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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.989/2004

New Delhi, this the 4th day of March, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Ms. Ritu Singh
W/o Sh. Sanjay Singh
R/o Room No.19, New Nurses Hostel
Loknaya Hospital
New Delhi. ... Applicant
(By Advocate: Sh. M.K.Bhardwaj proxy for Sh. Arun Bhardwaj)

Versus

1. Govt. of NCT
Through Secretary Health and Family Welfare
9th Level, Delhi Secretariat, Player's Building, ITO
New Delhi.
2. Under Secretary
UPSC, Shahjahan Road
New Delhi.
3. Ms. Allen Beck
Senior Lecturer, Ahilya Bai College of Nursing
Loknaya Hospital
New Delhi. ... Respondents

**(By Advocate: Sh. Vijay Pandita for R-1 and Ms. Abhilesha
Dewan proxy for Mrs. B. Rana, for R-2 and None for R-3)**

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ORDER

By Mr. Justice V.S. Aggarwal:

Applicant has been working in Ahilya Bai College of Nursing as Sister Tutor. She belongs to Scheduled Caste category. In the year 2001, she completed M.Sc. (Nursing) from Delhi University. On 12.12.2002, Respondent No.1 (Govt. of National Capital Territory of Delhi) had issued a Circular by which the Sister Tutors were directed to exercise their option for consideration for promotion to the post of Principal Tutor or Senior Lecturer. The applicant had exercised her option. She contends that the Union Public Service Commission had approved a total of **seven** vacancies, out of which **three** were of the Senior Lecturer and **four** posts of Principal Tutor. It was followed by a corrigendum of 16.4.2003 saying that number of posts was **four** for Senior Lecturer and **three** for Principal Lecturer.

2. The grievance of the applicant is that she was at Sl. No.18 in the seniority list. Above her, there were only three Scheduled Caste category candidates. None of them was eligible for the post



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of Senior Lecturer or Principal Lecturer as per the Recruitment Rules and her claim has wrongly been ignored and that Respondent No.3, Ms. Allen Beck has been appointed as Senior Lecturer. She was not even eligible and belonged to Scheduled Tribe category. By virtue of the present application, she seeks setting aside of the promotion order of Respondent No.3 and to direct respondents to implement the reservation policy and to consider her claim to the post of Senior Lecturer, being the senior-most eligible Scheduled Caste candidate.

3. The Union Public Service Commission, Respondent No.2 filed its reply. It pleads that the applicant was not eligible for promotion to the post of Senior Lecturer in the Department of Health and Family Welfare. Therefore, she cannot be taken to be an aggrieved person. A Departmental Promotion Committee meeting was held on 30.9.2003 in the office of the Union Public Service Commission. The Departmental Promotion Committee considered **seven** eligible feeder grade officers on the basis of assessment of their character rolls. It empanelled **five** officers

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including **one** officer in the **Extended Panel**. The applicant did not fulfil the condition of five years regular service in the feeder grade and, therefore, she was not eligible. It has been explained that prior to the vacancy year 1999-2000, the crucial date prescribed for determining the eligibility of officers for promotion was 1st October of the year to which the vacancy pertained. However, instructions had been issued vide **Office Memorandum dated 17.9.1998**. As per the said Office Memorandum, the crucial date for determining eligibility of officers for promotion would fall on 1st January immediately preceding such vacancy year and in the case of calendar based vacancy year, the first date of the vacancy year, i.e., 1st January itself would be taken as the crucial date irrespective of whether the ACRs are written financial year-wise or calendar year-wise. Accordingly, on that date, i.e., 1.1.2002, the applicant did not have five years regular service.

4. Respondent No.1 has filed a separate reply. It also pleads that on 1.1.2002, the applicant was not eligible for promotion

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because she did not complete the regular service of five years in the feeder cadre.

5. The applicant has placed on record the Recruitment Rules for the post of Principal Tutor/Senior Lecturer. Column No.12 prescribes the qualifications in case of recruitment by promotion/deputation/transfer. The same reads:

<p style="text-align: center;">“In case of recruitment by Promotion/Deputation/Transfer grades from which Promotion/Deputation/Transfer to be made</p>
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<p>PROMOTION (FOR PRINCIPAL TUTOR):</p> <p>Senior Tutor/Sister Tutor in the scale of pay of Rs.6500-10500 with 5 years' regular service in the grade.</p> <p>FOR SENIOR LECTURER:</p> <p>Senior Tutor/Sister Tutor in the scale of pay of Rs.6500-10,500 with 5 years' regular service in the grade and possessing Master's Degree in Nursing from a recognized University or Equivalent.</p>



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Note: Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade. Senior Tutor/Sister Tutor shall be asked to exercise their option for consideration for promotion either to the post of Principal Tutor or Senior Lecturer and the option once exercised shall be final.

