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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.3036/2004

This the 3rd day of October, 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Smt. Jaswanti Singh,
Working as Chief Matron,
Northern Railway Hospital,
Muradabad (UP).

... Applicant

(By Shri Yogesh Sharma, Advocate)

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.

2. General Manager (P),
Northern Railway,
Baroda House,
New Delhi.

... Respondents

(By Shri Prabhash Kumar Yadav, Advocate)

ORDER

Hon'ble Shri V.K.Majotra, Vice-Chairman (A):

As per averments in the application, applicant was initially appointed on 16.6.1982 as Staff Nurse. She was promoted to the post of Matron in grade Rs.6500-10500 on 27.8.1998 and further as Chief Matron in grade Rs.7450-11500 on 26.9.2001. She is stated to be due for her promotion to the post of Assistant Nursing Officer, grade Rs.7500-12000 (Group 'B'). Before 10.5.1998 the channel of promotion for the Group 'B' post of Assistant Nursing Officer (Rs.7500-12000) was from Matron (Rs.6500-10500) but by way of accepting the recommendations of the Fifth Central Pay Commission, the Railway Board introduced a new pay scale of Rs.7450-11500, i.e., the post of Chief Matron between the post of Matron and Assistant Nursing Officer. Respondent No.2 vide

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order dated 21.7.2004 decided to conduct selection for 8 posts of Assistant Nursing Officer/Group 'B' (7 unreserved and 1 SC) and also published a list of eligible 24 candidates on the basis of Chief Matron scale Rs.6500-10500 (RSRP). It is alleged that although applicant was in a superior scale of Chief Matron (Rs.7450-11500) she was not allowed to participate in the selection for the post of Assistant Nursing Officer. Only those persons who had longer service than applicant in the grade Rs.6500-10500 were allowed to participate in the written test. Applicant's representation dated 28.8.2004 remained undecided. Earlier on applicant had filed OA No.2371/2004 which was disposed of vide order dated 1.10.2004 directing respondents to consider applicant's representation. Vide the impugned orders dated 9.8.2004 (Annexure A-1) which were communicated to applicant vide letter dated 18.11.2004, applicant's representation was rejected stating that the seniority list of Chief Matron in scale Rs.6500-10500 (RSRP) and above for promotion to the post of Assistant Nursing Officer in scale Rs.7500-12000 (RSRP) was prepared on the basis of para 203.5 of IREM (1989 edition). Applicant was informed that her alleged junior Shri K.L.Sharma Chief Matron/MB was promoted as Matron in scale Rs.6500-10500 (RSRP) w.e.f. 1.3.1993 vis-à-vis applicant who was promoted in scale Rs.6500-10500 (RSRP) w.e.f. 27.8.1998. As such, applicant was junior to Shri K.L.Sharma in the revised provisional combined seniority list of Matron.

2. By virtue of the present OA applicant has sought quashment of the impugned orders dated 21.7.2004 and also a direction to respondents to conduct a fresh selection for the post of Assistant Nursing Officer by taking into account the seniority in grade Rs.7450-11500. Applicant has also sought quashment of paragraph 203.5 of the IREM declaring that it has become inoperative after introduction of the new grade of Chief Matron in scale Rs.7450-11500 w.e.f. 10.5.1998.

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3. In their counter reply, respondents have stated that in terms of paragraph 203.5 of IREM Vol.-I, seniority has to be determined from the date of promotion in scale Rs.6500-10500 for purpose of promotion to Group 'B' service and not from the date of promotion in scale of Rs.7450-11500. The total length of service in grade Rs.6500-10500 and Rs.7450-11500 taken together is the factor determining the seniority for promotion irrespective of the fact that employees are working in higher grade of Rs.7450-11500. It is also stated in the counter reply that the combined service in grade Rs.6500-10500 and Rs.7450-11500 of applicant is less than the service of candidates called to appear in selection for the post of Assistant Nursing Officer. As such applicant could not find place in the zone of consideration for selection to the post of Assistant Nursing Officer. It is also stated that applicant's name in the seniority list is at Sl. No.82 and her name could not find place within the zone of consideration on the basis of 3-X formula. The learned counsel of applicant submitted the following contentions:

- (1) In terms of paragraph 203.5 *ibid* employees from different streams, if eligible to appear for the selection, integrated seniority for purposes of selection has to be determined on the basis of total length of non-fortuitous service rendered in grade Rs.2000-3200 (RS) and above. In other words, in such an event, the date of appointment in grade Rs.2000-3200 (RS) on a non-fortuitous basis is the criterion. The learned counsel submitted that in the present case, admittedly, the posts of Matron and Chief Matron are not from different streams. As such, the provision of paragraph 203.5 *ibid* would not be applicable to applicant's case.
- (2) Next, the learned counsel submitted that the provision of paragraph 203.2 *ibid* would be applicable to the present case. It provides that in case a junior employee is considered for selection, all persons senior to him shall be held to be eligible notwithstanding the position that they do not fulfil the requisite minimum service conditions. The learned counsel pointed out

