

6
8
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 671 OF 1992
Cuttack, this the 21st day of July, 2000

Bhagirathi Sahoo Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*

(G. NARASIMHAM)
MEMBER (JUDICIAL)



Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
21/7/2000

X 9

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 671 OF 1992
Cuttack, this the 21st day of July, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....
Bhagirathi Sahoo, aged about 53 years, son of Chakrabarti Sahoo, At-Badenatu, PO-G.Udaygiri, Dist.Phulbani, at present working as Staff Nurse (Male), ARC Hospital, Charbatia Centre, Dist.Cuttack

..... **Applicant**

Advocates for applicant - M/s S.K.Nayak-1,
A.K.Baral
K.Ray

Vrs.

1. Union of India, represented through the Cabinet Secretary, Bikaner House Avenue, Shahjahan Road, New Delhi.
2. The Director, Aviation Research Centre Headquarters, Block V(East), R.K.Puram, New Delhi-110066
3. Assistant Director (Administration), R.K.Puram, New Delhi-110066
4. Assistant Director (I), Aviation Research Centre, At/PO-Charbatia, Dist.Cuttack,Orissa, Pin-754 028.
5. Sri S.N.Barik, Senior Staff Nurse, A.R.C.,Charbatia, At/PO-Charbatia, Dist.Cuttack

..... **Respondents**

Advocates for respondents -Mr.AshokMohanty
Sr.C.G.S.C.
for R1 to 4
M/s H.M.Dhal
P.Mohanty
H.K.Dalai
H.K.Das
For R-5.

S.Jom.

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 28.8.1992 promoting S.N.Barik (respondent no.5) to the post of Senior Staff Nurse .

The second prayer is for treating the applicant to have been promoted to the post of Senior Staff Nurse with effect from 28.8.1992 when respondent no. 5 was promoted, along with all service benefits.

2. The applicant's case is that he successfully completed three years course in Nursing training in "A"Grade conducted by Orissa Nurses and Mid Wives Examination Board on 16.12.1960. While he was working in the office of Regional Family Planning Centre, he was appointed as Staff Nurse (Male) in Aviation Research Centre Hospital, Charbatia under the departmental respondents on 7.1.1967. According to the applicant, respondent no. 5 joined on 1.12.1966 as a Dresser in ARC Hospital, Charbatia, without diploma qualification or any training. The petitioner made a representation to respondent no.2 to consider his case for promotion to the post of Senior Staff Nurse (Male) on 14.2.1992 and in reply he was informed that the case of the applicant would be considered as and when vacancy arises according to seniority and subject to fitness. Thereafter in the impugned order dated 24.8.1992 respondent no.5 was promoted to the post of Senior Staff Nurse without considering the case of the applicant. Against such illegal promotion the applicant submitted a representation praying that his case should be considered and he should be promoted to the post of Senior Staff Nurse (Male) with effect from 28.8.1992. His representation was rejected in order dated 26.10.1992 at Annexure-6. In the context of the above facts the petitioner has come up in this application with the prayers referred to earlier.

SJM



3. The departmental respondents in their counter have opposed the prayers of the applicant stating that the petitioner joined as Staff Nurse (Male) in ARC, Charbatia on 7.1.1967 whereas respondent no.5 joined as Staff Nurse (Male) on 13.10.1966. The departmental respondents have stated that at no point of time respondent no.5 has worked as a Dresser in ARC, Charbatia. They have furtherstated that the Recruitment Rules for appointment of para medical staff in ARC Hospital came into force on 7.3.1977 in which the required qualification for the post of Staff Nurse is Matriculation or equivalent with "A" grade Diploma in Nursing registered by recognised Nursing Council. But this Recruitment Rule was not applicable to the appointment of respondent no.5 as Staff Nurse as he was appointed much prior to coming into force of the Recruitment Rules in notification dated 7.3.1977. The departmental respondents have stated that one post of Senior Staff Nurse fell vacant due to retirement of the incumbent on 31.5.1992. As per provisions contained in the Recruitment Rules, the meeting of the DPC was held. The post was to be filled up by promotion from out of the Staff Nurse with two years service experience in the grade. The norm for promotion was seniority subject to elimination of unfit. The DPC recommended the name of respondent no.5 who is senior and accordingly he was promoted. The departmental respondents have furtherstated that respondent no.5 was appointed as Staff Nurse with effect from 1.3.1966 after being found suitable for the post in view of his long experience prior to framing of the Recruitment Rules. Therefore the initial appointment of respondent no.5 in 1966 is not open to challenge by the

J Jam.

applicant. They have further stated that the DPC while recommending the name of respondent no.5, took into consideration the CRs of the officials who came within the zone of consideration. The departmental respondents have further reiterated that the post of Senior Staff Nurse is a non-selection post to be filled up on the basis of seniority subject to elimination of unfit. On the above grounds the departmental respondents have opposed the prayer of the applicant.

4. Respondent no.5 in a separate counter has stated that the Recruitment Rules which came into force in March 1977 have no application so far as his appointment in 1966 is concerned. He has also stated that as he is senior to the applicant, the DPC has been right in recommending his case. On the above grounds respondent no.5 has opposed the prayers of the applicant.

