

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2175 of 1998

New Delhi, this the 15th day of December, 1999

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HON'BLE MR.S.P.BISWAS, MEMBER(ADMNV)
HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Manu Masih
s/o Shri Mehngo Masih,
Aged about: 37-1/2 years
Resident of: S-703,
New Nurses Hostel,
Safdarjung Hospital,
New Delhi

And Employed As:

Nursing Sister(Rank No.4329)
In Safdarjung Hospital
New Delhi-110029

-APPLICANT

(By Advocate: Shri B.B.Raval)

Versus

1.Union of India
Through the Secretary(Health)
Ministry of Health & Family Welfare
Government of India
Nirman Bhawan
New Delhi-110001

2.The Medical Superintendent
Safdarjung Hospital
New Delhi-110029

3.Smt.R.K.Tuli
Then Working as Nursing Sister
Now working as Nursing Superintendent
Kalawati Saran Hospital
New Delhi

4.The Additional Medical Superintendent
Kalawati Saran Children's Hospital
New Delhi

-RESPONDENTS

(By Advocates: Shri Mohar Singh, for respondents 1&2
and Shri N.S.Verma, for respondent 3)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant has filed this O.A. about the inaction on the part of the respondents for non-disposal of his application addressed to the Director General of Health Services (in short 'DGHS') for the post of Nursing

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Superintendent at Safdarjung Hospital followed by two reminders addressed to the Hon'ble Ministers for Health and Family Welfare.

2. The grievance of the applicant is that the respondents are not filling up the post of Nursing Superintendent at Safdarjung Hospital on regular basis by considering him and, clandestinely, they have brought one Mrs.O.P.Sethi who was a Deputy Nursing Superintendent in Kalawati Saran Hospital, to function as Nursing Superintendent in Safdarjung Hospital on ad hoc transfer on deputation. Similarly, respondent no.3 Mrs.R.K.Tuli, is officiating as Nursing Superintendent against the rules on indefinite ad hoc basis at Kalawati Saran Hospital, so the applicant has prayed that the respondents be directed to fill up the post of Nursing Superintendent at Safdarjung Hospital on regular basis by considering him and, if selected, appoint him on that post by relieving Mrs.Sethi to take up her promoted post at Kalawati Saran Hospital and relieve respondent no.3 Mrs.Tuli, officiating as Nursing Superintendent there to join her regular substantive post of Nursing Sister at Safdarjung Hospital, New Delhi.

3. In the O.A., the applicant has alleged that he had joined service at Safdarjung Hospital as Staff Nurse and thereafter, he was promoted to the rank of Nursing Sister on 26.10.93, to which post he is continuing. He states that he holds diploma in General Nursing from S.A. Mac Robert Hospital, Punjab, diploma in Midwifery from Philadelphia Hospital, Ambala and has completed B.Sc. Nursing from All India Institute of Medical Sciences, New

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Delhi. He submits that there is one sanctioned post of Nursing Superintendent at Safdarjung Hospital which was lying vacant as departmental candidates in the same Hospital were not eligible. Therefore, one Mrs.O.P.Sethi who was a Deputy Nursing Superintendent in Kalawati Saran Hospital, was brought on ad hoc transfer on deputation with effect from 12.1.95 to function as Nursing Superintendent in Safdarjung Hospital and she continues to hold that post till date. The last extension was given to her by the DGHS on 9.9.97. The applicant alleges that Mrs.O.P.Sethi had also got a promotion on regular basis w.e.f. 6.10.97 at Kalawati Saran Hospital but she is continuing to work at Safdarjung Hospital against the sanctioned post of Nursing Superintendent. It is submitted that the post of Nursing Superintendent was also advertised. The applicant had applied in response to the same. Though considerable time has lapsed but no action has been taken thereafter.

