

**(2010) 11 GAU CK 0034**

**Gauhati High Court (Shillong Bench)**

**Case No:** Writ Petition (C) No. 279 (SH) 2009

Naib Subedar/Nursing Assistant  
Dijendra Pathak and Others

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

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**Date of Decision:** Nov. 4, 2010

**Hon'ble Judges:** Biplab Kumar Sharma, J

**Bench:** Single Bench

**Advocate:** R. Mazumdar and A. Kumdar, for the Appellant; S.C. Shyam, CGC, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

B.K. Sharma, J.

1.The claim made in the writ petition by the Petitioners who are Nursing Assistants working in the Hospitals of Assam Rifles, is for Nursing Allowance on the basis of orders issued from time to time by the authorities. Be it stated here that the Petitioners are in the combatised category. Their grievance is that they have been deprived of Nursing Allowance (hereinafter referred to as "NA") although they are entitled to the same at par with other nursing personnel/staff working in other forces.

2. Tracing back the history of grant of NA to the nursing personnel, it has been stated in the writ petition that the Government of India in the Ministry of Health and Family Welfare by its letter dated 4.1.1988 conveyed the grant of NA @ 150/- per month to all the nursing personnel of all categories at all levels working in the Central Government Hospitals/Institutions etc. with effect from 1.10.1986. The rate of NA was revised to Rs. 300/-per month with effect from 1.8.1997 and thereafter to Rs. 1600/- with effect from 15.7.1998. In this connection the Petitioners have referred to the Annexure-A order dated 28.7.1998 issued by the Government of India in the Ministry of Health and Family Welfare (Department of Health). For a

ready reference the same is quoted below :

No. Z 28015/86/97-N

Government of India

Ministry of Health and Family Welfare

(Department of Health)

Nirman Bhawan, New Delhi

Dated the 28th July, 1998

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 15.7.1998.

1. Nursing Allowance will not be treated as a part of "pay".
2. The additional expenditure due to enhancement of Nursing Allowance will be met by the respective institutions from their sanctioned budget.
3. 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)

3. By yet another communication dated 19.11.2008, the rate of NA was further revised from Rs. 1600/- to Rs. 3200/- per month. According to the Petitioners the said allowance although was granted to all categories of nursing personnel at all levels working in Central Government Hospitals/Institutions etc., however, the nursing personnel both civilian and combatised serving in the hospitals of Central Police Forces had been denied the said benefits. Being aggrieved, the civilian nursing personnel working in the CRPF approached the Central Administrative Tribunal, Guwahti Bench by filing O.A. No. 122/1989 and the same was disposed of by judgment and order dated 12.4.1990 with the direction to pay the enhanced rate of NA to the Petitioners with effect from 1.10.1986. In the judgment and order, the learned Tribunal referred to the O.M. dated 4.1.1988 issued by GOI, Ministry of

Health and Family Welfare stating that the nursing personnel of all categories at all levels working in the Central Government Hospitals/Institutions etc. are entitled to NA at the rate indicated in the O.M.

4. The Tribunal upon a reference to the law laid down by the Apex Court in the matter of discrimination of pay, allowances and other service benefits between one set of employees in a particular unit of the Government and that of another set of employees in another unit observed thus :

7. The basic principle laid down by the Hon"ble Supreme Court in a plethora of judicial pronouncement is that there should not be any discrimination of pay, allowances and other service benefits between one set of employees in a particular unit of the Government and that of another set of employees in another unit if the nature and duties of work discharged by the members of both units are one and the same. At the cost of repletion, we may say that in the present case there is absolutely no dispute raised on behalf of the opposite parties that the nature sand duties of work in the Petitioners is different from that of the nature and duties of work of Nursing Staff of other hospitals. In such circumstances we find no justifiable reason to deny to the Petitioners the allowance such as Uniform allowance, washing allowance and the new allowance called nursing allowance at the enhanced rate as stated in the above quoted office memorandum. There, we direct that the enhanced rate of such allowance be paid to the Petitioners with effect from 1.10.1986 and amount due to the Petitioners by virtue of this judgment paid to each of them within 120 days from the date of receipt of a copy of this judgment.

5. The aforesaid judgment of the Tribunal was carried on appeal to the Apex Court, but the same was dismissed vide order dated 5.11.1990 (Annexure-C) affirming the judgment of the Tribunal.

6. Pursuant to the aforesaid judgment of the Tribunal the GOI, in the Ministry of Home Affairs by its communication dated 9.11.2000 addressed to the DG, CRPF conveyed the sanction of the competent authority towards payment of NA and other allowances to the nursing personnel of CRPF.

7. The Petitioners have also referred to the judgment and order dated 16.8.2001 passed by the Tribunal (Annexure-E) in O.A. No. 24/2001 filed by the nursing staff of the Assam Rifles making a grievance against action of the authority in not giving effect to the recommendation made by the 5th Pay Commission in respect of salary structure and allowances including that of nursing allowance. The O.A. was disposed of directing the Respondents to take a decision in the matter of implementation of the said recommendation. It is the stand of the Petitioners that pursuant to the said direction of the Tribunal, the DG, Assam Rifles issued necessary orders in March, 2002 for grant of NA and other allowances to the nursing staff of the Assam Rifles.

