

IN THE GAUHATI HIGH COURT
THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH
SHILLONG BENCH

WRIT APPEAL No. (SH) 1/2011

1. Union of India represented by
The Secretary to the Govt. of India,
Ministry of Home Affairs,
North Block, New Delhi-01.
2. The Director General, HQ Director General
Assam Rifles, Shillong-10, Meghalaya.
3. The Deputy Inspector General,
Medical Branch, HQ Directorate General Assam
Rifles, Shillong-10, Meghalaya. : Appellants.

-Vs-

1. Naib Subeder/Nursing Assistant
Dijendra Pathak No.370399 P.
2. Hav/Nursing Assistant Loknath Yadav
No.371149 K.
3. Hav/Nursing Assistant Bahadur Ram
No.370642 L.
4. Hav/Nursing Assistant C. Chandra Prasad
No.370999 F.
5. Hav/Nursing Assistant Rajendran B
No.370762 K.
6. Hav/Nursing Assistant Awdesh Thakur
No.370725 W.
7. Hav/Nursing Assistant Ashok Kumar
No.371201 F.
8. Hav/Nursing Assistant Arun Kumar Sharma
No.371366 A.
9. Hav/Nursing Assistant Dilwar Singh Chauhan
No.371073 P.
10. Hav/Nursing Assistant Marali M
No.370947 M.
11. Hav/Nursing Assistant Sree Ram Chauhan
No.370955 M.
12. Hav/Nursing Assistant Surendran K
No.370959 A.
13. Rfn/Nursing Assistant J.R. Rai
No.370675 W.
14. Rfn/Nursing Assistant Ashok Singh Bist
No.371334 X.

15. Rfn/Nursing Assistant Jawahar Lal Verma
No.371232 F.
16. Rfn/Nursing Assistant Kuldeep Singh
No.371398 H.
17. Rfn/Nursing Assistant Soumya Rajan
No.371200 Y.
18. Rfn/Nursing Assistant Sandeep Kumar
No.371230 W.
19. Hav/Nursing Assistant J Ajayan Nair
No.370623 A.
20. Hav/Nursing Assistant Balbir Singh Rawat
No.370623 A.
21. Hav/Nursing Assistant Santosh Kumar Chandel
No.370708 W.
22. Hav/Nursing Assistant Om Prakash
No.370552 P.
23. Hav/Nursing Assistant Navin Chandra
No.371228 Y.
24. Hav/Nursing Assistant Mohit Chandra
No.370713 F.
25. Hav/Nursing Assistant Umesh Kumar
No.371173 W.
26. Hav/Nursing Assistant Netra Bahadur
No.371150 M.
27. Hav/Nursing Assistant Ashok Kumar
No.370475 A.
28. Hav/Nursing Assistant Jayaranjan
No.370759 K.
29. Hav/Nursing Assistant B.K. Bhovati
No.371192 L.
30. Hav/Nursing Assistant Chacko Varghese
No.370950 L.
31. Hav/Nursing Assistant Mohan Chandra
No.371144 L.
32. Hav/Nursing Assistant Vinod Kumar Singh
No.371147 Y.
33. Hav/Nursing Assistant Laxmi Narayan Sharma
No.370910 K.
34. Hav/Nursing Assistant Ram Prakash
No.370474 X.
35. Hav/Nursing Assistant Dilip Kumar Roy
No.371194 W.

36. Nb. Sub/Nursing Assistant Sugathan A.B.
No.370380 W.
 37. Hav/Nursing Assistant Mitran N P
No.370632 F.
 38. Hav/Nursing Assistant Karan Singh Sayala
No.371311 W.
 39. Rfn/Nursing Assistant Sajan Kumar
No.371389 M.
 40. Hav/Nursing Assistant Sathayan G
No.370921 W.
 41. Hav/Nursing Assistant Braja Kumar Singh
No.370715 M.
 42. Hav/Nursing Assistant Dhanapalan M G
No.370565 F.
 43. Nb. Sub/Nursing Assistant Ramesh Kumar
No.370936 F.
 44. Hav/Nursing Assistant Y.I. Singh
No.371037 W.
 45. Rfn/Nursing Assistant Rajiv Kumar
No.371372 F.
 46. Rfn/Nursing Assistant Pankaj Negi
No.371430 Y.
 47. Rfn/Nursing Assistant Prakash Chand Prohit
No.371433 W.
 48. Rfn/Nursing Assistant Ranjit Das
No.371447 M.
 49. Rfn/Nursing Assistant Amit Kumar
No.371294 H.
 50. Rfn/Nursing Assistant Narayan C
No.371292 X.
 51. Rfn/Nursing Assistant Kh. Vikramjit Singh
No.371282 H.
- : Respondents

