

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos. 1236/2000, 1283/2000 & 151/2001

THURSDAY, THIS THE FIRST DAY OF NOVEMBER, 2001.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A.1236/2000

1. B.P. Pookunju S/o Ambath Chetta Muhammed,
Male Nursing Orderly,
Indira Gandhi Hospital,
Kavarathi
residing at Govt. Quarters, Kavarathi
2. K. Havva D/o Pallichetta Syed
Female Nursing Orderly, Community Health Service
Agatti Island
residing at Agatti Island, UT of Lakshadweep
3. P. Sakinabi D/o Shaikkoya P.
Female Nursing Orderly
Indira Gandhi Hospital
Kavarathi Island, U.T. of Lakshadweep
residing at Kavarathi Island
4. T.K. Kadeesabi D/o Mohammed A.K.
Female Nursing Orderly
Indira Gandhi Hospital
Kavarathi Island, UT of Lakshadweep
residing at Kavarathi Island
5. M.K. Zamarath S/o Aboobacker
Lab Attender, Indira Gandhi Hospital
Kavarathi Island, UT of Lakshadweep
residing at Kavarathi Island
6. A. Aboobacker Koya S/o Kidavkoya Sylaniodu
Male Nursing Orderly
Government Hospital, Minicoy Island
residing at Minicoy Island, UT of Lakshadweep
7. M.H. Attakidave S/o Adima
Male Nursing Orderly,
Primary Health Centre
Kadamath Island
residing at Kadamath Island
8. N.P. Beefathummabi D/o C.N. Pookoya
Female Nursing Orderly,
Primary Health Centre,
Kiltan Island
residing at Kiltan Island

9. K.C. Nusaimath W/o Shkaraf K.V.
Female Nursing Orderly
Primary Health Centre,
Chethlath Island
residing at Chethlath Island

10. K. Cheriyakoya S/o M. Koyla
Male Nursing Orderly,
Government Health Centre
Kalpeni residing at Kalpeni.

Applicants

By Advocates Mr. M. R. Rajendran Nair, Mr. M.R. Hariraj
and Mr. Sreeraj

Vs.

1. Union of India represented by
the Secretary to Ministry of
Health and Family Welfare
New Delhi.

2. Administrator
Union Territory of Lakshadweep
Kavarathi

3. The Director of Medical & Health Services
Union Territory of Lakshadweep
Kavarathi.

By Advocate Mr. P.R. Ramachandra Menon for R-2 & 3
Advocate Mr. K.V. Sachidanandan ACGSC for R-1

O.A. 1283/2000

K.K. Abdul Manaf Koya
Male Nursing Orderly
Primary Health Centre
Chethlath

Applicant

By Advocate Mr. M. R. Rajendran Nair, Mr. M.R. Hariraj &
Mr. Sreeraj

Vs.

1. Union of India represented by
the Secretary to Ministry of
Health and Family Welfare
New Delhi.

2. Administrator
Union Territory of Lakshadweep
Kavarathi

3. The Director of Medical & Health Services
Union Territory of Lakshadweep
Kavarathi.

By Advocate Mr. C. Rajendran, SCGSC for R-1

By Advocate Mr. P.R. Ramachandra Menon for R-2 & 3

O.A.151/2001

1. D. Noorjahan W/o C.N. Kunjukoya
Female Nursing Orderly
Community Health Centre
Agatti residing at Kunoosha Manzil, Agatti.
2. K. Khalid S/o Ahmed
Male Nursing Orderly,
Community Health Centre, Agatti,
residing at Chembrathy House,.....Applicants

By Advocate Mr. M. R. Rajendran Nair, Mr. M.R. Hariraj & Mr. Sreeraj

Vs

1. Union of India represented by
the Secretary to Ministry of
Health and Family Welfare
New Delhi.
2. Administrator
Union Territory of Lakshadweep
Kavarathi
3. The Director of Medical & Health Services
Union Territory of Lakshadweep
Kavarathi.

By Advocate Ms Vani, ACGSC for R-1
Advocate Mr. P.R. Ramachandra Menon for R 2 & 3

These Applications having been heard on 19.10.2001, the Tribunal delivered the following on 1.11.2001.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

As the issues involved in all these three Original Applications are the same, they were heard together and are being disposed of by this common order.

