

(Reserved)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH

Dated, Allahabad, this 21st August 2001

CORAM : Hon'ble Mr. Rafiq Uddin, Member (J)  
Hon'ble Mr. S. Biswas, Member (A)

Original Application No. 573 of 1992

Mrs. M.A. Singh, Nurse in the  
Northern Railway Hospital, Muradabad

..... Applicant

Counsel for the applicant : Shri A. Kumar

V E R S U S

1. Union of India through the General Manager,  
N. Railway, Boroda House, New Delhi
2. Divisional Railway Manager, Northern Railway,  
Muradabad

..... Respondents

Formal Respondents:

3. Mrs. Maya Bhist, Staff Nurse  
through C.M.S., Northern Railway  
Hospital, Muradabad
4. Mrs. V.S. John, Staff Nurse,  
through C.M.S., Northern Railway Hospital,  
Muradabad

..... Formal Respondents

Counsel for the Respondents: Shri A.K. Shukla  
Shri A. Tripathi

O R D E R

(Reserved)

(Order by Hon'ble Mr. Rafiq Uddin, Member (J))

The applicant, who is working as Staff Nurse in Northern Railway Hospital, Muradabad, has filed this O.A. for seeking directions to be issued to the Respondents to regularise her service rendered by her on ad hoc basis and to assign her seniority over her juniors. The applicant has also sought quashing of the seniority list of the Nurse Grade Rs. 1400-2300 (RPS) issued by the Respondents vide letter dated 29.6.1990 copy of which has been annexed as Annexure A-1 to this O.A. and direction to promote the applicant as:

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Staff Nurse in higher grade.

The case of the applicant is that the vacancies for the two post, of Nurse were notified vide Divisional Superintendent (now Divisional Railway Manager), Muradabad (Respondent No.2) vide his letter dated 22.7.1978. The applicant had applied against the aforesaid advertised vacancy which was to be filled up by local Recruitment Procedure (a copy of the aforesaid Notification has been annexed as Annexure A-II to this O.A.). The applicant appeared before the Selection Board for interview and was selected and offered temporary appointment to the post of Nurse grade Rs.425-640/- on ad hoc basis vide letter dated 31.1.1979. The applicant accepted the offer of appointment and joined the duty and was posted under Medical Superintendent, Northern Railway Hospital, Muradabad on 7.2.1979.

The applicant claims that she was appointed Staff Nurse against the clear permanent vacancy and consequently she became entitled for regularisation, confirmation after completion of 2 years continuous service in terms of policy laid down by the Railway Board. The applicant made representation as her services were not regularised after a long gap. Her claim was referred to the Railway Service Commission, Allahabad for regularisation and confirmation of her service by the Respondent No.2 vide his letter dated 1.1.1981. The applicant, however, could not participate in the screening which was held in the Office of the Railway Service Commission, Allahabad, because the applicant was not informed in time by the Office of the Respondent No.2. On the other hand one junior Nurse Km.Renuka M.Harris of the same Division appeared at the said Screening Test at Allahabad and her services were regularised with effect from 5.3.1980. It is alleged that discrimination has been

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made by the Respondents by adopting pick and choose policy. The applicant had also personally approached the Divisional authority and requested them to make arrangement for her screening. But no proper response was made by them. The applicant thereafter represented to the Respondent No.2 on 11.3.1985 as junior class Nurses who were appointed later on to her were being regularised and confirmed after screening by Railway Service Commission and the applicant was being pushed below for no fault of her. The applicant also made several representations to the Respondents for her confirmation and assigning her correct seniority, but without any response.

A provisional Seniority List of Nurses in scale of Rs.425-640/- vide letter dated 4.9.1986 was circulated by the Respondent No.2 in which name of the applicant was placed at serial number 13 mentioning her date of appointment as on 31.1.1979. The name of the junior Staff Nurses from Serial Number 7 to 12 who were appointed later on ad hoc basis like the applicant were, however, shown above her name. The applicant, therefore, made representation to the General Manager, Northern Railway on 21.3.1988 and again on 13.6.1988. The General Manager initiated the matter to regularise her services along with Nurses of other Divisions vide his letter dated- 9/15.3.1989 and the applicant was formally screened on 18.8.1989 by the Railway Recruitment Board, Allahabad. The Screening Committee of Railway Recruitment Board found the applicant suitable. Thus although the applicant was initially selected by the Selection Board before her appointment on 7.2.1979 her formal confirmation was obtained by the Respondent No.1 and 2 through Railway Recruitment Board in August, 1989 after lapse of 10 years and 6 months. The impugned Seniority List of Nurses

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has been circulated by the Respondents vide letter dated 29.6.1990 of Respondent No.2 in which name of the applicant has been mentioned at Serial Number 15 whereas her name should have been placed at Serial Number 1 above the name of Smt.V.S.Johri(Respondent-4)in Seniority List of Staff Nurse Grade Rs.1400-2300/- and below Mrs.Maya Visht(Respondent No.3)(Serial Number 8 of the Seniority List of Nurse Grade Rs.1640-2900/-). Thus the impugned Seniority List is invalid because the junior Nurses, who were appointed much after the applicant, has been shown in higher position than the applicant. The applicant is entitled for seniority under para 302 & 306 of Indian Railway Establishment Manual (IREM).

