

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
REGN. NO.: OA/050/00787/2016
w i t h
MA/050/00014/2017
a n d
MA/050/00282/2017

Reserved on : 20/09/2017

Date of Order : 22/09/2017

C O R A M

HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER
HON'BLE MR. JAYESH V.BHAIRAVIA, JUDICIAL MEMBER

1. Hansmukh Jain, son of Sri Mohan Lal Jain, resident of village-Jetana, PS-Jhallara, District-Udaipur, Rajasthan, presently posted as Assistant Professor, Department of Nursing AIIMS, Patna, residing at Quarter No. 110, Type-IV, Block-2, AIIMS Residential Complex, PS-Phulwarishariff, District-Patna.
2. Rathish Nair, son of V.S.R.Nair, resident of village-Ramapuram, PS-Ramapuram, District-Kottayam, Kerala, presently posted as Assistant Professor, Department of Nursing AIIMS, Patna, residing at Quarter No.102, Type-IV, Block-1, AIIMS Residential Complex, PS—Phulwarishariff, District-Patna.

..... Applicants.

- By Advocate[s]: Mr. Shashank Chandra;
 Mr. Dhirdyuti Kumar Verma.

-Vrs.-

1. The Union of India through the Secretary, Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi.
2. The Joint Secretary, Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi.
3. The Deputy Secretary, Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi.
4. The Director, All India Institute of Medical Sciences, Phulwarishariff, Patna.
5. The Administrative Officer, All India Institute of Medical Sciences, Phulwarishariff, patna.

..... Respondents.

- By Advocate: Mr. Kumar Sachin.
 Mr. B.K.Pandey [For Respns. No. 4 & 5]

ORDER

Per Mr. A.K. Upadhyay, A.M:- This application has been filed for setting aside the order dated 30.09.2016 by which the pay scale of the applicants has been reduced from PB4 Rs.15600-39100 + GP Rs. 8000 to PB3 Rs. 15600-39100 + GP Rs. 6600. The impugned order is as follows:-

“I am directed to inform that pay band of Shri Rathish Nair and Shri Hansmukh Jain working as Assistant Professor in the College of Nursing, AIIMS, Patna has been revised from Rs.15600-39100 [Pay scale] + GP Rs.8000 to Rs.15600-39100 [Pay scale] + GP Rs.6600 which is at par with the pay structure of Lecturer in Nursing [Assistant Professor] at AIIMS, New Delhi. The revised Pay Scale and Grade Pay will be effective from the date of their joining at this Institute.”

2. The undisputed facts of the case are as follows:-

[i] There was an advertisement issued by the Government of India, Ministry of Health & Family Welfare dated 28.12.2011 by which applications were invited for a total of 91 posts in different categories. The applicants are concerned with the post of Assistant Professor [Nursing] for which the qualifications, experience and pay were prescribed as follows:-

“XII. Qualifications: Qualifications may be relaxed for highly experienced, trained or reputed candidates at the discretion of the search cum selection Committee. However, they generally are:

1.
2.
3. Nursing: As per recommendations of the Nursing Council of India.

XIII. Experience:

1.
2.
3.

4. **Assistant Professor** : 3 years of Teaching/Research Experience after Qualifying degree or 3 years as Senior Resident or Equivalent.

XIV. Pay :

1.
2.
3.
4. **Assistant Professor: Pay Band-3:** Rs.15600-39100 with Grade Pay of Rs.8000 with a minimum of Rs.30,000 + NPA. [NPA for medically qualified candidates only] with provision to move to PB-4 after three years [Rs.37400-67000] with Grade Pay of Rs.8700.”

[ii] The applicants were called for interview on 21.12.2012 at the National Institute of Health & Family Welfare, Education Block, Mundrika, New Delhi. They were selected for the post of Assistant Professor, Department of Nursing, AIIMS, Patna and they were issued appointment letters dated 09.04.2013. The applicant no.1 joined on 26.04.2013 and the applicant no.2 joined on 10.04.2013.

[iii] The applicants were given salary in accordance with the terms of advertisement quoted in para-2[i] i.e. Rs. 15600-39100 + GP Rs.8000.

[iv] The above scale was reduced to Rs. 15600-39100 + Rs.6600 without any prior notice or show cause after more than three years.

3. The applicants’ contention is that they fulfill all the prescribed qualifications and experience in the notification and they were rightly given the pay scale mentioned in the notification. Therefore, reducing it abruptly after three years is wholly arbitrary.

4. The written statement has been filed on behalf of respondents no.4 & 5 i.e. AIIMS, Patna in which the following submissions have been made:-

[i] The office order dated 30.09.2016 [*i.e. the impugned order*] was issued keeping in view the pay structure of the faculty of

Nursing Cadre of AIIMS, New Delhi. The AIIMS New Delhi is the mentor institute. Besides the above, office order was based on the offer of appointment issued to the applicants. The offer of appointment clearly mentions, *“The All India Institute of Medical Sciences, Patna offers you an appointment to the post of Assistant professor in the Department of Nursing in the pay structure as applicable to the employees of your status in AIIMS, New Delhi or as may be decided by the competent authority and on the following terms and conditions.”*

[ii] The offer of appointment further states in clause 18 that *“You shall undertake that the pay structure as suggested in the offer of appointment shall be agreeable to you and in no case any reference of any of the pay structure envisaged during the procedure of selection shall be insisted by you during the currency of your service in the grade.”*

[iii] The candidates accepted the offer of appointment and they are bound to accept the pay structure being followed in AIIMS, New Delhi. New AIIMS were created by an amendment of AIIMS Act, 1956 in the year 2012 and thus, there must be similarity with regard to the pay structure of the Nursing Faculty in all the AIIMS.

