

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

2 DATE OF DECISION: 3-11-1989

P R E S E N T

Hon'ble Mr.N.V.Krishnan - Administrative Member

and

Hon'ble Mr.A.V.Haridasan - Judicial Member

ORIGINAL APPLICATION NO.119/89

Mrs. Kathrinamma Sebastian - Applicant

Versus

1. Union of India  
represented by Secretary,  
Ministry of Labour &  
Rehabilitation,  
D/o Labour Employment,  
New Delhi.
2. The Director General  
of Labour Welfare,  
Government of India,  
New Delhi
3. The Welfare Commissioner,  
Welfare Organisation,  
Bangalore. - Respondents

Mr.MV Joseph - Counsel for applicant


Mr.PVM Nambiar,SCGSC - Counsel for respondents

O R D E R

(Hon'ble Mr.A.V.Haridasan, Judicial Member)

In this application filed under Section 19  
of the Administrative Tribunals Act, 1985, the  
applicant a staff nurse in Beedi Workers Welfare  
Dispensary, Alathur has prayed that, it may be  
declared that she was entitled to cross the Efficiency

...2/-




Bar on 1.1.1982 at the stage of Rs.560/- and that a direction may be made to the respondents to release the increments due to her from 1982 to 1985.

as averred in the petition

2. The facts of the case/can be briefly stated as follows: The applicant was appointed as a Staff Nurse in Iron Ore Mines Labour Welfare Organisation under Ministry of Labour, Government of India, Ballary, in February, 1969. As per the Recruitment Rules the qualification prescribed for Staff Nurse in the Iron Ore Mines Labour Welfare Fund Organisation was ~~xxxxxx~~ of registration as Nurse and Midwife. The applicant was a registered nurse, but she did not have a registration in midwifery. But she was appointed as a staff nurse. The applicant came to know that registration as a midwife was a necessary qualification only on 9.4.1974, when she was asked to produce a certificate in midwifery for verification. Thereafter, by memo dated 22.4.1974 issued by the Welfare Commissioner, she was directed to undergo training in midwifery at her own expence and to obtain the necessary certificate within a period one year. Though the applicant sought permission to undergo training in midwifery in 1974 itself, she was not permitted to undergo training then as she was

...3/-



under suspension during that time. Anyway the issue of acquiring a qualification in midwifery arose thereafter only in 1984. The applicant was due to cross efficiency bar on 1.1.1982 at the stage of Rs.560/- in the scale of Rs.425-15-560-EB-20-640. Since no step was taken by the respondents in the matter, the applicant made a representation. But the applicant was informed on 12.8.1985 that, she would not be permitted to cross efficiency bar on the ground that she was not possessing a certificate in midwifery. The representation made by the applicant to the third respondent against this decision was rejected. The stand taken by the third respondent, that the Departmental Promotion Committee which met on 18.11.1987 had decided to revise the pay scale w.e.f. 1.1.1986, and therefore, there was no necessity for the applicant to cross efficiency bar in the old scale according to the applicant is arbitrary and illegal. The applicant has filed an appeal to the second respondent which has not yet been disposed of. The respondents should have relaxed the qualification and permitted the applicant to cross the efficiency bar in 1982 itself. Since she has been appointed to the post of staff nurse without a registration in midwifery, according to the applicant the action


...4/-

of the respondents in not allowing her to cross the efficiency bar in 1.1.1982 is illegal and arbitrary and therefore, the applicant has filed this application for the relief of a declaration<sup>that</sup>/she was entitled to cross the efficiency bar on 1.1.1982 and consequential reliefs.

3. The third respondent has on behalf of the respondents filed a reply statement. It has been contended that since the applicant is not having the requisite qualification, the department could not allow her to cross the efficiency bar on 1.1.1983, while it was due and the Departmental Promotion Committee has in its meeting in 1987 recommended that, she could be allowed to cross efficiency bar w.e.f. 30.4.1987, when she/<sup>became</sup> qualified for the post of staff nurse. Therefore, according to the respondents since the applicant did not possess the qualification for the post of staff nurse she was rightly denied permission to cross the efficiency bar.

