

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/239/2016

Date of Reserve:08.04.2019
Date of Order: 01.05.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Nanda Kumar Paniyadi, aged about 43 years, S/o. Of Gopala Krishna Upadyaya, - resident of At-B-1-122, Kunjibettu Post Udupi, Karnataka-576 102, at present serving as Asst.Professor of Nursing, College of Nursing, All India Institute of Medical Sciences, Bhubaneswar, At-Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda (Odisha)

...Applicant

By the Advocate(s)-M/s.N.C.Mohanty
P.K.Dhal
P.Ranjan
N.A.Rout

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi-110 011.
2. Director, All India Institute of Medical Sciences, Bhubaneswar, Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda (Odisha).
3. Deputy Director (Admn.), All India Institute of Medical Sciences, Bhubaneswar, Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda (Odisha).

...Respondents

By the Advocate(s)-Mr.J.K.Nayak
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Assistant Professor of Nursing, College of Nursing, All India Institute of Medical Sciences, Bhubaneswar. Being aggrieved by office order dated 10.04.2015 (A/5) whereby and whereunder his pay has been re-fixed in PB-3 (Rs.15600-39100) with Grade Pay Rs.6600/- on the ground that as per Ministry of Health & Family Welfare, Government of India Pay Structure, there is no such post of Assistant Professor in Nursing College and therefore, the post of Lecturer in Nursing

should be considered as Assistant Professor, the applicant has approached this Tribunal in this Original Application under Section, 19 of the A.T.Act, 1985, praying for the following reliefs:

- i) The Respondents be directed to sanction monthly salary of applicant at the Pay Band-3 Rs.15,600-39100 with Grade Pay of Rs.8000/- with a minimum of Rs.30,000/- with provision to move to PB-4 after three years (Rs.37400-6700) with Grade Pay of Rs.8700 along with arrear salary.
- ii) And further the order dtd. 10.4.2016(A/5) passed by the Respondent No.2 vide Annexure-A/5 may be quashed.
- iii) And/or pass any other order/order(s) as deemed fit and proper in favour of the applicant.

2. The genesis of the O.A. is that in pursuance of an advertisement made by the Government of India, Ministry of Health & Family Welfare for recruitment to various disciplines of six newly established All India Institute of Medical Sciences (in short AIIMS), the applicant was an aspiring candidate for the post of Professor-cum-Principal, Nursing. However, in the interview, he was selected for the post of Assistant Professor, Nursing and issued with the offer of appointment vide letter dated 1.2.2013 (A/2) in pursuance of which, he joined at AIIMS, Bhubaneswar 04.03.2013. According to the stipulations made in the advertisement, the post of Assistant Professor, Nursing carries PB-3 (Rs.15,600-39100) with Grade Pay of Rs.8000/- with a minimum of Rs.30,000/- with provision to move to PB-4 after three years, whereas, after his joining the post of Assistant Professor, Nursing, he was granted PB-3 with Grade Pay of Rs.5400/-. The applicant went on making representation after representation to the Director, AIIMS, Bhubaneswar (Respondent No.2) requesting for fix his pay at PB-3 with Grade Pay of Rs.8000/-, but to no effect. While the matter stood thus, vide letter dated 10.4.2015 (A/5), the applicant was intimated that there is no such post of

Assistant Professor in Nursing College and therefore, the post of Lecturer in Nursing be considered instead of Assistant Professor and in the above backdrop, his pay was fixed in PB-3 with Grade Pay Rs.6600/- which is the Pay Scale of Lecturer. In the meantime, the applicant received an information under the RTI Act that Mr.Rathis Nair and Mr.Hansmukh Jain who had been selected as Assistant Professors in College of Nursing, AIIMS, Patna along with the applicant, are being paid salary in PB-3 with Grade Pay of Rs.8000/- with a minimum of Rs.30,000/- with provision to move to PB-4 after three years with Grade Pay of Rs.8700/-. Based on this, the applicant submitted a further representation dated 15.9.2015 enclosing thereto the information received under the RTI Act (A/7 series) to the Director, AIIMS, Bhubaneswar (Res.No.2) with a request to fix his pay in PB-3 with Grade Pay of Rs.8000/-. Since, there was no response, the applicant has moved this Tribunal in this O.A. praying for the reliefs as already mentioned above.

3. The grounds on which the applicant has mainly based his claim are that the advertisement issued by the Government of India, Ministry of Health & Family Welfare dated 28.11.2011 (A/4) inviting applications for filling up the posts in various disciplines, amongst other things, the pay of Assistant Professor as stipulated in Clause-XIV reads as under:

“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.37400-6700) with Grade Pay of Rs.8700/-”.

