma or BSc (Nursing) and as such they are not entitled to two additional increments as per rules, and accordingly deductions have been made from salary of B.Sc. Nursing Staff recruited after 01.01.1996..

6. In this context, counsel for applicant also cited judgment of CAT Jaipur Bench dated 05.11.2014 passed in OA No. 829/2013 where matter under adjudication was similar/identical and the Tribunal came to the conclusion as under:

14. The Vigilance Department in their note have rightly pointed out that there is a discrepancy between the provisions of IREM Para 160 and the circulars of Railway Board No.37/2005 and 33/2012. Because in para 160 of IREM there is no restriction or mention that the incentive of two advance increments to the nursing staff who possess at the time of recruitment or acquire subsequently the degree in nursing will be granted two advance increments is applicable only to those nursing staff who were appointed prior to 1.1.1996. Whereas this

restriction has been mentioned in the Railway Board circulars RBE No.37/2005 dated 28.2.2005 (Annexure A/6) and RBE No.33/2012 dated 14.3.2012 (Annexure A/8). Therefore, before taking any decision with regard to withdrawal of two advance increments of the applicants the competent authority should have cleared the position in this regard and only after coming to a finding that the facility of 2 advance increments is available only to those staff nurses which were appointed prior to 1.1.1996 is applicable then he/she should have passed a reasoned and speaking order. I understand that the provision of IREM have a All-India implication and so do the circulars issued by the Railway Board and it is not limited to a particular Railway.

15. Therefore, in view of the above discussions I direct the respondent No.1 to examine the whole issue again and see whether the provisions of the IREM have been subsequently clarified in circulars issued by the Railway Board. He would also examine as to what is source of stating in the circulars dated 28.2.2005 (RBE No.37/2005-Annexure A/6) and dated 14.3.2012 (RBE No.33/2012-Annexure A/8) that the facility of 2 advance increments is available only to the nursing staff holding B.Sc. degree as additional qualification appointed prior to 1.1.1996. If the respondent No.1 comes to a conclusion that these 2 advance increments are admissible only to the staff nurses appointed prior to 1.1.1996 then that decision would be applicable to all the staff nurses working under the jurisdiction of respondent No.1 and not only to the applicants. The provision of Para 160 of IREM clearly mentions that the incentive of 2 advance increments would be available to staff nurses who possess the degree in nursing at the time of recruitment or acquire subsequently that degree. This clearly shows that intention behind this is that even those staff nurses who do not possess a degree in nursing at the time of recruitment but acquire subsequently would be given two advance increments as an incentive. This provision also does not lay down any time limit for acquiring the degree in nursing after

recruitment to enable to staff nurses for this benefit of two advance increments.

16. In view of the above discussions the respondents are directed to continue the 2 advance increments to the applicants and not to recover any amount pursuant to the orders issued by them at Annexure A/1, A/2, A/3 and A/4 till the decision is taken by the respondent No.1 as directed in para 15 above."

In view of the above decision, counsel for the applicant prayed for similar relief.

7. Counsel for respondents in the context of this judgment submitted that the issue to be adjudicated upon in this OA is similar/identical to the case in which decision has been rendered by CAT Jaipur Bench (supra) and directions have been given to Union of India through General Manager, Western Railway, Jabalpur to examine the whole issue again with reference to provisions of para 160 of IREM and the circulars dated 28.02.2005 (RBE No. 37/2005) and 14.03.2012 (RBE No. 33/2012) issued by the Railway Board in this regard.

8. Considered the rival contentions and perused the judgment cited by counsel for applicant. In the present OA as the controversy is similar/identical to the controversy decided by CAT Jaipur Bench in OA No. 829/2013 on 05.11.2014, therefore, taking note of the same the respondents are directed to decide the issue in the light of the observations and directions made by the CAT Jaipur Bench in OA No. 829/2013 decided on 05.11.2014 and further the respondents are also directed to continue the two advance increments granted to the

applicants and not to recover any amount pursuant to the order dated 08.11.2013 (Annex. A/5) till the issue is decided by the respondents.

9. In terms of the above directions, the OA is disposed of with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member

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