

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.NO.3349 OF 2014New Delhi, this the 12th day of September, 2016

CORAM:

**HON'BLE SHRI P.K.BASU, ADMINISTRATIVE MEMBER
AND****HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

.....

1. Anju Sharma, Staff Nurse,
Aged about 45 years,
Daughter of Mr.Mange Ram,
Resident of House no.9, Block E-2,
Street no.1, Shastri Nagar,
Near Metro Station, Delhi 110052
Date of Appointment/working as Staff Nurse in erstwhile Municipal Corporation of Delhi since: 07.05.1992
Presently posted at Onkar Nagar Polyclinic,
North Delhi Municipal Corporation,
Tri Nagar, Delhi 110034

2. Ritu Khurana, Staff Nurse,
Aged about 44 years,
Wife of Mr.Rakesh Khurana,
Resident of: 4/28, Jangpura-B,
Bhogal, New Delhi,
Date of Appointment/working as Staff Nurse in erstwhile Municipal Corporation of Delhi since 07.05.1992
Presently posted at: T.B.Chest Clinic,
South Delhi Municipal Corporation, Nehru Nagar, Delhi

3. Indumati Jamwal, Staff Nurse,
Aged about 46 years,
Wife of A-80, First Floor,
Meera Bagh, Paschim Vihar, New Delhi,
Date of Appointment/working as Staff Nurse in
erstwhile Municipal Corporation of Delhi since 11.05.1989.
presently posted at Hindurao Hospital,
North Delhi Municipal Corporation,
Delhi

4. Jyoti Sharma, Staff Nurse,
 Aged about 44 years,
 w/o Mr.Anurag Sharma,
 resident of GG-1/204-A,
 Vikaspuri, New Delhi 110018,
 Date of Appointment/working as Staff Nurse in
 Erstwhile Municipal Corporation of Delhi since 26.03.1994.
 Presently posted at Lala Lajpat Rai Ayurvedic Panchkarm Hospital,
 South Delhi Municipal Corporation,
 Rajouri Garden,
 New Delhi 110027

í í Applicants.

(By Advocate: Mr.Pradeep Kumar)

Vs.

1. North Delhi Municipal Corporation,
 Service to be effected upon/through its Commissioner,
 At: Dr.S.P.Mukherjee Civic Centre,
 Minto Road, New Delhi 110002
2. East Delhi Municipal Corporation,
 Service to be effected upon/through its Commissioner,
 At: 419, Udyog Sadan,
 Patparganj Industrial Area,
 New Delhi 110096
3. South Delhi Municipal Corporation,
 Service to be effected upon/through its Commissioner,
 At: Dr.S.P.Mukherjee Civic Centre,
 Minto Road, New Delhi 110002
4. Government of N.C.T.Delhi,
 Service to be effected upon/through its Principal Secretary,
 At Department of Health & Family Welfare,
 9th Level, Delhi Secretariat, I.P.Estate,
 New Delhi 110002

(By Advocates: Ms.Anupama Bansal for R-1, Mr.R.N.Singh for R-2, Mr.R.K.Jain for R-3, and Mr.Vijay Pandita for-4)

Í Í Í ORDER

Per RAJ VIR SHARMA, MEMBER(J):

The applicants, four in number, initially joined the erstwhile Municipal Corporation of Delhi as Staff Nurses on 7.5.1992, 7.5.1992, 11.5.1989 and 26.3.1994 respectively. After trifurcation of the Municipal Corporation of Delhi (M.C.D.), three independent Municipal Corporations, namely, North Delhi Municipal Corporation (N.D.M.C.), South Delhi Municipal Corporation (S.D.M.C.), and East Delhi Municipal Corporation (E.D.M.C.), have come into being. Applicant nos. 1, 3 and 4 are presently working as Staff Nurses under N.D.M.C., and applicant no.2 is presently working as Staff Nurse under S.D.M.C. As regards service matters of all the employees of the unified M.C.D., the N.D.M.C. still continues to act as the Nodal Corporation. An agreement was entered into by and between the Director General of Health Services, Government of India, and Delhi NursesøUnion on 16.5.1998. As per the said agreement, a cadre review was to be undertaken, and redeployment/redistribution of posts in hierarchy of the Nursing Cadre was to be made as under:

Category	Existing % of posts	Revised % of redeployment/ redistribution of posts
Staff Nurse	65%	36.8%

Ward Sister	27.8%	52%
Asstt. Nursing Superintendent	6.2%	9.4%
Deputy Nursing Superintendent	0.9%	1.8%
Total	100%	100%

The above redeployment/redistribution of posts was subject to the following conditions:

- a) Beneficiary Staff Nurse, Ward Sister, Assistant Nursing Superintendent would continue to discharge duties as assigned by the competent authority prior to the agreement;
- b) Review would not imply upgradation in duties and functional responsibilities;
- c) Review would be a onetime intervention; and
- d) While being eligible to draw emoluments of the next level, each Nurse so benefitted was to bear the same designation as before.

