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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

OA No.233/1992

Lucknow, this 14th day of February, 2001

Hon'ble Mr. Rafiquddin, Member(J)  
Hon'ble Mr. M.P. Singh, Member(A)

Smt. Kamla Singh  
T-3, Fateh Ali Ka Talab  
Jail Road, Lucknow .. Applicant

(By Mr. R.B. Pandey, Advocate)

Versus

Union of India, through

1. General Manager  
Northern Railway  
Baroda House, New Delhi
2. Chief Medical Officer  
Northern Railway, New Delhi
3. Divisional Railway Manager  
Northern Railway  
Hazratganj, Lucknow
4. CMS, Northern Railway Hospital  
Lucknow .. Respondents

(By none)

ORDER(oral)

By Mr. Rafiquddin

The applicant has filed this OA seeking direction to the respondents to determine her seniority with effect from the date of her initial appointment and regularised as Nurse Grade B in the pay scale of Rs.425-640 (Rs.1400-2600 RPS) and other consequential benefits. She further seeks direction to the respondents to release promotion order to her on the next higher post of Nurse Grade A with effect from the date her juniors have been promoted and pay arrears of salary alongwith 18% interest.

2. It is an admitted case of the parties that the applicant was appointed in Nurse Grade B as a temporary and stop gap arrangement on ad hoc basis with effect from 29.6.76. Her services subsequently

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regularised after she was declared successful by the Railway Service Commission with effect from 13.2.92.

3. The grievance of the applicant is that since services of some of her juniors namely L.D. Lal etc. who were also appointed as Nurse Grade B and whose services were regularised by the Railway Board w.e.f. 7.2.89 vide order dated 7.2.89, a copy of which is at Annexure A-2 to the OA, she should also be regularised from this date.

4. We have heard the learned counsel for the parties and perused the records.

5. Learned counsel for the applicant has urged that the services of juniors to the applicant have been regularised by the Railway Board without obtaining approval of the Railway Service Commission and respondents committed discrimination in respect of the applicant.

6. It is relevant to mention here that there is no dispute <sup>that</sup> in the recruitment to the post of Nurse Grade B through the Railway Service Commission/Railway Recruitment Board. It ~~is~~ therefore <sup>cannot be</sup> rightly concluded that the appointment of the applicant was made in accordance with the R/Rules as contended by the learned counsel for the applicant. It is clear that the applicant is seeking counting of the services rendered by her on ad hoc basis during the period from 29.6.76 to 12.2.92. It is well settled in law that services rendered by a government servant on ad hoc basis cannot be counted for determination of seniority. Learned counsel for the applicant on the other hand has referred to the judgement of the apex court in the case of

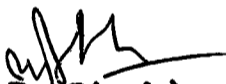
R.K.Vishwakarma & Ors. Vs. UOI 1998 SCC(L&S) 321  
on this point. In this case the apex court held that where the rules provided for relaxation of the rules, appointment made in exercise of the power of relaxation, without following the process of selection is ad hoc appointment under the rules. In our considered opinion the facts of the present case and the one relied upon (supra) are distinguishable because the appointment of the applicant was not made in exercise of powers of relaxation of the R/Rules. The appointment of the applicant was purely on ad hoc basis de hors the rules; therefore the applicant cannot claim the benefit of regularisation of her services from the date of her initial appointment as Grade B Nurse. It is further contended by the learned counsel for the applicant that since the Railway Board has regularised the services of some Grade B Nurse who were purely ad hoc and junior to the applicant and are similarly situated, the applicant should be granted the benefit of seniority, otherwise it would amount to discrimination in respect of the applicant. We are not, however, convinced with this argument, because the question of parity is positive concept and it cannot be claimed on the basis of a wrong action of the respondents. The order dated 7.2.89 of the Railway Board appears to be patently wrong having been issued against Rules. The applicant cannot however claim any benefit on the basis of such a wrong order.


7. It is worthwhile to mention that the respondents in their CA <sup>have</sup> clearly stated that the services rendered by the applicant as ad hoc Nurse Grade B

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will be counted for pensionary benefit as well as in the matter of increment per present grade, except seniority. We find no illegality in the action taken by the respondents in respect of the applicant. Learned counsel for the applicant however insists that no formal order has been issued by the respondents in this connection and suitable direction may be issued to them in the light of their averments made in the OA.

8. Accordingly we direct the respondents to grant pensionary benefits and also increment in the present grade and to pay arrears, if any, in respect of services rendered by the applicant before her regularisation. If necessary, formal orders should also be passed in a period of 3 months from the date of communication of this order. The OA is disposed of accordingly. No costs.

  
 (M.P. Singh)  
 Member(A)

  
 (Rafiquddin)  
 Member(J)

/gtv/

14.2.2001

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Hon'ble Mr. Rafiquddin, JM  
Hon'ble Mr. M.P. Singh, AM

Mr. R.B. Pandey, counsel for the applicant  
None for the respondents

Arguments heard. Order dictated on a separate sheet.

*Handwritten notes:*  
Judgment  
M.P.S.  
D  
De/10/01 /gtv/

*Signature of AM*  
AM

*Signature of JM*  
JM