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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 06.04.2023

+ W.P.(C) 832/2017

DALIP KUMAR SHARMA AND ANR Petitioners

Through: Ms.Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS Respondents

Through: Ms.Arunima Dwivedi & Ms.Amrita
Prakash, CGSC with Mr.Aakash
Pathak & Ms.Pinky Pawar, Advs. for
UOI.

Mr. Hemendra Singh, Dy.
Commandant (Law) BSF

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT (oral)

1. Present petition has been filed seeking directions to the respondents to grant nursing allowance to personnel holding post of Head Constable (Nursing Assistant) in Border Security Force including petitioners with effect from date other nursing staff in Border Security Force have been granted Nursing Allowance.
2. Learned counsel for the respondents has informed this Court that the issue raised in the present petition has already been decided by the Hon'ble Supreme Court in Civil Appeal No.172/2023 decided on 16.01.2023 titled as ***"The Union of India & Ors. vs. Rajib Khan & Ors."*** whereby observed as

under:

“5. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand the view taken by the High Court that the educational qualification cannot be a ground for denial of Nursing Allowance to the Nursing Assistants is unsustainable. In the present case the respective Nursing Assistants are being paid ‘Hospital Patient Care Allowance’. The Nursing Assistants in the BSF neither have relevant experience for appointment as Staff Nurse nor they possess any educational qualification for appointment as Staff Nurse. Therefore, the case of Nursing Assistants cannot be compared with that of the Staff Nurses as both carry different educational qualification. Under the circumstances, the High Court has committed a serious error in holding and directing that the Nursing Assistants serving in the Assam Rifles/BSF are entitled to Nursing Allowance at par with the Staff Nurses.

6. In view of the above and for the reason stated above present appeal succeeds. The impugned judgment and order passed by the learned Single Judge as well as the Division Bench of the High Court holding and directing that the original writ petitioners – Nursing Assistants shall be entitled to Nursing Allowance at par with the Staff Nurse is hereby quashed and set aside.”

3. Thus, counsel for the respondents submits that nothing survives in the present petition.
4. Learned counsel appearing on behalf of the petitioners does not dispute the submission of counsel for the respondents.
5. Accordingly, present petition is dismissed in view of the judgment of ***Rajib Khan & Ors. (supra)***.

(SURESH KUMAR KAIT)
JUDGE

(MANMEET PRITAM SINGH ARORA)
JUDGE

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