It was also agreed that the distribution of posts and percentage-wise redistribution of posts at each level were to be made available to the Chief Secretary, Government of NCT of Delhi in respect of Hospitals under its control and other organizations like DGHS/CGHS/MCD/NDMC and other sub-cadres of Nurses to undertake a similar review keeping in mind the principle followed by the Central Government. It was also agreed that ACP Scheme was to be made applicable to the Nurses subject to double benefit not being availed by any individual. The M.C.D., vide its resolution no. 353 dated 8.9.2008, approved the aforesaid agreement dated 16.5.1998 for implementation of the 1992-norms for Nurses and promotional posts, and

upgradation of posts according to the 1998-agreement. Accordingly, the M.C.D. issued office order dated 23.2.2009 stipulating thus:

- ða) 423 Staff Nurses with effect from 15.07.1998 are to be upgraded to Sr.Staff Nurse in the pay scale of Rs.5500-9000/- with benefit of fixation of pay under FR 22(1)(a)(1);
- b) 257 Nursing Sisters with effect from 15.07.1998 are to be upgraded to Non-Functional Ward Sister in the pay scale of Rs.6500-10500 with benefit of fixation of pay under FR 22(1)(a)(1);
- c) 61 Assistant Nursing Superintendents with effect from 15.07.1998 are to be upgraded to Non-Functional ANS in the pay scale of Rs.6500-10500 with benefit of fixation of pay under FR 22(1)(a)(1).ö

On 15.4.2009 applicant no.1 made representation requesting the M.C.D. to place her in the upgraded post of Senior Staff Nurse with effect from 15.7.1998, and to grant her all financial benefits. Respondent-NDMC, vide circular dated 14.6.2012, issued final seniority list of AØ Grade Staff Nurses working in various Medical institutions/Hospitals of the M.C.D.. In spite of their repeated approaches, and preparation of the final seniority list of AØ Grade Staff Nurses by the respondent-N.D.M.C., no orders placing them and others in the upgraded post of Senior Staff Nurse with effect from 15.7.1998 were issued. Therefore, the applicants filed this Original Application on 17.9.2014 praying for the following reliefs:

- ða) Directing respondents to forthwith issue by name operative order granting, upgrading:
 - i. Applicant Staff Nurses with effect from 15.07.1998, to Senior Staff Nurse in the pay scale of Rs.5500-9000; with benefit of fixation of pay under FR 22(1)(a)(1) in terms of its order no.AO(H)/AK/GF-105/09/1950 dated 23.02.2009 (Annexure A-11), with arrears along with interest @ 9% per annum, recoverable from salaries of

officers of the ~~Corporations~~ for forcing the applicants into this otherwise avoidable litigation, with all consequential reliefs and benefits.

- b) Directing respondents to revise, grant to the applicants, all their subsequent benefits granted under Assured Career Progression Scheme, Modified Assured Career Progression Scheme from their revised date of eligibility as determined after grant of aforesaid upgradation as per the provisions of the Modified Assured Career Progression Scheme and to make payment of salary, arrears, as per revised fixation of pay so arrived with all consequential reliefs and benefits;
- c) Costs of this application may also be recovered from officers of the respondent no.1 and granted to the applicants;
- d) Any other or further order or direction to grant complete relief to the applicants.ö

2. In its reply, while stating that after trifurcation of M.C.D., the N.D.M.C. is the nodal Corporation for all establishment matters of the employees of the unified M.C.D, the Respondent No.2-E.D.M.C. has prayed for deletion of its name from the array of parties to the O.A.

3. Respondent no.4- Government of NCT of Delhi, in its counter reply, has also prayed for deletion of its name from the array of parties to the O.A. on the grounds that the applicants are employees of the M.C.D. and that no relief is prayed for by the applicants against Government of N.C.T. of Delhi.