8. By Annexure-F letter dated 26.3.2009, the Director (Police Finance) in the Ministry of Home Affairs asked for proposals for financial implication from the IGP (Pers) of

all the Central Police Forces for grant of NA to the nursing personnel at the rates applicable to them working in central Government Hospitals. In the said letter, the Annexure-A order dated 28.7.1998 quoted above was also referred to. Thereafter by Annexure-G Office Memorandum dated 28.7.2009, the GOI in the Ministry of Home Affairs with the concurrence of the Ministry of Finance conveyed the rate of NA applicable to nursing personnel of Central Government Hospitals and stating that the same would be applicable to the nursing personnel of CPF as indicated in the O.M. In this O.M. also the Annexure-A order dated 28.7.1998 has been referred to.

9. By Annexure-H communication dated 22.9.2009, the DG, Assam Rifles although communicated the decision for payment of NA to the nursing staff indicated them to be only Assistant Matron, Sister, Staff Nurse and ANM of Assam Rifles and thereby excluded the category of Nursing Assistant.

10. In paragraph 15 of the writ petition describing the duties and functions of the Nursing Assistant, it has been stated that the Nursing Assistants formed an integral part of the Nursing Staff. In this connection the Petitioners have referred to Annexure-I order dated 22.3.1983 laying down the duties of Nursing Staff both Civilian and Combatised. The said chart of duty includes all categories of nursing staff including that of Nursing Assistants. While assigning and indicating duties to the staff nurses including Auxiliary Nurses, Junior Nurses and Midwives, it was also indicated that the staff nurse would advised other Nursing Staff including Male Nursing Assistants. Instruction was also issued to see that the Nursing Staff including Nursing Assistants performed their duties properly. It was also laid down in the duty chart that in absence of staff nurses, Havildar Nursing Assistant will be the incharge of Male Wards. Various others hospital duties for Nursing Assistants, both during day and night had also been indicated in the said duty chart.

11. It is on the above basis, the Petitioners have claimed that they being an integral part of nursing staff/personnel, they are entitled to NA and the non-payment of the same for un tenable pleas is discriminatory and liable to be interfered with granting appropriate relief.

12. The Respondents have filed their counter affidavit denying the claim of the Petitioners. In this connection it has been stated that the Nursing Assistants has been specifically excluded from the purview of NA as per OM dated 21.3.2007. Although, the copy of the said OM has not been annexed to the counter affidavit, but the same has been produced during the course of hearing. It has been contended that for entitlement to NA special professional qualification are required as per Recruitment Rules applicable for recruitment of Nursing Staff of the Assam Rifles. According to the Respondents on the basis of the prescribed qualification for appointment of Nursing Assistant they are not entitled to NA.

13. As regards the aforesaid judgments of the Tribunal, it has been stated that the benefit of NA was extended to the eligible nursing staff as they fulfill the requisite

qualification laid down in the Recruitment Rules. So far as the aforementioned OM dated 28.7.2009 (Annexure-G) is concerned, the Respondents have referred to para 2 of the said OM, which speaks of applicability of NA only to those nursing personnel who are entitled for payment of NA as per Recruitment Rules and Service Rules. Thus in a nutshell it is the stand of the Respondents that since the Nursing Assistants do not possess any specialized qualification like that of other nursing staff, they are not entitled to NA. However, in paragraph 13 of the affidavit it has been admitted that "Although Nursing Assistants are integral part of the Nursing Staff of Assam Rifles, but the same do not in itself qualify them for grant of Nursing Allowance".

14. Along with the counter affidavit, the Respondents have enclosed the amended Assam Rifles (Medical Staff) Recruitment Rules, 1980. The Petitioners have filed their reply affidavit denying the stand of the Respondents. It has been stated that at every steps the nursing staff have been denied the benefit of NA for which they had to approach the Courts/Tribunals and it was only thereafter they have been paid NA. According to the Petitioners they have been deprived of NA without any valid basis even after recognizing the fact that they form integral part of nursing staff.

15. I have heard Mr. R. Majumdar, learned Counsel for the Petitioners as well as Mr. S.C. Shyam, learned CGC appearing for the Respondents. I have also carefully considered the entire materials on record. Giving my anxious consideration to the submissions and the materials my findings on the issue raised are as follows:

16. Annexure-A order dated 28.7.1998 has been quoted above. By the said order the sanction was conveyed to enhance the NA to all nursing personnel. In the said order no distinction was made between and/or amongst the categories of nursing staff. When there was inaction on the part of the authorities of the CRPF to pay the NA to the nursing staff they have approached the Tribunal. As to what was the result has been noted above. It was only after such legal battle the nursing staff had been paid their entitled rate of NA. The judgment of the Tribunal has also been affirmed by the Apex Court.