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI
THE HON'BLE MR JUSTICE P.K. SAIKIA

For the Appellants : **Mr SC Shyam, CGC.**

For the Respondents : **Mr R Majumdar, Adv.**

Date of hearing : **11.04.2012**

Date of Judgment & Order : **25.05.2012**

JUDGMENT AND ORDER

(P.K. Saikia, J)

The judgment in WP(C)No.(SH)279/2009, this Court disposed of the writ petition as follows: Pg 18 Para 25 & 26.

*“25. For all the aforesaid reasons, the prayer of the petitioners in acceptance of the writ petition is allowed. It is hereby declared and ordered that the petitioners are entitled to NA at par with the other nursing staff from the respective date of applicability of the same at the prescribed rates. The respondents are directed to provide the petitioners with the benefit of NA as expeditiously as possible, but at any rate not later than three months from today.
26. The writ petition is allowed, without, however, any order as to costs.”*

2. Being dissatisfied with and aggrieved by the aforesaid judgment, the appellants (who are respondents in WP(C) No. (SH) 279/2009) have preferred this appeal on the grounds, stated in the memo of appeal.

3. The facts necessary for disposal of the present proceeding, in short, are that the writ petitioners in WP(C) No.(SH)279/2009 (who are referred herein as respondents/writ petitioners) are the Nursing Assistant working in the Hospital of the Assam Rifles. However, despite they being Nursing Personnel and inspite of there being a clear direction to pay them Nursing Allowance (hereinafter referred to as N.A.), the respondents in WP(C) No.(SH)279/2009 (who are referred herein as appellants) refused to pay them the N.A. although other similarly situated nursing staff were granted the allowance aforesaid.

4. A narration as to how the N.A. came into being would help us to appreciate the dispute before us well. As stated in the writ petition, as back as 04.01.1998, the Govt. of India in the Ministry of Health & Family Welfare, vide its letter dated 04.01.1998 conveyed its decision to grant of N.A. @ Rs.150 pm to all Nursing personnel who worked in all Central Govt. Hospital / Institution and such order was made effective from 01.10.1986.

5. The rate of N.A. was revised to Rs.300 pm w.e.f. 01.08.1997 and thereafter to Rs.1600 pm w.e.f. 15.07.1998. In that connection, the petitioners have referred us to order dated 28.07.1998 (which was attached to the writ petition as Annexure-A), issued by the Director (PMS) ,Ministry of Health and Family Welfare, (Department of Health) New Delhi.

6. For ready reference, we find it necessary to reproduce here the order dated 28.07.1998 which is as follows:

“No.Z 28015/86/97-N
Government of India
Ministry of Health & Family Welfare
(Department of Health)

Nirman Bhawan, New Delhi
Dated the 28th July, 1998

O R D E R

To,
Director General of Health Services,
Nirman Bhawan, New Delhi.

Subject: Enhancement of Nursing Allowance regarding

I am directed to state that the question of enhancing Nursing Allowance from the existing amount of Rs.300/- as recommended by the 5th Pay Commission, has been under consideration of the Government. After careful consideration of the matter, sanction of the President is hereby conveyed to enhance the Nursing Allowance from the existing rate of Rs.300/- per month to Rs.1600/- per month to all the Nursing Personnel working in the Central Government hospitals with effect from 15.07.1998.

2. Nursing Allowance will not be treated as a part of 'pay'.

3. The additional expenditure due to enhancement of Nursing Allowance will be met by the respective institutions from their sanctioned budget.