4. In its counter reply, respondent no.1-NDMC has stated, *inter alia*, that all the eligible Nursing personnel are getting the benefits of financial upgradations under ACP/MACP Schemes from the date(s) of their entitlement for the same. While processing the matter to extend the benefits of financial upgradation as per the 1998 agreement to the eligible Nursing

personnel, it issued a letter dated 30.11.2015 calling for the relevant documents, i.e., ACRs, currency of punishment report from the concerned Health Units and -No RDAØ report from the Vigilance Departments of all the three Corporations. The benefits are to be extended to eligible nursing personnel with effect from 15.7.1998. Some of the Nursing personnel have retired, expired or left the Municipal services, and hence, it would take considerable time to extend the benefits to all the eligible Nurses. The names of eligible 423 -AØGrade Staff Nurses, 257 Nursing Sisters, and 61 Assistant Nursing Superintendents and their effective dates of Non-Functional Financial Upgradation have already been mentioned in the letter dated 30.11.2015, ibid. As per the letter dated 30.11.2015, ibid, the four applicants are eligible for Non-Functional Financial Upgradation with effect from 23.5.2006, 23.5.2006, 12.6.2002 and 1.3.2012 respectively. After collection of the relevant documents and information, the matter would be placed before the Screening Committee, and on the basis of the recommendation of the Committee, and with the approval of the competent authority, orders would be issued granting the Non-Functional Financial Upgradation to the eligible Nursing personnel. In the above view of the matter, respondent no.1- N.D.M.C. prays for dismissal of the O.A.

5. In their rejoinder reply to respondent no.1-N.D.M.C.Øs counter reply, the applicants, besides reiterating more or less the same averments as in the O.A., have urged that the list containing the names of eligible 423 -AØ Grade Staff Nurses, 257 Nursing Sisters, and 61 ANS, issued vide letter

dated 30.11.2015, *ibid*, is entirely wrong. They have contended that as per the principle, the senior most Staff Nurses ought to have been first awarded financial upgradations under the ACP Scheme, and thereafter juniors ought to have been considered against the upgraded posts of Nursing personnel.

6. Before the matter was taken up for final hearing, the applicants brought to the notice of the Tribunal an office order dated 11.3.2016 issued by the respondent No.1-N.D.M.C. granting Non-Functional Grades to A ϕ Grade Staff Nurses in NFSG Scale Rs.5500-9000(pre-revised), Nursing Sisters in the NFSG Scale of Rs.6500-10500/- (pre-revised) and Assistant Nursing Superintendent in the NFSG Scale of Rs.6500-10500/- (pre-revised) with effect from different dates as per the list of personnel mentioned therein. The names of the applicants appear at sl.nos. 863, 865, 777 and 957 of the list mentioned in the office order dated 11.3.2016, *ibid*. They are shown to have been granted Non-Functional Grade with effect from 23.5.2006, 23.5.2006, 12.6.2002 and 1.3.2012 respectively.

7. We have heard Shri Pradeep Kumar, the learned counsel appearing for the applicants, and Ms.Anupama Bansal and S/Shri R.N.Singh, R.K.Jain and Vijay Pandita, the learned counsel appearing for the respondents.

8. Mr.Pradeep Kumar, the learned counsel appearing for the applicants, submitted that in terms of the letter No.Z.28015/78/99-N(PMS) dated 9.4.2000 (Annexure A/6) issued by the Government of India, Ministry of Health and Family Welfare, Department of Health, the senior most

persons ought to have been first awarded financial upgradation under the A.C.P. Scheme, and thereafter the junior persons ought to have been considered against the upgraded posts of Nursing personnel. The respondent no.1-N.D.M.C., instead of following the principle laid down by the Central Government in the aforesaid letter dated 9.4.2000, *ibid*, has granted Non-Functional Grades to the incumbents on the basis of their seniority, as a consequence of which the junior persons, like the applicants, were not given Non-Functional Grades with effect from 15.7.1998, although they had put in more than three years of service in the grade of Staff Nurse as on 15.7.1998 and had become eligible for the Non-Functional Grade with effect from 15.7.1998. It was also submitted by Mr.Pradeep Kumar that as per the agreement dated 16.5.1998, the M.C.D. or, for that matter, the N.D.M.C., while undertaking the cadre review of its Nursing personnel, being required to keep in mind the principle followed by the Central Government, the guideline contained in the letter dated 9.4.2000, *ibid*, ought not to have been ignored by the respondent-N.D.M.C.