17. It is true that by letter dated 21.3.2007 addressed to the DG, AR by the GOI, Ministry of Home Affairs under the signature of the Under Secretary, the approval of the competent authority was conveyed for the indicated pay scales and NA to the nursing staff of Assam Rifles and the same was stated to be applicable for nurses only. However, by Annexure-G OM dated 29.7.2009 upon a reference to the above quoted Annexure-A order dated 28.7.1998, the decision of the Government arrived at with the Ministry of Finance was conveyed that NA would be applicable to the nursing personnel of the Central Government Hospitals including Assam Rifles. Needless to say that the letter dated 21.3.2007 cannot override the OM issued by the Ministry with the concurrence of the Ministry of Finance. In any case, the Annexure-G OM dated 28.7.2009 being of a later point of time than the letter dated 21.3.2007, same will hold the field.

18. Apart from the above, if the aforesaid plea of the Respondents on the basis of the letter dated 21.3.2007 is to be accepted than in that case, the Annexure-H letter dated 22.9.2009 could not have been issued entitling the NA to Assistant Matron, Sister etc. The said letter mentions the Assistant Matron, Sister, Staff Nurse and ANM of Assam Rifles only to the exclusion of Nursing Assistants. Any strict interpretation of the letter dated 21.3.2007 might even exclude the other categories of nursing staff and will mean only the nurses.

19. The duties and functions being performed by the Nursing Assistants have been noted above. On perusal of the Annexure-I duty chart, nothing is discernible to accept the contention that the Nursing Assistants do not form integral part of nursing staff, a fact which has been fairly admitted by the Respondents in their counter affidavit.

20. Although, in the counter affidavit the Respondents have stated about exclusion of the Nursing Assistant by the said letter dated 21.3.2007, but their whole basis of denial of NA to the Nursing Assistants is that the same is applicable only to the nursing staff for whom there is prescription of NA in the Recruitment Rules. The basic contention of the Respondents is that the Petitioners and for that matter the Nursing Assistant do not conform the requirement of prescribed professional qualification entitling them to NA. In this connection they have referred to the Recruitment Rules as amended in 2001. In the Recruitment Rules there is nothing to indicate that the nursing staff with the particular qualification only are entitled to NA. The Recruitment Rules only indicates the posts of Sister, Staff Nurse, Civilian Compounder, Midwives/Auxiliary Nurse, Veterinary Field Assistant, Riflemen (Clerk), Riflemen (Nursing Assistant) etc. indicating their classification, scale of pay, age limit for direct recruitment and as to whether the posts are selection or non-selection posts. Qualifications and other criterias for the posts cannot be decisive of the question as to whether they are entitled to NA. There is nothing in the RR to indicate grant of NA to any category of nursing staff. The same has been placed reliance by the Respondents only to indicate the pay scale and other parameters for appointment to the posts.

21. In paragraph 4 of the counter affidavit, the Respondents have indicated the educational qualification and professional qualification required for the posts of Nursing Assistant, ANM, Staff Nurse and Sister so as to contend that although the educational qualification required for all the posts is matriculation but for nursing staff no professional qualification is required unlike other categories of nursing staff. While for the post of Nursing Assistant, the requirement is matriculation with English., Mathematics, Science with Biology, there is no such prescription for the other posts for whom only qualification required is matriculation. It is true that for other category of nursing staff certificate and/or diploma qualification in nursing or midwifery is required, but the same by itself cannot be decisive of the question of granting or non-granting of NA to the nursing staff.

22. The office memorandums referred to above do not make any distinction between the nursing staff with diploma and/or certificate and the nursing staff without such diploma and/or certificate. Had it been the case the said O Ms would have specifically spelt out the same. On a total reading of all the O Ms there is no escape from the conclusion that the NA is applicable to all nursing personnel/staff. The Respondents themselves have admitted in their counter affidavit that the Nursing Assistants form integral part of the nursing staff, but at the same time have stated that same by itself will not qualify them for grant of NA, without, however, specifying anything as to why they are not entitled to the same being integral part of the nursing staff.

23. The expression "personnel" means people employed in an organization or engaged in an organized undertaking. The expression used in various O Ms is "Nursing Personnel" who are entitled to NA. In the said O Ms no distinction has been made on the basis of qualification etc. All pervasive expression used in the O Ms is that the NA would be applicable to all Nursing Personnel working in Central Government Hospitals. In the Annexure-G OM dated 28.7.2009 laying down the rate of NA, the GOI in the Ministry of Home Affairs indicated about the applicability of the same to the nursing personnel working in Central Government Hospitals including that of Assam Rifles. Although, in paragraph 2 of the OM, it has been stated that the NA would be applicable only to those nursing personnel who are entitled to payment as per their Recruitment Rules and Service Rules, but there is nothing in the RR applicable to Assam Rifles to indicate that NA is applicable only to the nursing staff excluding the Nursing Assistants. As discussed above the RR does not throw any light on the entitlement of NA. This is precisely the reason as to why the Respondents have based their claim towards denial of NA to the Petitioners referring to the prescribed qualifications including professional qualification required for appointment of nursing staff under various categories including that of Nursing Assistants. When the O Ms themselves do not make any distinction on the basis of educational and professional qualification towards entitlement of NA, in my considered view the authority of the Assam Rifles cannot import something to the said O Ms to deny the NA benefits to the Nursing Assistants.

24. 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.

25. The writ petition is allowed, without, however, any order as to costs.