2. The brief details leading to the filing of these three Original Applications are given below.

O.A. No. 1236/2000 and O.A. No.1283/2000.

3. Applicants ten in number and one in number in the above two Original Applications are Nursing Orderlies and Lab. Technicians working in various hospitals and health centres of Union Territory of Lakshadweep. According to them they were appointed as such after training in accordance with

the training rules. In support of which they produced Annexure A-2 training rules for Male and Female Nursing Orderlies, 1974. They further claimed that A-2 would indicate that Nursing Orderlies were none other than Nursing Assistants. By A-3 order dated 11.2.87 Nursing Allowance to Nursing Personnel of all categories was granted, by A-4 and A-5 orders both dated 11.2.87 the rate of Uniform Allowances and Washing Allowances in respect of Nursing Personnel were enhanced. By A-6 order dated 29.1.92 it was clarified that all Registered Ancillary Nurse, Mid wife, Family Health Worker, Lady Health Visitors, Multi Purpose Health Workers, etc. etc. were Nursing personnel in accordance with the Nursing Council Act and hence all the said categories were entitled to allowances stipulated in A-3 to A-5. Pursuant to A-6 due allowances were paid and in certain hospitals even arrears of allowances were paid but the enhanced allowances were not paid. Thereafter the third respondent issued letter seeking clarifications from the Ministry. By A-7 letter dated 4.2.93 and A-8 letter dated 16.2.93 it was clarified that Nursing Orderlies did not come under category of Nursing Personnel as clarified by A-6. Aggrieved the applicants along with others approached this Tribunal in O.A. 468/93 and O.A. 948/93. These OAs were disposed of A-9 and A-10 orders dated 17.1.94 and 28.1.94 respectively permitting the applicants to make a detailed representation to the competent authority within four months after giving an opportunity to the applicants or their representative to put forward their cases. Accordingly the applicants made a detailed representation. Applicants' representative one T.I. Mohammed was given a personal hearing to present applicants' case but no orders were passed till issue of A-1 order dated

1.11.2000. According to the applicants the reason of A-1 order was that some others claiming to be similarly situated approached this Tribunal claiming grant of allowances. According to them the orders had not been issued after consideration of the issue by the same officers who granted a hearing to the applicants. As such the said hearing was reduced to an empty formality. They submitted that when there was a direction to pass orders within a time limit of four months, without seeking time from the Tribunal, it was not permissible for the respondents to issue the impugned order. As such the respondents had made the issue final as far as the applicants were concerned by acquiescence. It was not permissible to resurrect the dead issue only because some one similarly situated claimed the same relief. The reasoning in A-1 was improper and illegal. The applicants were doing the same quantity and quality of work as done by the Staff Nurse on most occasions. It was mandatory to wear uniforms. There was nothing in the concerned orders to exclude the Nursing orderlies and Lab Attendants from the purview of the said orders. They sought the following reliefs

(i) Quash Annexure A1

(ii) Declare that the applicants are entitled to allowances as stipulated in Annexure A-3, A-4, A-5 and A-6 and direct the respondents to continue to pay the said allowances to the applicants

(iii) Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and

(iv) Grant the cost.

4. Applicants two in number working as Female and Male Nursing Orderlies under the respondents filed this Original Application aggrieved by A-1 order dated 1.11.2000 issued by the Director of Medical Health Services, Union Territory of Lakshadweep (3rd respondent) and Order No. C-13013/6/2000-PMS dated 24.10.2000 issued by the first respondent communicated by OM No. 5/1/93-DHMS dated 1.11.2000 issued by the Director of Medical Health Services, UT of Lakshadweep (A-1). According to them as Nursing, Uniform and Washing Allowances were being given only to those employees who had approached this Tribunal and they were not being given, they approached this Tribunal by filing O.A. No.1155/99 and 1163/99 respectively which were disposed of by this Tribunal by A-9 and A-10 order. Pursuant to A-9 and A-10 orders, A-1 order dated 1.11.2000 enclosing letter dated 24.10.2000 was issued. According to them A-1 was improper and illegal. They were doing the same quantity and quality of work as others who were granted the allowances. They submitted that it was mandatory for the applicants to wear uniforms. There was nothing in the concerned orders to exclude the Nursing Orderlies and Lab Attendants from the purview of the said orders. Accordingly they sought the following reliefs through this O.A.:

(i) Quash Annexure A-1

(ii) Declare that the applicants are entitled to allowances as stipulated in Annexure A3, A4, A5 and A6 and direct the respondents to continue to pay the said allowances to the applicants.

