

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

REGISTRATION NO. O.A. 51 of 1996

DATE OF ORDER : 25.01.2001

1. Grace Toppo, W/o Theophil Toppo , resident of Nurses Quarter, Central Institute of Psychiatry, P.O. Kanke, , District Ranchi, presently posted as Nursing Sister, Central Institute of Psychiatry, at and P.O. Kanke, Ranchi.
2. Mudit Karketta, W/o Amrit Kerketta, resident of village, Khorkha Toli, P.O. Itki, District-Ranchi, presently posted as Nursing Sister, Central Institute of Psychiatry, P.O Kanke, Ranchi.

By Advocate Shri G. Trivedi.

.....APPLICANTS.

Versus

1. Union of India, through the Secretary of Health, Ministry of Health & Family Welfare, Govt. of India, Nirman Bhawan, New Delhi.- 110011.
2. The Secretary, Ministry of Health & Family Welfare, Govt. of India, New Delhi.
3. Director General of Health Services, Govt. of India, Ministry of Health & Family Welfare, New Delhi.
4. Director & Medical Superintendent, Central Institute of Psychiatry , at and P.O. Kanke, Ranchi.
5. Mrs. Sushila Hoda, Assistant Nursing Superintendent, Central Institute of Psychiatry, at and P.O. Kanke District Ranchi.
6. Mrs. Jyoti Beck,
7. Mrs. Mariam Ekka,
8. Jayacinta Kachhap,

Asstt. Nursing Superintendent , Central Institute of Psychiatry, at and P.O. Kanke, District-Ranchi.

.....RESPONDENTS.

By Advocate Shri G.K. Agarwal, Addl. Standing Counsel

C O R A M

Hon'ble Mr. Lakshman Jha, Member (J)

Hon'ble Mr. L. Hmingliana, Member (A)

O R D E R

L. Hmingliana, Member (A):- The two applicants were initially appointed as Staff Nurses in the Central Institute of Psychiatry, Kanke, Ranchi, applicant no. 1 on 1.8.1969 and the applicant no. 2 on 26.11.1968, and they were promoted as Nursing Sisters on 10.12.1974 and 5.4.1971 respectively. It is their case that the respondents no. 5 to 8 who were their juniors in the cadre of Nursing Sisters were among ~~ten~~ Nursing Sisters who were promoted by order dated 4.2.1994 passed by the Director and Medical Superintendent of the Institute, ignoring their seniority. By this OA, they are praying for quashing the order of promotion of the respondents no. 5 to 8 and for consideration of their cases for promotion.

2. The respondents have not filed their written statement. Instead an affidavit of one Shri Madan Mohan Kumar Azad, clerk of Shri G.K. Agarwal, Addl. Standing Counsel, and the learned counsel for the respondents in the present matter, has been filed, stating that the Director in-charge of the Central Institute of Psychiatry, Kanke, Ranchi vide his letter dated 26.3.1999 informed the learned counsel Shri Agarwal that the petitioners' grievances had already been satisfied, and the

applicants have sent their application for withdrawal of their case. Copies of the letter of the Director -in-charge and of the two applicants are annexed with the affidavit.

3. The applicant no. 1 filed her rejoinder , stating that the affidavit had not been verified by the person competent to do so, and it is fit to be rejected. Nevertheless, it is stated in the rejoinder that it is totally incorrect to say that the applicants' grievances were redressed, and they sent their application for withdrawal of the present case. It is further stated that when notices for admission of the OA were issued to the respondents, Dr. Dinkar Minz, who was administrative officer of the Institute requested them to withdraw their application, assuring them that consequently due promotion would be given to them, and they agreed to the proposal of the withdrawal of the OA, provided they got their promotion. It is further stated that being ignorant of the intricacy of the law and also relying upon the assurance given by Dr. Minz and also being hopeful of getting their due promotion, they asked Dr. Minz to prepare an application as desired by him, and on 2.11.1996 they put their signatures on the two typed applications in good faith and in the hope that they would get their due

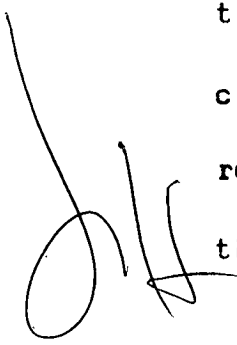
promotion without fighting litigation in the court.

4. The applicants were given promotion on ad hoc basis vide order dated 27.4.1994 (Annexure-2). It was made clear in the promotion order that their ad hoc promotion would not bestow upon them any claim for regular appointment, and the ad hoc services rendered by them would not count for seniority or for eligibility for promotion.

