

Central Administrative Tribunal  
Principal Bench

O.A. No. 1581 of 2002

New Delhi, this the 3rd April, 2003

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

Ms. Kiran Bala Sharma,  
D/o Shri Bishan Chand Sharma,  
House No.163-B, Block-A5/B,  
Janakpuri,  
New Delhi-110058

(By Advocate: Shri P.S. Mahendru)

...Applicant

Versus

1. Union of India through  
The Secretary,  
Ministry of Health and Family Welfare,  
New Delhi-110011.
2. The Director General Health Services,  
Ministry of Health and Family Welfare,  
Nirman Bhawan,  
New Delhi-110011
3. The Officer Incharge,  
Rural Health Training Centre,  
Govt. of India,  
Najafgarh,  
New Delhi-110043

...Respondents.

(By Advocate : Shri R.N.Singh)

ORDER (Oral)

Justice V.S. Aggarwal

By virtue of the present application, the applicant (Kiran Bala Sharma) seeks a direction to consider her case for promotion to the post of Principal Nursing Officer in the Rural Health Training Centre, Najafgarh, New Delhi in preference to the outsiders.

2. Learned counsel for the applicant in support of his case contended that the applicant was selected regularly in accordance with the procedure and has continued to work on the said post for more than a decade. She is, therefore, entitled for promotion to the



said post referred to above regarding which no recruitment rules have been framed.

3. In support of his argument, learned counsel for the applicant has relied upon the decision of the Supreme Court in Nagpur Improvement Trust Vs. Yadaorao Jagannath Kumbhare, (1999) 8 Supreme Court Cases 99). The Supreme Court held that in the absence of the statutory rules governing service conditions, executive instructions and decisions taken administratively operate and promotions could be made in accordance with such executive instructions. Reliance has further been placed on the decision of this Tribunal rendered in the case of Madhusudan Patra & Ors. Vs. Union of India & Ors. reported in 1997 (3) All India Service Law Journal 32, wherein this Tribunal held that it is unbelievable that persons have been working for 20-25 years and there are no posts for them. Almost identical view was expressed in the case of Awadesh Kumar Yadav Vs. Divisional Forest Officer, Manipur & Ors. by the Allahabad High Court in Civil Misc. Writ Petition No.21596/97 decided on 2.11.99.

4. But for the purpose of the present application, it becomes unnecessary for us to dwell into this controversy. The reason is obvious because the applicant had filed O.A. No.1918/91 which was decided by this Tribunal on 22.11.91. In the aforesaid O.A. she had prayed that as a Senior Public Health Nurse she

As Ag

should be regularised. This Tribunal had not granted the relief of regularisation but disposed of the application with the following directions:-

"Analysing the facts and issues brought out above. It is clear that the lien of the applicant has been extended upto 10.8.1992. Her appointment also shows that it was also shows that it was something more than "ad hoc". The letter of DGHS dated 7.8.1991 shows that the recommendation was for extending the lien for one year from 10.8.1991 or till the recruitment rules are notified. Thus, it is clear that though the applicant was selection for the post of Senior Public Health Nurse in RHTC, her appointment was not according to any prescribed recruitment rules. But in view of the fact that her lien has been extended now and no regular selection made so far, she cannot be reverted to her old post of Staff Nurse until the post of Public Health Nurse (Senior) in RHTC continues. If the post is to be declared surplus, it has to be done by a proper order and proper instructions regarding absorption of surplus staff and in accordance with law.

In the circumstances, we direct that until the post the applicant is holding is abolished or declared surplus or until final selections are made on the basis of recruitment rules, whichever is earlier, she should not be reverted on the ground that her services are not required any longer, more so, when her lien has been extended upto 10.8.1992."

5. This was the inter-party decision and the regularisation had been declined to her. Because of her being not a regular employee, <sup>it will be</sup> ~~it was~~ improper for this Tribunal to grant the relief claimed that she should be considered for promotion to the post of Principal Nursing Officer in preference to the outsiders. In that view of the matter, we are not dwelling into further argument that has been advanced.

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6. Keeping in view of the aforesaid, the O.A.  
is dismissed.

*V.K. Majotra*

(V.K. Majotra)  
Member(A)

*V.S. Aggarwal*

(V.S. Aggarwal)  
Chairman

/ug/