(iii) Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and

(iv) Grant the cost of this Original Application

5. Respondents 2 & 3 and Respondent-1 filed separate reply statements.

6. Respondents 2 & 3 resisted the claim of the applicants. According to them, the attempt of the applicants in these Original Applications was to extract various allowances at the specified rates payable to Nursing Personnel having higher qualifications and higher duties and responsibilities despite the fact that the applicants were only Nursing Orderlies/Lab Technicians having much lesser qualifications and lesser duties / responsibilities. Unlike the Nursing Personnel who were having the recognition under the Indian Nursing Council Act, the applicants were placed on a much lower pedestal. According to them their basic qualification was VIIth standard with four months local training whereas for Nurses, the minimum qualification was a pass in PDC with three years training in Medical Colleges or other approved institutions. For the Auxiliary Nurse Midwives/Lady Health Visitors, etc. the basic qualification was SSLC with 18/24 months training from a recognised institution and registration with the Nursing Council. The Nursing Orderlies were Group-D staff to help the Nurses. They were neither registered nor qualified to be registered with the Nursing Council. By the short training given to them locally, they do not get qualified for discharging the duties of Nursing personnel. As per the directions of this Tribunal in A-9 and A-10 personal hearing was granted to the representatives of the applicants by the Under Secretary to the Government of India and the Nursing Advisor as directed by the first respondent. The hearing was conducted at Kochi in November, 1996. The applicants were Group-D employees and getting the prescribed allowances. As per the rules Group-D employees were eligible for two sets of uniform at a cost of

Rs. 1085/- including cost of chappal and stitching charges for two years for male employees and Rs. 785/- for female employees per year. They were ineligible for Nursing allowances etc. Nursing Allowance was not being paid to all Nursing Orderlies. It was disbursed only in certain islands on the specific undertaking from the recipients that they would pay it back if they were found not eligible. The orders issued in this regard by the first respondent and consequential orders issued by the second and third respondents were within the four walls of law and were not assailable on any ground. The respondents had not violated any of the principles of natural justice or any of the relevant provisions of law or any rights of the applicants. The OAs were devoid of merits and were liable to be dismissed.

7. The first respondent filed separate reply statement in all the three Original Applications resisting the claim of the applicants. According to the first respondent, the orders issued by the Government of India for revising the various allowances to the Nursing personnel were meant only for those Nursing personnel who were registered with State Nursing Council as per Indian Nursing Council Act. The Nursing Orderlies/Lab Attendants of these Applications should not have been paid the allowances. When it was brought to the notice of the Ministry it was clarified that Nursing Assistants/Lab Attendants were not entitled for the allowances since they did not come under the category of Nursing Personnel. Personal hearing was given to the applicants by the respondents on 16.11.96. After careful examination of the case of the applicants it was decided that

the applicants were not categorised as Nursing Personnel as per the guidelines of the Indian Nursing council. As such they were not eligible for any of the allowances that were sanctioned particularly to the Nursing personnel including Nursing Allowance, Uniform allowance and Washing allowance. The decision taken could not be communicated to the applicants as the relevant file was not traceable. Therefore, it was communicated only on 24.10.2000. The delay caused in the communication was neither wanton nor willful and had not been made with malafide intention. The Nursing personnel were regulated with various allowances by the Govt. of India. However, for grant of uniform and washing allowances the Nursing Orderlies were regulated by separate orders which were issued by Government of India from time to time. The Original Applications were devoid of merits and therefore were liable to be dismissed.

