

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH

Jaipur, this the <sup>30<sup>th</sup></sup> day of January, 2009

**ORIGINAL APPLICATION NO. 158/2006**

**CORAM:**

HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

1. Smt. Manju Kumari Singh wife of Shri Vaikunth Singh, aged about 46 years, resident of Quarter NO. 118, Type 2, GCI, General Reserve Police Force, Ajmer.
2. Shri Benzamine Besra son of Shri Suphal Besra, aged about 52 years, resident of Quarter No. 18, Type 3, GCI, CRPF, Ajmer.
3. Pratibha Besra wife of Shri Benzamin Besra, aged about 51 years, resident of Quarter No. 18, Type 3, GCI, CRPF, Ajmer.

All are serving under Station Hospital (Combatise) GCI, Ajmer.

.....APPLICANTS

(By Advocate: Mr. V.K. Mathur)

VERSUS

1. Union of India through the Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi.
2. The Director of General, Central Reserve Police Force, CGO Complex, Lodhi Road, New Delhi.
3. The Director (Medical), CRPF, Dispensary Block, Sector-4, Pushp Vihar, M.B. Road, New Delhi.
4. The Additional Deputy Inspector General of Police, GCI, CRPF, Golf Course Road, Ajmer (Rajasthan).

.....RESPONDENTS

(By Advocate: Ms. Kavita Bhati proxy to Mr. Kunal Rawat)

**ORDER (ORAL)**

**PER HON'BLE MR. B.L. KHATRI**

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 thereby praying for the following reliefs:-

- "(i) It is, therefore, humbly prayed that your honour may kindly please to allow this Original Application and on the

basis of facts and circumstances of the case, the impugned orders dated 06.10.2005 (Annexure A/1) dated 20.10.2005 (Annexure A/2) and dated 18.03.2006 (Annexure A/3) may kindly be quashed and set aside.

- (ii) Any other further or alternative relief as the Hon'ble Tribunal deems just and proper in the facts and circumstances of the case.
- (iii) Cost of this OA be allowed to the applicants."

2. Brief facts of the case, as stated by the applicants in Para No. 4 of the OA, are that :-

- 4(1) That the applicants are the members of the Station Hospital (Composite) Staff working in the Central Reserve Police Force (hereinafter referred as CRPF) hospital in Ajmer. The applicants are working as Group 'C' and 'D' Non-combatised civilian members staff of CRPF hospital and are governed by the Central Civil Services Rules and such other rules as framed from time to time by the Union of India under Article 309 of the Constitution of India. All the applicants are non-combatised employee.
- 4(2) That in order to better the condition of the Nursing Personnel, the 5<sup>th</sup> Pay Commission have made certain recommendations for enhancement of Nursing Allowances from existing amount of Rs.300/- P.M. The Director (PMS) Government of India, Ministry of Health and Family Welfare, New Delhi vide office order dated 28<sup>th</sup> July, 1998, enhanced the Nursing Allowance from the existing rate of Rs.300/- per month to Rs.1600/-PM to all the Nursing Personnel working in the Central Government Hospitals w.e.f. 15.07.1998, as per sanction conveyed by the President. Subsequently the respondent no. 1 under Secretary to the Government of India, Ministry of Home Affairs, New Delhi vide office order dated 09.11.2000 conveyed sanctioned to the respondents no. 2 for payment of Nursing allowance to the Nursing Personnel of CRPF only on the scale admissible to C.H.S. Nursing Personnel<sup>22</sup> at the rate of Rs.300/- per month w.e.f. 01.08.1997 and Rs.1600/- per month w.e.f. 15.07.1998. Copies of orders

dated 28.07.1998 and dated 09.11.2000 are submitted herewith and marked as Annexure A/4 and A/5 respectively.

