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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

O.A.No.40 of 2007
Cuttack, this the 11th August, 2010

M. Subhalaxmi Applicant
-Versus-
Union of India & Others Respondents

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not?
2. WHETHER it be circulated to all the Benches of the Tribunal or not?


(G. Shanthappa)
Member (Judicial)


(C.R. Mohapatra)
Member (Admn.)

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C O R A M
THE HON'BLE MR.G.SHANTHAPPA, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

M.Subhalaxmi, aged about 50 years, D/o.Late M.Satyanarayan, presently working as ANM (Medical Department), E.Co.Railway, Waltair residing at Railway Quarter No.390/A/Wireless Colony, At-Allipuram Road, Visakhapatnam-4.

.....Applicant
Legal practitioner: M/s. Agasti Kanungo, S.K.Kari, Counsel
-Versus-

1. Union of India represented through General Manager, E.Co.Railway, Chandraekharpur, At-Bhubaneswar, Po/Dist. Khurda.
2. Chief Personnel Officer, Chandrasekharpur, E.Co.Railway, At-Bhubaneswar, Po/Dist. Khurda.
3. Chief Medical Director, East Coast Railway, Chandrasekharpur, At-Bhubaneswar, Po/Dist. Khurda.
4. Sr. Divisional Personnel Officer, East Coast Railway, Waltair, Visakhapatnam (A.P).
5. Chief Medical Superintendent, E.Co.Railway, Waltair, Visakhapatnam (A.P).

.....Respondents
By legal practitioner: Mr.T.Rath, Counsel

O R D E R
MR. C.R.MOHAPATRA, MEMBER (A)

Applicant is working as ANN (Medical Department) of East Coast Railway, Waltair Division. In this Original Application filed U/s.19 of the A.T. Act, 1985 her prayer is to direct the Respondents 1,2, and 3 to absorb the applicant as 'Staff Nurse' in relaxation of the Rules [para 114 of the IREM (Vol.1)] and accordingly grant her financial benefit of the staff Nurse w.e.f. 30.03.1995. This was strongly objected by the Respondents in their counter filed in this case. Through rejoinder Applicant reiterated her stand taken in the OA.

2. It is the contention of the Applicant that prior to the amendment of the Recruitment, as she was fulfilling the conditions stipulated in the

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Recruitment Rules, her name was sponsored for pre-requirement training for promotion to the post of Staff Nurse. But for one way or the other/one reason or the other her name was not approved by the Head Office of the Railway for undergoing such training. Meanwhile the Recruitment Rule was amended providing higher essential qualification than the qualification which the applicant ~~possessed~~ ^{passed}. Learned Counsel for the Applicant further submitted that meantime applicant has been placed in the higher scale meant for Staff Nurse under ACP scheme. He has, therefore, submitted that taking into consideration the peculiar circumstances of the case and the experience, expertise and there being no financial burden in case the applicant is promoted to the post of Staff Nurse, Respondents may be directed to absorb the applicant as 'Staff Nurse' in relaxation of the normal Rules [para 114 of the IREM (Vol.1)]. On the other hand it was the contention of the Respondents' Counsel that the Applicant worked against the surrendered ANM post, had been redeployed against the vacant post of Mid Wife in the scale of Rs.950-1400/- and allowed to draw her salary in scale of Rs.975-1540/- (RSP)/Rs.3050-4590 (RSRP). RAILWAY Board in letter dated 30.11.1984 & 12.11.1991 decided to sponsor serving Auxiliary Nurse cum Mid Wives (ANMs) as well as Mid Wives for training in General Nursing in recognized training schools at Railway Cost for considering them for promotion to the post of Staff Nurse. Railway Board further in letter dated 3.6.1999 intimated that the eligible ANMs and Mid Wife could be sponsored for General Nursing training in nursing schools run by the Indian Railways at Danapur, Malda and Maligaon. In case of any difficulty in securing admission in Indian Railway Nursing Training School, the candidate will be sent to the nearby recognized training institutes of the State Government. As per the Rules for imparting General Nursing Training the candidate should have passed intermediate or equivalent examination with

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45% of marks and should not have completed 35 years of age with relaxation of three years for SC staff. The applicant is only SSC pass and has crossed 38 years age, therefore, she could not be sponsored for General Nursing Training. It has also been contended by the Learned Counsel for the Respondents that no discretion is left with the authority for relaxation of essential qualification and accordingly, the Respondent's counsel has prayed for dismissal of this OA.

3. We have carefully considered the rival submissions of the parties and perused the materials placed on record. Before proceeding to express our opinion on the merit of the matter, for the sake of clarity we would like to refer and rely on the views of the Hon'ble Apex Court on some of the decisions in which it has been held that Administrative Tribunal could not direct that power of relaxation available in statutory Recruitment Rules must be exercised to give promotion or regularize erroneous promotion [**Union of India and Another v Narendra Singh**, (2008) 1 SCC (L&S) 547].

There is no right in any employee of the state to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service [**P.U. Joshi and others v Accountant General, Ahmedabad and others**, 2003(2) SCC 632].

It is the prerogative of the authority to decide what shall be the channel of promotion for technical and non technical persons [**T.N.Electricity Board and another v T.N. Electricity Board Thozhilalar Ayukkiya Sangam**, 2008 (2) SLR 809].

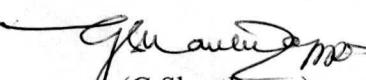
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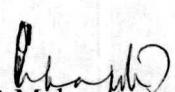
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What is guaranteed by Article 16 (1) of the Constitution is equality of opportunity in the matter of an appointment in State Services and nothing more. It is open to the Government to frame necessary rules prescribing the requisite qualifications and it is also open to the authorities to lay down such perquisite conditions for appointment as would be conducive to the maintenance of proper discipline amongst Government servant [**Banarsi Das v. State of UP**, AIR 1955 SC 520].

4. It is an admitted fact that the Applicant does not have the essential qualification to hold the post of Staff Nurse. It is also the specific case of the Respondents that no discretion is left to the authority to relax the essential qualification provided in the Rules in a single case. We also note that the role of a staff nurse is very important in the field of treatment of the patient. Appointment/promotion of person in relaxation of Rules will have serious adverse impact in so far as providing service to the patients at large. In view of the above, when the factual scenario is examined in the background of the legal principles set out above, the inevitable conclusion is that the Applicant has failed to substantiate her case for any of the reliefs claimed in this OA.

5. Hence, this OA stands dismissed by leaving the parties to bear their own costs,


(G. Shanthappa)
Member (Judl.)


(C.R. Mohapatra)
Member (Admn.)