5. We have heard the learned counsel for both sides. The learned counsel for respondent no.5 had filed a written note of submission after serving copy on the other side which has been taken note of. At our instance the learned standing counsel has filed a copy of the ARC (Para Medical Staff) Recruitment Rules, 1977 and two orders and these have also been taken note of.

6. ARC (Para Medical Staff) Recruitment Rules, 1977 came into force on 7.3.1977. Rule 4 deals with initial appointment. It is provided that all persons holding as on the appointed day, any of the posts in the grades specified in column 2 of the schedule, whether in a permanent or temporary or officiating basis, shall be eligible



10/10/77

B

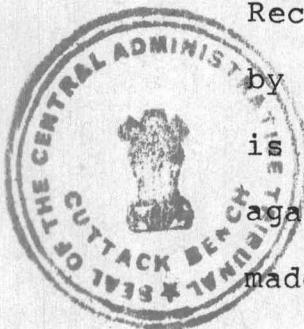
for

/ appointment to the said posts at the commencement of these rules. A Screening Committee will be constituted for each grade for adjudging suitability of persons who are working in any of those posts for appointment in such grade. It is mentioned that the Screening Committee will prepare list of persons considered suitable for appointment in each grade with names of such persons arranged in order of seniority based on the date of continuous appointment in the grade in which they are to be absorbed or in equivalent grade. It is also provided that persons holding posts as on the appointed date who are not found suitable for appointment in the said grade may be continued in the post in the same grade in a temporary and officiating capacity so long as may be necessary. Respondent no.5 has been appointed on 13.10.1966 and the applicant on 7.1.1967 as Staff Nurse (Male). At the time of appointment of both the applicant and respondent no.5 the Recruitment Rules were not in force. The departmental respondents have enclosed at Annexure-R/1 to their counter the order dated 31.12.1965 in which respondent no.5 was appointed to the post of Staff Nurse (Male). As at that time qualifications, particularly Diploma in Nursing were not prescribed, respondent no.5 was rightly appointed to the post. In any case it is not open for the applicant to challenge the appointment of respondent no.5 to the post of Staff Nurse (Male) after passage of so many years. The learned Senior Standing Counsel has enclosed a notice issued in August 1973 intimating about an interview for several posts in ARC Hospital, Charbatia for which applications had been invited by 29.9.1973. This includes four posts of Staff Nurse (Male) and qualification prescribed is



S. Jam

Matriculation/SSLC with Diploma in Nursing. From this it is seen that even prior to coming into force of the Recruitment Rules on 7.3.1977, for the post of Staff Nurse (Male) qualification adopted was Matriculation with Diploma in Nursing. But respondent no.5 was appointed much prior to 1973 and therefore, his initial appointment as Staff Nurse (Male) cannot be questioned after passage of so many years on the ground of his not having the qualification of Diploma in Nursing. According to the Recruitment Rules the next promotional post from Staff Nurse (Male) is Nursing Sister. In order dated 3.6.1991 the post of Nursing Sister has been redesignated as Senior Staff Nurse without any change in the scale of pay or other conditions. According to the Recruitment Rules the post of Staff Nurse is to be filled up by way of promotion, failing which by direct recruitment. It is also provided in column 12 of the Recruitment Rules against the post of Nursing Sister that promotion has to be made from the grade of Staff Nurse with two years service in the grade. From column no.8 it appears that the qualification prescribed is B.Sc.(Nursing) or Matriculation or equivalent with "A"Grade Diploma in Nursing with at least three years experience in any Hospital. But the heading of column 8 specifically provides that these qualifications are for direct recruits. From this it is clear that the post of Nursing Sister later redesignated as Senior Staff Nurse is to be filled up by promotion from the grade of Staff Nurse with two years service. If the post is not filled up by promotion, then for direct recruits the qualification mentioned above will be applicable. In the instant case respondent no.5 is admittedly senior to the applicant in the post of Staff Nurse (Male). Promotion to the post of Senior Staff Nurse has to be



S. Jam.

given on the basis of seniority subject to elimination of unfit. The DPC has considered respondent no.5 and all others who came within the zone of consideration and has recommended respondent no.5 who had by that time put in more than 25 years as Staff Nurse (Male). Therefore, it cannot be said that the appointment of respondent no.5 as Staff Nurse (Male) has been in violation of the rules. The prayer of the applicant for quashing the appointment of respondent no.5 to the post of Senior Staff Nurse is therefore held to be without any merit and is rejected.

7. The second prayer of the applicant is for a direction to the departmental respondents to promote him to the post of Senior Staff Nurse after quashing the promotion of respondent no.5. As we have rejected the first prayer, this prayer automatically stands rejected because the departmental respondents have stated that at the relevant point of time only one post of Senior Staff Nurse fell vacant due to superannuation of the existing incumbent. This prayer is accordingly rejected.

8. In the result, therefore, the Original Application is held to be without any merit and the same is rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)



Somnath Som
(SOMNATH SOM)
21.7.2010
VICE-CHAIRMAN