



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **16.11.2021**

CORAM :

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.4094 of 2014

and

M.P(MD)No.1 of 2014

and

W.M.P(MD)No.19436 of 2018

K.Kanagaraj

... Petitioner

Vs.

- 1.Union of India,
Represented by its Secretary,
Ministry of Home Affairs,
North Block, New Delhi - 1.
- 2.The Director General,
ITBP Force, Ministry of Home Affairs,
Directorate General, ITBP,
Block No.2, C.G.O. Complex,
Lodhi Road, New Delhi - 110 003.
- 3.The Director (Meical),
ITBP Force, Ministry of Home Affairs,
Directorate General, ITBP,
Block No.2, C.G.O. Complex,
Lodhi Road, New Delhi - 110 003.
- 4.The Deputy Inspector General (Org),
ITBP Force, Ministry of Home Affairs,
Directorate General, ITBP,
Block No.2, C.G.O. Complex,
Lodhi Road, New Delhi - 110 003.
- 5.D.S.Nandish
- 6.Shoorveer Singh
- 7.Nagendra Kumar Singh
- 8.Manohar Lal
- 9.Satya Dev
- 10.Ravinder Kumar



12.Rita Kaur

13.Ram Kumar

14.Satish Kumar

15.Jitender

16.Bhupendra Singh Yadav

17.Kastuba Nand Pant

18.Sushil Kumar Dubey

19.Avijit Maji

20.Himmat Singh

21.Hemant Singh

22.Radhey Lal Pal

23.Rajkumar

24.Vijay Kumar

25.Kharakram

26.B.Rajesh

27.Th.Romesh Singh

28.Dodisapna Ben

29.M.Madhusoodhanam

30.Ramakrishnan

31.Anoop Bala

32.Y.Govind Rao

33.S.Devasagayam

34.K.Anil

35.Uday Kumar



36.Balbir Singh

37.Mustaq Ahamad

38.Ashok Kumar Mishra

39.Devanand Prajapati

40.K.Manilla Hussain

41.Kanchan Singh

42.Bhoi Pinal Kumar

43.Rajeev Kumar Pandey

44.Harender Singh

45.Bali Thakur

46.Rajender Singh

47.Arjun Singh

48.Pratap Singh

49.S.Vijayakumaran

50.C.Rajaram

51.Sunil Sharma

52.Pitamber Joshi

53.Rajeev Kumar

54.Chandra Bhusan

55.Vikarm Singh

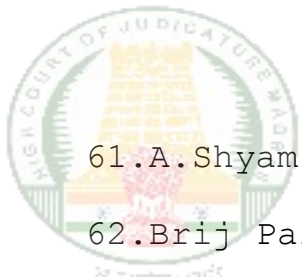
56.Brijesh Singh

57.Narender Singh

58.Surender Singh

59.Mohd Tanvir Khan

60.Manju Karki



61.A.Shyam Chandra

62.Brij Pal Sharma

63.Pramod Kumar Tomar

64.Asha Devi

65.Prakash Singh

66.Rajendran Nair

67.Brij Raj Pal

68.Tapak Rime

69.Sandeep Chand

70.C.Anand

71.Parveen Singh Negi

72.Palzor Wanchok Kazi

73.Devi Singh

74.Shakti Lal

75.Gajendra Singh

76.Ajay Kumar Nayak

... Respondents

(R5 to R76 are impleaded vide Court order
dated 17.02.2020 in W.M.P(MD)No.2639
of 2020 in W.P(MD)No.4094 of 2014)

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the fourth respondent pertaining to its order bearing number 1-45024/31/2009 Organisation dated 18.10.2013 and to quash the same and consequently, direct the respondents to extend the benefits of nursing allowance on par with nursing assistants of Assam Rifles.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.K.R.Laxman,
for R1 to R4.

No Appearance for R5 to R76



O R D E R

The petitioner is working as a Commandant of 45th Battalion in Indo-Tibetan Border Police Force (ITBPF), Idayapatti Camp, Amoor South, Madurai, Tamil Nadu. The petitioner is appointed as a designated Medic and he is receiving Hospital Patient Care Allowance. The petitioner is comparing himself with the Nursing Assistants of Assam Rifles wherein, they will be paid allowance of Rs.150/- (Rupees One Hundred and Fifty only).