[iv] The impugned order was issued in the line of pay scale of Nursing Faculty of AIIMS, New Delhi.

[v] The recent advertisements of AIIMS, Rishikesh dated 17.12.2016 and AIIMS, Jodhpur dated 31.12.2016 also substantiate the fact that they are following the pay structure of Nursing Faculty of AIIMS, New Delhi [Annexures-A & B respectively].

[vi] The post of Administrative Officer in AIIMS, Patna was vacant from 31.10.2013 to 25.08.2014. The charge of Administrative Officer was given to Shri Rathish Nair, (*applicant no.2 in the present case*), and he worked on that post from 26.08.2014 to 31.03.2016. Hence, the order for reverting the grade pay of Assistant Professor [Lecturer] could not come into force.

[vii] The advertisement dated 28.12.2011 [*Annexure-1 in pursuance of which the applicants have been appointed*] was issued

without proper consideration of eligibility and experience criteria for the post of Assistant Professor [Lecturer] of AIIMS, New Delhi.

5. The learned counsel for the respondents 1, 2 & 3, Mr. Kumar Sachin, submitted that he has not received any instructions on behalf of the Government of India, and that he has been advised that the respondents no.3 & 4 would also represent their case.

6. Heard the parties and perused the documents.

7. It is now clear that the respondents' case is not that the applicants do not meet the qualifications that were prescribed in the advertisement. Therefore, we are not getting into examining the detailed submissions made by the applicants with regard to their qualifications. The respondents' contention is that firstly there was an error in the advertisement and, secondly, the appointment letter mentions some clauses under which they are competent to reduce the pay scales. We proceed to examine both the submissions.

8. As we have stated above, the advertisement has been issued by the Government of India, Ministry of Health & Family Welfare and it is for them to submit that there has been a gross error on their part. AIIMS Patna is a lower formation than the parent Ministry. The learned counsel for the AIIMS Patna, Shri B.K.Pandey, fairly submitted that it is for the Government of India to explain as to how this mistake happened and why no corrigendum was issued and as to what action has been taken against guilty officials who have committed this bungling either out of collusion or gross negligence. The advertisement is now six years old and the OA has been filed in

November, 2016. Till date we have nothing on record regarding any admission, statement or order by Government of India, Ministry of Health & Family Welfare about the said error and its rectification, or any action against guilty officials pursuant thereof.

9. Now, we come to the second plank of argument taken by the respondents 4 & 5 i.e. AIIMS Patna that the conditions in the appointment letter empowers them to change the pay scale. The said appointment letter has been issued by AIIMS Patna in which the two conditions have been mentioned, which have been cited in para 4[i] & [ii] above. There is no mention in the main instrument i.e. in the advertisement dated 28.12.2011 [Annexure-A/1] issued by the Government of India that the pay scales mentioned therein are subject to any changes with reference to AIIMS New Delhi. A specific pay scale and grade pay has been mentioned. Therefore, in our view, an appointment letter issued by the AIIMS Patna mentioning some general clauses cannot overturn the specific pay scale mentioned by their administrative ministry i.e. Government of India, Ministry of Health & Family Welfare.

10. We have gone through the recent notifications issued by AIIMS, Rishikesh and AIIMS, Jodhpur [Annexures-A&B to written statement respectively] which have been relied upon by the respondents. There are two vital differences in these notifications from that in respect of AIIMS Patna under adjudication in the present OA. As we have stated earlier, the notifications for AIIMS Patna has been issued by the Govt. of India, Ministry of Health & Family

Welfare, whereas the notifications for AIIMS Rishikesh and Jodhpur have been issued by the respective AIIMS's. Secondly, in AIIMS Rishikesh the post of Assistant Professor [Lecturer] in Nursing has been clearly mentioned as PB3 Rs.15600-39100 + GP Rs.6600. In AIIMS Jodhpur no post of Assistant Professor Nursing was notified. There were four posts of Associate Professor Nursing. For AIIMS Patna not only the notification was issued by the Govt. of India, Ministry of Health & Family Welfare, the pay scale also for the Assistant Professor was notified in PB-3 Rs.15600-39100 + GP Rs.8000. Thus, there is no parallel between the notifications for AIIMS Patna under consideration in the OA and notification for AIIMS Rishikesh and Jodhpur submitted by the respondents in the written statement.

11. It is well settled that every recruitment has to be governed by the terms of the respective notification. The applicants recruitment is governed by their notification dated 28.12.2011 issued by the Govt. of India, Ministry of Health & Family Welfare and recruitment for AIIMS Rishikesh and AIIMS Jodhpur will be governed by their notifications issued by the respective Institutes.

12. In conclusion, the impugned order dated 30.09.2016 [Annexure-A/7] issued by the AIIMS Patna is wholly illegal and without authority. Hence, this order is quashed and set-aside. The OA is allowed. The respondents are directed to refund the amount recovered from the applicants within a period of two months from

the date of receipt of a copy of this order. There shall be no order as to costs.

Sd/-
[Jayesh V.Bhairavia]
Member [Judl.]

sd/-
[A.K.Upadhyay]
Member [Admn.]

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