

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

(1) TRANSFERRED APPLICATION NO. 203/00001/2018

[WP(S) No.4569/2015 of High Court of Chhattisgarh at Bilaspur]

&

(2) TRANSFERRED APPLICATION NO. 203/00004/2018

[WP(S) No.4540/2015 of High Court of Chhattisgarh at Bilaspur]

Jabalpur, this Tuesday, the 09th day of April, 2019

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

(1) TRANSFERRED APPLICATION NO. 203/00001/2018

[WP(S) No.4569/2015 of High Court of Chhattisgarh at Bilaspur]

**Smt.Jeayareka, W/o B.Parthiban, Aged about 37 years,
Working as Assistant Professor (Nursing), R/o H.No.49,
Balaji Green City, Sondongari, Near Heerapur Housing
Colony, Raipur (C.G.)** - **APPLICANT**

(By Advocate –Ms.Shalini Choudhari)

Versus

1. Union of India through its Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
2. State of Chhattisgarh, Through the Secretary, Department of Health, Mahanadi Bhawan, Naya Raipur (C.G.)
3. Chief Controller of Accounts, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
4. President Institute Body, All India Institute of Medical Science, Raipur (C.G.) Tatibandh, G.E.Road, Raipur (C.G.)
5. Director, All India Institute of Medical Science, Raipur (C.G.) Tatibandh, G.E.Road, Raipur (C.G.)
6. Administrative Officer, All India Institute of Medical Science, Raipur (C.G.) Tatibandh, G.E.Road, Raipur (C.G.) - **RESPONDENTS**

(By Advocate – Shri Vivek Verma)

(2) TRANSFERRED APPLICATION NO. 203/00004/2018

[WP(S) No.4540/2015 of High Court of Chhattisgarh at Bilaspur]

Dr.Binu Mathew, W/o Shri Sajan Joseph, Aged about 42 years,
Working as Assistant Professor (Nursing), R/o House No.HIG 32
Hudco Bhilai, District Durg (C.G.) **- APPLICANT**

(By Advocate –Ms.Shalini Choudhari)

Versus

1. Union of India through its Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
2. State of Chhattisgarh, Through the Secretary, Department of Health, Mahanadi Bhawan, Naya Raipur (C.G.)
3. Chief Controller of Accounts, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
4. President Institute Body, All India Institute of Medical Science, Raipur (C.G.) Tatibandh, G.E.Road, Raipur (C.G.)

5. Director, All India Institute of Medical Science, Raipur (C.G.) Tatibandh, G.E.Road, Raipur (C.G.)

6. Administrative Officer, All India Institute of Medical Science, Raipur (C.G.) Tatibandh, G.E.Road, Raipur (C.G.) **- RESPONDENTS**

(By Advocate – Shri Vivek Verma)

(Date of reserving the order: 26.03.2019)

COMMON ORDER

By Navin Tandon, AM.-

The applicants in both these cases are aggrieved by reduction of their salary.

2. As the issue involved in both the cases are common and the facts are identical, both these cases were heard together and are being disposed of by this common order. For the sake of convenience, the facts &

pleadings of TA No.203/00004/2018 have been taken in this order unless otherwise specifically mentioned.

3. The petitioners had approached Hon'ble High Court of Chhattisgarh in WP (S) No.4569/2015 and WP(S) No.4540/2015. Consequent upon the notification dated 22.06.2017, wherein All India Institute of Medical Sciences (AIIMS), Raipur has been notified under the provisions of Section 14(3) of the Administrative Tribunals Act, 1985, Hon'ble High Court of Chhattisgarh vide its order dated 09.11.2017 transferred the cases to this Tribunal, where these were registered as TA 203/00001/2018 and TA 203/00004/2018 respectively.

4. Brief facts of the case as submitted by the petitioners are as under:

4.1 Ministry of Health & Family Welfare (respondent No.1), issued an advertisement in dated 28.12.2011 (Annexure P-2), inviting applications for faculty positions in six new AIIMS being established at Rishikesh, Bhopal, Jodhpur, Patna, Raipur and Bhubaneswar.

4.2 The petitioner applied for the post of Assistant Professor (Nursing) in Pay Band 3 Rs.15600-39100 with grade pay Rs.8000 with a minimum of Rs.3000+NPA (NPA for medically qualified candidates only) with provision to move to PB-4 (Rs.37400-67000) after three years with grade pay of Rs.8700/-.

4.3 Ministry of Health & Family Welfare (MoHFW) communicated on 31.01.2013 (Annexure P/3) the approval of Hon'ble Health and Family Welfare Minister to the approval of the recommendation of the Selection Boards, which included the name of the petitioner as Assistant Professor (Nursing).

4.4 Accordingly, appointment letter dated 23.03.2013 (Annexure P/4) was issued and the petitioner joined AIIMS Raipur in March, 2013 itself.