5. It is stated in the OA that though their promotion was only for a period of six months, it was extended till July, 1995, and they worked even for the whole of August, 1995 for want of communication from the Director of the Institute. It is admitted that their cases for promotion was considered by the Departmental Promotion Committee, but they were not promoted, because they lacked the essential eligibility condition of having diploma or certificate in nursing administration or teaching. At para 4.23, it is stated that "10 Asstt. Nursing Sisters named in the aforesaid order (impugned order dated 4.10.97) did possess the second essential qualification required for appointment by promotion to the post of Assistant Nursing Superintendent, still their cases were considered for promotion, and they were promoted as such." Then at para 4.25, it is stated that "all the 10 Nursing Sisters, who have been

promoted to the post of Assistant Nursing Superintendent whether junior to the applicants or senior to them have now been allowed to acquire the essential qualification i.e. diploma or certificate in nursing administration or teaching by taking admission in correspondence course in different institution or even in hospital itself. The case of the applicants appear to be that the 10 Nursing Superintendents who were given regular promotion by the impugned order also did not have the essential qualification of having diploma in nursing administration or certificate of teaching. It is also stated at para 4.10 that according to the recruitment rules, namely, Hospital for Mental Disease (Recruitment to Class II and Class IV posts) Rules, 1959, they were eligible for promotion to the post of Assistant Nursing Superintendent, but the eligibility condition of possessing diploma or certificate in nursing administration or teaching was inserted , when the recruitment rules was amended in 1977.

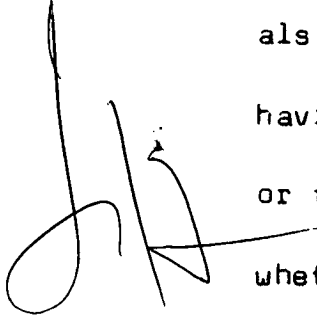
6. Their prayer in the OA, besides ^{their} challenge to the impugned order dated 4.2.1994, is for consideration of their case for promotion after relaxing the second eligibility clause for allowing them to acquire the qualification during ^{the} course of



their promotion in the post of Assistant Nursing Superintendent. An alternative prayer is for direction to the respondents to dispose of their representation.

7. Even though copies of their application for withdrawal of the OA because of the assurances given to them by the Director of the Institute has been filed with ^{the} affidavit of the clerk of the learned counsel for the respondents, there was no prayer made by the applicants' learned counsel, Shri G. Trivedi at the hearing for withdrawal of the OA. Besides, it can be plainly seen that the applicants were disappointed because the assurances which they say was given to them by the Director of the Institute, was not fulfilled. Then, no cognizance need be taken of the applications, which they admittedly signed for withdrawal of the OA, as it has not materialised.

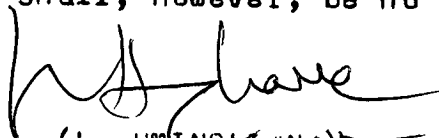
8. Because of the omission on the part of the respondents to file their written statements, and because of the ambiguity in the statements made in the OA on the question whether ^{the} 10 Nursing Sisters who were promoted by the impugned order dated 4.2.94 also did not fulfil the eligibility condition of having diploma or certificate in nursing administration or teaching, it is not possible to say for us as to whether the 10 nursing Sisters had fulfilled the

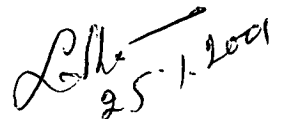


essential eligibility condition before their promotion on regular basis. In case any of the respondents no. 5 to 8 , who were among the 10 promotees, also did not possess ^{the} necessary diploma or certificate before their promotion, the cases of the applicants for promotion will also have to be considered by the respondents, and if they are fit for promotion otherwise, they will have to be given promotion from the date the juniors who also did not have the necessary qualification were promoted.

9. The application is partly allowed. In case respondents no. 5, 6, 7 and 8 or any of them were promoted by the impugned order dated 4.2.94 without their possessing diploma or certificate in nursing administration or teaching at the time of promotion, the respondents shall consider the cases of the two applicants for promotion on regular basis with effect from the date of promotion of their juniors, and they shall issue appropriate orders within six months from the date of communication of this order to them. In case the applicants are given promotion with retrospective effect from the date of promotion of their juniors, they shall also be paid all the consequential

financial benefits within a period of three months from the date of issue of the ^{ir}orders. There shall, however, be no order as to costs.


(L. HMINGLIANA) 25/1/2001
MEMBER (A)


(LAKSHMAN JHA)
MEMBER (J)

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