4. This issues with the approval of JS(FA) vide Dy.No.3095/98-JS(FA) dated the 23.7.98.

Sd/-
(R.M. BHATTACHARYA)
DIRECTOR (PMS).”

7. By yet another communication dated 19.11.08, the rate of N.A. was further revised from Rs.1600 pm to Rs.3200/- pm. The learned counsel for the petitioners has contended that the said allowance was granted to all categories of Nursing personnel at all the level working in the Central Hospital / Institution but for the reason best known to the appellants, both the Civilian and Combatised Nursing Staff serving in the Hospital of the Central Police Force were denied the benefit of N.A.

8. Being aggrieved, the Nursing personnel working in Central Police Force approached the Central Administrative Tribunal, Guwahati by way of O.A. No.122/1989. Referring to the Office Memorandum dated 04.01.1998 issued by the Govt. of India, Health & Family Welfare, on 12.04.90, the learned Central

Administrative Tribunal, Guwahati disposed of the proceeding with a direction to the concerned authority to pay the petitioners therein the N.A. at the enhanced rate w.e.f. 01.10.1896. The learned Tribunal recorded its opinion that all categories of nursing personnel at all the level working in Central Hospital / Institution are entitled to N.A. at the rate as indicated in the Office Memorandum.

9. The judgment which was passed by the Tribunal was ultimately challenged before the Supreme Court of India. However, the Supreme Court of India dismissed such an appeal vide its order dated 05.11.1990, copy of which was attached to the writ petition as Annexure-C.

10. In compliance of the direction, rendered in the judgment dated 12.04.1990 passed in O.A. No.122/1989, the Ministry of Home Affairs vide its communication dated 19.11.2000 which was addressed to the Director General Central Police Force, conveyed its sanction to the competent authority regarding the payment of N.A. and other allowances to the Nursing personnel working in the Central Police Force.

11. In that connection, the petitioner also referred us to the judgment and order dated 16.08.2001 passed by the Central Administrative Tribunal, Guwahati in O.A. No.24/2001. O.A. No.24/2001 was filed by the Nursing Staff of Assam Rifles highlighting their grievances against the concerned authority for not giving effect to the recommendation of the 5th Pay Commission in respect of salary structure and other allowances including N.A.

12. On disposing the Original Application No.24/2001 (O.A.), the Tribunal directed the respondents therein to take decision in matter of implementation of recommendations made by the 5th Pay Commission. It has been stated that the Director General of Assam Rifles issued necessary order in March, 2002 for granting of N.A. and other allowances to the Nursing staff of the Assam Rifles.

13. On 26.03.2009, the Director (Police Finance) in the Ministry of Home Affairs referring to the order dated 28.07.1998 sought for proposals from all the IGP(s) of all Central Police Force indicating therein financial involvement necessary to meet the expenses arising out of granting of N.A. to the Nursing personnel at the rate, applicable to Nursing staff, working in the Central Hospital / Institution.

14. Thereafter, by the Office Memorandum dated 28.07.2009 a copy of which was attached as Annexure-G to the writ petition, the Govt. of India in the Ministry of Home Affairs conveyed the rate of Nursing Allowance applicable to the Nursing personnel of all Central Hospital / Institution, wherein it was stated that the same would be applicable to the Nursing personnel of Central Police Force as indicated in the Office Memorandum.

15. By the letter dated 22.09.2009, the Director General of Assam Rifles communicated a decision for payment of N.A. to the Nursing Staff. But it had also been indicated therein that same would be paid to Assistant Matron, Sister Staff Nurse and Auxiliary Mid-wife Nurse (AMN) of Assam Rifles thereby totally excluding Nursing Assistant from getting the benefit which the Circular aforesaid has explicitly made available to them as well. A copy of the communication dated 22.09.2009 was attached as Annexure-H to the writ petition.

