

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.613 OF 1995
Cuttack, this the 16th day of October, 2000


Kamini NayakApplicant

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
16.10.2000

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CUTTACK BENCH, CUTTACK.

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CORAM:

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

Kamini Nayak, daughter of Mangula Nayak,
Vill-Dungumala,
P.O-INS Chilika, Dist.Khurda, Orissa...Applicant

Advocates for applicant - M/s G.Tripathy
R.K.Nayak
A.K.Swain
P.K.Dash
B.S.Tripathy
M.K.Rath.

Vrs.

1. Union of India, represented through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Naval Staff, Naval Head Quarters, New Delhi.
3. The Flag Afsar, Kaman-in-chief, Eastern Naval Command Mukhalaya, Nausena Base, Visakhapatnam-530 014
4. Commanding Officer, INHS Nivarini, At/PO-Chilika, Dist.Khurda, Orissa.
5. Jhunamali Dei, Ward Sahayika, INHS Nivarini, At/PO-Chilika, Dist.Khurda, Orissa...Respondents

Advocates for respondents-Mr.J.K.Nayak
ACGSC
for R-1 to 4
M/s G.B.Jena
S.Jena
S.Das
for R-5.

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ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for a direction to the departmental respondents to regularise her services with effect from the date of her appointment and also for quashing the appointment of respondent no.5 and appointing her as Ward Sahayika.

2. The applicant's case is that on being duly selected she was appointed as an Attendant (Sahayika) in Family Welfare Centre, INHS Nivardini at Chilka base on 1.3.1984. The two orders to this effect are at Annexures 1 and 2. The applicant has been working continuously and is being paid an honorarium of Rs.250/- per month as mentioned at Annexure-2. She had represented in September 1988 for appointment to the post of Ayah but without any result. For her good work she has been issued with certificates of proficiency at Annexures 4 and 5. The service of the applicant was not regularised. Coming to know that some posts of Ward Sahayika were lying vacant, the petitioner applied for the post for which she had the requisite qualification. Her application was also forwarded by Surgeon Lt. Commander Medical Officer-in-charge, Family Clinic, Chilka, in July 1995 at Annexure-7. Her name was also sponsored by the Employment Exchange and she was given a call letter for appearing at an interview for the post of Ward Sahayika on 28.8.1995. But she was not selected and an outsider (respondent no.5) was selected for the post. The applicant has stated that as she has been working uninterruptedly since 1984 and her work is satisfactory, she is entitled to be regularised against the post in preference to a fresh outsider.

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3. The respondents in their counter have opposed the prayers of the applicant stating that the petition is not maintainable. They have stated that the applicant was appointed in the Family Clinic which is not a Government organisation and has been set up from out of non-public funds, namely, "Command Amenities Fund", the aim of which is to cover the medical facilities to the families

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of the service personnel. As the applicant is working as a private employee working in a medical organisation established locally for the welfare of the personnel, the applicant has no right to approach the Tribunal. It is stated that employees working in Nausena Baugh, Visakhapatnam, who are paid out of non-public fund, approached the Hyderabad Bench of the Tribunal in OA No. 419/94 and the case was dismissed in order dated 30.6.1994 on the ground that the Tribunal did not have jurisdiction to entertain the Application. The respondents have further stated that the applicant was selected as Lady Attendant at Family Clinic and not at Family Welfare Centre which is clear from Annexure-1 of the O.A. Though the Family Clinic operates in the premises of the Family Welfare Centre, the two organisations are distinct. The Family Welfare Centre is a Government sanctioned facility whereas Family Clinic is maintained by non-public fund. It is stated that as the Family Clinic is maintained by non-public fund, the employees are paid on honorarium basis and the applicant has joined the post in 1984 knowing fully well that she would be paid monthly honorarium. This has been clearly mentioned at Annexure-2. It is further stated that a post of Ward Sahayika in Family Welfare Centre, which is a Government organisation, fell vacant in June 1995 due to resignation of Mrs. Bijayalaxmi Dash. The post had to be filled up in accordance with departmental instructions and accordingly the selection process was undertaken. The applicant's name was sponsored by the Employment Exchange Officer along with seven other candidates. Besides the above eight, two departmental

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candidates who were serving for more than fifteen years, also applied. The Selection Committee consisting of four officers interviewed the candidates and selected respondent no.5 as the first name in the panel. The proceedings of the Selection Committee and the marklist have been enclosed by the departmental respondents. As the applicant has been duly considered and not recommended by the Selection Committee, the departmental respondents have opposed the prayers of the applicant.

4. We have heard Shri B.S.Tripathy, the learned counsel for the petitioner and Shri J.K.Nayak, the learned Additional Standing Counsel for the departmental respondents and Shri G.B.Jena, the learned counsel for respondent no.5 and have also perused the records.

5. From Annexure-1 of the OA it appears that in 1984 the applicant was selected for the post of Lady Attendant in Family Clinic, Chilka which, according to the departmental respondents, is a non-Government organisation. In the order dated 16.7.1984, however, it has been specifically mentioned that the applicant has been selected as Attendant in the Family Welfare Centre, INHS Nivarini at Chilka. The respondents have mentioned that Family Welfare Centre is a Government organisation. Thus, it is clear that these two orders are contradictory. According to the order at Annexure-1 the applicant was appointed in Family Clinic, Chilka whereas according to Annexure-2 she was appointed as Attendant in the Family Welfare Centre. The departmental respondents have stated that the Family Clinic functions in the premises of Family Welfare Centre as it has no separate buildings of its own. In their counter the departmental respondents have stated that the applicant is working in the Family Clinic which is

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a non-Government organisation maintained from out of non-public fund. This assertion has not been denied by the applicant. As the applicant is working in a non-Government organisation, her prayer for getting regularised in the post is held to be without any merit and is rejected.

6. As regards maintainability of the application before the Tribunal, the O.A. is obviously maintainable because she has applied for the post of Ward Sahayika in the Family Welfare Centre which is a Government organisation maintained out of Government fund and on being unsuccessful in the interview for the post of Ward Sahayika in the Family Welfare Centre, which is a civil post, she has approached the Tribunal. Her claim for appointment to the post of Ward Sahayika in the Family Welfare Centre is thus entertainable by the Tribunal. It is seen from the counter that the applicant's name was forwarded by the Employment Exchange and she was considered by the Selection Committee. Apparently there was a written test besides marking under other heads and the applicant has not done well in the interview as it appears from the marks given. In view of this, the applicant cannot claim that she should be selected over the head of respondent no.5 who has done the best in the selection test and interview.

7. In the result, therefore, we hold that the case of the applicant for getting appointed to the post of Ward Sahayika in the Family Welfare Centre is without any merit, and the O.A. is rejected. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
16.10.2000