

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO.323/2006

DATED THE 18th DAY OF JANUARY, 2008.

CORAM:

HONBLE DR.K.B.S.RAJAN, JUDICIAL MEMBER
HONBLE MR.K.S.MENON, ADMINISTRATIVE MEMBER

Smt.Veena Keshao Rao Mashram,
working as Matron in Indian Railway Cancer
Institute and Research Centre, Varanasi. Applicant.

(By Advocate Sri T.S.Pandey)

V/s,

- 1 The Union of India through the
General Manager,
North Eastern Railway, Gorakhpur.
- 2 The Divisional Railway Manager,
North Eastern Railway, Varanasi.
- 3 The Director/Coordinating Officer, CRI/BSB,
Indian Railway Cancer Institute and Research
Centre, Varanasi.
- 4 Smt.Geeta Kumari Choudhary, Wife of,
Luxman Choudhary, working as Matron in
Indian Railway Cancer Institute and Research
Centre, Varanasi.
- 5 Mrs.S.S.Ori Lal, Chief Matron,
Railway Cancer Institute and Research Centre,
Varanasi. Respondents

(By Advocate Mr. A. Tripathi & Mr. S.K. Mishra)

(ORDER)
Hon'ble Dr.K.B.S.Rajan, Judicial Member

The hierarchy in this case is staff nurse (Rs 5000 – 8000), Nursing sister (5500 – 9000), Matron (Rs 6500 – 10500) and Chief Matron (Rs 7450 – 11500). The applicant, initially appointed as Staff Nurse, was promoted as Nursing Sister with retrospective effect from 01-11-2003, vide order dated 07-01-2005. Respondent No. 4 by order dated

07-01-2005 was promoted as Nursing Sister from that very date. Respondents have, earlier, issued notification dated 14-12-1995 for promotion to the post of Matron for 6 vacancies but, panel only for five was provisionally prepared by order dated 6th February, 1996.

2. One Sangeeta Rani Choudhary whose name did not figure in in the list of promotees for the post of Matron belonged to S.C. Community as the applicant and Respondent No. 4, and the said Sangeeta Rani was called for viva-voce as the best among the failed candidates and was declared passed, while the applicant who passed in the written test was declared unsuccessful in the viva-voce. As the said Sangeeta Rani was promoted despite her having not qualified in the written test, and the applicant had not been promoted, despite her having qualified in the written test, the applicant filed OA No. 274/02 challenging the promotion of Sangeeta Rani, of course, belatedly. The said OA was dismissed and writ petition also was dismissed.

3. Respondent No. 4 herein was promoted as Matron by the impugned order dated 15-07-2005. This was stated to have been done on the ground that the said respondent had filed OA No. 684/98 which was allowed and the writ petition filed against the said order was dismissed (vide Annexure A-7 and A-8). The grievance of the applicant is that when a review of promotion granted was ordered by the Tribunal, the respondents have confined the review only with reference to the respondent No. 4 whereas they should have reviewed the promotion by considering all those who were similarly situated as the said respondent. The promotion order of Respondent No. 4 is at Annexure I and when the applicant made representation for consideration of her case as she was similarly situated as respondent No. 4, the same was rejected vide order at Annexure A-2. These two have been impugned in this OA and this OA claiming the following relief:-

a

"g. It is, therefore, most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to :

- a) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 15.7.2005 (Annexure No.1) and the order dated 30.12.2005 (Annexure No.2) with the further order and direction in the nature of mandamus commanding the Respondent Nos 1 to 3 to issue the promotion order of the applicant on the post of Matron with effect from 24/7/1997 with all consequential benefits.
- b) Award costs to the applicant from the respondents.
- c) Issue any other and further writ, order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case, but may have not been pleaded and is found, just and appropriate to this Hon'ble Tribunal."

4. Respondents have contested the OA. According to them, Sangeeta Rani had been promoted which had been upheld by the Tribunal and Respondent No. 4 had been promoted on the basis of the order of the Tribunal. The applicant has no case.

5. Applicant has filed an amendment application, impleading respondent No. 5 for certain alleged harassment and for quashing of an order passed by the said respondent vide Annexure A-11.

6. Pleadings were complete and arguments were heard. Counsel for the applicant succinctly took the tribunal through various documents to support the case of the applicant. Counsel for the private respondent took up the point of res-judicata as well. Counsel for the official respondent reiterated the contents of the counter.