8. Heard Shri M.R. Rajendran Nair learned counsel for the applicants in all the three Original Applications. He took me through the factual aspects and relying on A-9 and A-10 (in O.A. 1236/2000 and 1283/2000) orders of this Tribunal submitted that A-1 order had not been issued as per the direction of the Tribunal. He submitted that the OAs could be disposed of quashing the impugned orders and remitting them back to the first respondent to consider the matter afresh and pass appropriate orders in accordance with A-9 and A-10 orders. According to him Nursing Councils Act did not categorise any service or define the Nursing personnel. His case was the words "etc. etc." in Annexure Annexure A-6 must be interpreted applying the rule of "ejusdem generis". As the order was a beneficial piece of

legislation it must be given a wider meaning so as to take in the applicants also and therefore according to him the applicants in all these three Original Applications fell under the purview of A-6 in the clause "all registered Auxiliary Nurse Midwife/Female Health Workers, Lady Health Visitors, Multi Purpose Health Workers, etc. etc." According to him this Tribunal had directed the respondents to issue orders after affording an opportunity to the applicants in four months time, and as no such order was passed, after about five years and that too by some officer other than the one who gave personal hearing, the said order was not in compliance of the dictates of this Tribunal. He relied on the judgment of the Hon'ble Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another (AIR 1959 SC 308) and submitted that the personal hearing became an empty formality. The respondents had by acquiescence granted the benefits to the applicants. They were estopped from resurrecting the issue at this distance of time. It could not be a case where the respondents could sleep over a direction for any length of time and when some third party stake a claim on the basis of equality principle, turn back and resurrect the whole issue once more.

9. The learned counsel for the first respondent Ms. Vani took me through the pleadings in the reply statement and submitted that as the Government of India had taken the decision in the matter as directed by this Tribunal in the earlier Original Applications, taking all the factors into account there was no case for remitting the case back to the

respondent. According to her the Original Applications were liable to be dismissed. Counsel for respondents 2 and 3 reiterated the contents in the reply statement.

10. I have given careful consideration to the submissions made by the learned counsel for the parties and the pleadings of the parties and also perused the documents brought on record.

11. Before I go into the issue as to whether the applicants are entitled for the allowances as stipulated in A-3, A-4, A-5 and A-6, let me first consider as to whether the case should be remitted back to the first respondent for passing an order afresh after quashing A-1 as sought for by the learned counsel for the applicants.

12. I find that the applicants in OA No. 1236/2000 and 1283/2000 were among the applicants in earlier O.As.No. 468/93 and 948/93 and both these OAs were disposed of by this Tribunal by A-9 and A-10 orders. A-10 order which was passed in OA 948/93 was in consonance with the earlier order in O.A. 468/93. A-9 order dated 17.1.1994 in OA 468/93 is as follows:

Applicants are Laboratory Attendants/Nursing Orderlies under the Lakshadweep administration. They have stated that they have been receiving nursing allowance, uniform allowance and washing allowance etc. as per entitlement under Annexure VI, VI(a) and VI(b) with effect from 1.10.1986. They have been receiving these allowances till a clarification was issued as in Annexure-I order dated 16.2.1993, that Nursing Orderlies are not nursing personnel, and as such, they are not entitled to these allowances. Applicants are aggrieved by the withdrawal of these allowances being received by them, and pray for a

declaration that Nursing Orderlies are also Nursing Personnel, and are entitled to these allowances aforesaid.

2. In the reply statement, respondents 2 & 3 state that applicants are only Group-D staff, their counterparts are not being paid these allowances in some of the Islands, and where the allowances have been paid to the applicants, they have been so paid on the condition that if found ineligible, they would be recovered and that the stoppage of these allowances has been as a result of the clarification issued by the Government of India in Annexure-I. As such, stoppage of the allowances is claimed by the respondents to be in order.

3. Applicants have sought to show that Nursing Orderlies are to be classified as Nursing Personnel in view of the training they have undergone, and the general practice in this profession as evidenced by Annexure-III extract of "Hand Book for Nurses's Aides." The fact that they are Group-D personnel would have no bearing on the issue according to applicants. Learned counsel for applicants submits that as seen from Annexure-VII, which is the order dated 29.1.1992 relied upon for the clarification issued in Annexure-I.