9. On the other hand, Ms.Anupama Bansal, the learned counsel appearing for respondent no.1-N.D.M.C., submitted that after issuance of the order dated 11.3.2016, *ibid*, placing the four applicants in the upgraded post of Senior Staff Nurse with effect from the dates of their entitlement, i.e., 23.5.2005, 23.5.2006, 12.6.2002 and 1.3.2012 respectively, nothing survives for adjudication in the O.A. and the O.A. is liable to be dismissed as being infructuous. It was also submitted by Ms.Anupama Bansal that the

applicants were not entitled to be placed in the upgraded post of Senior Staff Nurse with effect from 15.7.1998.

10. After having given our anxious consideration to the facts and circumstances of the case and the rival contentions, we have found no substance in the contentions of the applicant.

11. The letter No.Z.28015/78/99-N(PMS) dated 9.4.2000 (Annexure A/6) reads thus:

Re: No.Z.28015/78/99-N(PMS)
 Government of India
 Ministry of Health & Family Welfare
 (Department of Health)
 Nirman Bhavan, New Delhi
 Dated the 9th April, 2000

To

The Director General of Health Services
 (Nursing Section),
 New Delhi.

Sub: Upgradation of posts of Nursing Personnel and ACP
 Scheme regarding.

The matter in question is under examination for implementing of the Ministry's order No.Z.28015/86/97-N(PMS) dated 28/7/1998 and 2/6/1999 for upgradation of 1200 nursing posts in Central Govt. Hospital simultaneously with Assured Career Progression scheme introduced by DOPT vide No.35034/1/97-Estt. (D) dated 9th August, 1999 for quite some time. On examining the facts, it is decided that the senior most persons first be awarded ACP scheme. Thereafter juniors may be considered against the upgraded posts of Nursing Personnel.

2. While implementing the Ministry's order for upgradation of posts, reservation roster should be strictly followed.

Yours faithfully,
 Sd/
 (R.M.Bhattacharya)
 Director (PMS)

12. The letter dated 9.4.2000, *ibid*, was not issued by the Government of India to the M.C.D. The principle indicated in the letter dated 9.4.2000, *ibid*, is applicable only to the Nursing personnel working under the Director General of Health Services and other Central Government organizations. The erstwhile M.C.D. or, for that matter, the three trifurcated Municipal Corporations, being independent organizations, cannot be said to be bound by the provisions contained in the letter dated 9.4.2000, *ibid*. The applicants have not produced before this Tribunal any material to show that the M.C.D. or, for that matter, the N.D.M.C. has taken decision to adopt the principle indicated in the letter dated 9.4.2000, *ibid*, for its Nursing personnel. As per the agreement dated 16.5.1998, *ibid*, the M.C.D. has to undertake the cadre review of its Nursing personnel, and, while so doing, has to keep in mind the principles followed by the Central Government regarding percentage of posts to be deployed and distributed to different grades of the Nursing cadre. It does not mean that instructions issued by the Central Government on the subject of A.C.P.Scheme and upgradation of posts of Nursing personnel working under its different organizations are automatically applicable to the Nursing personnel working under the M.C.D. Therefore, the letter dated 9.4.2000, *ibid*, does not clothe the applicants-Nursing personnel working under the M.C.D. with a right to claim placement in the upgraded posts in accordance therewith.

13. The other aspect of the matter is that the A.C.P.Scheme came into force with effect from 9.8.1999, while the upgradation of the posts in

the Nursing cadre of the M.C.D., by way of cadre review, took effect from 15.7.1998. It is trite that when some posts in a cadre stand upgraded, placement of incumbents in the upgraded posts is made on the basis of their seniority in the cadre. In the instant case, when the senior most persons were entitled to be placed in the upgraded posts with effect from 15.7.1998, it would be wholly illegal to deny placement of those senior most persons in the upgraded posts with effect from 15.7.1998 with a view to award them financial upgradation under the ACP Scheme with effect from 9.8.1999, and to place the junior persons in the upgraded posts with effect from 15.7.1998.

14. In the above view of the matter, we do not find any substance in the contention of the applicants that they have been denied placement in the upgraded post of Senior Staff Nurse with effect from 15.7.1998 in clear violation of the principle contained in the letter dated 9.4.2000, *ibid.*

15. In the light of our above discussions, we have no hesitation in holding that the applicants have not been able to make out a case for the reliefs claimed by them. The O.A., being devoid of merit, is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(P.K.BASU)
ADMINISTRATIVE MEMBER