

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.230/2000

New Delhi, this the 31st day of the May, 2001

HON'BLE MR. KULDIP SINGH, MEMBER(J)
HON'BLE MR. S.A.T.RIZVI, MEMBER (A)

Smt. Nirmala Devi Sharma,
W/o Shri Moti Ram Sharma,
B-1/15, DDU Complex,
Hari Nagar, Delhi
(By Advocate: None)

... Applicant

V E R S U S

1. Secretary (Medical)
Govt. of NCT of Delhi,
5, Shyam Nath Marg,
Delhi-54.
 2. Joint Secretary cum P.H.C.
J.L. Nehru Marg,
Delhi - 110 002
 3. Medical Superintendent,
D.D.U. Hospital,
Hari Nagar
Delhi-110 064
 4. Shri Naveen Chand,
O.T. Asstt.
C/o Medical Supdt.
G.T.B. Hospital,
New Delhi
(By Advocate: Shri Ajesh Luthra)
- ... Respondents

O R D E R

By S.A.T. RIZVI, MEMBER (A):

None was present on behalf of the applicant, nor was the applicant herself present. We, therefore, proceed to dispose of the present OA in accordance with rule 15 of the CAT (Procedure) Rules.

2. We have heard the learned counsel appearing on behalf of the respondents and have perused the material placed on record.

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3. The grievance revealed in the present is that while her juniors have been promoted, the applicant has been left out and continues to work as Nursing Orderly (N.O). A number of Attendants and N.Os, some of them juniors to the applicant, have been promoted to the post of Assistant (O.T./CSSD/CTS etc) in the pay scale of Rs.950-1500/- by respondents' orders dated 22.10.1996 and 13.9.1997. By these orders, the Attendants/N.Os have been promoted on ad-hoc basis for a period of six months. Seven different N.Os junior to the applicant, who have been promoted by the aforesaid orders have been named in paragraph 4 of the OA. The applicant places reliance on respondents' Notification dated 18.7.1988 by which the Recruitment Rules (RRs) for the post of Assistants (OT/CTS/Neuro-Surgery etc.) have been amended to provide for the filling of 25% of such posts of Assistants by promotion on the basis of seniority, laying down further that promotions will be made from the post of Attendants having 3 years regular service or from the post of N.Os with 5 years regular service in the grade. The applicant's contention is that she deserved to be promoted in accordance with the aforesaid amended RR's, but her legitimate claim has been ignored by the respondents. She further contends that even though the respondents maintain a register of seniority, yet the same is never circulated among the concerned employees and this way the respondents succeeded in following a pick and choose policy. Her

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apprehension is that very shortly the respondents will proceed to take action to regularise the ad-hoc promotees including her juniors which step, if allowed to be taken, will jeopardise her legitimate service interest in terms of promotion on a permanent basis.

4. The respondents have sought to contest the OA by filing a reply. The same has been followed by a rejoinder filed by the applicant. The respondents place reliance on the RRs as amended by respondents' Notification dated 1.7.1998 and not on the aforesaid Notification of 18.7.1988 on which reliance has been placed by the applicant. It is settled that RRs as well as amendments thereto take effect only prospectively and ~~these~~ amendments made by Notification dated 1.7.1998 cannot apply to *or to promotions to post which fell vacant before that date.* promotions made prior to 1.7.1998. Promotion orders impugned by the applicant were issued prior to 1.7.1998. The aforesaid promotions should, therefore, have been regulated in accordance with the amended Notification dated 18.7.1988 relied upon by the applicant as the same was in force when the impugned promotions were made by the respondents in October, 1996 and September, 1997. The applicant was appointed as N.O in November, 1972 and had accordingly acquired sufficient experience in terms of the aforesaid amended RRs to become eligible for consideration for promotion to the post of Assistant (OT etc). It is clear ~~that~~ that the applicant has not been considered at all for promotion in terms of

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the aforesaid amended RRs of 18.7.1988. On the other hand, the respondents have incorrectly proceeded to rely on the RRs as amended by the Notification of 1.7.1998.