4. Applicant further alleged that Mrs.R.K.Tuli, respondent no.3 who was in rank number 1981, was the Nursing Sister at Safdarjung Hospital at the relevant time. She also applied in response to the advertisement for filling up two posts of Nursing Superintendents in October 1993 - one each at Lady Hardinge Medical College (in short 'LHMC') and Smt.Sucheta Kriplani Hospital & Kalawati Saran Children Hospital, on transfer on deputation basis. Despite the fact that she was neither qualified nor experienced, was appointed to the post of Nursing Superintendent at Kalawati Saran Hospital and Mrs.O.P. Sethi continued to work at Safdarjung Hospital despite the fact that she had been promoted at Kalawati

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Saran Hospital. The applicant states that on the one hand, the respondents are not disposing of his representation to help Mrs.Tuli to continue to hold the post of Nursing Superintendent though she is not qualified even to hold the post of Nursing Sister, and, on the other hand, Mrs.Sethi is being allowed to continue to work at Safdarjung Hospital with a view to help respondent no.3 Mrs.Tuli to save her from reversion. The applicant claims that on the question of filling up the post of Administrative Officer, the qualifications with regard to length of service had been relaxed. Similarly, in the recruitment rules for filling up the post of Nursing Superintendent on regular basis, there is a clear provision of relaxation of rules which could be used in favour of the applicant for both ad hoc as well as regular promotion to that post. The applicant further states that earlier also, he had filed an O.A.1118/98 but the same was dismissed as being premature.

5. This O.A. is being contested by the official respondents as well as respondent no.3,Mrs.R.K.Tuli.

6. The official respondents have stated in their counter that Mrs.Sethi is being allowed to continue as Nursing Superintendent since no other eligible candidate is available for appointment to the post of Nursing Superintendent. As regards Mrs.Tuli, it is stated that a selection committee had considered all educationally qualified candidates for appointment to the post of Nursing Superintendent in different Central Govt. Hospitals and she was selected for the post in Kalawati Saran Children Hospital on transfer on deputation basis.

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It is also submitted that as per the recruitment rules, the departmental candidates are not eligible to be considered for appointment on deputation in the same hospital. It is further stated that at the time when the selections were made to the posts of Nursing Superintendent in 1994, the applicant was not eligible for consideration for appointment to that posts as he did not fulfil the requisite qualification as provided in the recruitment rules. It is stated that as regards the selection and posting of Mrs. Sethi at Kalawati Saran Hospital is concerned, when the applications were invited for filling up the posts of Nursing Superintendents on deputation basis in the year 1993, the applicant was not eligible for the post at that time also. So he cannot be said to be aggrieved of any order which may be entertained under Section 19 of the Administrative Tribunals Act. It is further stated that the applicant is not eligible since he is not having the experience of five years in the scale of 1640-2900, in which he is working. The respondents, as such, have prayed that the application lack merits and the same should be dismissed.

7. Private respondent Mrs. Tuli has also filed her reply. She has stated that she was appointed as Staff Nurse on 12.4.71. She was promoted as Staff Nurse (Selection Grade) equivalent to the post of Nursing Sister on 12.4.85. Thus she has got the equivalent post carrying the pay scale of 1640-2900 on 12.4.85 whereas the applicant got the same pay scale on 26.10.93. She has further stated that a circular was issued on 24.9.93 vide which the DGHS wanted to fill up two posts of Nursing Superintendent, one for Sucheta Kriplani Hospital

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and another for Kalawati Saran Hospital by transfer on deputation basis. The applications were invited accordingly. Since the applicant was not eligible, respondent no.3 was selected to the post at Sucheta Kriplani Hospital. It is stated that the applicant himself admitted in his application that he is short of experience in the grade of Nursing Sister as he was promoted to that rank on 26.10.93. Thus respondent no.3 has also prayed that the O.A. be dismissed.

8. We have heard the learned counsel for the parties, gone through the records as well as relevant recruitment rules placed on record by the parties.

