

(A8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. NO: 587/87 199  
xxTxx Noxx

DATE OF DECISION 23.9.92

Gurdeep Kaur & 4 ors. Petitioner

Mr. E K Thomas Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Mr. V G Rege Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S K Dhaon, Vice Chairman

The Hon'ble Mr. M Y Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

S  
V.C.

mbm\*

(1)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, "GULESTAN" BUILDING NO.6  
PRESOT ROAD; BOMBAY-1

OA No. 587/87

1. Gurdeep Kaur  
R B III, 13/4  
1st floor; Usha Kiran; Sion  
Koliwada; BOMBAY
2. Rita Mariya Xavier  
R B II/497/5  
Near Railway ground  
Igatpuri
3. Rajani M Shah  
RB I/1021/C  
Near Railway Hospital  
Bhusawal
4. Madhavi C. Ringe  
MSS Manjidana colony  
B/M2, Gittikhadam  
Katal Road; Nagpur
5. Kusum Bhivaji Kadam  
RB II/104 Ganesh Hall  
Railway Colony  
Sholapur

..Applicants

V/s.

1. Union of India  
through Secretary  
Ministry of Railways  
Rail Bhavan; New Delhi
2. General Manager  
Central Railway  
Bombay V.T.

..Respondents

Coram: Hon. Shri Justice S K Dhaon, V.C.  
Hon. Shri M Y Priolkar, Member(A)

APPEARANCE:

Mr. E K Thomas  
Counsel  
for the applicants

Mr. V G Rege  
Counsel  
for the respondents

ORAL JUDGMENT:

(PER: S K Dhaon, Vice Chairman)

DATED: 23.9.92

The applicants, who are Nursing  
Sisters, apprehend  that on the basis of the  
communication dated 13th March 1987 issued by  
the Joint Director (Est.) (N) Railway Board

addressed to the General Manager, Central

✓ Railway and others, that their pay scale would be reduced from Rs.1640-2900 to Rs.1400-2300. Hence this application.

2. During the pendency of this application an interim order was passed to the effect that the respondents ~~were~~ restrained from reverting the applicants and also recovering any amount from them.

3. A reply has been filed on behalf of the respondents. A rejoinder affidavit too has been filed. Counsel for the parties have been heard at length. It is not in dispute that in the year 1985 the applicants were put in the pay scale of Rs.455-700. The IVth Pay Commission some time in June 1986 made certain recommendations. We are concerned with the recommendation contained in paragraph 11.87 under the sub-head "para-medical staff". It would be convenient to extract the said paragraph :

"11.87. There are about 4,600 staff nurses in the central government. Recruitment to the post of staff nurse is in the scales of Rs.425-640 and Rs.425-700. The next level of promotion for them is generally the post of

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nursing sister in the pay scale of Rs.455-700. It has been represented that it takes about 15 to 20 years for a staff nurse to be promoted to the post of nursing sister. The nursing sister is incharge of a ward and supervises the work of staff nurses. Taking into account the nature and responsibility of work, we recommend that the staff nurses in the scale of Rs.425-640 and Rs.425-700 may be given the scale of pay of Rs.1400-2600. The nursing sister in the scales of pay of Rs.455-700, 470-750 and Rs.550-700 may be given the scale of pay of Rs. 1640-2900."

A perusal of the afore quoted recommendation of the IVth Pay Commission shows that it was categorical that the nursing sisters in the pay scale of Rs.455-700 may be given the scale of pay of Rs.1640-2900. We may note at this stage that the pay commission did not differentiate between nursing sisters working on the medical side and those working on the family welfare side, though in the same establishment.

4. The case set up by the respondents is that the pay commission, in fact, made a recommendation with respect to nursing sisters who were working on the medical side and it did not make any recommendation with regard to those working on the family welfare side. According to the respondents, those nursing sisters who were not working on the medical side were entitled to be placed in the pay scale of Rs.1400-2300 (RPS). On the contrary, it is the case of the applicants that they were entitled to be put at par with the

nursing sisters working on the medical side.

Therefore, they should be given the pay scale of Rs.1640-2900 (RPS).

5. There was some controversy raised before us as to whether the applicants were working as nursing sisters on the family welfare side or on the medical side. Counsel for the applicant made a valient effort to satisfy us that, in fact, the applicants were employed on the medical side. However, in view of the admissions made in the body of the application by the applicants themselves, there cannot be getting away from the fact that, perhaps barring the applicant no.4, all other applicants were employed as nursing sisters on the family welfare side. We are, therefore, proceeding on the assumption that all the applicants were employed on the family welfare side.

