

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

28 (30)

Regn. No. 1323/89

Date of decision 21.9.92.

Mrs. M.E. Toppo

Applicant

Shri J.P. Verghese

Counsel for the applicant

vs.

Union of India

Respondents

None

Counsel for the respondents

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J).

The Hon'ble Mr. L.P. Gupta, Member (A).

J U D G M E N T (ORAL)

This is an admitted case in which the respondents never filed their counter. On 21.8.89, Mrs. Raj Kumari Chopra, counsel, stated before the Bench that she has no instructions from the respondents and the Bench proceeded ex-parte. On 9.8.90, the Bench passed an interim order in favour of the applicant that the respondents are directed to maintain status quo as regards the continuance of the petitioner as Nursing Superintendent in the Safdarjang Hospital. The respondents neither applied for setting aside this ex-parte order nor anyone is present when the case was taken up at 3.15 P.M. on behalf of the respondents. Hence, we have heard the learned counsel for the applicant and proceed to decide the O.A. finally.

2. The learned counsel for the applicant said that the applicant was given ad hoc promotion to the post of Nursing Superintendent from 10.8.90 after the interim order dated 9.8.90. He said that the applicant was retiring on 30.9.92 from the post of Nursing Superintendent. The short point that was stressed for consideration was that the applicant had a right to be considered for promotion as Nursing Superintendent from October 1987, if not earlier, instead of 10.8.90. He bases his claim on the ground that there was a single

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post of Nursing Superintendent in the Safdarjung Hospital and being the single post it was not reserved for a Scheduled Caste candidate, according to roster point, as it is not permissible to keep a single post as reserved for the first point, as that would imply 100% reservation. However, the apex court has already observed in **Arti Roy Choudhary's** case (1974 (1) S.C. 87), that when subsequent vacancies occur in a single post, the roster point for reservation has to be looked into. When second time the post was being filled, it was filled by an unreserved candidate since there was no Scheduled Caste candidate. When third time, it was being filled, again it was filled by an unreserved candidate since no suitable Scheduled Caste candidate was available. He, therefore, contended that when fourth time the vacancy was being filled, a Scheduled Tribe candidate, if available, should have been considered because the 4th point in the roster is reserved for a Scheduled Tribe candidate. Even otherwise, he said that in the absence of a Scheduled Caste candidate, the 4th time when the vacancy was being filled, the carry forward vacancy for Scheduled Castes candidate ^{at point 1} could have been claimed by the Scheduled Tribe candidate. In other words, what he meant was that it was doubly justified to fill the post 4th time by a Scheduled Caste or a Scheduled Tribe candidate and in the absence of the Scheduled Caste candidate, by a Scheduled Tribe candidate. He further added that the applicant was available at that point of time with requisite experience and service. The applicant belongs to Scheduled Tribe.

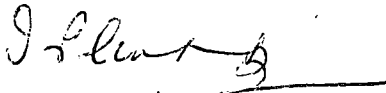
3. In view of the above contentions of the learned counsel for the applicant, we direct that the respondents should consider the case of promotion of the applicant (ad hoc or otherwise) from October 1987 when the ad hoc appointment of Mrs. Ram Nath (unreserved) was made and in case the applicant is found suitable as on that date, according to qualifications, experience and performance, she should be given the promotion from October 1987 and


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notional benefit in regard to fixation of pay should be given from October 1987 which will consequentially give advantage in the retiral benefits. Her suitability for the post of Nursing Superintendent against the reserved post from October 1987 should be adjudged within one month from the date of communication of this order. The respondents may consider creating a supernumerary post, as necessary to avoid any reversions.

4. With the aforesaid direction and order, the O.A. is disposed of with no order as to costs.


(I.P. GUPTA)
MEMBER (A)


(RAM PAL SINGH)
VICE-CHAIRMAN (J)