

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.2396/98

New Delhi: this the 10<sup>th</sup> day of November, 1999.

HON'BLE M.R.S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Smt. Mridula Das,  
W/o Shri J.C. Das,  
R/o A-307, M.S. Apartment,  
K.G. Marg,

New Delhi-01

working as Deputy Nursing Advisor,  
M/o Health & Family Welfare,  
Dept. of Family Welfare,  
Nirman Bhawan,  
New Delhi

..... Applicant.

(By Advocate: Shri C. Hari Shankar )

Versus

1. Union of India,  
M/o Health & Family Welfare,  
through  
Secretary (Health).

2. The Director General (Health Services),  
Union of India,  
M/o Health & Family Welfare,  
Nirman Bhawan,  
New Delhi.

3. Union of India,  
M/o Personnel, Training & Public Grievances,  
Dept. of Personnel & Training,  
North Block,  
New Delhi.

(through Secretary).

4. T. Dilip Kumar,  
Nursing Advisor on Deputation,  
M/o Health & Family Welfare,  
Nirman Bhawan,  
New Delhi.

... Respondents.

(By Advocate: Shri P.H. Ramchandani for official  
respondents.)

Shri Raju Ramchandram, Sr. Advocate  
along with Shri ADN Rao for R-4.

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant impugns the grant of extension given to Respondent 4 on deputation as Nursing Advisor under Respondents 1 and 2 in the 4th and 5th year as illegal and arbitrary and seeks a declaration that the non-filling up of the vacant post of Nursing Advisor in accordance with the existing Recruitment Rules is likewise illegal and arbitrary. It is prayed that Respondent 4 be repatriated from his existing posting as Nursing Advisor and the aforesaid post of Nursing Advisor be filled up in accordance with the Recruitment Rules within a reasonable period. Costs are also prayed for.

2. We have heard Shri Hari Shankar for applicant, Shri P. H. Ramchandan for the official respondents and Shri Ramchandram for Respondent - 3.

3. Admittedly there are 3 departments under the Ministry of Health & Family Welfare viz. Deptt. of Health; Deptt. of Family Welfare; and Deptt. of Indian System of Medicine and Homoeopathy. The Directorate General of Health Services is an attached office of Department of Health. At present there are the following 3 posts in the Nursing stream in the Ministry.

1. Nursing Adviser (Rs. 3700-5000 RPS) in DGHS.
2. Deputy Nursing Adviser (Rs. 3000-4500 RPS) in Deptt. of Family Welfare.
3. Nursing Officer (Rs. 2200-4000 RPS) in DGHS.

4. As per Recruitment Rules dated 12.8.77

(Annexure-A-2) the post of Nursing Advisor is required to be filled by promotion/transfer on deputation failing which by direct recruitment.

5. In 1994 the post of Nursing Advisor became vacant. Applicant who joined Respondent 1 and 2 w.e.f. 4.4.88 under Respondent No.2 as Nursing Officer, was admittedly not eligible for consideration for promotion as Nursing Advisor in 1994 when the post fell vacant. Respondent 4 who was substantively holding the post of Dy.Nursing Advisor was selected for the post of Nursing Advisor by UPSC for appointment to this post on deputation basis and was so appointed for a period of 3 years w.e.f. 2.3.94 by order dated 15.3.94 (Annexure-R - VIII) This 3 years' period was therefore to have concluded on 15.3.97, but thereafter the deputation period was extended for a further period of one year till 15.3.98, and was thereafter again extended for a further period of one year till 15.3.99. It is not denied that Respondent No.4 is still working against the post of Nursing Advisor since 15.3.99 till date, although formal orders regarding extension of his deputation beyond 15.3.99 have not been issued as yet.

6. Meanwhile applicant has been appointed on adhoc basis as Deputy Nursing Advisor in the vacancy created by Respondent No.4, and is continuing as such.

7. During hearing respondents' counsel Shri Ram Chandani has invited our attention to UPSC's letter dated 4.10.99 addressed to Respondent No.1 a copy of which is taken on record. This letter reveals that

14

that at the time the recruitment rules for the posting of Nursing Advisor were notified on 12.8.77, the aforesaid post was in the scale of Rs.1300-1700. The replacement scale after the 4th Pay Commissioner's recommendations for this pay scale was Rs.3000-5000, but the post was upgraded by the 4th Pay Commission. As per DP & T's OM dated 8.5.87, the amendment to the recruitment rules should have been initiated within one month from 8.5.87 but the Ministry initiated revision in the RRs only in 1994. By the time DP & T approved the revised RRs, the 5th Pay Commission recommendations were released which further upgraded this post thereby necessitating a *de novo* exercise for revision of RRs. DP & T's OM dated 25.5.98 required the concerned ministries in such cases to complete the review and furnish necessary amendment proposals to UPSC within 2 months from 25.5.98, but UPSC noted with dismay that Ministry of Health & Family Welfare, had not initiated any proposal in this regard which had resulted in undue delay in amending the RRs and also a denial of opportunity to the feeder grade officers for consideration which was highly unjustified. The UPSC also noted with concern that despite DP & T's instructions dated 18.3.88 calling for quinquennial review of RRs to bring them into conformity with changed condition, the Ministry had not taken necessary action in this regard either.

8. In view of the further time likely to be taken in amending the RRs, UPSC has suggested to the Ministry to approach them (UPSC) for approval for the 'Mode of Recruitment', as a one time measure to fill up the post urgently

15

pending finalisation of the amendments to the RRs, and simultaneously terminate the extension tenure of Respondent No.4 and revert him back to his parent cadre immediately.

9. In the light of the contents of UPSC's letter dated 4.10.99(supra), we dispose of this OA with a direction to respondents to terminate the extension tenure of Respondent No.4 forthwith and revert him back to his parent cadre immediately. Simultaneously it would be open to respondents to approach UPSC with a proposal to fill up the post of N.A. as a one time measure on an urgent basis pending finalisation of the amendments to the RRs, till which time respondents should consider filling up the post from eligible candidates on adhoc basis.

10. The OA is disposed of in terms of para 9 above.  
No costs.

Lakshmi Swaminathan  
( MRS. LAKSHMI SWAMINATHAN )

MEMBER(J)

Anfolgi  
( S. R. ADIGE )  
VICE CHAIRMAN(A).

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