4. In view of the above, it has been contended by the applicant that after his appointment as Assistant Professor, the authorities are bound to follow and grant him the pay scale as per the stipulations made in the advertisement and by no means they can put his conditions of service in a

disadvantageous position on some ground or the other after his joining the post. Secondly, the applicant has pointed out that All India Institute of Medical Sciences being under the control of the Government of India, Ministry of Health & Family Welfare, there cannot be variation in allowing different pay scales in different AIIMS in the country in so far as Assistant Professor of Nursing is concerned.

5. Per contra, the director, AIIMS, Bhubaneswar (Respondent No.2) has filed a detailed counter. It has been submitted that in the appointment order issued to the applicant vide letter dated 1.2.2013 to the post of Assistant Professor of Nursing, it was made clear that the scale of pay will be as per AIIMS, New Delhi/Advertisement. The applicant vide his e-mail dated 06.03.2012 had accepted the offer of appointment and intimated to join on or before 13.3.2013. No Pay Band or GP about the post was mentioned as by then it was expected that the Ministry of Health & Family Welfare would communicate the decision about the pay scale of the Lecturer in Nursing. According to Respondent No.2, the applicant accepted the pay scale of AIIMS, New Delhi/Advertisement to be decided by the AIIMS, Bhubaneswar after confirmation of the Ministry. It has been pointed out that PB-3 with Grade Pay of Rs.8000/- with a minimum of Rs.30,000/- is applicable to the Assistant Professor in Medical Colleges, but the same is not applicable to the Assistant Professor in Nursing Colleges. Therefore, it has been submitted that the Assistant Professor in Nursing is not entitled for grant of Academic Grade Pay of Rs.8000/- in PB-3. Respondent No.2 has submitted that the applicant vide his application dated 07.01.2014 enclosing the information received by him through RTI Act intimated that Assistant Professor, Nursing, AIIMS, Rishikesh is in receipt of PB-3 with GP of Rs.6600/- which should be granted to him

instead of PB-3 with GP of Rs.5400/- and in consideration of his request, he was granted GP of Rs.6600/- from the date of his joining. It has been submitted that the PMSSY Division of Ministry of Health & Family Welfare, Government of India vide letter No.2-28106/69/2013-SSH dated 4th April, 2013 (R/3) communicated that the pay scale of Lecturer Nursing (Assistant Professor) is Rs.15,600-Rs.39,100 with Grade Pay of Rs.6600/- and there is no post of Assistant Professor, Nursing in Nursing College, whereas there is sanctioned post of Reader/Associate Professor. Therefore, the post of Assistant Professor in Nursing is treated at par with Lecturer in Nursing.

6. With these submissions, Respondent No.2 has prayed that the O.A. being devoid of merit is liable to be dismissed.

7. Applicant has filed a rejoinder to the counter in which he has submitted that CAT, Patna Bench vide order dated 22.09.2017 has decided a similar matter in O.A.No.050/00787/2017 in favour of the applicants therein and therefore, similar order may be passed in his case. On the other hand, Respondent No.2 has pointed out that the decision of CAT, Patna Bench is not applicable to the case of the applicant herein inasmuch as the offer of appointment issued by the AIIMS to the applicants before the CAT, Patna Bench indicated the Grade Pay of Rs.8000/- and they were allowed to continue with the same Grade Pay for more than 3 years. Subsequently, they were placed in GP of Rs.6600/- with a direction to refund the amount without issuing show cause notice. In the instant case, in the offer of appointment issued to the applicant, there was no mention of Grade Pay of Rs.8000/- nor at no point of time, he was granted the said Grade Pay. The applicant accepted the offer of appointment and placed in the Grade Pay of Rs.5400/- which on his request, was revised to Rs.6600/-. Therefore, it is the case of the

Respondent No.2 that the decision of CAT, Patna Bench should not be relied upon while considering the present O.A.

8. We have heard the learned counsels for both the sides at great length and perused the materials on record. We have also gone through the decision of CAT, Patna Bench, cited supra.