"It is clarified that all registered Auxiliary Nurses/Midwives/Female Health Workers, Lady Health Visitors, Multipurpose Health workers, etc. etc. are also nursing personnel..."

Learned counsel for applicants also submits that he would be satisfied with a direction to the Government of India to reconsider the matter in the light of their own orders issued in Annexure-VII.

4. It cannot be denied that Government of India are perfectly within their right to decide which personnel should get allowances of the nature stated in these orders in Annexure-VI, VI(a) and VI(b). However, such a decision xxxxxxxxxxxxxxxx should be based on the facts of the case and in consonance with normal professional practice so as to avoid any charge of arbitrariness, and unfair treatment. As of today, there is no representation pending before Government of India on this issue. I consider that before a judicial decision is pronounced as to whether the applicants are Nursing Personnel within the meaning of Annexure -VII, it would be better for the matter to be considered by the competent authorities in the Government, and for this purpose, applicants are directed to file their joint representation before first respondent within one month of this order. The 1st respondent is directed to dispose of such representation, if received, within four months thereafter, after affording an opportunity to the applicants or their representatives to put forward their case in person.

5. The interim order already issued under which applicants are continuing to receive uniform allowance, nursing allowance, and washing allowance shall be in force till the representation submitted by the applicants in pursuance to this order, is disposed of by the competent authority. If, however, no such representation is made by the applicants as herein directed, the interim orders shall stand vacated at the end of one month from the date of this order.

6. Application is disposed of as above. No costs.

I find from the above order that the substantive reliefs sought for in that OA was the same as what is sought for in this OA. i.e.. for a declaration that Nursing Orderlies are also Nursing personnel and are entitled for the Nursing, Uniform and Washing Allowances as stipulated in Annexures -VI, VI(a) and VI(b). Annexures -VI, VI(a) and VI(b) in that OA are A-3, A-4 and A-5 in these three OAs. A-VI referred to in that OA is A-6 order dated 21.1.92 in the present Original Applications. In O.A. 468/93 learned counsel for the applicant submitted that he would be satisfied for a direction to the Government of India for reconsideration of the matter in the light of Annexure VII order therein. The result of the reconsideration of the matter is the impugned order dated 24.10.2000 (A-1) under challenge in these OAs. Thus I find that this is a case where grievance of the applicants which started in 1993, is still pending without reaching a finality. Further from the reliefs sought by the applicants in all these three OAs, I find that not only quashing of A-1 order is sought, but also for a declaration that they are Nursing Personnel and are entitled for the allowances contained in A-3, A-4, A-5 and A-6 orders. This would clearly indicate that merely quashing of A-1 order will not automatically entitle the applicants for the allowances. By accepting the submission made by the learned counsel for

the applicants to remit the case back to the first respondent to pass a fresh order, after quashing A-1 order, this Tribunal will be bringing back the position as it existed in 1994 as far as the applicants in these Original Applications are concerned. This would mean that in respect of the applicants in OA 1236/2000 and OA 1283/2000 are concerned they would continue to get these allowances as they are covered by interim orders of this Tribunal whereas in respect of the applicants in OA No. 151/2001 are concerned they would continue not to get these allowances. In fact this was the ground advanced by the first applicant in O.A. 151/2001 when she approached this Tribunal earlier through OA No. 1155/99 which was disposed of by this Tribunal by A-9 order dated 23.6.2000. In my view when this Tribunal gives an order the same should not result in continuation of such a discriminatory situation. Further, it will be neither in public interest nor in the interest of the applicants to remit the matter to the respondents to decide the issue as it may only prolong the issue further because the respondents have placed their points of view not only in the impugned order but also in the reply statements. Under such circumstances, I reject the relief sought by the learned counsel for the applicants of remitting back the case to the respondents.

