

Central Administrative Tribunal  
Principal Bench

O.A. No. 1711 of 1999

New Delhi, dated this the 5<sup>th</sup> DECEMBER, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

S/Ms.

1. I.S. Kumar,  
W/o Shri Sushil Kumar  
R/o C-256, Albert Square,  
Gole Market, New Delhi.
  2. S.P. Saini,  
W/o Shri Anand Saini,  
R/o D-22, Double Storey,  
Lajpat Nagar,  
New Delhi.
  3. R.K. Khanduja,  
Nursing Sister,  
Dr. R.M.L. Hospital,  
New Delhi.
- .. Applicants

(By Advocate: Mrs. Rani Chhabra)

Versus

1. Union of India through  
the Director (PMS),  
Ministry of Health & F.W.,  
Dept. of Health,  
Nirman Bhawan,  
New Delhi.
  2. Government of India through  
the Administrative Officer,  
Dr. R.M.L. Hospital,  
New Delhi.
  3. General Secretary,  
Dr. R.M.L. Hospital, New Delhi.
  4. Ms. Vijay Kannan
  5. Ms. Bimla Rani
  6. Ms. Veena Dochana  
(R-4 to 6 are Nursing Sisters in  
Dr. R.M.L. Hospital, New Delhi).
- .. Respondents  
(By Advocate: Shri Madhav Panikar)

ORDER

MR. S.R. ADIGE, VC (A)

Applicants impugn respondents' order dated  
10.7.99 (Annexure A-3) and seeks a direction to

respondents to promote them to the posts of Asst. Nursing Superintendents according to their seniority. A direction is also sought to place them according to their seniority in the cadre of Nursing Sisters according to the proviso incorporated in the general principles of seniority vide O.M. dated 30.1.97.

2. Heard both sides.

3. Admittedly applicants were senior to private Respondents 4 to 6 in the grade of Staff Nurse. However, as Respondents No.4 to 6 belong to reserved category, they were promoted to the grade of Nursing Sister on regular basis in 1990 against reserved vacancies, while applicants got promoted as such only in 1992. Thus Respondents No. 4 to 6 were placed above applicants in the seniority list of Nursing Sister.

4. The Hon'ble Supreme Court in its judgment dated 10.10.95 in Union of India Vs. Virpal Singh Chauhan etc. JT 1995 (7) SC 231 held as follows:

"Even if an SC/ST candidate is promoted earlier by virtue of rule of reservation/roster than his senior general category candidate and the senior general category candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted SC/ST candidate. The earlier promotion of the SC/ST candidate does not confer upon him seniority over the general candidate even though the general candidate is promoted later that category."

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5. This principle has been incorporated by DP&T to the general principle of seniority contained in their earlier circulars on the subject vide their O.M. dated 30.1.97 (Annexure 11/4) by adding the following:

"Provided that if a candidate belonging to SC or ST is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate, who is promoted later to the said immediate higher post/grade, the general/OBC candidate will regain his seniority over such earlier promoted candidates of the SC or ST in the immediate higher post/grade."

It has been stated that these orders would take effect from the date of issue of the O.M.

6. Meanwhile based upon the seniority list of Nursing Sisters (Annexure R-15), respondents by impugned order dated 10.7.99 (Annexure A-3) have promoted 29 Nursing Sisters, as Asst. Nursing Superintendents (Non Functional) w./e.f. 15.7.98 which includes private respondents 4, 5 & 6 who are at Sl. No. 27, 28 and 29 of the impugned promotion order.

7. Official Respondents state that private respondents, 4, 5 & 6 feature at 29, 30 and 31 of Nursing Sisters, while applicants are at Sl. No. 34, 35 & 36 of that list. Applicants being junior to

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Respondents 4, 5 & 6 could not be promoted as Asst. Nursing Sisters before them.

8. Applicants' counsel contends that applicants having been promoted as Nursing Sisters regained their earlier seniority in the grade of Staff Nurse and thus became senior to Respondents 4, 5 & 6 as Nursing Sisters and vide O.M. dated 30.1.97, official respondents should, therefore, have recast the seniority list accordingly before making promotions to the grade of Asst. Nursing Superintendent.

9. We have considered the rival contentions carefully.


10. It is clear that when respondents incorporated the ratio of the Hon'ble Supreme Court's judgment dated 10.10.95 in Veerpal Singh Chauhan's case (supra) in their O.M. dated 30.1.97 and stated that those orders would take effect from the date of issue of the O.M. that is 30.1.97, it means that it is only where the general candidates are promoted to the higher post on or after 30.1.97 that they would regain their seniority. Even if the date of the Hon'ble Supreme Court's judgment in Veerpal Singh Chauhan's case (supra) i.e. 10.10.95 is taken as the crucial date, in the absence of any specific direction that the judgment would operate retrospectively it is clear that only where the


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general candidate was promoted to the higher post on or after 10.10.95 that he would regain seniority. In the present case while Respondents 4 to 6 who belonged to reserved category were promoted as Nursing Sister in 1990, applicants were promoted as such in 1992, and thus cannot derive benefit from DP&T's O.M. dated 30.1.97 which has incorporated the Hon'ble Supreme Court's ruling in Veepal Chauhan's case (supra).

11. As pointed out by respondents the aforesaid principle of general candidates regaining seniority got incorporated in the general principles of seniority only in 1997 and was made effective only from 30.1.97, and is not applicable in the case of applicants who were promoted in 1992.

12. The O.A., therefore, warrants no interference. It is dismissed. No costs.

  
(Dr. A. Vedavalli)  
Member (J)

  
(S.R. Adige)  
Vice Chairman (A)

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