- 4(3) Respondent no. 3 vide office order dated 10.11.2000, sanctioned revised rates of Nursing, Uniform and Washing Allowance allowance to the Nursing Personal as admissible to CHS Nursing personal as per order dated 09.11.2000 (Annexure A/5). It is respectfully submitted that respondent no.3 admitted Nursing Allowance to both combatised and Non combatised Nursing Personal and since then the applicants were getting Rs.1600/- per month Nursing Allowance regularly. Copy of the order dated 10.11.2000 is submitted herewith and marked as Annexure A/6.
- 4(4) That the Director (Police Finance) Government of India, MHA vide order Memorandum dated 07.10.2004, has sanctioned the revised rates of Nursing, Uniform and Washing Allowance to the Nursing Personal as admissible to CHS, Nursing Personal. The Nursing Allowance (for nurses only) Rs.300/- per month w.e.f. 01.08.1997 only. It is submitted that the Nursing Allowance was admissible to the Nursing Personal who are serving in dispensaries/hospitals without any in patient facility are entitled for Nursing Allowance. Copy of the order dated 07.10.2004 is produced herewith and marked as Annexure A/7.
- 4(5) That it is submitted that without giving any opportunity of hearing or issuing any show cause notice to the applicants, the Director (PF) Government of India, Ministry of Home Affairs, New Delhi vide office order dated 06.10.2005, suddenly revised the rates of Nursing Allowance to Rs.300/- per month for all CPF including CRPF w.e.f. 07.10.2004, applicable to Nursing personal and directed to DG, CRPF that the amount paid in excess of Rs.300/- per month to Nursing Personal beyond 07.10.2004 is to be

recovered. Copy of order dated 06.10.2005 is produced herewith and marked as Annexure A/1.

- 4(6) That in continuation of office order dated 06.10.2005 (Annexure A/1), the respondent no. 3 directed to respondent no. 4 that the rate of Nursing Allowance have been revised to Rs.300/- per month for all Central Police Force include CRPF w.e.f. 07.10.2004 and requires to recover the amount, if paid in excess of Rs.300 per month w.e.f. 07.10.2004 (from retrospective effect) to Nursing Personal action be taken up and initiate to this office. Copy of order dated 20.10.2005 is submitted herewith and marked as Annexure A/2.
- 4(7) That the applicant No. 1 came to know about passing of orders about revision of rates of Nursing Allowance vide order dated 07.10.2004, CRPF order dated 09.02.2005 revised as Rs.300/- per month w.e.f. 07.10.2004, then immediately submitted a representation dated 01.03.2006 to the respondent no. 3 through proper channel with request to allow her to draw Nursing Allowance Rs.1600/- per month as per CGHS and being a non-combatised female staff nurse, but the representation of applicant no. 1 was returned by respondent no. 4 and stated that in view of clear judgement/verdict on the subject issued by the respondents there is no necessity to forward the application to higher authorities. Copies of representation dated 1.3.2006 and letter of respondent no. 4 dated 14.03.2006 are submitted herewith and marked as Annexure A/8 and A/9 respectively.
- 4(8) That similarly applicants nos. 2 & 3 also submitted a detailed representation to respondent no. 3 on 04.04.2006 against revision of rate of Nursing Allowance to Rs.300 vide order dated 06.10.2005 and recovery of excess paid amount w.e.f. 07.10.2004, with retrospective effect and requested that they may be allowed to draw Nursing Allowance Rs.1600/- per month as per CGHS and being a non-combatised female/male staff Nurse, but the

representation of the applicant has not been decided as yet and respondent no. 4 vide order dated 18.03.2006 (Annexure A/3) revised the rate of Nursing Allowance as per order dated 06.10.2005 and 31.12.2004 from 1600/- to Rs.300 per month w.e.f. 07.10.2004 and directed for recovery of Rs.1000/- per month w.e.f. 07.10.2004 from Nursing Allowance paid in excess. Copies of representation dated 04.04.2006 and 04.04.2006 are submitted herewith and marked as Annexure A/10 and A/11. respectively and order dated 18.03.2006 are produced herewith and marked as Annexure A/3.

4 (9) That being aggrieved by the impugned orders dated 06.10.2005 (Annexure A/1), dated 20.10.2005 (Annexure A/2) and dated 18.03.2006 (Annexure A/3), the applicants preferred this OA before this Tribunal for redressal of their grievances.

3. Learned counsel for the applicant relied upon the order dated 13<sup>th</sup> July, 2006 of the Guwahati Bench of the Tribunal in OA No. 318/2005, Smt. S. Medhaboti vs. Union of India & Others, wherein order dated 07.10.2004 was set aside and it was further directed that since the earlier order dated 09.11.2000 was still governing field, the applicants were entitled to get the said allowances as per said order. The recovery made, if any, and the benefit of the said order will be restored (without interest).

While deciding the OA, the Guwahati Bench of the Tribunal had also referred to the order of Hon'ble Andhra Pradesh High Court.