4.5 In consequence with recommendation of the Internal Audit Wing, MoHFW, the pay of the petitioner was revised by respondent no.6 vide order dated 14.11.2015 (Annexure P-1) as under:

S. No.	Period	Wrong Pay Fixation (in Rs.)	Revised Pay Fixation as per recommendation of Internal Audit Party (in Rs.)
1.	17.04.2013 to 30.06.2014	Pay – 30,000/- Grade Pay-6,600/-	Pay 18,750/- Grade Pay -6600/-
2.	01.07.2014 to 30.06.2015	Pay – 31,100/- Grade Pay 6,600/-	Pay 19,510 Grade Pay -6600
3.	01.07.2015 to 30.06.2016	Pay – 32,240/- Grade Pay 6,600/-	Pay 20,300/- Grade Pay -6600

5. The petitioner has sought for the following relief:

“10. RELIEF(S) SOUGHT:

In view of the facts and grounds as mentioned in foregoing paragraphs, the petitioner pray for the following reliefs;

10.1 That, this Hon'ble Court may kindly be pleased to call for the entire record relating to the passing of the impugned order.

10.2 That, this Hon'ble Court may kindly be pleased to quash and set aside the order dated 14.11.2015 (Annexure-P/1).

10.3 That, this Hon'ble Court may kindly be pleased to direct the respondent authorities not to recover any amount from the petitioner paid to her in pursuant to the impugned order.

10.4 That, this Hon'ble Court may kindly be pleased to command and direct the respondents to pay G.P. of Rs.8,000/- with minimum of Rs.30,000/- to the Petitioner from the date of her appointment including arrears of pay and interest therein.

10.5 That, this Hon'ble Court may be pleased to award cost of the petition along with compensation for mental agony.

10.6 Any other relief, as it appears to be fit and appropriate to this Hon'ble Court in the facts and circumstances of the present case.”

6. Reply has been filed on behalf of respondents Nos.4 to 6, where they have submitted that the petitioner is well aware that in all AIIMS, the pay scale for Assistant Professor Nursing is Rs.15600-39100 + GP6600. Advertisement dated 04.04.2013 (Annexure R-4/1) and notification dated 06.08.2013 (Annexure R-4/2) have been filed in support of their argument. This anomaly was detected by the Audit team and highlighted in their report (Annexure R-4/3). Accordingly, necessary action was taken by AIIMS, Raipur to revise the pay.

7. During argument stage, it was brought to our notice that on the basis of the same advertisement by respondent No.1, AIIMS Patna had appointed Hansmukh Jain and Rathish Nair as Assistant Professor

(Nursing). Their pay was also reduced. Aggrieved by this act of the respondents, they had approached Patna Bench of this Tribunal in OA 050/787/2016, which was allowed vide order dated 22.08.2017.

7.1 Since the facts of the present case are identical to those decided by our coordinate Bench at Patna, we may reproduce full contents of the order as under:

“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”.*

7.2 We further find that against the order passed by the Tribunal in the case of **Hansmukh Jain** (supra), the respondents had approached the Hon'ble High Court of Judicature at Patna by way of filing Civil Writ Jurisdiction Case No.4605 of 2019. However, the said writ petition was dismissed vide order dated 08.03.2019 with the following observations:-

“The contention raised by the learned counsel for the Union of India is that the advertisement did mention an incorrect pay band, but the pay structure at the time of offer of appointment to the respondent-petitioner was to be governed by the terms of appointment which categorically provides for the pay structure as applicable to the employees of the same status in A.I.I.M.S., New Delhi or as may be decided by the competent authority on the terms and conditions mentioned in the advertisement.

From the impugned judgment, we find that the learned counsel for the Union of India appearing before the Tribunal stated that he had not received any instruction on behalf of the

Government and that he has been advised that the respondent nos.3 and 4 were the concerned parties who would represent the case on behalf of the Government of India.

The Tribunal in paragraph-8 of the impugned judgment has observed that it was for the Government of India to have pointed out if there was any error in the advertisement and they having not done so adverse inference were drawn and the application was allowed in favour of the respondent-petitioner.

Thus, for the mistake of the appellant, present writ petition does not deserve to be entertained by us at this stage without prejudice to the rights of the petitioners to file an appropriate review application before the Tribunal itself.

Consequently, the petition is dismissed with the said liberty at this stage.”

8. Since the facts of the present case are exactly similar to **Hansmukh Jain** (supra) decided by our coordinate Bench at Patna, which has been upheld by Hon'ble High Court of Patna, we are of the considered opinion that similar reliefs should be granted in the present case also.

9. Accordingly, both the TAs are allowed. The petitioners are entitled to a basic pay of Rs.30000 + GP Rs.8000 from the date of their appointment. Arrears due, including recovery made, if any, shall be paid within 60 days of the date of receipt of a certified copy of this order. No interest shall be payable. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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