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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No.87 of 1988.

Date of decision: 11th December, 1991

Smt. Namita Adhikari

...

Applicant.

Vs.

Union of India & Ors.

...

Respondents.

CORAM

HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.

HON'BLE MR. D.K. CHAKRAVORTY, MEMBER (A).

For the applicant

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Shri S.K. Bisaria,
Advocate.

For the respondents

...

Shri M.L. Verma,
counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice V.S. Malimath, Chairman)

The applicant before us is Smt. Namita Mistry (Adhikary) who belongs to the Namasudra community. She claims that the caste she belongs is included in the Sch. Castes and Sch. Tribes/Order, 1950 and, therefore, is entitled to all the service benefits flowing from her status of ~~the~~ Scheduled Caste.

The applicant joined service as Nurse on 24.6.1969. At the time she joined service in the Project, she did not claim status as a member of the Scheduled Caste. It is obvious that was not necessary for her to press her claim as she was likely to get the post even without claiming the privileges of a member of the Scheduled Caste. Be that as it may, she made a request for her status as a member of the Scheduled Caste being recognised, by her representation dated 28.11.1978. She produced a certificate

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from the Sub-Divisional Officer, Nowrangpur in Orissa State. That certificate supports her claim that she was a member of the S.C. The authorities, however, felt that they cannot act upon the certificate issued by the authorities in Orissa. They called upon her to produce the certificate from the S.D.O. of Burdwan District in West Bengal State. In due course, she applied for such a certificate and produced the same, a copy of which was shown for our perusal during the course of arguments by the counsel for the respondents. That certificate has been issued by the Office of the District Magistrate, Burdwan on 2.7.1985. It certifies that Smt. Namita Mistry (Adhikary) daughter of Shri Manohar Mistry of Jageswardihi P.O. Jageswardihi P.S. Katua Dist. Burdwan in the State of West Bengal, belongs to the Namasudra Community which is recognised as a Scheduled Caste/Tribe under the Constitution (Sch. Castes and Sch. Tribes/Order, 1950/The Constitution (Sch. Castes and Sch. Tribes) (Union Territories)-Order, 1951(as amended by the Sch. Castes and Sch. Tribes Lists (Notification) Order, 1956, the Bombay Re-organisation Act, 1950, the Punjab Re-organisation Act, 1966, the State of Himachal Pradesh Act, 1970 the North Eastern Areas (Re-organisation) Act, 1971 and the Sch. Castes and Sch. Tribes Orders (Amendment) Act, 1976). The applicant was able to produce this certificate on 31.7.1985 as is clear from Annexure 9 of the O.A. By the time the applicant was able to secure and produce this certificate, the posts of Selection Grade Nurses were filled up on 25.3.1981.

✓ Seven posts of S.G. Nurses were sanctioned and they were

filled up on the said date. The applicant claims that on the basis of the relevant order according her the status of a member of the S.C. community, she should have been considered for promotion to the said post of S.G. Nurse on 25.3.1981 and accorded all the consequential benefits flowing therefrom. But the authorities took the view that a valid certificate having been produced by the applicant only on 31.7.1985, her claim to be recognised as the member of the S.C. and for according all promotional benefits could be considered only from the date of production of such evidence in her favour and not from an anterior date. In other words, it took the view that the applicant was not entitled to be considered for the post of S.G. Nurse on 25.3.1981 as she was not able to produce a certificate in her favour on that date. It is in this background that the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for appropriate relief.

It is necessary to point out at this stage that it is admitted that the Project in which the applicant was working at the relevant point of time has since been closed and the applicant has been redeployed with the C.G.H.S. Hence, it follows, if the applicant is right in her contention, she will be entitled to monetary benefits till the date the post ^{was} ~~is~~ abolished consequent upon the Project being closed.

That 7 posts of S.G. Nurses were sanctioned for which a selection was made on 25.3.1981 ~~was~~ not disputed.

It is also not in dispute that there is 15% reservation

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in favour of the members of the S.C. in the matter of filling up of the posts of S.G. Nurses. It is also not in dispute that the name of the applicant is at serial No.25 in the seniority list of Nurses and there is none belonging to the S.C. category above her in the seniority list. It, therefore, follows, if there was one post reserved for the S.C. category in the post of S.G. Nurses, the applicant would be entitled for promotion provided she had the requisite eligibility for being considered. As the number of posts of S.G. Nurses is 7 and the reservation is 15%, it is obvious that there was scope for filling up at least one post in the S.C. category of Nurses among the members of the S.C.

It is conceded that the applicant is entitled to the status of a member of the S.C. category from the date she produced a certificate. The question that requires consideration is as to whether she was entitled to be considered for appointment to the post of S.G. Nurse on 25.3.1981 on the ground that she had not produced the relevant certificate from the competent authority by that date. This is not a case in which the applicant had never claimed status as a member of the S.C. category. On 28.11.1978 she had requested for consideration of her case for promotion as a member of the Scheduled Caste. In support of her case, she had produced a certificate from the S.D.O., Nowrangpur in Orissa State. Therefore, it is clear that the applicant had not abandoned her right for consideration as a

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member of the S.C. She has been pressing her right from 28.11.1978 onwards when she produced the certificate issued by the S.D.O., Nourangpur in Orissa State. The authority, however, took the view that the certificate should be from the S.D.O. of Burdwan District in West Bengal State. This took some time and the applicant was able to secure and produce the certificate on 31.7.1985. This is, therefore, evident that there was only a delay in the matter of producing evidence in support of the applicant's case that she was a member of the S.C. Delay in producing evidences, in our opinion, cannot have the effect of defeating the rights of the members of the S.C. for whose benefit reservation orders have been made by the President of India. We have, therefore, no hesitation in taking the view that the applicant who was able to produce a certificate from the prescribed authority on 31.7.1985, should not be denied her right for being considered for the post of S.G. Nurse as on 25.3.1981, particularly when she had produced a certificate issued by the S.D.O., Nourangpur in Orissa State on 28.11.1978. As the Project in which the applicant was working is not now in existence, the applicant would be entitled only to the benefit of computing the monetary benefits from 25.3.1981 till the post of Staff Nurse ceased to exist.

For the reasons stated above, this Application is allowed, the impugned orders are quashed and it is declared that the applicant is entitled to be considered

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for promotion to the post of S.G. Nurse as on 25.3.1981.
She shall be granted all the monetary benefits flowing
from her appointment as S.G. Nurse w.e.f. 25.3.1981
till the date the post stood abolished consequent upon
the closure of the Project. No costs.

As this is a case of a member of the S.C.
community, we consider it appropriate to direct the
respondents to accord the benefit of the judgment most
expeditiously.

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A)
11.12.1991.

V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN
11.12.1991.

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