7. Arguments were heard and documents perused. The claim of the applicant is that when the Tribunal had in the case of respondent No. 4 held that as per the prevailing rules, when juniors were considered, senior should also be considered and on that basis it had compared the case of Sangeeta Rani and Respondent No. 4 and held that on the basis

of the prevailing rules, the case of respondent No. 4 should be considered, the same should have been adopted in the case of the applicant as well. The tribunal has held in Annexure A-7 order dated 8th May 2002 as under:-

"We also find from a supplementary affidavit filed by the applicant that the seniority of the applicant was modified under the order dated 9-6-2000 by which seniority list of nursing sister dated 12-7-1999 has been modified and the applicant was granted promotion as nursing sister from 23-11-1995 which is the date on which her junior Smt. Sangeeta Rani Chaudhary had been given promotion as nursing sister. Thus, the applicant had raised the issue of seniority which had been decided by the respondents as late as on 9-6-2000 and on account of this rejection of the present application of the applicant on the ground of limitation would cause great injustice to the applicant."

The next submission of the learned counsel for the respondents was that as the time of consideration for the selection of Matron was done, only Smt. Sangeeta Rani Chaudhary had completed 5 years while the applicant had completed less than 5 years of service. In this connection, the applicant has placed reliance on para 203.2 of Indian Railway Establishment Manual, which provides as under:-

'In case a junior employee is considered for selection by virtue of his satisfying the relevant minimum service condition all persons senior to him shall be held to be eligible, notwithstanding the position that they do not fulfil the requisite minimum service conditions.'

It is clear that as a consequence of grant of promotion on same date to the applicant, as was given to Smt. Sangeeta Rani Chaudhary, as also the proviso of para 203.2 of the I.R.E.M., the applicant had a claim to be considered for the post of Matron at the time of selection held in December, 1995. Since she had been deprived of that opportunity, we consider it proper in the interest of justice to direct the respondents to hold a review DPC of selection held for the post of Matron based on notification in December 1995 and consider the applicant also along with other candidates, and in case the applicant succeeds, grant her seniority over her junior with consequential benefits..."

8. The above order thus would show that it was passed, based on a particular rule position as contained in Rule 203.2 of the IREM. That rule is equally applicable to the applicant herein as well. Admittedly, the applicant's promotion to the post of Nursing Sister was 01-11-2003, while that of Sangeeta Rani Chaudhary was as of 07-01-2005. The seniority list at Annexure A-4 also depicts the seniority of the applicant at Serial

No.17, while that of Sangeeta Rani at Serial No. 22 and that of respondent No. 4 at 21. Thus, admittedly, the applicant is senior to both Sangeeta Rani and respondent No. 4. As such, there is no logic in not considering the case of the applicant for promotion from the post of Nursing Sister to Matron as done in the case of Respondent No. 4, whose date of promotion was effected from 24-07-1997. Non consideration of the applicant's case is, certainly, violative of the provisions of Art. 16 of the Constitution of India.

9. The applicant has thus, a cast iron case. She is entitled to be considered for promotion from the post of Nursing Sister to Matron w.e.f. 24-07-1997, when her junior was considered and promoted and consequential benefits should be granted. The extent of consequential benefit shall be the same as extended to the junior i.e. Respondent No. 4, in the wake of the order of this Tribunal dated 8th May 2002. If arrears of pay and allowances had been paid to Respondent No. 4 in pursuance of the above mentioned order coupled with the impugned order at Annexure I, the applicant shall also be entitled to the same.

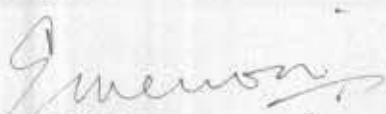
10. The applicant has prayed for quashing of Annexure A-1 order. That is not possible since there is no irregularity in the promotion of respondent No. 4. The illegality and irregularity lies only in non consideration of the case of the applicant and consequently, rejection of her representation vide Annexure A-2. Thus, it is only Annexure A-2 that is liable to be quashed and set aside and we order so. The applicant is entitled to be considered for promotion as Matron from the date Respondent No. 4 had been promoted and the consequential benefits, as aforesaid should be extended to the applicant.

11. The applicant has prayed for quashing of Annexure A-11 also. The contents of this Annexure are not directly and proximately related to the main relief sought and as

such the same is not considered. It is however directed that if there be any representation from the applicant regarding the alleged harassment by respondent No. 5, the G.M. North Eastern Railway, Gorakhpur shall consider the same in its proper perspective.

12. The OA is disposed of on the above terms. Review DPC shall be conducted and the decision thereof implemented within a period of three months from the date of communication of this order and if the applicant be promoted consequent to the Review DPC, then arrears of pay and allowances, if paid to respondent No. 4 when the order of this Tribunal dated 8th May, 2002 was implemented, should be paid to the applicant as well. This be done within three months after the decision of the Review DPC as stated above is implemented.

13. No costs.



K.S.Menon
Administrative Member



Dr.K.B.S.Rajan
Judicial Member