13. Coming to merits, A-1 has been assailed on the ground that the representation had not been disposed of in accordance with the directions of this Tribunal. What I find from the order in O.A. 468/93 reproduced above is that this Tribunal had directed the first respondent to dispose of the representation to be submitted by the applicants in consonance with normal professional practice. The first

respondent in that O.A. was the Union of India represented by the Secretary, Ministry of Health and Family Welfare, New Delhi i.e.. Government of India. Decision of the Government of India are to be taken in accordance with the Rules of Business. A-1 impugned order dated 24.10.2000 reads as under:

Most Immediate/Court Matter

No.C.13013/6/2000-PMS
Ministry of Health & Family Welfare
(Department of Health)

Room No. 539 'A' Wing
Nirman Bhawan, New Delhi-110011
Dated the 24th October, 2000

To

Dr. P.Kunhiseethi Koya
Director (Medical & Health Services)
Administration of UT of Lakshadweep
Directorate of Medicdal & Health Services,
Kavaratti Island (Via) HPO Kochi
PIN-682555

Sub: Medical & Health Services-UT of
Lakshadweep-Payment of Nursing & Uniform Allowances,
etc. to MNO/FNO-Implementation of Hon. CAT
order-Regarding.

Sir,

I am directed to refer to your D.O. letters Nos 5/1/93-DHMS dated 12th July 2000 and 5/19/99-DHMS dated 15th July and 28th July 2000 on the subject noted above.

2. The matter relating to the eligibility of Nursing Orderlies and Lab Technicians etc. for "Nursing Allowance, Uniform Allowance and Washing Allowance" etc. has been examined in this Ministry in pursuance to the directions of the Hon'ble CAT as passed in OA Nos. 468/93, 948/93, 1201/99, 1155/99, 1163/99 and 246/2000. The Nursing Orderlies and Lab Technicians have not been categorised as "Nursing Personnel", as per the guidelines of the Indian Nursing Council. As such they are not eligible for any of the Allowances that are sanctioned specifically to the Nursing Personnel including "Nursing Allowance, Uniform Allowance and Washing Allowance.

3. You are, therefore, requested to take further action in the light of above decision.

Yours faithfully,

Sd/-

K.C.MISHRA

Under Secretary to Govt. of India

It is evident from a reading of the above, that the above decision had been taken by the Ministry and the order is signed by the Under Secretary to the Government of India. According to the applicants, their claim to belong to the category of Nursing Personnel should have been examined with reference to A-6 order dated 29.1.92 and not according to guidelines of Indian Nursing Council. As already stated, in A-9 order in OA 468/93, this Tribunal directed the first respondent to consider the matter based on the facts of the case and in consonance with normal professional practice. When such is the case, if the first respondent had examined the case with reference to the guidelines of the Indian Nursing Council, no infirmity can be found on this ground. I hold thus because in India, the said Council has the final say in the professional matters of Nursing personnel. The Indian Nursing Council is a body set up under the Indian Nursing Council Act, 1947 and thus has statutory sanction.

14. A-6 order dated 29.1.92 reads as under:

Sub: Grant of Nursing allowance, uniform allowance and washing allowance to Nursing personnel clarification regarding.

The undersigned is directed to say that enquiries are being received in this Ministry from time to time whether the Nursing allowance, uniform allowance and washing allowance granted vide enclosed copies of this Ministry's orders No.

(i) No.Z.20016/4./87-PMS dated 11.2.87 about Nursing allowance

(ii) No. Z. 20016/2/87 -PMS dated 11.2.87 about uniform allowance

(iii) No.Z. 28016/3/87-PMS dated 11.2.87 about washing allowance

are also extended to the categories of Auxiliary Nurses, Midwives, Female Health workers, Multi-purpose Health workers(Female), Lady Health Visitors, etc. etc.

2. It is clarified that all registered Auxiliary Nurse Midwives/Female Health Workers, Lady Health Visitors, Multi purpose Health workers, etc. etc, are also Nursing personnel in accordance with the Indian Nursing Council Act and hence all the above categories of the personnel working in Central Government Hospital/Institutions/Hospitals run by the Delhi Administration including Municipal Corporation of Delhi and New Delhi Municipal Committees and Centrally funded autonomous bodies like All India Institute of Medical Sciences, New Delhi, Post Graduate Institute of Medical Education and Research Chandigarh, etc. shall also be eligible to the above allowances subject to the condition that uniform and washing allowances shall be admissible to only those cases where those personnel are required to wear uniform in accordance with any standing orders or instructions of the Government w.e.f. 1.10.86 or from such other later date when they are required to wear uniform in accordance with such standing orders or instructions.