9. At the outset, it is to be noted that in the Advertisement made by the Government of India, Ministry of Health & Family Welfare (A/1) inviting applications for filling up various posts in different AIIMS of the country, there is an indication of Details of Posts against Clause-XI, which inter alia, at SI.No.27 mentions "NURSING" and the number of vacancy in the discipline of Assistant Professor required to be filled was one. As already quoted above, under Clause –XIV 'PAY' - Assistant Professor carries 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.37400-6700) with Grade Pay of Rs.8700/-. It is the case of the Respondents that in view of communication dated 4.4.2013 of the Government of India, Ministry of Health & Family Welfare (PMSSY Division), Lecturer in Nursing (Assistant Professor) carries PB-3 with Grade Pay of Rs.6600/-. In other words, according to Respondent No.2 there is no post of Assistant Professor Nursing and it should be Lecturer in Nursing carrying the PB-3 with Grade Pay of Rs.6600/- and therefore, the applicant's pay has rightly been fixed in Grade Pay of Rs.6600/- with effect from the date of his joining, i.e., 04.03.2013. Here a question does arise, whether the applicant having joined as Assistant Professor of Nursing on 04.03.2013 in pursuance of Advertisement made by the Government of India, Ministry of Health & Family Welfare on 28.12.2011 in which it is stipulated that the Assistant Professor of

Nursing carries PB-3 with Grade Pay of Rs.8000 with a minimum of Rs.30,000/- his pay can be fixed in pursuance of a subsequent communication dated 4.4.2013 of the Government of India, Ministry of Health & Family Welfare (PMSSY Division) stating that the Lecturer in Nursing (Assistant Professor) carries PB-3 with Grade Pay of Rs.6600/- and if so, whether this is legally permissible. In this connection, we have gone through the decision of CAT, Patna Bench, as cited above. It reveals therefrom that under the same advertisement, the applicants therein were appointed as Assistant Professor (Nursing) and being aggrieved by the impugned order by virtue of which their pay was revised from Rs.15600-39100 + GP Rs.8000 to Rs.15600-39100 + GP Rs.6600 with is at par with the pay structure of Lecturer in Nursing (Assistant Professor) at AIIMS, New Delhi with a direction that the revised Pay Scale and Grade Pay will be effective from the date of their joining, they had approached CAT, Patna Bench in O.A.No.050/00787/2016. The CAT, Patna Bench after taking note of the entire advertisement decided the O.A. in favour of the applicants. In the fitness of things, the relevant parts of the order passed by CAT, Patna Bench are reproduced herein below:

7. It is not clear that the respondents' case is not that the applicant 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 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 change 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 notification issued by AIIMS, Rishikesh and AIIMS, Jodhpur (Annexure-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 PB 3 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 20.09.2016 (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".

10. From the above, it is quite clear that the CAT, Patna Bench has decided that as per the advertisement dated 28.12.2011 issued by the Government of India, Ministry of Health & Family Welfare, the post of Assistant Professor of Nursing carries PB-3 Rs.15600-39100 + GP Rs.8000 and the applicants therein having been appointed pursuant to that advertisement are entitled to PB-3 Rs.15600-39100 + GP Rs.8000/- and the action of the respondent-AIIMS in revising their pay in PB-3 with Grade Pay of Rs.6600/- is wholly illegal and without authority. In this connection, it is pertinent to note that in the order of CAT, Patna Bench no such communication dated 4th April, 2013 issued by the Government of India, Ministry of Health & Family Welfare has been dealt or discussed. This Tribunal is at a loss to understand as to what prevented the respondent-AIIMS to bring the communication dated 4th April, 2013 (R/3) issued by the Government of India, Ministry of Health & Family Welfare in which Lecturers in Nursing(Assistant Professors) were granted PB-3 with Grade Pay of Rs.6600/- before the CAT, Patna Bench when the O.A. was heard and decided on merit. In this regard, we would like to note that the communication dated 4th April, 2013(R/3) by itself cannot have any effect so as to modify the tenor of the advertisement dated 28.12.2011 in general and the pay structure of Assistant Professor of Nursing in particular.

11. From the discussions held above, we have no hesitation to hold that the applicant in this O.A. is the similarly situated person as that of the applicants before the CAT, Patna Bench (supra) and therefore, following the judicial precedent as already decided by the CAT, Patna Bench, we quash and set aside office order dated 10.04.2015 (A/5) and accordingly, hold that the applicant was entitled to PB-3 (Rs.15600-39100) with GP Rs.8000/- with a minimum of Rs.30,000/- as Assistant Professor or Nursing, AIIMS, Bhubaneswar from 04.03.2013. Accordingly, Respondent No.2 is directed to re-fix the pay of the applicant in BP-3 with Grade Pay of Rs.8000/- with a minimum of Rs.30,000/- with effect from 04.03.2013 and draw and disburse arrears in his favour within a period of 120 (one hundred twenty) days from the date of receipt of this order.

12. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

BKS

(GOKUL CHANDRA PATI)
MEMBER (A)