DEPUTATION:

Officers of Central/State Govt./Union Territories

- i) (i) Holding analogous posts on regular basis in the parent cadre/department; or
- (ii) With five years service in the grade rendered after appointment thereto on regular basis in the scale of Rs.6500-10500 or equivalent in the parent Cadre/Department; and
-) Possessing the educational qualifications and experience prescribed for direct recruits under column 8, (The departmental officers in the feeder Category who are in the direct line of promotion will not

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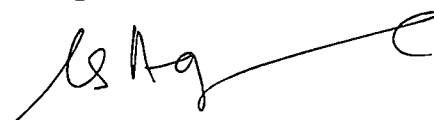
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be eligible for consideration for appointment on deputation. Similarly deputationists shall not be eligible for consideration for appointment by promotion).

(Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organisation/department of the Central Government shall ordinarily not exceed three years. The maximum age limit for appointment by deputation shall be not exceeding 56 years as on the closing date of receipt of applications.)"

It is abundantly clear from the aforesaid that in both the cases, five years regular service in the grade and in case of Senior Lecturer, Master's Degree in Nursing is necessary. The applicant has also been fair and has placed on record the final seniority list of Sister Tutors. She is at serial No.18 of the said seniority list and her date of regular appointment in the feeder cadre is 17.6.1997. It is obvious that as on 1.1.2002, she did not have five years regular service and thus she was not eligible.



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6. So far as Respondent No.3 is concerned, she is a Scheduled Tribe candidate. She has been regularly appointed on 29.9.1989 and, therefore, even as per the applicant's documents, she was eligible. If Scheduled Caste candidates are not eligible, necessarily, the post can be adjusted with Scheduled Tribe and we find nothing illegal about it.

7. As regards the date of 1.1.2002 which has been taken as date on which eligibility criteria has to be determined, the instructions applicable are of 17.9.1998 which read as under:

"The undersigned is directed to say that where the Recruitment/Service Rules lay down promotion as one of the methods of recruitment, some period of service in the feeder grade is generally prescribed as one of the conditions of eligibility for the purpose of promotion. Vide the Department of Personnel and training, Office Memorandum No.2201/7/86-Estt.(D), dated July 19, 1989, the crucial date for determining the eligibility of officers for promotion has been prescribed as under:-

- (i) 1st July of the year in cases where ACRs are written calendar year-wise.



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- (ii) 1st October of the year where ACRs are written financial year-wise.

2. The matter has been reconsidered by the Government and in supersession of the existing instructions it has now been decided that the crucial date for determining eligibility of officers for promotion in case of financial year-based vacancy year would fall on January 1 immediately preceding such vacancy year and in the case of calendar year-based vacancy year, the first day of the vacancy year, i.e., January 1 itself would be taken as the crucial date irrespective of whether the ACRs are written financial year-wise or calendar year-wise. For the sake of illustration, for the panel year 2000-2001 (financial year), which covers the period from April 1, 2000 to March 31, 2001, and the panel year 2000 (calendar year), which covers the period from January 1, 2000 to December 31, 2000, the crucial date for the purpose of eligibility of the officer would be January 1, 2000 irrespective of whether ACRs are written financial year-wise or calendar year-wise.

3. The crucial date indicated above is in keeping with Para. 9 of the Department of Personnel and Training, Office Memorandum No.22011/9/98-Estt.(D), dated September 8, 1998 (vide Sl. No.39) which prescribes a Model Calendar for DPCs. In accordance with Paragraphs 10 and 11 of the said Office Memorandum, these instructions will come into force in respect of vacancy years commencing from January 1/April, 1999 and will,

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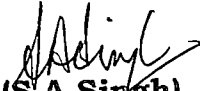
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accordingly, be applicable to all such subsequent vacancy years.

4. These instructions shall be applicable to all services/posts. The Recruitment/Service Rules may, therefore, be amended accordingly. All Ministries/Departments are requested to bring these instructions to the notice of all concerned, including Attached/Subordinate Offices, for guidance and compliance."

8. It clearly shows that as per the above said Office Memorandum, the crucial date for determining the eligibility of officers for promotion in case of financial year-based vacancy year would fall on 1st January immediately preceding such vacancy year and in the case of calendar year-based vacancy year, the first day of the vacancy year. In this backdrop, when 1.1.2002 was taken as the date, it must be held that the same was in order and legal.

9. In face of these circumstances, it must be held that Original Application No.989/2004 is without merit. Accordingly it must fail and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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