

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 1

O.A. No. 379 of 2019

Nb Sub Kailash Chandra Bhatt
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>06.01.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Heard Shri KKS Bisht, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents.</p> <p>2. Applicant has filed present application under Section 14 of the Armed Forces Tribunal Act, 2007 and has sought following reliefs:-</p> <p style="padding-left: 40px;">“a) To set aside the letter dated 25.02.2019 denying the Higher rate of X Group Pay.</p> <p style="padding-left: 40px;">b) To direct the Respondents to place the Applicant in X Group Pay (Rs. 6200/-).</p> <p style="padding-left: 40px;">c) To direct the respondents to produce all records in respect of similar case recommending to 7th CPC for granting higher grade.</p> <p style="padding-left: 40px;">d) To pass any such direction as deemed fit by this Hon'ble Tribunal in light of facts and circumstances of the case.”</p> <p>3. Brief facts of the case are that applicant was enrolled in the Army on 18.08.2001. The applicant underwent prescribed course in General Nursing & Midwifery at Command Hospital (WC) Chandigarh from 01.09.2008 to 29.02.2012 which is approved by the Indian Nursing Council (INC) and passed examination in Feb. 2012 and a General Nursing & Midwifery Certificate was issued to the applicant by Armed Forces Medical Services Examination Board. Therefore, applicant approached AMC Records for publication of Part II Order for remustering into 'X' Group trade (X Group pay @ Rs. 6200/- per month) having been completed three and half years diploma course which was denied by AMC Records vide letter dated 12.12.2012. The applicant has fulfilled all the conditions as provided in para 24 of ROI 15/2005 for remustering into X Group, however, he is still not being placed in X Group pay by the respondents. Being aggrieved, the applicant has filed the present Original</p>

Application.

4. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 18.08.2001. The applicant underwent prescribed course in General Nursing & Midwifery at Command Hospital (WC) Chandigarh from 01.09.2008 to 29.02.2012 which is approved by the Indian Nursing Council (INC) and passed the theoretical and practical examination in Feb. 2012 and a General Nursing & Midwifery Certificate was issued to the applicant by Armed Forces Medical Services Examination Board. Therefore, A letter dated 26.11.2012 was sent to AMC Records by the unit of the applicant to remuster applicant in X Group having been completed three and half year diploma course. The reply of AMC Records dated 12.12.2012 stating that applicant will be remustered as Nursing Technician Group 'Y' in the rank of Naib Subedar in his own turn is against the principle of natural justice and against the Article 14 of the Constitution of India. The applicant was remustered as Nursing Technician JCO on 01.03.2014.

5. Learned counsel for the applicant further submitted that as per 7th CPC letter dated 29.11.2016, it was mentioned that higher diplomas approved by AICTE/UGC/Indian Nursing Council/equivalent to AICTE will be placed in X Group (Rs. 6200/- pm), however, the applicant despite having the said diploma is still not kept in X Group. The applicant filed a RTI application dated 10.10.2018 seeking information as to why Nursing Technician are not placed in higher X Group. The reply received from AICTE dated 27.11.2018 mentioned that AICTE is not providing equivalence to qualifications and also said that it is upon the employer to decide the suitability for a particular post. A letter dated 14.03.2019 was also issued by IHQ of MoD (Army), New Delhi in response to the RTI application stating that proposal for considering various AMC trades into X Group has been forwarded to 7th CPC Cell vide Dte Gen letter dated 08.12.2016 and that training of Radiographers and lab Technicians trades in AMC is not approved by AICTE.

6. Learned counsel for the applicant further submitted that applicant has fulfilled all the conditions as provided in para 24 of ROI 15/2005 for remustering into X Group. The applicant even after fulfilling the essential conditions as

required by the respondents is not being placed in X Group (X Group pay @ Rs. 6200/- per month) while Radiographers and Lab Technicians trades in AMC whose training is not approved by AICTE and other diploma holders of one year/two years in Army are still placed in X Pay Group. Thus, the action of the respondents ignoring the demand of the applicant of placing him in X Pay Group having completed 3 and ½ years Diploma course is biased, unfair and prejudicial. He pleaded that applicant is eligible to be remustered in X Group and accordingly, he should be paid higher rate of X Group Pay

7. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Army (Army Medical Corps) on 18.08.2001. He has undergone Diploma in General Nursing & Midwifery Course and on completion of the said course he was remustered to Nursing Technician and was subsequently promoted to the rank of Naib Subedar w.e.f. 01.03.2014. The applicant submitted his Diploma in General Nursing and Midwifery certificate dated 12.05.2012, issued by Command Hospital (Western Command) Chandimandir to AMC Records for publication of Part II Order for fixation of higher rate of 'X' Group pay, however, the ibid documents were returned unactioned to his unit stating that there is no provision for grant of higher rate of 'X' Group pay for Nursing Technician JCOs in terms of IHQ of MoD (Army) letters dated 22.10.2018 and 18.07.2018 which stipulates that "*the revised policy for 'X' group is applicable only for Radiographer and Lab Technician (JCOs only) trades in Army Medical Corps and Dental Hygienist trade in Army Dental Corps*".

8. Learned counsel for the respondents further submitted that a proposal has been sought by the office of DGAFMS/Pay Cell for inclusion of 13 trades of 'Y' groups into 'X' groups based on Diploma which is recognized by AICTE/equivalent statutory body of Medical/Dental/Nursing/Paramedical received through IHQ of MoD (Army) vide their letter dated 02.07.2018. In accordance with IHQ of MoD (Army), financial liabilities were calculated by AMC Records and submitted to IHQ of MoD (Army) vide AMC Records letter dated 20.07.2019. Subsequently, financial liabilities of Nursing Technical (JCO) were also calculated and duly vetted by Pay Account Office (OR) were

submitted to IHQ of MoD (Army) vide AMC Records letter dated 07.08.2019. Now, the applicant has filed the present Original Application to place him in X Group pay (Rs. 6200/- pm) before receiving any decision from the competent authority without exhausting the service remedies under Section 26 of Army Act, 1950 applicable to him and therefore, O.A. is liable to be rejected being devoid of merit and lacking substance.

9. We have perused the records and we find that applicant has done Diploma in General Nursing & Midwifery Course from Command Hospital (Western Command) Chandimandir and on completion of the said course he was remustered to Nursing Technician and subsequently he was promoted to the rank of Naib Subedar. We have also observed that few other trades in AMC who are having a diploma of 1 year/2 years duration are kept in 'X' Group whereas the applicant who has done the Diploma for a duration of 3½ years has been denied inclusion of his name in 'X' Group trades having monetary benefit of Rs. 6200/- per month.

10. In view of aforesaid, Original Application is disposed off with the direction to the respondents to consider case of the applicant who is having Diploma in General Nursing & Midwifery of 3 ½ years duration and include his case in the trades of 'X' Group as per rules. The respondents are directed to give effect to this order at earliest preferably within a period of four months from the date of receipt of certified copy of the order.

11. No order as to costs.

12. Pending Misc. Application(s), if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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