

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.Nos. 488/87 & 564/87

(B)

Smt. Meena Vijaykumar Rangnekar
Miss Sudha Punalekar and
Mrs. Sindhu Manvatkar

... Applicants

v/s.

Director, Family Welfare Training
and Research Centre, Bombay.

And Another. ... Respondents

CORAM: Hon'ble Member (J) Shri M.B.Mujumdar
Hon'ble Member (A) Shri M.Y.Priolkar

Appearances

Applicants in person

Mr. R.C.Kotiankar
for Mr. M.I.Sethna
Advocate
for the Respondents

JUDGMENT

Dated: 7.2.1990

(PER: M.Y.Priolkar, Member (A)

All the three applicants in these two cases are working as Public Health Nurses (one in OA.No. 488/87 from July 1963 and two in OA.No. 564/87 from November 1965, April 1969 respectively) at the Family Welfare Training and Research Centre under the Ministry of Health and Family Welfare, in Bombay. Their grievance is that they have been denied the benefit of Messing Allowance at the enhanced rate specified in Government of India letter dated 22.4.1969 (Annexure 6 in OA. 488/87). All their representations for giving them this benefit having been rejected, they have approached the Tribunal praying for directions to the respondents that the orders contained in the Govt. of India letter dated 22.4.1969 be made applicable to them with all consequential benefits.

2. The respondents have opposed these applications on the ground that the orders of the Government of India dated 22.4.1969 are applicable only to the nurses working in the Central Government Hospitals and those of Delhi Administration and the Training and Research Centre at Bombay in which the applicants are working does not fall within the ambit of these orders.

3. We have heard the applicants who personally argued their case and Mr. R.C.Kotiankar for Mr. M.I.Sethna, Central Government Counsel, on behalf of the respondents.

4. Admittedly, the Public Health Nurses at the said Centre at Bombay where the applicants are serving and those in Central Government Hospitals and under Delhi Administration as also Nurses (Ward sisters) in these hospitals always had and even now have common scales of pay and, until the issue of the impugned orders dated 22.4.1969, also drew Messing Allowance and other allowances at the same rates as were admissible from time to time. However, under orders dated 22.4.1969 of the Ministry of Health and Family Planning, the rate of payment of Messing Allowance in favour of Public Health Nurses and other nurses in the same grade working in Central Government Hospitals and hospitals under the Delhi Administration was raised to Rs.60/- p.m., D.A. (dearness allowance) and C.C.A.(City Compensatory Allowance) being made 80% of what was admissible to other Central Government employees. The applicants, however, continued to get the Messing Allowance, D.A. and C.C.A. at the lower rates sanctioned under the earlier orders dated 8.6.1965, namely, Messing Allowance at Rs. 45/- p.m., D.A. at two thirds and C.C.A. at 50% of that admissible to the Central Government employees.

5. The orders contained in the said letter dated 22.4.1969 were not received at the Centre in Bombay and the applicants could obtain a copy from the respondents only on 26.8.1975. Meanwhile, from 1.1.1973, the earlier scale of pay applicable to Public Health Nurses at the Centre in Bombay as well as to Public Health Nurses and other Nurses in the same grade working at the Central Government Hospitals and those under the Delhi Administration was revised, merging therein the element of Messing Allowance, as recommended by the Third Central Pay Commission. While fixing the pay of the applicants in the revised scale, Messing Allowance at Rs.45/-p.m. and also D.A. at the lower rate were taken into account as required under the relevant pay fixation instructions. The applicants, having thus been kept outside the purview of the orders dated 22.4.1969, have been deprived of the benefit of the enhanced rate of Messing Allowance and D.A. while refixing their pay in the revised scale from 1.1.1973, resulting in a recurring financial loss not only in the basic pay but also all allowances related to basic pay like D.A., C.C.A., HRA etc.

6. Mr. R.C.Kotiankar could not explain why the enhanced rate of messing allowance sanctioned under orders dated 22.4.1969 was made applicable only to the public health nurses and other nurses in that grade working at the Government hospitals or the reasons why this benefit was not extended to the public health nurses working at the Bombay Centre when both these categories of nurses had been treated till then on par as regards pay scale, messing allowance and other allowances. Even the letter dated 27.8.1979 from the Ministry of Health and Family Welfare which was received in reply to the representation of the applicants, after a lapse of three or four years, has rejected the request of the applicants only on the ground that the Centre at Bombay does not fall within the ambit of their orders dated 22.4.1969. Evidently, the Ministry could

not find any valid reason to justify the exclusion of the public health nurses at the Bombay Centre from the purview of their orders dated 22.4.1969, after taking into account the qualifications, duties and responsibilities attached to the posts of public health nurses working at the Bombay Centre, for which clarification had been sought subsequently by the Ministry.

After considering all these and also the fact that the rationale for Messing Allowance which is two fold : firstly, as an incentive to attract candidates to the nursing profession and secondly, to subsidise the cost of extra nourishment needed by nurses who are exposed to health hazards, vide Vol.I, Chapter 16, para X (90) of ^{Y of the applicants,} Third Central Pay Commission Report, is equally applicable in the case, ^{we see no justification} for denying to the applicants the benefits of the higher rate of messing allowance as also of D.A. and C.C.A. sanctioned to the nurses working at the Government Hospitals alone by orders dated 22.4.1969 of the Ministry of Health and Family Planning.

7. Mr. Kotiankar, however, argued that since the cause of action, if any, in this case has arisen in 1969, the applications should be rejected as barred by limitation of time prescribed under Section 21 of the Administrative Tribunals Act, 1985. The applicants contend that their applications are against the specific orders dated 15.7.1986 of the Ministry of Health and Family Welfare in which their request for Messing Allowance at higher rate has been rejected without giving any reasons, also stating therein that the case may be treated as closed. Since the joint representation dated 19.7.1977 of the applicants was earlier rejected by the competent authority under the Ministry's letter dated 21.8.1979 (Annexure 16 in OA. 488/87), further repeated representations or replies thereto will not result in extending the period of limitation. However, taking an overall and lenient view of the facts and circumstances of

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this case, we feel that the ends of justice will be met, if the claims of the applicants for monetary benefits are reckoned with effect from a period of three years, immediately anterior to the date of their filing the present applications before this Tribunal.

8. On the basis of the foregoing discussions, we direct that these three applicants shall be held to be entitled to take into account the benefit of the orders dated 22.4.1969 of the Ministry of Health and Family Planning for the purpose of refixation of their pay in the revised scale of pay from time to time with effect from 1.1.1973. The actual payment, on the basis of such refixed pay, of the difference between the due and drawn amounts of pay and allowances, shall, however, be made only for the period from 23.7.1984 in the case of the applicant in OA. 488/87 and 24.8.1984 in the case of the applicants in OA. 564/87. The retirement benefits of the applicant in OA. 488/87 who was stated to have retired voluntarily in August 1989 shall also be reworked, if necessary, on the basis of the refixed pay and the difference, if any, between the due and drawn amounts paid to her. These payments may be made, as far as possible, within a period of three months from the date of receipt of a copy of this order. The parties will bear their respective costs.