

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.3235/2014
M.A.No.2779/2014

Tuesday, this the 17th day of April 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Sh. Sreenivas NV (posted as Staff Nurse)
Age 37 years
s/o NV Vasudevan Nair
r/o Flat No.401, Tara Apartment
Ward No.6, Mehrauli, New Delhi – 110 030
2. Ms. Ranjana Kumari (Posted as Staff Nurse)
Age 43 years
d/o Krishna Ram Dogra
E-14, Mata sundari DDU Marg
New Delhi – 110 002
3. Ms. Archna Rani (Posted as Staff Nurse)
Age 30 years
r/o S-679, School Block
Shakarpur, New Delhi – 92
4. Ms. Sunita C Babu (Posted as Staff Nurse)
Age 45 years
d/o late Kr Mohan Nair
r/o J-63, Street No.4
Laxmi Nagar, Delhi
5. Ms. Rita Sharma (Posted as Staff Nurse)
Age 55 years
w/o Mukesh Sharma
Quarter No.C-10, Mirdard Lane
MAMC Campus, New Delhi – 110 002

..Applicants

(Mr. Ramesh Chand, Advocate)

Versus

1. Union of India through the Secretary
Ministry of Health & Family Welfare
Govt. of India, New Delhi
2. The Principal Secretary
Dept. of Health & Family Welfare
Govt. of NCT of Delhi, New Delhi

3. The Secretary
Dept. of Personnel & Training
Govt. of India, New Delhi
4. The Secretary
Dept. of Finance
Govt. of India, New Delhi
5. The Principal Secretary
Dept. of Finance
Govt. of NCT of Delhi
New Delhi
6. The Director
Guru Nanak Eye Centre
New Delhi
7. The Medical Superintendent
Satyawadi Raja Harish Chandra Hospital
Narela, New Delhi
8. Ms. Anchal Sangotra, Staff Nurse
Through Medical Superintendent
Satyawadi Raja Harish Chandra Hospital
Narela, New Delhi

..Respondents

(Mr. Ashok Kumar, Advocate for respondent No.1
Mr. Bhanu Gupta, Advocate for Mr. Ankur Chhibber, Advocate for
Respondent Nos.2, 5, 6 & 7,
Mr. Subodh Kaushik, Advocate for Mr. VSR Krishna, Advocate for
Respondent Nos. 3 & 4 –
Nemo for respondent No.8)

O R D E R (ORAL)

Through the medium of this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following reliefs:-

- “a) Declare one time lump-sum incentive for Diplomas, Degree and Post Graduation in Nursing, which are acquired after induction in service, as higher qualification pay for nursing personals/service holder. And;
- b) Update the office memorandum No.1/2/89-Estt. (pay.1) dated 09.04.1999 of the respondent no-3 with the Diplomas, Degrees and Post Graduation in Nursing. And;

c) Issue direction to the respondent no-1 to follow the updated office memorandum of the respondent no-3, in this regard so that the Applicants and other such candidates who have other additional qualifications like degree and diplomas in computer science and others which improve the quality of nursing, get qualification pay. And;

d) Withdraw the impugned OM dated 15.01.2010 issued by the respondent no-1 and OM dated 08.10.2010 issued by the respondent no-2 regarding the qualification pay for Nurses, which create inequality and discrimination in public employment Or pass any order/direction to the respondents that they also consider the applicants for the additional monthly increments as the applicant no.-1 has additional qualifications.”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 Delhi Subordinate Services Selection Board (DSSSB) conducted selection for the post of Staff Nurse in the year 2005. The applicants herein participated in the selection process and were selected. The DSSSB published the Annexure A-2 Result Notice dated 01.04.2005. However, only the name of applicant No.1 finds mention at Sl. No.6 of the said Result Notice.

2.2 In order to encourage the serving officials to acquire higher qualifications, there was a Scheme of the Central Government to sanction advance increments to such employees, who were acquiring higher qualifications. The said Scheme was formulated on the recommendations of the 4th Central Pay Commission (CPC).

2.3 The Committee of Secretaries (CoS), Govt. of India, reviewed the said Scheme and recommended that the Scheme of grant of advance increments be replaced with ‘one time *lump sum* incentive’. Accepting the said

recommendations of CoS, Department of Personnel & Training (DoPT), Govt. of India issued Annexure A-4 O.M. dated 28.06.1993, which, *inter alia*, envisaged as under:-

- “i) No incentive shall be allowed for acquiring higher qualification purely on academic or literary subjects. Incentives should be considered only if the higher qualification will make the official more effective in the present of next higher assignment. Incentives need not be considered for qualifications like MBA or Degree in Humanities. Incentives may be given for Engineering Degree, Accountancy, Computer Science and post Graduate Degree in Medicine and the like;
- ii) The quantum of lump-sum, one time incentive shall be based on qualification without any relation to increment or level/grade of the officer.
- iii) A Central Govt. employee who acquired higher qualification by taking study leave will not be eligible for any incentive. This condition will not apply to members of the Armed Forces and will be applicable only to civilian employees of Ministry of Defence;
- iv) Incentive payment should be given only for higher qualification acquired after induction into service and will not apply for the incentives now being given in the existing schemes for possession of higher qualification at an entry stage;
- v) No incentive would be admissible if an appointment is made in relaxation of the educational qualification. No incentive would be admissible if the employee acquires the requisite qualification for such appointment at a later date;
- vi) No stepping up of pay shall be allowed in the case of juniors by virtue of drawing more pay under the scheme of advance increments.”

