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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

1016

1987

DATE OF DECISION 2.5.1989.

Mrs. K Anderson

Petitioner

Shri R.K. Mehta, Advocate

Advocate for the Petitioner(s)

Versus

Delhi Administration & Others

Respondent

Mrs. Avnish Ahlawat & Mukul Talwar

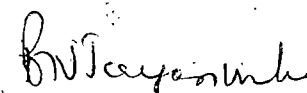
Advocate for the Respondent(s)


CORAM :

The Hon'ble Mr. JUSTICE AMITAV BANERJI, CHAIRMAN

The Hon'ble Mr. B.N. JAYASIMHA, VICE CHAIRMAN

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*


(B.N. JAYASIMHA)
VICE CHAIRMAN


(AMITAV BANERJI)
CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN. NO. O.A. 1016/87

Date of Decision:- 2.6.1989.

Mrs. K. Anderson

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Applicant.

Vs.

Delhi Administration

.....

Respondents.

CORAM:- HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

HON'BLE MR. B.N. JAYSIMHA, VICE CHAIRMAN

For the Applicant

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Shri R.K. Mehta, Advocate

For the Respondents

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Mrs. Avnish Ahlawat along-
with Mukul Talwar, Advocate

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. B.N. JAYASIMHA, VICE CHAIRMAN)

The applicant, a staff Nurse, Civil Hospital, Rajpur Road, has filed this application challenging the order No. 53.F3 (Misc)/86-DHS/HQ/Estt/20438, issued by the Head of Office, Civil Hospital, Delhi, treating her as an Auxiliary Nurse Midwife.

2. According to the applicant, she got herself registered as a Nurse with the Punjab Nurses Registration Council on 28.1.1950. She also had an additional qualification of midwife in addition to the 3 years course of General Nursing. She was appointed as a Nurse in the year 1956 in the then Delhi State, alongwith others in pay scale of Rs. 100-180. In 1957-58 Delhi state was converted into a Union Territory. Some of the hospitals/institutions came under Delhi Administration and some other were transferred to the Municipal Corporation of Delhi. Employees were asked to opt either for work under Delhi Administration or for work under Municipal Corporation. The applicant alongwith other opted for work under the Delhi Municipal Corporation. By an office order No. 1017 dated 18.12.62, the applicant was treated as an employee of the Municipal Corporation and her pay fixed according to Central Services (Revised Pay) Rules, 1960. This was fixed wrongly in the grade of Auxiliary Nurse Midwife, even ^{though} she was employed as a Nurse.

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3. The Poor House Hospital, where the applicant was working was initially under the Delhi Municipal Corporation. This hospital was transferred to Delhi Administration. The services of the applicant thereafter stood transferred to Delhi Administration. The applicant performed her duties at the said hospital under Delhi Administration.

4. By an order No. 14399/III/Admn/75 dated 19.3.75, the Nurses who were employed along with her were given the pay scale of Rs. 425-640 by the Delhi Municipal Corporation. Her name was not included in this orders as at that time, she was working in the Poor House Hospital under the Control of Delhi Administration. The applicant made several representations for giving her the prescribed pay scale, but respondents did not take action on the representations made by her. One of her representation was forwarded by the Civil Surgeon to the Joint Director (Admn) through letter No. F.3/19/7/PH/1662 dated 14.4.84. On 10th Sept. 1984, the applicant was asked to submit certain documents. The applicant sent a reply stating that she could not produce the initial order of appointment as these were destroyed during flood. In spite of her making further representations, the Joint Director issued the impugned order dated 27.5.87 intimating the applicant to submit the documents required to consider her request. Thereafter by an office order No. 53 dated 5.3.87, she was informed that she stands retired from service with effect from 31.7.87.

5. The applicant contends that the office order No. 53. F.3(Misc)/86-DHS/HQ/Estt/20438 dated 5.3.87 is illegal since she is governed by F.R. 56(b) and has a right to be continued in service until she attains the age of 60 years. She contends that the post of Staff Nurse is a highly-skilled worker post. She also contends that her designation has all along been shown wrongly as Auxiliary Nurse Midwife and she therefore seeks directions to the respondents (1) to allow her continue in service till she attains the age of 60 years (2) to treat her as staff (Nurse Grade A) in the pay scale Rs. 150-280 w.e.f. 1.4.57, Rs. 425-640 w.e.f. 1.1.73 and Rs. 1400-2600 w.e.f. 1.1.1986 and pay her the arrears.