The Respondents in their C.A.have refuted the claim of the applicant and stated that the applicant's appointment was made on ad hoc basis. She was required to submit application in prescribed form to the Railway Service Board, Allahabad as and when vacancy would advertise for regularisation of her ad hoc appoinment. It is also denied that the applicant could appear before the Railway Service Commission for qualifying herself if she had been intimated in time. The applicant attended the interview of Nurse Grade 'B' held in the Office of the D.R.M., Lucknow, on 17.12.1982. But she could not qualify and was not empanelled. As regards Km.Renuka Harris, who was also appointed on ad hoc basis on 6.12.1979, she was found suitable by the Railway Service Commission, Allahabad and was empanelled on 5.3.1980 and seniority was assigned to her accordingly. The applicant was, however, declared suitable by the Screening Committee of Railway Recruitment Board only on 18.8.1989 and, therefore, her services have been regularised correctly with effect from the said date.

Her position in the impugned Seniority List has been shown correctly at Serial Number 15 on the basis of her empanelment by Railway Recruitment Board, Allahabad.

We have heard Shri A.Kumar, Learned Counsel for the applicant and Learned Counsel for the Respondents and carefully perused the records.

The vacancies in the grade Staff Nurse are filed up by Direct Recruitment through the agency of the Railway Recruitment Board (RRB) as per paragraph 106 of the Indian Railway Establishment Manual (IREM). In the present case it is an admitted position that the applicant was initially appointed as Staff Nurse only on ad hoc basis with effect from 7.2.1979. The applicant has not filed the copy of her appointment letter dated 31.1.1979 as mentioned in the present O.A. It is also not in dispute that the appointment of the applicant in the cadre of Grade Staff Nurse was regularised with effect from 18.8.1989 after she was found suitable by the RRB, Allahabad. Under the facts and circumstances of the case the only question for determination in this application is whether the service rendered by the applicant as ad hoc Nurse from 7.2.1979 till her regularisation i.e. 18.8.1989 are to be counted on the basis of her continuous length of service in the Nurse Grade for determining her inter se seniority.

It was held by the Appex Court in Ashok Gulati Vrs. B.S.Jain, AIR 1987 SC 424 that "according to the accepted canons of service jurisprudence, seniority of a person appointed must be reckoned from the date he becomes a member of the service. The date from which seniority is to be reckoned may be laid down by rules or instructions (a) on the basis of the date of appointment, (b) on the basis of confirmation, (c) on the

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basis of regularisation of service, (d) on the basis of length of service, or (e) on any other reasonable basis." It is well settled that an ad hoc or fortuitous appointment on a temporary or stop-gap basis cannot be taken into account for the purpose of seniority even if the appointee was qualified to hold the post on a regular basis, as such temporary tenure hardly counts for seniority in any system of service jurisprudence.

A Constitution Bench of the Appex Court in the leading case "The Direct Recruit Class-II Engineering Officers' Association Vrs. State of Maharashtra, AIR 1990(2) SC 1607 (Direct Recruit Case) has laid down inter alia the following 2 important propositions :

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. "

The proposition (B) has further been explained by the Appex Court in "Keshav Chandra Joshi and Ors. Vrs. Union of India & Anor, AIR 1991 SC 284" by relieving an earlier case namely, M.A.Khan Vrs. State of Madhya Pradesh (1990) 3 JT 295 and it was stated that the question whether the subsequent selection would entitle an employee to the benefits of the entire temporary

service for seniority ? It was held that when the rules of advertisements and orders of appointment indicate that the appointment is only for limited period, subject to recruitment by Public Service Commission, the appointments are only emergency arrangement pending regular selection by the Public Service Commission, the entire length of service cannot be counted for seniority.