4. The respondents have filed detailed reply thereby opposing the claim of the applicant. However, they are not disputing the facts of the case as already submitted by the applicant. The learned counsel for the respondents relied upon Para No. 4.7 of the reply and submitted that decision of Ministry of Home Affairs for revision of Nursing Allowance was communicated to all formations for necessary action and compliance. It will not be out of place to mention here that the similar case like that of the applicants are under reconsideration before

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the Ministry of Home Affairs and outcome of the same is still awaited which will be intimated to all the concerned employees. Respondent no. 4 has not forwarded the representations of the applicants to the concerned authorities. Therefore, this application deserves to be dismissed on this count alone.

5. In Para No. 5 of the reply the respondents have stated that the contents of Para No. 4.2, 4.3 and 4.4 of the Original Application are not admitted as stated. The respondents have submitted that on the basis of the 5<sup>th</sup> Pay Commission's recommendations vide OM dated 28.07.1998 enhanced the Nursing Allowance from the existing rate of Rs.200/- per month to Rs.1600/- per month to all the Nursing Personnel working in Central Government Hospitals w.e.f. 15.07.1998 and further other allowances viz. Uniform Allowance and washing Allowance were also revised by Government of India w.e.f. 15.07.1998 @ Rs.3000/- per month and Rs.150/- per month respectively. Since the Allowances are not extended to the nursing personnel working in CRPF Hospitals, therefore, some of the employees filed Writ Petition bearing No. 15637 of 1999 before the Hon'ble High Court of Andhra Pradesh, Hyderabad for granting them the benefits from the respective dates from which the allowances extended to the Nursing Staff working in the Central Government Hospitals. It will not be out of place to mention here that the case for grant of these benefits was already under consideration with the government of India. The Hon'ble High Court vide judgement dated 19.04.2000 disposed of the Writ Petition directing Government of India to take decision in the matter as expeditiously as possible preferably within a period of three months from the date of receipt of the order.

Thereafter, the Government of India, MHA vide their OM NO. 27012/6/99- PF.I/II dated 09.11.2000 conveyed decision for payment of Nursing Allowance @ Rs.300/- per month w.e.f. 01.08.1997 and Rs.1600/- per month w.e.f. 15.07.1998. The said decision was conveyed to all sector Headquarters vide Dte. Genl. Letter No. A.IX-1/00-Med-II (MHA) dated 10.11.2000 for implementation.

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Government of India, Ministry of Home Affairs vide their OM NO. -II-27012/6/99/PF-I/II(Vol.II) dated 07.10.2004 conveyed sanction for revision of the rates of various allowances in respect of Nursing personnel in the Central Police Forces on admissible to CHG personnel as under:-

	<u>Existing Rate</u>	<u>Revised Rate</u>
(i) Nursing Allowance	@Rs.150/ PM	Rs.300/ PM
		w.e.f. 01.08.1997

In the light of the above instructions, the Director General, CRPF Vide UO NO. A.IX.I/2004 Med. - II dated 09.02.2005 indicated the case for revision of Nursing Allowance @ Rs.300/- per month w.e.f. 01.08.1997 and Rs.1600/- per month w.e.f. 15.07.1998 instead of Rs.300/- per month w.e.f. 01.08.1997 and Rs.1600/- w.e.f. 15.07.1998 instead of Rs.300/- in accordance with the OM dated 09.11.2000. In turn MHA vide their OM dated 06.10.2005 clarified that Nursing Allowance have been revised to Rs.300/- per month for all Central Police Force. Since the rates of Rs.300/- per month are applicable for Nursing Personnel of all CPFs including CRPF w.e.f.07.10.2004, the amount paid in excess of Rs.300/- per month to Nursing personnel beyond 07.10.2004 is to be recovered. The decision was conveyed to all Sector Headquarters vide Director General letter dated 20.10.2005 for compliance.

6. Learned counsel for the respondents had also referred to the order of Hon'ble Jammu & Kashmir High Court who had disposed of the Writ Petition with the direction to the respondents to take the decision in the matter within three months from the date of the order and until such decision is taken, recovery in terms of the order impugned against the petitioners shall remain deferred.

7. Learned counsel for the respondents had also submitted that Hon'ble Guwahati Bench of the Tribunal has not appreciated the facts of the case and this issue had not yet been decided by the Hon'ble High Court of Jammu & Kashmir and also by the Hon'ble High Court of Andhra Pradesh. Even the Hon'ble Andhra Pradesh had directed the

respondents to take decision in the matter within a period of three months from the date of receipt of a copy of this order.