16. In order to fortify their claim more and more that they are also entitled to N.A., it has been stated that the duty performed by the Nursing Assistant are similar to those of Assistant Matron, Sister Staff Nurse and AMN and being so, they are integral part of Nursing staff. In that connection, the petitioner also rely on the order dated 22.03.1983, copy of which was attached as Annexure-I, which give a list of duties of all categories of Nursing staff including that of Nursing Assistant.

17. According to the writ petitioners, the duty chart, referred to above, unmistakably demonstrates that the petitioner are doing the job which are quite similar to the duty of Assistant Matron, Sister Staff Nurse and Auxiliary Mid-wife Nurse (AMN) and despite of above, the respondent authorities has made unreasonable classification to deprive them from the benefit which they are legally entitled to.

18. In that connection, they have referred to the decision of the Administrative Tribunal, Gauhati Bench, rendered in O.A. No.122/ 1989, passed on 12.04.1990 which run as follows:

“6. We have given our careful consideration to the averments in the counter. Nowhere it is stated on behalf of the opposite parties that the nature of duties discharged by the nursing staff attached to the CRPF

Hospital is in any way different from the nature of duties discharged by the Nursing Staff of the Hospitals under the Ministry of Health and Family Welfare, or those Hospitals mentioned in the said office memorandum quoted above. In such circumstances there is no option left with this bench, but to presume that the nature of duties of the petitioners and that of the Nursing Staff of the hospitals mentioned in the said office memorandum are one and the same. In this connection a judgment reported in AIR 1982 Supreme Court 879 (Randhir Singh Vs. Union of India and others) would be relevant. Their Lordships were considering the principle of equal pay for equal work."

19. The respondents have filed their counter affidavit denying the claim of the petitioner. It has been clearly stated in their counter affidavit that the Nursing Assistant have clearly been excluded from the purview of N.A. as per the Office Memorandum dated 21.03.2007. To take their claim home, it has been contended that for entitlement of N.A. special qualification(s), as per the recruitment Rules applicable for recruitment of nursing staff of Assam Rifles, is required. Since the Nursing Assistant did not possess any qualification, they cannot not legally claim allowance meant for a particular class(s) of Nursing staff possessing special qualification in the terms of the recruitment Rules.

20. Drawing our attention to the Office Memorandum dated 28.07.2009, a copy of which was attached as Annexure-G to the writ petition, it has been stated that Office Memorandum at Annexure-G clearly specifies that N.A. will be paid to only those Nursing personnel of Central Police Force who are required to have special qualification(s) as per their Recruitment Rules/Service Rules.

21. The Service Rules, above, do not prescribe any special qualification for recruitment of Nursing Assistant unlike Sisters, Matrons etc who are to possess special qualification(s) in the term of Recruitment Rules/Service and therefore, the Nursing Assistant cannot claim any allowances applicable to the Nursing staff under the Office Memorandum, aforesaid.

22. Appellants also incorporated a Tabular Chart in their counter affidavit to show that the educational qualification(s) for Assistant Matron, Sister, Staff Nurse and Auxiliary Mid-wife Nurse (AMN) are quite different from the Nursing Assistant and therefore, aspirants vying for job of Assistant Matron, Sister Staff Nurse and Auxiliary Mid-wife Nurse (AMN) are to posses special professional qualification as well. Banking on such a chart, it has, now, been contended that professional

qualification, as shown in the chart, comes in the way of writ petitioners getting N.A. aforesaid.

23. Referring to the judgment, rendered by the Tribunal aforesaid, it has again been stated in their counter affidavit that the benefit of N.A. has been extended to only those Nursing staff, who have fulfilled the conditions, so stated in the Office Memorandum dated 28.07.2009 and whose qualification(s) are found to be in conformity with the requirement made in the Recruitment Rules.

24. Thus, the stand, taken by the respondents in their counter affidavit, was that since the Nursing Assistant did not possess any special qualification like others Nursing staff, aforementioned, they are not entitled for N.A. The respondents also enclosed an amended Assam Rifles Meghalaya Staff Recruitment Rules, 1980 along with their counter affidavit.