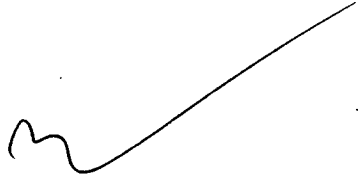
4. We have heard the arguments of the counsel on either side and have carefully gone through the documents produced. It is a common case that the

...5/-



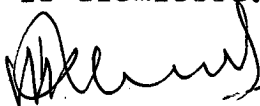
qualification for recruitment as a staff nurse in the Welfare Fund Organisation was registration as a nurse and midwife. It is also a common case when that the applicant was appointed as staff nurse, she did not possess a registration in midwifery, and that she acquired the said qualification only in 1987. The applicant was denied permission to cross efficiency bar because she did not acquire the qualification, even though she has been specifically asked to acquire the qualification within a period of one year in 1974 itself. It is true that the applicant had applied for leave to undergo ~~xxx~~ the course in 1974, but during that period she could not be granted leave as she was under suspension. But thereafter she did not take care to acquire the necessary qualification. In 1985 she was asked to join the training course in midwifery, but she made a request as evidenced by Annexure R.3 for granting her time to undergo the training till October, 1986, since at the time she was pregnant. By Annexure R.4 memo dt.19.6.1985 extension of time to undergo the training till October, 1986 was granted by the Welfare Commissioner. Therefore, it is evident from the records that the

...6/-



applicant acquired the qualification required for the post of staff nurse fully only on 30.4.1987. By Annexure-5 proceedings of the Departmental Promotion Committee meeting held on 18.11.1987, the applicant has been allowed to cross the efficiency bar w.e.f. 30.4.1987. There is no merit in the argument of learned counsel for the applicant that, since she was appointed as a staff nurse and was allowed to continue in service/quite a long period without the requisite qualification in midwifery, the respondents should have relaxed the qualification in her case and allowed her to cross the efficiency bar on 1.1.1982 itself. In spite of definite instruction to the applicant in 1974 in order to be confirmed in the post, she must acquire a registration in midwifery. The applicant didnot acquire the qualification till 1987. Therefore, we are not in a position to hold that the decision of the Departmental Promotion Committee, not to allow the applicant to cross the efficiency bar till she acquired the required qualification to/the post is either illegal or arbitrary. Therefore, we are of the view that the applicant is not entitled to the relief claimed.

5. In the result the application fails and the same is dismissed. However, there is no order as to costs.

  
(A.V. HARIDASAN)  
JUDICIAL MEMBER

  
(N.V. KRISHNAN)  
ADMINISTRATIVE MEMBER

3-11-1989

19-1-90

RA No.87/89 in OA-119/89

NVK & AVH

Mr Suresh Babu proxy counsel for review applicant  
Mr PVM Nambiar, SCGSC for respondents

Adjourned at the request of the counsel for  
the review applicant to 9.2.90.

*[Signature]*

19-1-89

9.2.90

NVK & AVH

Mr. Varghese Myloth  
Mr. C.S. Ramanathan.

The respondents would like  
to file a statement in respect  
of MP 868/89. Call on  
16.2.1990.

*[Signature]*

9.2.90

16.2.90

NVK & AVH

(7)

SCGSC for respondents

Neither the applicant nor his  
counsel was present though the case  
was called twice. In the interest  
of justice adjourned to 22.2.90

Adjourned to  
26-2-90 vide  
order no 3/2/90 -  
Dhill - dk - 24-2-90  
SP  
21/2/90

*[Signature]*

16.2.90

- 2- RA: 87/89 in  
OA 119/89.

NVK & AVH

26/2/90

(5)

Mr Varghese Myloth — for applicant  
Sc e gsc for the Respondent.

Respondent seek time to file  
reply to MP. 866/89, seeking condonation  
of delay. Reply may be filed within  
2 weeks time.

The RA may be listed for  
hearing on 14/3/90.

2 R

26/2/90

14-3-90

NVK  
SPG & AVH

Mr Varghese Myloth for applicant  
Mr PVM Nambiar for SCGSC

The applicant has filed M.P-866/89 to  
condone delay. The respondents are opposed for  
condonation. We noticed that the order of the  
Tribunal was despatched <sup>to</sup> the applicant only on  
1.12.89 and the review application <sup>has</sup> having been filed  
on 22.4.89. <sup>12</sup> We are of the view that if limitation is  
reckoned from the date of service of the order, as  
a matter of fact, there is no delay <sup>in</sup> for filing the  
application. <sup>The m-p is allowed</sup> The respondents have <sup>already</sup> in any case filed  
a reply statement.

The matter will be heard on 22.3.90.

