

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 182/88

198

~~T.A. No.~~DATE OF DECISION 1-4-1992Ms. Shirin M Karani PetitionerMr. H J Acharya Advocate for the Petitioner(s)

Versus

Union of India & Another RespondentMr. A L Kasture Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice U C Srivastava, Vice Chairman

The Hon'ble Mr. M Y Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓

MGIPRRND-12 CAT/86-3-12-86-15,000

V.C.

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESCOT ROAD; BOMBAY-400001

O.A. No. 182/88

Miss. Shirin M. Karani
Nursing Sister
J.R. Hospital
M M Marg
Bombay 400 008

..Applicant

V/s.

1. Union of India
through General Manager
Western Railway
Churchgate; Bombay-20
2. Chief Hospital Supdt.,
Jagjivan Ram Hospital
Western Railway
M M Marg; Bombay-8

Coram: Hon.Shri Justice U C Srivastava, V.C.
Hon.Shri M Y Priolkar, Member (A)

CORAM:

Shri H J Acharya
Advocate
for the applicant

Shri A L Kasture
Advocate
for the respondents

JUDGMENT:

(PER: U C Srivastava, Vice-Chairman)

DATED: 1-4-1992

By means of this application the applicant has prayed that the panel notified by the respondent by letters dated 7.1.88 and 13.1.88 for filling up the posts of Matron Gr.II be quashed and the respondents be directed to conduct selection in compliance and in conformity with the Rules and the instructions in force and to ensure fair opportunity to all eligible candidates and restore the status quo ante as prevailed on 7.1.88 be also restored. The applicant who is fully qualified was employed as Nursing Sister and is the senior most employee amongst the category of Nursing sisters.

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By letter dated 7.8.87 eighteen employees were informed to appear for the written test to be held on 1.9.87 for the post of Matron Gr.II in the scale of Rs.2000-3200. It was only about 14th of August 1987, the Matron got the said letter noted by the applicant. Applicant had applied for 10 days leave prior to the noting of the letter and hence she proceeded on leave from 15.8.87. As her cousin brother was admitted in Parsi General Hospital, who expired on 30.8.87, a note was sent to the applicant by the Matron on 31.8.87 informing her to appear for the examination on 1.9.87 as she had acknowledged the letter dated 7.8.87. In these circumstances the applicant was not given full notice and opportunity to prepare and had to appear for the test on the very next day of death of her cousin. In the meantime the applicant was promoted to the post of Matron vide order dated 28.9.87 as the applicant was the senior most employee. According to the applicant that this ad hoc promotion was made by the respondents knowing fully well that the applicant has not succeeded in the written test as was told to her. Later on in the written test she was not empanelled and others were empanelled, although the applicant was seniormost and better qualified than others and there was no adverse reports against her. Applicant made representation against the same but the representations bore no fruit and that is why she has approached the Tribunal.

The grievance on behalf of the applicant is that in case proper notice was given and the instructions in this behalf had been followed the applicant would have succeeded in the examination and in view of the matter the applicant would have got an opportunity to appear in the subsequent examination.

It is true that the applicant appeared for the examination on 1.9.1987 and one month notice as provided in the instructions, a copy of which has been annexed, has not been given to her. It may be that she could not fully prepare for the written test during this period and it appears that one month time permissible so that she can get sufficient opportunity to prepare herself for examination was not given, but the applicant having appeared for the examination without protesting cannot ~~now~~ take the plea that she was not given one month time merely because the Vigilance has found that certain irregularities have been committed in the ^{said} examination and marks have been changed. It cannot be said that the irregularities were committed as ~~has been~~ stated by the applicant, who is not very clear about it and has expressed her view of doubt. The applicant has placed on record certain documents and instructions regarding supplementary examination. It may be the respondents have not taken the supplementary examination for some reason or other. As the applicant has appeared in the said examination it is no longer possible for her to make a complaint against them in the absence of any clear averment regarding prejudice.

It is still open to the respondents to consider this question, as the applicant could not get sufficient time herself and appear in the examination and during this period she was promoted on ad hoc basis for three months and subsequently she has been promoted and no supplementary examination was held to give her opportunity to appear once again, whether in these circumstances it would be desirable to consider the plea of the applicant for promoting her with effect from an earlier date when others were promoted, and give her notional pay fixation. But for the above observation the applicatio

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is otherwise dismissed with no order as to
costs.



(M Y PRIOLKAR)
MEMBER (A)



(U C SRIVASTAVA)
VICE CHAIRMAN