2.4 The instructions contained in the 1993 O.M. have since been revisited. The DoPT thereafter issued O.M. dated 31.01.1995, which was replaced by O.M. dated 09.04.1999 (Annexure A-5 (colly.)). The 1999 O.M. gives a list of higher qualifications / degree/ diploma in respect of which the *lump sum* incentives are available. It also prescribes the quantum of such incentives.

2.5 The Ministry of Health & Family Welfare (respondent No.1), vide its Annexure A-6 O.M. dated 15.01.2010, has prescribed as under:-

“6. The above scheme was reviewed by the Ministry of Health and Family Welfare in consultation with the Department of Personnel and Training in the light of the two OMs No.1/2/89-Estt. (Pay-1), dated 31st January, 1995 and 9th April, 1999 and it was decided to continue the scheme.

7. The above scheme has been further reviewed after revision of pay scales of nurses on implementation of 6th Central Pay Commission order. It has been decided to continue the scheme in the present format with the slight change that the increment to be granted will be 3% of the basic pay of the nursing staff concerned.”

As on date the O.M. dated 15.01.2010 holds the field.

2.6 The essential qualifications for recruitment to the post of Staff Nurse are (i) Matriculation or its equivalent, (ii) ‘A’ Grade Certificate in Nursing from a recognized Institution, (iii) Certificate in Midwifery, etc. Applicant No.1, besides possessing diploma in General Nursing and Midwifery, had also done B.Sc. degree in Nursing at the time of his induction as Staff Nurse. Hence, in terms of the 1993 O.M., he was granted the additional increment. During the service, he acquired diploma in Computer Application. He claims that in terms of the 1999 O.M., he is entitled for a second incentive. It is stated that such a dispensation has been granted to private respondent No.8, but the same has been denied to applicant No.1. Accordingly, he has approached this Tribunal in the instant O.A. praying for the reliefs, as indicated in paragraph (1) above.

3. Separate replies have been filed by respondent Nos. 1, 3 & 4 and 2, 5 & 6. In the reply filed on behalf of respondent Nos. 2, 5 & 6, it is stated that

Annexure A-4 O.M. dated 28.06.1993 makes it absolutely clear that the incentive should be given only for higher qualification acquired after induction into service and will not apply for possessing higher qualification at the entry stage. This O.M. further clarifies that no incentive shall be allowed for acquiring higher qualification purely in academic or literary subjects. The Annexure A-6 O.M. dated 15.01.2010 has further clarified that such incentives would be available only in cases of acquiring higher qualification in the disciplines indicated therein. According to this O.M., the first incentive is to be given on acquisition of Post Certificate Diploma of 10 months duration in the disciplines of Nursing Education & Nursing Administration, Psychiatric Nursing, Pediatric Nursing & Public Health Nursing. It further specified that two increments are to be given on acquisition of B.Sc. (Hons.) or M.Sc. (Nursing). The said respondents have thus contended that since applicant No.1 has acquired the higher qualification of diploma in Computer Application, which has nothing to do with his professional discipline of Nursing, hence he cannot be granted the benefits of Annexure A-6 O.M. dated 15.01.2010. It has also been contended that private respondent No.8 had acquired B.Sc. (Nursing) while in service and hence she has been granted the benefits of Annexure A-6 O.M. by way of two increments.

4. Arguments of learned counsel for applicants and learned counsel for the respective respondents are heard.
5. It is quite apparent from the records that the scheme of granting incentives for acquiring higher qualification has been under transformation

from time to time. Such incentives were initially available even on acquiring higher qualifications, which had no co-relationship with the profession of nursing. In Annexure A-6 O.M., it was made absolutely clear that higher qualification acquired should have co-relationship with the nursing profession. In the said O.M., further clarity has been brought in as to the disciplines in which acquisition of higher qualification are to be encouraged and rewarded. One more change that has now been brought in is that the incentives and increments had been replaced with *lump sum* payments.

6. The records would reveal that the applicant No.1, at the time of his induction as Staff Nurse, besides the essential qualification of diploma in General Nursing and Midwifery, was also having a higher qualification of B.Sc. degree in Nursing, for which he was given an additional increment by way of incentive in terms of the Scheme. He has subsequently acquired the higher qualification diploma in Computer Application, which has no direct co-relationship with the nursing profession. As such, I do not find any flaw in the action of the respondents in denying him the incentives in terms of Annexure A-6 O.M. The case of private respondent No.8 is completely different; she has acquired the higher qualification of B.Sc. (Nursing) while in service and has been granted incentive in terms of Annexure A-6 O.M. correctly on the ground that the higher qualification acquired is covered under the said O.M.

7. The applicants have also challenged the *vires* of Annexure A-6 O.M. dated 15.01.2010. Pertinent to mention that this O.M. as well as its predecessor O.Ms. have intended to encourage the serving officials to

acquire higher qualification, which would enhance their proficiency in the job. The respondents were earlier granting such incentives on acquiring any kind of higher qualification, be it related or un-related to the profession of nursing. They later realized that this kind of wanton grant of incentive would not serve the useful purpose, as they felt that the higher qualification acquired must be relatable to the nursing profession. Accordingly, they have brought clarity on this issue, to start with in Annexure A-4 O.M. dated 28.06.1993 and complete clarity in Annexure A-6 O.M. dated 15.01.2010. I am of the view that such a decision is completely in the nature of policy making and falls entirely in the domain of the Executive. No intervention in this matter from the judiciary is warranted. Therefore, I hold that the challenge to Annexure A-6 O.M. dated 15.01.2010 in this O.A. is completely misplaced and unwarranted.

8. In the conspectus of discussions in the foregoing paragraphs, I do not find any merit in the O.A. It is accordingly dismissed without any order as to costs.

(K.N. Shrivastava)
Member (A)

April 17, 2018
/sunil/