9. As per the recruitment rules for the post of Nursing Superintendent, the method of recruitment is "By promotion/transfer on deputation failing which by direct recruitment." The educational qualifications required for the post are that the candidate should possess Diploma in Nursing Administration or B.Sc. Nursing from a recognised University or equivalent and should be a registered Nurse and registered Midwife. For the purpose of promotion/transfer on deputation, the candidate should either be holding analogous post on a regular basis; or with three years' regular service in the scale of Rs.2000-3500 or equivalent or with five years' regular service in posts in the scale of Rs.1640-2900 or equivalent; and possessing diploma in Nursing Administration or B.Sc. Nursing and should be a Registered Nurse and registered Midwife.

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10. We find that vide Annexure R-3, the DGHS had issued a circular dated 24.9.93 for filling up two posts of Nursing Superintendent, one each at LHMC and Smt.S.K.Hospital and Kalawati Saran Childrens' Hospital, New Delhi. Eligibility conditions for filling up the posts were the same as narrated above and the significant condition was that the candidate should have 5 years regular service in the scale of Rs.1640-2900. Admittedly, on 24.9.93, when the applications for the posts of Nursing Superintendents were invited, the applicant was not eligible since he got the grade of Rs.1640-2900 even after the date of issuance of the circular i.e. on 26.10.93. Thus the applicant, not being himself eligible to hold the post of Nursing Superintendent, cannot challenge the posting of Mrs.Tuli, respondent no.3 at Kalawati Saran Hospital.

11. According to respondents 1&2, Smt.Sethi was appointed as Nursing Superintendent with effect from 12.1.95 and even at that time also, the applicant had not sufficient experience and, therefore, he could not have been promoted to the said post. Even on 9.9.97, when Mrs.Sethi had been given last extension, the applicant was not eligible for promotion as he was not having the experience of five years in the scale of Rs.1640-2900. The applicant was appointed to the post of Nursing Sister on 26.10.93 and thus, he would complete five years' service on 25.10.98. So by no stretch of imagination, it can be said that on 9.9.97 when the last extension was given to Mrs.Sethi, the applicant was adequately qualified to be considered eligible for the post of Nursing Superintendent.

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12. The main relief of the applicant as sought in the petition, is that the respondents be directed to fill up the post of Nursing Superintendent at Safdarjung Hospital on regular basis by considering him and, if selected, he should be posted as Nursing Superintendent. On this aspect, we may mention that Mrs.O.P.Sethi who had been given last extension on 9.9.97, is yet to complete her term of deputation and the petitioner's claim for any such post may be available to him after she completes her deputation period and not at the stage of filing of the present O.A.

13. Admittedly, the applicant himself mentioned in the O.A. that he could have been considered for relaxation in qualification and experience as was done in the case of Administrative Officer. This clearly goes to show that at the time when Mrs.Sethi was appointed as Nursing Superintendent or she was granted extension, the applicant was not eligible for promotion. As far as grant of relaxation is concerned, it is for the department to see whether in a particular case, any relaxation in qualification or experience should be given or not. The applicant cannot, as a matter of right, claim that he should have been appointed as Nursing Superintendent after obtaining relaxation.

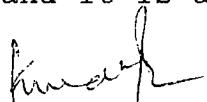
14. In view of the above discussion, we are of the considered opinion that at the time when Mrs.O.P.Sethi was appointed as Nursing Superintendent and was further granted extension on 9.9.97, the applicant was not qualified to hold that post and, therefore, he cannot

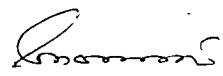
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challenge the appointment of Mrs. Sethi and cannot compel the department to repatriate her back without completion of her deputation tenure. The applicant may have a case after the expiry of the term of deputation of Mrs. Sethi for being promoted as per the Recruitment Rules but at the time of filing of the application, he had no case.

15. In the circumstances, we find no merit in the O.A. and it is accordingly dismissed. No costs.


(KULDIP SINGH)
MEMBER(JUDL)


(S.P. ~~BISWAS~~)
MEMBER(ADMNV)

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