25. The petitioners have filed their affidavit-in-reply denying the stand taken by the respondents in their counter affidavit. It has been stated therein that Nursing staff have to move to Court again and again to get their benefits realised. The respondents' authorities most illegally denied the petitioners the benefits of N.A. although under the Office Memoranda aforementioned, particularly, the Office Memorandum dated 28.07.09, they are well entitled to such benefit.

26. The learned Single Judge after hearing both the parties, come to the conclusion that Nursing Assistants are very much covered by the term "Nursing personnel" as referred to in various Office Memoranda including Office Memorandum dated 27.03.2007, Office Memorandum dated 28.07.2009 and as such, they are entitled to the benefit of N.A. and accordingly his Lordship allowed the writ petition with the directions aforementioned. It is that judgment which has been assailed in this appeal.

27. We have given our anxious consideration to the arguments, advanced by the parties, keeping in view of the materials on record. On a very careful perusal of the materials on record, we have found that the entire argument, advanced from the side of the appellants, is founded on the assertion that in view of conditionality, made in the Office Memoranda dated 27.03.2007, 28.07.2009 and the Recruitment Rules, 1980, more particularly, in the Office Memorandum dated

28.07.2009, N.A. can paid only to those nursing personnel who are having professional qualification, prescribed by the R/R / S/R and none else.

28. However, on a reading the aforesaid Office Memoranda in between the lines in juxtaposition with the Recruitment Rules of 1980, we cannot pursue ourselves to such a proposition put forward by the learned counsel for the appellants. In our considered opinion, Office Memoranda dated 27.03.2007, 28.07.2009 and the Recruitment Rules, 1980, more particularly, the Recruitment Rules, 1980, do not suggest even remotely that N.A. can be given only to those nursing personnel who possess special professional qualification(s).

29. When the Office Memoranda which provide such allowances do not make any distinction between the Nursing staff on the basis of educational qualification and when the Office Memoranda aforesaid do not speak anything regarding educational qualification(s) in order to claim Nursing Allowance, the respondents, being armed with subsequent Notifications or the Recruitment Rules, cannot be allowed to import thereto something which they are conspicuously lacking, more so, when such an interpretation is found to be not in consonance with object of the Office Memoranda under consideration.

30. In this connection our attention has been drawn by the learned counsel for the appellants to the decision of the Hon'ble Supreme Court reported in ***AIR 1952 SC 16*** in the case of ***Commissioner of Police, Bombay Vs. Gordhandas Bhanji*** which runs as follows:

“9. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

31. The decision, aforementioned, has again reaffirmed our view that appellants cannot be allowed to give a new meaning to the term “Nursing personnel” on the basis of subsequent Notifications or the Recruitment Rules in order to deprive them from getting the benefit provided by the Memoranda, referred to above.

32. We may note here that on making an assessment of the Memoranda, aforementioned as well as the Recruitment Rules, referred to above, we have found that if any distinction between the Nursing Staff *vis-à-vis* the entailment to N.A. needs to be made, then such distinction cannot be made on the basis of educational qualification alone rather it needs to be made basically on the basis of duty entrusted to the various Nursing staff. Opinion, rendered in judgment dated 12. 04. 1999 in O.A No.122/1989 doubly confirms the above proposition.

33. On a careful reading of the duties of Nursing Assistant, it would appear clear that Nursing Assistant ---- who are admittedly integral part of the Nursing Staff ---- are basically entrusted with the duties of nursing the patients and therefore, the duties, they discharge, are very much like the duty, discharged by the other Nursing Personnel, such as, Assistant Matron, Sister Staff Nurse and Auxiliary Mid-wife Nurse (AMN).

34. A perusal of various duties entrusted to Nursing Assistant, so mentioned in the Annexure-R-I, particularly, item Nos. No.9, 10, 14, 16 & 17, makes it more than clear. In above view of the matter too, the writ petitioners, who are already held to be the Nursing Personnel, are well entitled to claim Nursing Allowance (N.A.), aforementioned and their claim to Nursing Allowance (N.A.), therefore, cannot be rejected only for their not possessing special professional qualification as contended by the appellants herein.

35. In the result, we have found no force in the present appeal and same is consequently dismissed.

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