8. I have heard learned counsel for the parties and perused the relevant records. The applicants have challenged the orders of the respondents at Annexure A/1 to Annexure A/3. Vide order dated 06.10.2005 (Annexure A/1), the Director (PF), Government of India, Ministry of Home Affairs, New Delhi revised the rates of Nursing Allowances to Rs.300/- per month for all CPF including CRPF Nursing Personnel w.e.f. 07.10.2004 and directed to recover amount paid in excess of Rs.300/- per month to Nursing Personnel beyond 07.10.2004. Vide order dated 20.10.2005 (Annexure A/2); recovery of Nursing Allowances paid to the Nursing Personnel was revised from Rs.1600/- to Rs.300/- per month in consequence of OM dated 07.10.2004 for all CRPF Nursing Employees w.e.f. 07.10.2004 without affording any opportunity <sup>of being heard</sup> to the applicants. Vide order dated 18.03.2006, respondent no. 4 had passed an order for recovery of Nursing Allowance from the salary of the applicants as per revision of the Nursing Allowance vide order dated 06.10.2005, 31.10.2004 and directed recovery of Rs.1000/- per month w.e.f. 07.10.2004. Initially the Director (PMS), Govt. of India, Ministry of Health and Family Welfare vide order dated 28.07.1998 (Annexure A/4) enhanced the Nursing allowances from the existing rate of Rs.300/- per month to Rs.1600/- per month to all the Nursing Personnel working in the CGHS. Subsequently, the respondent no. 1 issued sanction for payment of such allowance to the Nursing personnel. Vide order dated 10.11.2000 (Annexure A/6), the applicants were granted the benefit of Nursing Allowance w.e.f. 15.07.1998 as per order dated 10.11.2000.

9. Applicant no. 1 had submitted representation vide Annexure A/8 and applicants nos. 2 & 3 had submitted representation vide Annexure A/10 & A/11. These representations had not been forwarded to the appropriate authority for taking necessary action inspite of the fact that no opportunity was given for withdrawal of the enhanced rate of allowances. Vide letter dated 07.10.2004 (Annexure A/7); the Director (PF) revised the Nursing allowances.

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10. In the case of Smt. S. Medhaboti & Others of the Guwahati Bench of the Tribunal (supra), as per para 6 of the order, some of the applicants had also moved petition before the Hon'ble High Court of Andhra Pradesh and in response to their petition 15637/1999 dated 19.04.2000, Hon'ble High Court had directed the respondents to take decision in the matter as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of that order. Similar issue was also agitated before the Hon'ble High Court of Jammu & Kashmir at Jammu. Hon'ble High Court vide order dated 16.11.2007 had also directed the respondents to take decision in the matter within a period of three months from the date of the order. Till the last date of hearing in the present case i.e. 22.01.2009, the respondents had not been able to apprise this Bench of the fact whether any order having considered the judgement of the Hon'ble High Court has been passed by them. The respondents have not complied with the direction issued by the Hon'ble High courts even till date. I also rely on the order dated 13.07.2006 of the Guwahati Bench of the Tribunal for this purpose and I agree with the finding of the Bench in Para nos. 8 & 9, which reads as under:-

"8. Moreover, no notice was given to the applicants before the benefit was withdrawn which is per se illegal, prior opportunity should have been given. {Reference (i) 1994 SCC (L&S) 1320, Bhagawan Shukla vs. U.O.I. & Ors. (ii) JT 2002 SC 189, State of Haryana vs. Haryana Civil Secretariat Staff Association (Recovery without notice not allowed)}.

9. In the circumstances, the impugned order annexure - IV dated 07.10.2004, so far as the applicants are concerned, will not stand on its legs. Therefore, the order is set aside to that extent. It is further directed that since the earlier order dated 09.11.2000 (Annexure -II) is still governing the field, the applicants are entitled to get the said allowance as per the said order. The recovery made, if any, and the benefit of the said order will be restored (without interest).

11. Therefore, having regard to the facts & circumstances and above order of the Hon'ble Guwahati Bench of the Tribunal, order dated 06.10.2005 (Annexure A/1), order dated 20.10.2005 (Annexure A/2) and order dated 18.03.2006 (Annexure A/3) are quashed and set

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aside. The applicants should be allowed the benefits of the allowances as per order dated 09.11.2000 (Annexure A/5). The amount of recovery made, if any, shall be refunded to the applicants.

12. With these observations, the OA is disposed of with no order as to costs.

  
(B.L. KHATRI)  
MEMBER (A)

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