

(S)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 788/2000

New Delhi: this the 30th day of October, 2000.

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

HON'BLE DR. A. VEDAVALI, MEMBER (J)

Ms. Uma Vincent,

W/o of Shri Ivon Vincent,

R/o 169-A, Basant Lane,

Railway Quarters,

New Delhi

....Applicant.

(By Advocate: Shri Anis Suhrawardy)

Versus

1. Union of India
through
the Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Medical Director,
Northern Railway,
Central Hospital,
Basant Lane,
New Delhi.
4. The Asstt. Personnel Officer,
Northern Railway,
Central Hospital,
Basant Lane,
New Delhi.
5. Ms. Satwant Kaur,
Matron,
Northern Railway,
Central Hospital,
Basant Lane,
New Delhi.

.....Respondents.

(By Advocates: Shri R. L. Dhawan for official respondents
& Shri M. L. Ohri for R-5).

✓

1.5

7A

25/10/4

7

order from
Jaley as direct
order but not

ORDER

Mr. S. R. Adige, VC(A)

Applicant impugns respondents' order dated 24.12.99 (Annexure-A1) passed pursuant to the CAT PB ORDER dated 8.10.99 in OA No. 419/99 filed by her earlier, rejecting her representation dated 4.2.99.

2. Admittedly by Railway Board's Circular dated 10.5.98 (Annexure-A5) introduction of new pay scales for certain categories of staff as recommended by V Pay Commission was effected on functional considerations. One such category was in respect of Nursing Staff. The pay scale of Staff Nurse (sanctioned strength of 30% of cadre was retained) was revised to Rs. 5000-8000; that of Nursing Sister (Sanctioned strength of 35% of cadre was retained) was revised to Rs. 5500-9000; that of Matron (sanctioned strength of 35% of cadre was reduced to 30%) was revised to Rs. 6500-10500; and a new scale that of Chief Matron was introduced, of Rs. 7450-11500, limited to 5% of the cadre to be filled on non-selection basis. The aforesaid Circular dated 10.5.98 made it clear that the existing instructions regarding reservation for SC/ST would apply while filling up posts in the new grade.

3. Pursuant to the above circular dated 10.5.98, 7 posts of Chief Matron (Rs. 7450-11500) became available, and applying the reservation roster, respondents have filled up one of the seven posts by promoting an SC candidate.

4. Applicant's contention is that these seven new posts of Chief Matron have been made available only through restructuring of existing cadre and not through creation of additional posts, and hence the principle of reservation of posts for SC/ST candidates is not attracted

2

and therefore one of the seven posts should have given to her.

5. We have heard both sides.

6. Shri Suhrawordy has placed considerable reliance on the Hon'ble Supreme Court's order dated 19.11.98 in Civil Appeal No. 3622/95 UOI Vs. V.K. Sirothia (Annexure-A2) wherein the Hon'ble Apex Court had upheld the Tribunal's finding that the so-called promotion as a result of redistribution of posts was actually a case of upgradation on account of restructuring of cadre and hence the question of reservation would not be attracted. Shri Suhrawordy has stressed that in the present case also as there was only redistribution of posts, the total number of posts remaining the same it was a case of upgradation and not of promotion, and hence the principle would not be attracted.

7. We have considered the matter carefully.

8. Although it is true that 7 posts of Chief Matron in the pay scale of Rs. 7450-11500 have been created not by adding to the cadre strength of the Nursing Staff, but from within the cadre strength itself, merely for that reason we are not prepared to hold that it involves only upgradation and not promotion. Para 2(e) of the Circular dated 10.5.98 clearly states that the normal minimum eligibility period of 2 yrs/3 yrs' service in the immediate lower grade would apply for promotion (emphasis supplied) to the new grade. Para 2(f) of the Circular dated 10.5.98 states that since the posts mentioned therein are being created on functional considerations, such

2

posts should be pinpointed and should include duties of higher importance. The benefit would become admissible only to the duly selected staff, and that too after they move to the pin-pointed posts. We note that applicant has not specifically impugned the contents of aforesaid Circular dated 10.5.98.

9. In the result we are satisfied that notwithstanding the fact that the 7 posts of Chief Matron (Rs.7450-11500) have been created not by adding to the sanctioned strength of the Nursing Cadre, but ^{from} form within the Nursing Cadre itself, these posts are not to be filled up by insitu upgrading the existing incumbents. Instead they are to be identified on functional considerations as being those posts which are required to discharge duties of higher importance and they are therefore to be filled up on promotion basis. Hence the ruling in Sirothia's case (supra) relied upon by Shri Suhrawardy does not advance applicant's case.

10. The OA therefore fails and is dismissed.
No costs.

A. Veda Valli
(DR. A. VEDAVALLI)
MEMBER (J)

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

/ug/