6. The respondents in their counter-affidavit state that the

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attempt of the applicant to include herself in the category of workman is wholly misconceived. The note under F.R.56(b) makes it clear that it applied to a highly skilled, semi skilled or un skilled Artisan who is employed in an industrial or work charge establishment. A nurse cannot be called an Artisan.

7. In regard to her initial appointment it is stated that the applicant was appointed as B Grade Staff Nurse and pay scale of B Grade Nurse is Rs. 110-155. The applicant did not object to her absorption under Delhi Administration when the Poor House Hospital was transferred to Delhi Administration. There is only one category of B Grade Nurses ^{and} ~~with~~ 3 posts exists in the Poor House Hospital. The letter dated 19.3.75 issued by the Municipal Corporation giving promotion to A Grade Staff Nurse after giving relaxation in Male Nursing has no relevance since the applicant is under Delhi Administration. The applicant has been performing the work of B Grade Nurse to which post she was appointed. The applicant could not produce her initial orders of appointment and all alone she has been treated as a B Grade Nurse and paid salary accordingly.

8. We have heard the learned counsel for the applicant and learned counsel for the Delhi Administration. We will first consider her claim for salary attached to the post of Staff Nurse Grade A. Neither the applicant nor the Delhi Administration has produced a copy of the initial appointment order. The learned counsel for the applicant argued that the Indian Nursing Council, Act, 1947 recognises for purpose of registering, general nursing, midwife (Auxiliary Nurse Midwife), Health Visitor or Public Health Nursing. The applicant got herself registered as a Nurse Division B on 28th Jan. 1950. Therefore, she could only have been appointed as a Nurse and not Auxiliary Nurse Midwife. We do not see how this supports the claim of the applicant that she was appointed as Staff Nurse A. Even as per Annexure C, which is order issued by the Municipal Corporation on 18th Dec. 1962, the applicant's pay was fixed in the revised grade Rs. 110-155. Even her representations

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which are at annexures E, F, G, H make no reference to her initial appointment as Nurse Grade A, but request the authorities to give her promotion to the post of Grade A and change of designation from Auxiliary Nurse Midwife to Nurse. In annexure H, she also sought for exemption from passing Male Nursing Training Test. In Annexure I and J also she requested for promotion her to 'A' Grade Nurse. At no time the applicant had claimed that she had been appointed as Nurse Grade A and that the pay scale attached to that post be given to her. Her request all along has been that she should be promoted to 'A' Grade after giving her relaxation in regard to Male Nursing Training. The learned counsel for the applicant argued that the post of 'B' grade Nurse does not exist in the various posts mentioned under Union Territory in the IV Pay Commission Report. The learned standing counsel pointed out that not all posts are reflected in the report and the posts in various grades are sanctioned to the different establishment separately. In Poor House Hospital, there was no posts of A Grade Nurse. Considering these facts, we are of the view that the claim of the applicant that she should be deemed to have been appointed as "A" Grade Nurse is without substance and has to be rejected.

9. On the contention viz. that the applicant comes under F.R. 56(b), the learned counsel for the applicant relied upon Bangalore Water Supply case (AIR-1978-SC-548) ^{and} submits that "hospital is an industry and hence the applicant is workman employed in an industrial establishment". He also states that in all the hospitals in Delhi, the Nurses are treated as workmen and continued until the age of 60 years, applying the provisions under F.R. 56(b).
Learned counsel for the Delhi Administration stated that he is unable to lay his hands on any record and to present the same before us, for the reason that no one has come from Delhi Administration. We have accordingly listed the case for 2.6.1989. Even on 2.6.89 the counsel stated that he could not bring any records or instructions from Delhi Administration. Inasmuch as the contention that the staff nurses are being continued till

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the age of 60 years has not been denied, we are of the view that the applicant cannot be discriminated and retired at the age of 58 years. In the result, we find that the applicant is entitled to continue until she attains the age of superannuation i.e. 31st July 1989. We accordingly direct that the applicant be re-instated and allowed to retire on 31.7.1989. She will be entitled to pay and allowances less pension etc. already drawn by her from 1.8.1987 to the date of her reinstatement^{or} upto 31.7.1989.

10. The application is disposed of as indicated above.
There will be no orders as to costs.

B.N. Jaysimha
(B.N. JAYSIMHA)
VICE CHAIRMAN

AD
(AMITAV BANERJI)
CHAIRMAN