

21.

Central Administrative Tribunal  
Principal Bench, New Delhi

O.A.No.72/93

New Delhi this the 2nd day of July, 1996.

Hon'ble Shri S.R. Adige, Member (A)  
Hon'ble Dr A. Vedavalli, Member (J)

Mrs. Angela Fabian,  
W/o Mr. Fabian Ekka,  
House No. A. 45-B, DDA Flats,  
Munirka,  
New Delhi - 110 067.                      ...Applicant  
(By none)

Versus

UNION OF INDIA, THROUGH:

1. Secretary,  
Ministry of Health & Family Welfare,  
Nirman Bhawan,  
New Delhi.
2. Director General of Health Services,  
Nirman Bhawan,  
New Delhi.
3. Medical Superintendent,  
Safdarjung Hospital,  
New Delhi - 110 091.                      ...Respondents

By Shri Madhav Panikar, Advocate)

ORDER (ORAL)

(By Hon'ble Shri S.R. Adige, Member (A) )

In this application Mrs Angela Fabian  
Public Health Nurse (retired) from Sufdarjung  
Hospital has prayed for the following reliefs :-

" (i) Direct the respondents to promote  
the applicant to the post of Dy Nursing  
Superintendent/Sister Tutor in the scale of Pay  
of Rs.2000-3500.

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(ii) Direct the respondents to pay the applicant all the arrears of pay and allowances in the revised scale of pay of Rs.2000-3500, and in the corresponding pre-revised scale of pay w.e.f. 8.11.78 i.e. the date from which she has been performing the duties of Tutor on the direction of the Respondent No.3.

(iii) Create a post of Public Health Nursing Tutor with retrospective effect, i.e. 8.11.78, as the similarly-placed Public Health Nursing Tutors are working in other hospitals.

(iv) Pass any further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. None appeared for the applicant when the case was called out. Shri Madhav Panikar appeared for the respondents and was heard.

3. In so far as the prayer for promotion to the post of Deputy Nursing Superintendent is concerned Shri Madhav Panikar has invited our attention to Para 4.8 and 4.18-19 of the respondent's reply from which it appears that the Staff Nurse and Public Health nurses constitute a separate cadre. Staff nurses are promoted as Nursing Sisters, who again<sup>1</sup> on completion of 3 years service are eligible to the post of Assistant Nursing Superintendent and thereafter Dy Nursing Superintendent. <sup>1</sup> ~~the~~ Nursing Sisters who <sup>1</sup> have<sup>1</sup> qualification of B.Sc. Nursing with A Grade



Sister Tutor Course and with 3 years experience are eligible for promotion as Sister Tutor. The respondents have stated that the applicant was not a BSc and she has also not 'A' Grade Sister Tutor Course, hence was not eligible for promotion to the post of Sister Tutor. Although, the applicant in her rejoinder has stated that she is well qualified to hold the post of MNursing Tutor and has referred to the certificate that she possess, there is no specific denial to the fact that she does not possess the certificate as she has not done Assistant Tutor Course. Though apart, the post of Public Health Nurse, which the applicant was occupying at the time of her retirement does not constitute the Feeder category for the post of Dy Nursing Superintendent and under the circumstances, we do not find it possible to allow the applicants' prayer for promotion as Deputy Nursing Superintendent.

4. In so far as the prayer for promotion as Public Health Nursing Tutor is concerned no such post is in existence, although Shri Panikar learned counsel for the respondents stated that at one time a proposal had been moved to create such a post. In fact, the applicant in her representation (Page 34) dated 19.05.86 admitted that there was no post of Public Health Nursing Tutor. It is ~~stated~~ <sup>well settled</sup> that ~~Mr. Panikar~~ <sup>the Courts/Tribunals</sup> have no jurisdiction to direct the respondents to create any particular post, as that is a matter which falls exclusively within the jurisdiction of the

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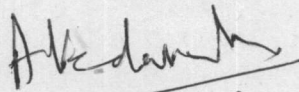
executive. In the absence of any post of Public Health Nursing Sister Tutor, the question of directing respondents to promote the applicant to the said post, does not arise. Hence relief 8.1 and 8.3 fail.

5. In that view, the question of granting the applicant arrears of pay in the revised scale of pay Rs 2000-3500 admissible to the post of Dy Nursing Superintendent and Sister Tutor does not arise.

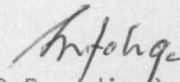
6. That apart, we note that the applicant is seeking relief w.e.f. 8.11.78 while the first representation was filed in 1986 and the O.A. itself was filed on 6.01.93.

7. Hence apart from lacking merit, this O.A. is also hit by limitation and lack of jurisdiction under Section 21 A.T. Act.

8. Under the circumstances, this O.A. is dismissed. No costs.



(Dr A. Vedavalli)  
Member (J)



(S.R. Adige)  
Member (A)