Sd/-

R.Srinivasan
Under Secretary to Govt. of India

15. After going through the above letter I am of the view that the above A-6 letter dated 29.1.1992 in effect defines the term "Nursing Personnel" used in A-3, A-4 and A-5. It is self evident that only "registered" personnel would be 'Nursing Personnel.' Applicants who are Nursing Orderlies/ Lab Attendants have no case that they are registered under the Indian Nursing Council. They also do not have a case that they are eligible for registration. Further, it is an admitted position that the training given to the Nursing Orderlies and Lab Attendants was not under the authority of the Indian Nursing Council. From para 1 of A2 notification I

find that the same was issued only to enable the Lakshadweep Administration to secure the services of qualified candidates for appointment as Nursing Orderlies in the Medical Institutions under the UT of Lakshadweep. It is evident that it was sporadic in nature. Thus it was not a regular course.

16. The next ground advanced for assailing A-1 was that the same had been passed by an officer different from the one who heard the representative of the applicants in O.A.468/93. According to the learned counsel for the applicants, the personal hearing given had become an empty formality and on this ground alone, the impugned order was liable to be set aside. He relied on the judgment of the Hon'ble Supreme Court in Gullappalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and another. He also cited the judgments of the Hon'ble Supreme Court in the following cases and submitted that the validity of the impugned order should be considered in the light of what is stated therein and not on what is stated in the reply affidavit.

(i) Commissioner of Police, Bombay Vs Gordhan Das Bhanji (AIR 1952 SC 16)

(ii) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others (AIR 1978 SC 851)

According to the respondents, the personal hearing was given by the officers on behalf of the Government and orders had also been passed on behalf of the Government of India by the officers who are competent to do so.

17. As already held by me, this Tribunal directed the Government of India to decide the matter and Govt. of India had decided the matter by A-1 order. Learned counsel for the applicant relied on para 31 of the judgment in Nageswara Rao's case in support of his submissions. In the said para the Hon'ble Apex Court held:

31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanor of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.

On a complete perusal of the above judgment I find that the above, has been held on the premise that the hearing to be given by the State Government in that case was judicial in nature. This is not so in this case. In this case the personal hearing was given pursuant to the direction of this Tribunal in O.A. 468/93. It is evident from para 4 of A-9 order in the said OA 468/93 that the personal hearing was administrative in nature. In such a case there is no infirmity if one person hears and the appropriate competent authority in the Government decides the matter. I find

support for this in para 50 and 60 of the judgment in the above case where two of the five Hon'ble Judges of the Apex Court after holding that the hearing was administrative in nature held as under:

50....."In these circumstances if the Minister ordered, in the absence of specific rules on the point, that the hearing should be by the Secretary, he was, in my opinion, complying with the essential requirement, namely, that there should be an oral hearing by the State Government before the decision of the objections. The bifurcation of the function of hearing from the function of deciding cannot in the circumstances, when the hearing was administrative be said to be improper or against R.10, and was necessary in order that the Government may function efficiently. Therefore, I am of the opinion that the hearing by the Secretary was sufficient compliance of R.10, which required a personal hearing before the decision of the objections."

X X X X X X X

60. The question now arises whether in view of the provisions of Chapter IV-A, summarized above, and the conclusions as indicated above, the determination by the State Government is judicial or quasi-judicial in character, as contended for the petitioners, or only of an administrative character, as contended on behalf of the respondents. In order that a determination may be characterized as judicial or quasi-judicial, it is essential that it should be objective, based on evidence pro and con (not necessarily given in accordance with the strict rules of evidence) by a determinate authority who should not have the right to delegate such a function of a judicial character. Section 68-D(2) authorises the State Government to decide whether or not the proposed scheme should be approved or modified. The "State Government" may mean the Governor himself or any of his Ministers or deputy Ministers or any officers in the Secretariat, according to the rules of business promulgated under Art. 166 of the Constitution. Section 68-D(2) could not have meant that the Governor himself or any of his Ministers should personally hear the objections that would be throwing too great a burden on them. The objections may be heard by any one who has been delegated the power. If that is correct, the function to be performed under S. 68-D(2), does not satisfy the test of a Judicial hearing. Under that section, the objections may be heard by 'A' and the decision arrived at by 'B'. If that is a regular procedure under that section, that is not an index of a judicial process.

