

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4069/2013

Order Reserved on: 07.02.2017
Order pronounced on 10.02.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

1. Mrs. Sosamma. K. Sam
Assistant Nursing Superintendent
Dept. of Nursing
All India Institute of Medical Science
New Delhi. ... Applicant

(By Advocate: Ms. N. M. Varghese for Ms. Tersy Varghese)

Versus

1. All India Institute of Medical Science
Through its Director
Ansari Nagar
New Delhi.

2. The Medical Superintendent
All India Institute of Medical Science
Ansari Nagar
New Delhi.

3. The Deputy Director (Admn.)
All India Institute of Medical Science
Ansari Nagar
New Delhi.

4. The Secretary
Department of Health
Ministry of Health & Family Welfare
Govt. of India, Nirman Bhavan
New Delhi. ... Respondents

(By Advocate: Mr. R.K.Gupta)

O R D E R

By V. Ajay Kumar, Member (J):

The applicant, an Assistant Nursing Superintendent under the Respondent-All India Institute of Medical Sciences (in short, AIIMS), filed the OA seeking the following relief(s):

"a) Pass an order directing the respondents to take appropriate proceedings for fixing the correct scale of pay by taking into consideration of the applicant's service rendered in the Military Nursing Services.

b) Pass an order directing the respondent to take appropriate proceeding for granting correct scale of pay from the date of joining as staff nurse along with subsequent modifications at relevant points of time and for giving the salary dues."

2. The brief facts of the OA are that the applicant was appointed as Commissioned Officer in the Military Nursing Service on 30.12.1976 and worked as such till 16.03.1982. In view of her marriage, and after her discharge from Military Nursing Service, she was appointed as Staff Nurse on 22.03.1982 in the Respondent-AIIMS, in the scale of pay of Rs.425-15-560-EB-20-640. The applicant submitted a representation dated 29.10.1982 for fixing her scale of pay by counting her past service in the Military Nursing Service but the respondents rejected the said representation vide their Memorandum dated 09.11.1982 (Though stated in the OA but furnished a copy of this order at the time of hearing). The applicant was regularized in the post of Staff Nurse on 25.10.1985 and was also promoted to the post of Sister Grade - I w.e.f. 01.03.1992, and again promoted to the post of Assistant Nursing Superintendent on 24.01.2009. The applicant

finally retired from service, after filing the present OA, on attaining the age of superannuation, on 20.12.2013.

3 Heard Ms. N.M.Varghese, proxy of Ms. Tersy Varghese, the learned counsel for the applicant and Shri R.K.Gupta, the learned counsel for the respondents, and perused the pleadings on record.

4. The learned counsel for the applicant submits that certain identically placed persons filed O.A.NO.T-19-CH-2009 (CWP NO.10281 of 2001) [**Capt. (Mrs.) Surjit Kaur and Others v. Post Graduate Institute of Medical Education & Research, Chandigarh & Others**) in the Central Administrative Tribunal, Chandigarh Bench (Annexure A5), seeking the counting of their Military service for the purpose of pension, in the Post Graduate Institute of Medical Education and Research, Chandigarh, and the said OA was allowed by directing the respondents therein to reconsider the cases of the applicants therein, in the light of the observations made therein on the issues raised and to pass necessary orders.

5. On coming to know about the same, the applicant made representation on 15.02.2013 to count her past service of Military Nursing Service for refixation of her pay and for all consequential benefits. However, the respondents have not passed any orders thereon till date.

6. It is submitted that since the applicant is identically placed like the applicants before the Chandigarh Bench, she is entitled for granting of the same benefits.

7. The learned counsel also placed reliance on the following decisions:

- i) **Director General of Posts and Others v. B. Ravindran and Another**, 1997(1) SLR (SC) 147.
- ii) O.A.No.146/2004 (**Shri P.V.Subba Rao v. The Senior Superintendent of Post Offices, Prakasam Division, Ongole & Others**), decided on 29.07.2009 by the Division Bench of the Central Administrative Tribunal, Hyderabad Bench.
- iii) O.A.No.34/2009 (**Manohar Singh Chana v. Union of India & Anr.**), decided on 20.02.2014 by the Division Bench of the Central Administrative Tribunal, Principal Bench.

8. On the contrary, Shri R.K.Gupta, the learned counsel appearing for the respondent-AIIMS, would submit that the OA is abnormally delayed and hence, liable to be dismissed on that ground alone. He further submits that under Rule 9(1) of CCS (Pension) Rules, 1972, benefit of counting of Military Service rendered before civil employment can be given to an employee whose services are confirmed in the civil employment. But the services of the applicant were not confirmed in AIIMS. The learned counsel further submits that under Rule 19(1) of CCS (Pension) Rules, 1972, applicant required to give an option at the time of her confirmation in the civil post whether she would like to get past Military service counted for the

pension in the civil post or service, but the applicant has not filed any document to show that whether she had exercised option or not.

9. It is well settled that wrong fixing or not fixing of a pay scale or pension is a continuous cause of action as held by the Hon'ble Apex Court in **M.R.Gupta v Union of India & Others**, (1995) 5 SCC 628, and hence, the contention of the respondents that the OA is barred by limitation, is unacceptable.

10. The contention of the respondents that the applicant's services were not confirmed is also rejected as they themselves stated in their counter that the applicant was regularized as Staff Nurse on 25.10.1985.

11. In **Captain (Mrs.) Surjeet Kaur** (supra), the applicants who were also discharged from the service of the Armed Forces and later appointed as Sister Grade-II in the Respondent-Institute, filed the said OA seeking identical relief, i.e., counting of their Military service for fixation of pay and for the purpose of pension, in terms of Rule 19 of the CCS (Pension) Rules, 1972. A Coordinate Bench of this Tribunal, considering the identical submissions and in the identical circumstances, while holding that the respondents therein have wrongly rejected the claim of the applicants therein, allowed the OA to the extent of direction to the respondents to reconsider the case of the applicants in the light of the observations made therein and to pass appropriate orders within a specific period.

12. In **Manohar Singh Chana** (supra), a Coordinate Bench of this Tribunal, considered the identical issue and allowed the OA by directing the respondents to count the Military service of the applicant therein for notional initial pay fixation and consequential fixation of pension.

13. In the circumstances and for parity of reasons, the OA is allowed and the respondents are directed to consider the case of the applicant for notional fixation of her initial pay by counting her Military Nursing Service, with all consequential benefits including for fixation of pension. However, in the circumstances, the applicant is entitled for arrears w.e.f. the date of filing of the OA, i.e., from 18.11.2013. The respondents shall complete the aforesaid exercise within three months from the date of receipt of a copy of this order. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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