We find in the present case that the appointment of the applicant was not as per service rule contained in para 160 of IREM mentioned above and it was a local arrangement made at the Divisional level on ad hoc basis which is evident from the contents of letter No.EMC-I/Rectt. Nurse.78 dt. 7.1978 of Divisional Superintendent, Muradabad in which it is clearly mentioned that there is a proposal for two Nurse on temporary ad hoc basis (a copy of which has been annexed as Annexure-2). Besides, in the letter dated 18.11.1978 (Annexure-3) addressed to the applicant for appearing before the interview Board on 6.12.1978, it was specifically mentioned that the appointment of the applicant will be purely as a temporary on ad hoc basis. It is not disputed by the Learned Counsel for the applicant that the regularisation of such appointee was to be made by the Railway Service Commission (subsequently by Railway Recruitment Board). Accordingly the regularisation of the service of the applicant was made after she was found suitable by the RRB on 18.8.1989. The Learned Counsel for the applicant has not brought to our notice any provision of service rules which requires the Respondents to get the regularisation of the service of the applicant done by the RRB. It was upto the applicant to apply before RRB for her regularisation as and when the vacancy in the grade of Staff Nurse arose and advertised by the RRB. On this point it has been contended on behalf of the applicant that she was not informed to appear before the Railway Service

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Commission Screening Committee in January, 1981, hence she could not be held responsible for this lapse on the part of the Respondents. It is no doubt correct, as is evident from the perusal of the letter dated 12.3.1983 issued from the Office of the Divisional Railway Manager, Muradabad ( a copy of which has been annexed as Annexure-A4) intimating the particulars of Nurses working on ad hoc basis at Muradabad Division to the Headquarter, Northern Railway, New Delhi, that the applicant could not appear before the Railway Service Commission because she was not intimated in time. But in our considered opinion this lapse on the part of the Respondent is not sufficient to treat regularisation of the service of the applicant on the basis of aforesaid suitability Test because she did not participate in the Selection process for whatever reason. In this context it is also significant to note that the applicant has not denied the fact that she duly appeared for Interview held in the Office of the Divisional Railway Manager, Muradabad on 17.2.1982 conducted by the Railway Service Commission, Allahabad, with reference to its Employment Notice No.1/80-81 for Category No.22, Role Number 85/95/102 she, however, could not qualify the selection and was not found suitable and as a result she was not empanelled in the selection list. The applicant, therefore, cannot complain<sup>mk</sup> that she was not provided opportunity for appearing before the Railway Service Commission for regularisation of her service as per rule. Admittedly she has been found suitable by the Railway Recruitment Board only in the year 1989 and her regular service has been treated by the Respondents from the date of her regularisation i.e. 18.8.1989. Consequently the applicant cannot claim her service rendered by her as ad hoc basis for counting her seniority. It is also admitted by the applicant that some other Nurses who were also appointed on ad hoc basis after the appointment of

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the applicant on ad hoc basis, were also duly cleared and found suitable by the Railway Service Commission/RRB, before their regularisation. Hence they were also given seniority from the date of their regularisation by the competent authority i.e. RRB.

It appears that the Learned Counsel for the applicant has placed reliance on proposition (B) laid down in the Direct Recruit case cited above and has contended that since the Respondent has in the case of the applicant allowed her to continue on the post of Nurse for over 10 years in dis-regarding of the rules without reverting her till the date of her regularisation of her service in accordance with the rules the period of officiating service has to be counted towards her seniority. In support of his argument Learned Counsel for the applicant has also relied on recent decision of the Appex Court in 'Rudra Kumar Sain & Ors. Vrs. Union of India & Ors. reported as 2000(5) Supreme 667. It was a case of inter se seniority among promotees and direct recruits Additional District and Session Judges of Delhi Higher Judicial Service. Under the facts and circumstances of the case it was held by the Appex Court that the seniority should be according to the continuous officiation, regardless of whether an appointee held a temporary post or a permanent post or whether he was posted on ad hoc basis or for fortuitous reasons or by way of stop-gap arrangement provided the appointment had been made as per rule after due consultation with and/or approval of the Higher Court and the appointees satisfied the qualification required under Rules. We, however, do not find any force in this contention because the fact of the present case and those of Rudra Kumar Sain's case are entirely different. Because the appointment of the promotees to Delhi Higher Judicial Service on ad hoc

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basis or by way of stop-gap arrangement was duly approved by the competent authority i.e. the High Court. But in the present case as has been stated above in the initial appointment of the applicant was on ad hoc basis and her appointment was not duly approved by the competent authority namely Railway Service Commission and it was done only in the year 1989 by the RRB. The applicant, is, therefore, cannot claim any benefit from the principle laid down in the case cited above. The Appex Court has even held in a very recent decision namely "State of Hariyana Vrs. Hariyana Veterinary & A.H.T.S. Asson, 2000(5) SLR (SC) 223" that it is not correct in equating the continous service with regular service and selection grade cannot be granted on the basis of continous service. The regular service will commence only from the date of appointment on selection by the Public Service Commission.

Therefore, in view of the admitted position that the initial appointment of the applicant was merely on ad hoc basis which was a de horsethrule and it was regularised or approved only in the year 1989, the applicant cannot claim counting of service for the purpose of senoirity rendered by her during the period from 7.2.1979 to 18.8.1989 on the basis of continous length of service.

In view of the above discussions we do not find any merit in the present O.A. and the same is dismissed.

However, there will be no order as to cost.

*Raymond*  
JM

*S. B. Singh*

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