Applicants have no case that all the points put forth by them had not been considered. Under such circumstances I reject the ground advanced by the applicants.

18. I also find that reliance placed by the learned counsel for the applicants in the judgment of the cases of Commissioner of Police, Bombay and Mohinder Singh Gill's case has no applicability in the facts of this case. Respondents have relied on the guidelines of the Indian Nursing Council to decide that Nursing Orderlies and Laboratory Attendants are not Nursing personnel. This is in line with the direction contained in this Tribunal's A-9 order and in consonance with A-6 order dated 29.1.92. Hence I reject this ground.

19. According to the applicants, having not passed the order within 4 months specified in A-9 order, respondents had by acquiescence granted the allowances and the same could not be withdrawn. I do not find any merit in this ground. I find that this Tribunal was made aware that the first respondent had not taken a decision finally pursuant to the order of this Tribunal in O.A. 468/93, when the applicants in O.A. 151/2001 filed O.A. 1155/99 and 163/99. In the order dated 23.6.2000 (A-9 in OA 151/2001) in O.A. No 1155/99 this Tribunal directed respondents to take a decision regarding the entitlement of Nursing allowance, Uniform allowance and Washing allowance to the Nursing Orderlies within four months. When such is the case, no infirmity could be found in A-1 order dated 24.10.2000, on the ground advanced as above.

20. In the light of the detailed analysis given above, I do not find any reason to interfere with the A-1 order issued by the first respondent and also hold that the applicants are not entitled for any of the reliefs sought for.

21. Accordingly, I dismiss these three Original Applications, under the circumstances with no order as to costs.

Dated the 1st November, 2001.

Sd/-
(G RAMAKRISHNAN)
ADMINISTRATIVE MEMBER

kmn

APPENDIX

O.A.1236/2000

Applicants' Annexure

A-1 True copy of the order No. C-13013/6/2000-PMS dated 24.10.2000 issued by the 1st respondent communicated by OM No. 5/1/93-DHMS dated 1.11.2000 issued by the Director of Medical Health Services, UT of Lakshadweep

A-2 True copy of Lakshadweep Training Rules for Male Nursing Orderlies and Female Nursing Orderlies, 1974 vide Notifaication No. F.No.20/132/73-DHMS issued by the 2nd respondent.

A-3 True copy of order No. Z.28016/4/87-PMS dated 11.2.87 issued by the first respondent

A-4 True copy of the order No. Z.28016/2/87-PMS dated 11.2.87 issued by the first respondent.

A-5 True copy of order No. Z.28016/3/87-PMS dated 11.2.87 issued by the first respondent.

A-6 True copy of the Memo No. Z-28016/14/90-PMS dated 29.1.92 issued by the first respondent.

A-7 True copy of the order No. Z.28016/14/90-PMS dated 4.2.93 issued by the first respondent.

A-8 True copy of the order F No. 5/10/88-DHMS/639 dated 16.2.93 issued by the 3rd respondent.

A-9 True copy of the final order dated 17.1.94 in O.A.No. 468/93 of this Tribunal

A-10 True copy of final order dated 28.1.94 in O.A. NO. 948/93 of this Tribunal

A-11 True copy of the communication No.5/1/93-DHMS/888 dated 21.3.95 issued by the 3rd respondent.

Respondents' Annexure -Nil-

O.A. 1283/2000

Applicant's Annexure same as in O.A. No. 1236/2000

Respondents' Annexure

R1 True copy of order bearing No. 27/11/98-Genl. dated 17.11.98 issued by the Administrator, UT of Lakshadweep.

O.A. 151/2001

Applicants' Annexure

A1 to A8 as in O.A. 1236/2000

A-9 True copy of order in OA 1155/99 dated 23.6.2000 of this Tribunal

A-10 True copy of order in OA 1163/99 dated 5.7.2000 of this Tribunal

Respondents' Annexure --Nil-