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that the intermediate grade of Chief Matron (Rs.7450-11500) between the posts of Matron and Assistant Nursing Officer was introduced vide RBE 100/98 on the basis of the recommendations of the Fifth CPC on 10.5.1998. Applicant had been promoted to the post of Chief Matron (Rs.7450-11500) on 26.9.2001. He relied on 1999 (2) ATJ 252 (Punjab & Haryana High Court) – *Union of India v Mohan Singh*, in which it was held that a person in higher scale cannot be junior to a person on a lower scale post. He further relied on 2000 (3) SLJ 276 (SC) – *Union of India v K.B.Rajoria*, wherein it was held that if a junior is eligible, senior will also be treated as eligible. The learned counsel stated that when 24 candidates on the basis of their service in Matron grade Rs.6500-10500 have been held eligible for selection to the post of Assistant Nursing Officer, applicant who had been promoted to the post of Chief Matron since 26.9.2001 being senior, was eligible for selection to the post of Assistant Nursing Officer.

4. On the other hand, although the learned counsel of respondents admitted that the posts of Matron and chief Matron in the nursing category are from the same streams, he contended that provision of paragraph 203.5 permitting combined service in the grades of Matron and Chief Matron for determining eligibility for selection to the post of Assistant Nursing Officer is applicable. On the basis of the combined seniority in the grades of Matron (Rs.6500-10500) and Chief Matron (Rs.7450-11500), applicant has been considered as junior to the 24 eligible candidates and did not come within the zone of consideration. Even Shri K.L.Sharma had a much longer service than applicant taking his service as Matron into consideration.

5. We have considered the respective contentions of parties and also the material on record.

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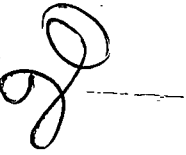
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6. Respondents have admitted that the posts of Matron and Chief Matron are from the same stream and form feeder categories for promotion for selection to the post of Assistant Nursing Officer. If that be so, the provisions of paragraph 203.5 for adopting an integrated seniority for purposes of selection cannot be applied. They are applicable only if employees from different streams are eligible to appear for the selection. In the category of nursing staff, the methodology of a combined seniority list of Matron and Chief Matron cannot be adopted for determining seniority. Persons holding the higher scale, i.e., on the post of Chief Matron (Rs.7450-11500) are certainly senior to those holding the post of Matron (Rs.6500-10500). In the present case, admittedly eligibility has been considered on the basis of combined service in the posts of Matron and Chief Matron or if a person has not been promoted as Chief Matron, the continuous service as Matron. In the selection in question, respondents have resorted to the provision of paragraph 203.5 for determining eligibility of personnel belonging to different grades although they come from the same stream. The provisions of 203.5 cannot be applied to the selection for the post of Assistant Nursing Officer. Those in grade of Chief Matron would be senior to those in the grade of Matron. Drawing support from *Mohan Singh* (supra) and *K.B.Rajoria* (supra), if people holding post of Matron and particularly Shri K.L.Sharma who has been holding the post of Matron (Rs.6500-10500), have been considered eligible for selection to the post of Assistant Nursing Officer, applicant who has been holding the post of Chief Matron (Rs.7450-11500) since 26.9.2001 would certainly be treated as eligible being senior to those in the grade of Matron, including Shri K.L.Sharma.

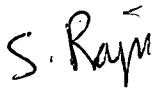
7. In our view, it is not necessary to consider validity of the provisions of paragraph 203.5 *ibid* in the present case as applicant has been held eligible on applying the provision contained in paragraph 203.2 *ibid*.

8. Having regard to the facts and circumstances of the case and discussion made above, impugned orders Annexure A-1 dated 9.8.2004 are quashed and set

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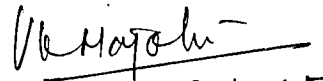


aside and applicant is held eligible for selection to the post of Assistant Nursing Officer grade Rs.7500-12000 (RSRP). As such the OA is partly allowed directing respondents to treat applicant as eligible for selection to the post of Assistant Nursing Officer in terms of paragraph 203.2 of the IREM by conducting a review selection and on finding applicant suitable for selection to the post of Assistant Nursing Officer, to appoint her giving notional promotion from the date her junior Shri K.L.Sharma was selected and appointed, with actual benefits from the date applicant is selected and appointed as such.



(Shanker Raju)
Member (J)

/as/



(V. K. Majotra) 3.10.05
Vice-Chairman (A)