6. The burden lies upon the respondents to demonstrate before us that the applicants are not entitled to be kept at par with the nursing sisters who are working on the medical side. To us, it appears that all the nursing sisters whether on medical side or on the family welfare broadly fall in the category of nursing sisters and, therefore, in the absence of any material to the contrary, they should be given the same grade. Otherwise, there will be a

the  
possibility of violation of the provisions  
of Articles 14 and 16 of the Constitution. It  
is for the respondents to establish that the  
quality and nature of work performed by the  
nursing sisters on medical side is so different  
as to constitute them a class, with the  
result that the nursing sisters working on  
family welfare side can not claim parity with  
the nursing sisters on the medical side.

Reliance has been placed on behalf of the  
respondents on paragraph 5 of the reply. The  
material averments in the said paragraph are  
these. The Railway Board by its communication  
dated 16.9.87 stated that the Public Health  
Nurses recruited under the family welfare orga-  
nisation in the scale of Rs.455-700 are  
entitled to be given the scale of Rs.1400-2300 (RPS).  
As a result of implementation of the recommenda-  
tion of IVth Pay Commission with effect from  
1.1.1986. In the said letter it has also been  
clarified that the redesignation of the Public  
Health Nurses in the Family Welfare Organisation  
as nursing sisters clearly stipulates that the  
redesignation is without any change in their  
pay scale, method of recruitment, seniority and  
avenue of promotion.

The original file containing the said communication dated 16.9.1987 has been placed before us. It appears that the Board, after the filing of this application before this Tribunal and after service of the notice for the respondents, by means of the said communication dated 16.9.87 purported to issue certain direction to the General Manager of the Central Railway, Bombay, of the manner in which, and the defence which should be taken to meet the case of the applicants in this application. It cannot be said that the contents of the communication was a policy decision taken prior to the date when this controversy had arisen. In our opinion, the respondents cannot derive any advantage from the said communication to defeat the rights of the applicants. Of course, the respondents are entitled to press their case before this Tribunal for adjudication and we are under an obligation to examine the case set up by them here. We may also note that, apart from the suggestion made in paragraph 5 that the work performed by the nursing sisters under the family welfare organisation differs

from the nature of work performed by the nursing sisters on the medical side, no details or particulars are given to enable us to form an opinion on this crucial question.

7. Learned counsel for the respondents then relied upon a communication dated 19.6.85 from the Railway Board to the General Manager of the Central Railway and others. The subject of this communication was: "Standardisation of Designations of Medical Department". In fact, the very opening sentence of the communication talks of the standardisation of various categories of posts within medical department. On the face of it, it appears that the Board till 19.6.85 did not draw any distinction between the medical department and the family welfare organisation. However, counsel has invited our attention to the annexure to this communication. We have perused the same. We find that under item no.27 there is a mention of nursing sisters. The revised pay scale fixed for them is Rs.455-700. Then we find a sub-head family welfare, and there under item no.27 'nursing sister' is to be found with revised grade of Rs.425-700. At best it can be said, on the basis of the afore said communication that dated 19.6.85, with effect from that date nursing

sisters in the grade Rs.425-700 could be appointed to work in the family welfare organisation. This document does not advance the case of the respondents. Admittedly the applicants had been appointed before 19.6.1985, and admittedly they had been given the grade of Rs.455-700. Their rights could not be affected by the mere fact that a class of nursing sisters in the grade of Rs.425-700 working under the family welfare organisation has been created under the afore said communication dated 19.6.85.

8. Learned counsel for the respondents then relied upon a communication dated 13.3.1987 from the Railway Board to the General Manager, Central Railway and others. We have read this communication. The subject of the communication is: "Cadre of Family Welfare Organisation - Absorption of Public Health Nurses in the Medical Department". Counsel argued that the import of this document is that the nursing sisters working under the family welfare organisation were to be treated as staff nurses. We are not satisfied with this argument as the interpretation is not correct. This document does not deal with the controversy which is before us. No other argument is advanced on behalf of respondents in opposition of this application.

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9. As a result of the foregoing discussion, we come to the conclusion that there is no rational basis for creating a separate class of nursing sisters under the family welfare organisation prior to 19.6.85. We are also of the opinion that the applicants, who admittedly working as nursing sisters in the family welfare organisation, were entitled to be kept at par with the nursing sisters on the medical side of the Railways. Therefore, they were entitled to be given the revised scale of Rs.1640-2900 i.e., the grade which was offered to nursing sisters on the medical side.

10. We, therefore, direct the respondents to continue to give to the applicants pay and emoluments etc., on the footing that they were and they are in the revised scale of Rs.1640-2900. In view of this direction, the question of making any deduction from the salary of the applicants or recovering any amount from any of the applicants does not arise.

11. It goes without saying that the applicants will be entitled to all consequential benefits as are admissible under law, including

seniority and promotion which may flow  
from this order.

There shall be no order as to  
costs.

  
( M Y Priolkar )  
Member(A)

  
( S K Dhaon )  
Vice Chairman

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