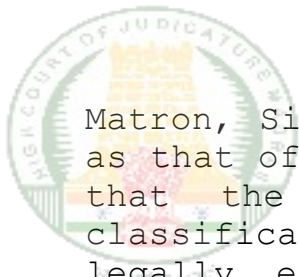
2. The learned counsel for the petitioner states that the petitioner is doing the same duty as that of the Nurses in the ITBP Hospital. He would further submit that, they are assigned to maintain the proper cleanliness in the hospital, viz, Medical Injection Room, sterilisation of all dressing materials, instruments, equipments, etc., under the guidance of senior Nursing Staff. Apart from that, the petitioner was assigned other works like to keep record of daily OPD/Indoor Attendance and consumption of medicine, assist the in-charge of stores or ward and other section of the hospital, prepare patients for operation, laboratory test, radiography and other investigations, assisting in feeding and giving drinking water, handling and observation of patients, dressing of wounds and other nursing procedure, assisting in diagnostic and treatment procedure, collecting and handling of pathological specimens and other duties as specified therein. It is the specific claim of the petitioner that these are the duties that are assigned to the Nurses also.

3. The respondents have filed a detailed counter. In paragraph 3(a) of the counter, it is specifically stated that the Medics and Nurses are not performing the same duties and the charter of duties for Nurses and Medics as specified in ITBP Manual are entirely different and as per their specified duties, Nurses and Medics are in different posts and grades and different cadres.

4. The specific claim of R1 to R4, in paragraph 10 of the counter affidavit, is that these Medics would be paid Special Hospital Patient Care Allowance and the petitioner is already receiving the same.

5. Heard the learned counsel for both the parties.

6. The petitioner is seeking the Nursing Allowance that is being granted to the Assam Rifles. The petitioner has relied on a judgment passed in the High Court of Gauhati, in W.P(C)No.(SH)279 of 2009, and has relied on paragraph 16 of the judgment. The issue in that Judgment is that the Nursing Assistants are given a Special Allowance, therefore, the similarly placed Assistant



Matron, Sister Staff Nurse and AMN are seeking the same allowance as that of the Nursing Staff. The High Court of Gauhati has stated that the respondent authorities have made an unreasonable classification to deprive them from the benefit, which they are legally entitled to. In the present case the petitioner is comparing "Medic" and "Nurses". Since those two are different posts and the name cannot be compared at all. Therefore the said judgment has no application to the facts of the present case.

7. The claim of the petitioner comparing himself with the Assam Rifles cannot be accepted for the reason, the Assam and the North-East part of India have different topography, where travelling would be very difficult. As per the ITBP category itself, service rendered in North-East is "hard service". So, there is no unreasonable classification.

8. As rightly pointed out by the learned counsel for R1 to R4, the petitioner is receiving another type of allowance, namely, Hospital Patient Care Allowance, which the Assam Rifles are not getting. These kind of allowances are within the domain of the Appointing Authorities. Under Article 226 of the Constitution of India, these issues cannot be litigated. Therefore, this writ petition fails. However, if R1 to R4 considers it to be fit to grant such allowance, the respondents may consider the same in accordance with law and this Court is not directing the respondents to consider it positively.

9. With the above observations, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

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Sub Assistant Registrar(CS)

gbg/btr

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

- 1.Union of India,
Represented by its Secretary,
Ministry of Home Affairs,
North Block, New Delhi - 1.
- 2.The Director General,
ITBP Force, Ministry of Home Affairs,
Directorate General, ITBP,
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- 4.The Deputy Inspector General (Org),
ITBP Force, Ministry of Home Affairs,
Directorate General, ITBP,
Block No.2, C.G.O. Complex,
Lodhi Road, New Delhi - 110 003.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-34816[F] dated 17/11/2021)

+1 CC to M/s.K.R. LAXMAN, Advocate (SR-34824[F] dated 17/11/2021)

**W. P (MD) No. 4094 of 2014
and**

**M. P (MD) No. 1 of 2014
and**

**W. M. P (MD) No. 19436 of 2018
16.11.2021**

KS (CO)
SB(07.12.2021) 7P 7C