

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

RA 91/95 in  
OA 1777/95

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New Delhi, this 20th day of March, 1997.

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Hon'ble Shri R.K. Ahooja, Member (A)

Union of India through the  
Genl. Manager (N.R.)  
Baroda House, New Delhi.

Medical Director  
Northern Railway  
Central Hospital, Basant Lane,  
New Delhi-55

(By Advocate Shri R.L. Dhawan )

... Review applicants

Vs.

Smt. Lalita Dua w/o  
Shri Prem Dua,  
Matron Grade-II,  
N.R. Central Hospital Basant Lane,  
New Delhi.

... Respondent

(By Advocate Shri S.K. Sawhney )

O R D E R (ORAL)

(Hon'ble Shri R.K. Ahooja, Member (A))

The applicant had filed OA 1777/95 being aggrieved by the order dated 21.3.1995 of the General Manager(P), Northern Railway, New Delhi whereby she was assigned her seniority from 1.5.74 instead of 27.6.1972. The basis of her grievance was that she had been appointed as Nurse Grade 'A' on 27.6.72 and, therefore, assigning her seniority w.e.f. 1.5.74 was arbitrary and unreasonable. In the impugned judgment a direction was given to the respondents to give the applicant her appropriate place in the merged seniority list of Nurse 'A' w.e.f. 27.6.72 and to consider her for further selection in accordance with the rules and instructions on the subject.

2. The present R.A. has been filed on the ground that firstly notice taken by the Tribunal in the impugned order that the counsel for the respondents had stated that the seniority of Nurse 'A' had since been revised w.e.f. 5.10.90 and the applicant had been assigned seniority w.e.f. 27.6.72

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was not correct. The other ground taken is that in terms of the Supreme Court's judgment in Malcon Lawrence Cecil D'Souza v. Union of India and others (1976 SCC (L&S) P-115), the matter could not be reopened after a lapse of 14-15 years. Shri Dhawan, learned counsel for the Review applicants (Original respondents) has contended that on both these two points, there are patent errors of fact and law which warrant a review.

3. We have heard the counsel for both the parties. The learned counsel for the review petitioners/respondents draws our attention to the affidavit which had been filed by Sh. O.P. Khatriya, the then learned counsel for the respondents. He contends that no such statement could have been made and the Bench misunderstood that the revised seniority list had been prepared assigning seniority to the applicant w.e.f. 27.6.72. He contends that thereby an error crept into the judgment. On the point of error of law, the learned counsel submits that the applicant though appointed as a Nurse in 1972 came back to the Delhi Central Hospital in 1974 and her seniority then had been fixed on that basis when combined seniority list was prepared of all the hospitals. The matter could not be reopened after a lapse of 20 years because the Supreme Court in the D'Souza's v. UOI case (supra) postulated that there should be no sense of uncertainty amongst the public servants because of stale claims made after a lapse of 14 or 15 years.

4. Shri Sawhney, learned counsel for the respondent (Original applicant) on the other hand pointed out that the impugned judgment is based not only on the statement of the then learned counsel for the respondents but also on the merits of the case and there is no error therein on that score.

5. We have carefully considered the impugned judgment. We are of the view that this judgment is based not only on the statement of the then learned counsel for the respondents but also on the merits <sup>of the case</sup>. In para 4 of the order, it has been observed as follows:-


" As there is no merit in their contention that as the seniority of Nurse who have been transferred to

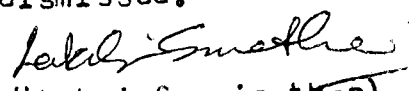
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the Central Hospital being merged w.e.f. 1.5.74, the services of the applicant prior to that date would stand totally vanished, we are of the considered view that the applicant's seniority as Nurse Grade 'A' should be counted from 27.6.72 and that she should be considered for selection to the post of Matron in the scale of Rs 2000-3500/- on the basis of that seniority."

6. In view of the fact that the impugned judgment has been given on the merit of the case and not only on the basis of the statement of the then learned counsel for the respondents, we find no error either of fact or law. In case the learned counsel for the respondents feels that the law on the subject ~~it~~ has not been correctly appreciated by the Tribunal in the impugned order, it is open to them to approach the proper forum. We <sup>thus</sup> find no ground for review and the R.A. is accordingly dismissed.

  
(R.K. Anjoja)  
Member (A)

  
(Smt. Lakshmi Swaminathan)  
Member (J)

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