2 R

14-3-90

(3)  
Affidavit by  
applicant filed  
on 14.3.90

OP  
17P



22.3.90

NVK & AVH

Mr. Varghese Myloth for review applicant.  
Mr. CS Ramakrishnan proxy counsel  
for respondents

At the request of the  
counsel for the review applicant  
list for final hearing on 12.4.90

9

Mr. V.V. Sidharthan  
ACGSC filed  
info appearance  
for respondents  
on 3.4.90.

22.3.90

17.4.90  
(5)

NVK & AVH

Mr Varghese Myloth for applicant.  
Mr VV Sidharthan, ACGSC for Respondents.

At the request of counsel, the matter is  
adjourned to 1.6.90.

17.4.90

6.7.90

NVK & AVH

Mr Varghese Myloth for the applicant.  
Mr VV Sidharthan for the respondents.

At the request of the counsel of applicant,  
the matter is adjourned for final hearing to 13.7.90. No  
further adjournment will be given.

6.7.90

Adj'd. to 17.4.90  
vide m.no.  
112/90-Jadh.  
dt. 11.4.90.

Adj'd. to 6.7.90  
vide Notice dt.  
31.5.90

Adj'd. to 13.7.90  
vide Notice  
dt. 12.7.90

R.A. No. 87/89.....

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Placed below is a Review Petition filed by Mrs. Katharinaamma Sebastian (Applicant/  
Respondent in OA/TA No. 119/89) seeking a review of  
the order dated 3-11-89 passed by this Tribunal in the  
above noted case.

As per Rule 17(ii) and (iii), a review petition shall  
ordinarily be heard by the same Bench which passed the order,  
and unless ordered otherwise by the Bench concerned, a review  
petition shall be disposed <sup>of</sup> by circulation where the Bench  
may either dismiss the petition or direct notice to be issued to  
the opposite party.

The Review petition is therefore, submitted for orders  
of the Bench consisting of Hon. Shri N.V. Krishnan  
(Member A) & Hon. Shri A.V. Haridasan.  
which pronounced the order sought to be reviewed.

1/1/90

1/1/90

PS to Hon. Shri A.V. Haridasan.

Member (T.)

Hon'ble Member(T) may kindly see

pleg be puring f hup

Agar Buth Day  
5/1

Hon'ble Member (A)

11.2.89

8/1

Notice issued  
on 12.1.90  
P.T.

day be posted for  
19/1/89

1/1/90  
5/1

17.7.90

RA-87/89 in DA 119/89

Mr. Varghese Myloth for review applicant.  
Mr. VV Sidharthan, ACGSC for respondents.

ORDER

Heard the learned counsel for both the parties.

2. It appears that the applicant wants to get the ~~Order~~ reviewed, challenging the finding arrived at by the Tribunal on the disputed questions on merits. That is not permissible in an application for review. If the applicant is aggrieved by the decision taken by this Tribunal on merits, she may do<sup>so</sup> by filing an S.L.P. before the Hon'ble Supreme Court.

Hence finding no merits in the review application we dismiss the same without issuing notice to the respondents.

  
(A.V. HARIDASAN)  
JUDICIAL MEMBER

  
(N.V. KRISHNAN)  
ADMINISTRATIVE MEMBER

17.7.1990

Order communicated  
on 19.7.90

FILED

19/7

RK

D.NO. 336/92 SEC. X/A  
SUPREME COURT OF INDIA  
NEW DELHI

From :-

DATED :- 5/1/83

The Registrar (Judicial)  
Supreme Court of India  
New Delhi.

To  
The Registrar,  
Central Administrative Tribunal  
Ernakulam Bench,  
M.G. Road  
Cochin.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL/CPL.) NO. 16722/92

(Petition under Article 136 (1) of the Constitution of India  
from the judgment and order dated 17-7-90  
of the High Court of Judicature at C.A.T., Ernakulam  
Bench in RA No. 82/89 in O.A. No. 119/89)

JB  
18/1/83

K. Sebastian

PETITIONER (S)

Versus

D.R. (S)  
18/1/83

VOI SON.

RESPONDENT (S)

Sir,

I am directed to inform you that the petition above  
mentioned filed in the Supreme Court was dismissed by the  
Court on 10-12-92.

Yours faithfully  
*[Signature]*  
For Registrar

S  
18/1/83  
SO (S)  
17/01/92  
18/1/83

*[Signature]*  
Mr. BUN