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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.1337/2002 &
M.A. NO.1071/2002

New Delhi this the 22nd day of April, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

Mrs. Alayamma A.J. Poonam Chaudhary
Wife of Shri V.P. Chaudhary,
'B' Grade Nurse
Divisional Northern Railway Hospital
Delhi. ...Applicant.

(By Shri S.K. Sawhney, Advocate)

vs.

Union of India Through

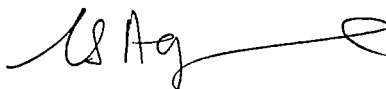
1. The Divisional Railway Manager
Northern Railway,
New Delhi-110001.
2. The Senior Chief Medical Supdt.
Divisional Railway Hospital
Northern Railway.
S.P. Mukherjee Marg
Delhi-110006. Respondents.

(By Advocate: Ms. Anju Bhushan)

O R D E R

Justice V.S. Aggarwal:-

The applicant (Smt. Alayamma A.J. Poonam) was appointed to the post of 'B' Grade Nurse on ad hoc and temporary basis. She joined on 15.7.1979. The appointment was to continue till such time a candidate was appointed through the Railway Recruitment Board or till her services were regularised. The services of the applicant were regularised with effect from 3.1.1992 on her passing the written and viva voce tests.



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2. By virtue of the present application, she claims that she should be granted due seniority in her cadre on basis of the total length of service from 15.7.1979 onwards.

3. The application has been opposed. The respondents contend and plead that the applicant was appointed on ad hoc basis on the condition that she has to qualify the selection through the Railway Recruitment Board. Her services were regularised after she passed the written and viva voce tests in January 1992. She has not made any application claiming seniority and represented in this regard after 10 years of her regularisation. The respondents further contended that two seniority lists had been issued on 28.4.1998 and in December 2001. Objections were called. The applicant did not represent or in other words accepted the seniority list so circulated. Otherwise also, it is denied that the applicant is entitled to claim seniority.

4. The first and foremost question that comes up for consideration is as to whether the application so filed is within time and in case it is barred by time, the delay in filing the same should be condoned or not. In this regard, the applicant has submitted an application seeking condonation of delay. In her application seeking condonation of delay, the applicant has pleaded

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that she has rendered 22 years' service. She has made a number of personal visits to the offices of the concerned authorities and represented in January 2000 and on 10.9.2001. No response was received and in these circumstances, it has been prayed that the delay should be condoned.

5. The principle of law is well-settled that delay in filing of an application can only be condoned if there are just and sufficient grounds which prevented the filing of the application by the concerned person. It goes with the facts of each case whether the delay has to be condoned or not and there cannot be any straight-jacket formula in this regard.

6. The applicant, as per her own assertions, had joined on temporary basis on 15.7.1979. She was regularised in January 1992. She had not cared to represent at the appropriate time to claim seniority when she was regularised. The cause of action had arisen in January 1992. The period of limitation once it starts running would continue to so run unless there are exceptions carved by the enactment or any such fact which may prevent this Tribunal to say otherwise. The period of limitation in the present case came to an end after the right referred to above had accrued. There is no explanation forthcoming as to why the applicant did not represent when the

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right accrued to her or take any appropriate action to come to this Tribunal.

7. In addition to that as has been pointed by the respondents, the seniority lists had been circulated and once the said seniority lists had been circulated in April 1998 and December 2001, the applicant even did not file any objections. It is too late in the day now to raise the plea that the delay should be condoned and her application entertained. Settled things cannot be unsettled in this process.

8. Not only that the applicant had not cared to implead those persons who are alleged to have been shown senior to her. Their valuable rights should also be involved. The totality of facts, therefore, indicate that in the peculiar facts there is no ground to condone the delay and the application must be held to be barred by time.

9. Even otherwise on merits of the matter, the contention raised that the applicant was appointed on ad hoc basis and must be granted seniority in this regard cannot be accepted. Reliance on behalf of the applicant was placed on a Constitution Bench decision of the Supreme Court in the case of **The Direct Recruit Class II Engineering Officers Association and Others v. State of Maharashtra and others**, JT 1990 (2)

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S.C.264. The Supreme Court discussed various aspects of the controversy and finally concluded that if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. The applicant cannot take advantage of the same because herein her services have not been regularised. The applicant was appointed on purely temporary basis. It was not regularisation of her services as is apparent from her own pleadings that she was recruited when she passed the written and viva voce tests. Therefore, it is not a case of regularisation but a fresh appointment in accordance with the rules. The decision of the Supreme Court, therefore, does not come to her rescue.

10. Reliance further has been placed on another decision of the Supreme Court in the case of **Rudra Kumar Sain and Ors. v. Union of India & Ors.**, JT 2000 (9) SC 299. In para 20, the Supreme Court held:-

"20. In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be "stop-gap or fortuitous or purely ad hoc". In this

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view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be fortuitous/ad hoc/stop-gap are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous."

11. The decision in the case of Rudra Kumar Sain (supra) must be said to be confined to the peculiar facts of that case. This is for the reason that there appointments had been made as per the rules and not like where the applicant had been appointed. In fact, in the preceding paragraph 19, the Supreme Court held that the meaning assigned to the terms like "ad hoc", "fortuitous" or "stop-gap" etc. has to be given on the provisions of the rules and the context in which they are used. Furthermore, the case of Rudra Kumar Sain (supra) was confined to the inter se seniority between the direct recruits and promotees. Therefore, it must be held to be totally distinguishable.

12. For the same reasoning, the decision in the case of I.K. Sukhija & Ors. v. Union of India & Ors., 1999 (1) S.L.J. 88 will not be of any help to the applicant because here once again the dispute was between the promotees and the direct recruits.

13. Herein, in the matter before us, the applicant not only has not cared to implead the persons whose seniority may be affected but she on the earlier occasion had joined on a purely

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temporary post and was appointed only when she passed the written and the viva voce tests as per the rules. She was appointed from that date, but she indeed in the peculiar facts cannot claim seniority over other persons who may have been recruited in accordance with the rules earlier to her.

14. Resultantly, the present application being without merit must fail and is dismissed. No costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

/sns/

V.S. Aggarwal

(V.S. Aggarwal)
Chairman