5. In the aforesaid circumstances, the orders of promotion dated 22.10.1996 and 13.9.1997 passed by the respondents would be liable ^{to} ~~be~~ ² ~~quashed~~ and set aside. However, the promotions made by the aforesaid orders are likely to have come to an end after the period of six months in each case. We do not consider it necessary, therefore, to quash and set aside the same by this order. Nevertheless, the ends of justice will, according to us, be ^{met} ~~made~~ in this case by directing the respondents to consider the claim of the applicant for promotion to the post of Assistant (O.T. etc) by applying the RRs as amended by Notification dated 18.7.1988 in respect of the vacancies, if any, in the post of Assistant (O.T etc) belonging to the period prior to 1.7.1998. The aforesaid direction of ours finds support in the case of Y.V. Rangaiah and Ors Vs. J.S. Sreenivasa Rao & Ors, reported in (1983) 3 SCC 284 decided by the Supreme Court. We direct the respondents accordingly to consider the applicant's claim as above within a period of two months from the date of receipt of a copy of this order.

6. On the question of circulation of seniority list, the respondents have not categorically enough stated that the same has been

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circulated to all the Attendants and N.Os. ^{list} Merely saying that the seniority prepared in 1996 was circulated in all the Institutions/Hospitals by respondents' letter of 12.3.1997 is just not enough. The respondents should have ensured that each and every employee finding place in the seniority list becomes aware of his position in the list. The respondents do not appear to have made any such attempt. Thus, we find it necessary to direct the respondents to circulate the seniority list of Attendants and N.Os amongst all the Attendants and N.Os as expeditiously as possible and, in any event, within a period of one month from the date of receipt of a copy of this order. The respondents will examine the objections, if any, received upon such circulation and proceed to finalise the seniority list within the next two months thereafter. We direct the respondents accordingly.

7. On the question of pick and choose policy followed by the respondents, the respondents have not clarified as to how the persons recruited as N.Os and Attendants are subsequently allocated to disciplines such as O.T, CSSD etc. The latest amendment of RRs, which are effective from 1.7.1998, clearly give an edge in matter of promotion to those N.Os and Attendants who have rendered regular service of at least 5 years in O.T, CTS etc. The learned counsel appearing on their behalf has also not been able to throw light on the method followed in allocating the aforesaid disciplines to persons

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initially recruited as Attendants and N.Os. We have carefully considered the matter and find that the ~~allocation~~ ^{allegation} of pick and choose policy has been made just because the respondents have failed to follow a transparent method in allocating Attendants and N.Os to the aforesaid disciplines which ultimately provide for quicker avenues of promotion. The submissions made by the learned counsel for the respondents that after becoming an Attendant through promotion, the applicant, who is presently a N.O., can enter the OT, CTS etc stream and ~~there~~ ^{then} become entitled to promotion to the post of Assistant (O.T etc) after rendering five years regular service as Attendant (OT etc), cannot assist the respondents in any manner. In our view, a definite case of discrimination is made out in the present case inasmuch as the respondents had clearly failed to lay down the ground rules for placing the N.Os and Attendants in the OT/CTS etc. stream. Equals have, therefore, been treated unequally, thereby violating Articles 14 and 16 of the Constitution. In the circumstances, we consider it worthwhile further to direct the respondents to lay down clear and unambiguous ground rules for putting N.Os and Attendants in the OT/CTS etc. stream. The ground rules to be laid down will undoubtedly have due regard to the seniority of the N.Os and the Attendants in position in the respondents' set up. The aforesaid direction will be complied within a period of two months from the date of receipt of a copy of this order.

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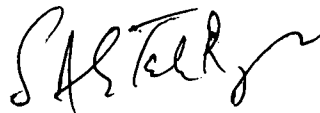
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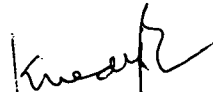
8. Since the respondents have admitted that a DPC has been held and the same has recommended regularisation of ad-hoc promotees, we also find it necessary to direct the respondents to ensure that no such regularisation is made or given effect to in respect of the vacancies in the post of Assistant (OT etc) relating to the period prior to 1..7.1998 without considering the claim of the applicant in the manner already directed above. We direct the respondents accordingly.

9. The present OA is disposed of in the aforestated terms. No costs.

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(S.A.T. RIZVI)
MEMBER(A)



(KULDIP SINGH)
MEMBER (J)

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