

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA No. 553 of 2005**

Date of order : *16th December* 2010

C O R A M

**Hon'ble Mr. Justice Anwar Ahmad, Member [Judicial]
Hon'ble Mr. Sudhir Kumar, Member[Administrative]**

Chanchla Kumari, W/o Shri Jai Shankar Prasad, R/o Ward No. 02, Shri Krishnapur, Kishunpur, Samastipur presently posted as Nursing Sister, Divisional Railway Hospital, Samastipur.

..... **Applicant.**

By Shri S.K.Thakur, Advocate

Vrs.

1. The Union of India through the General Manager, East Central Railway, Gorakhpur.
2. The Divisional Rail Manager [Personnel], Samastipur Division [East Central Railway], Samastipur.
3. Sr. Personnel Officer [Recruitment], East Central Railway, Gorakhpur.
4. Chief Medical Officer, Railway, Samastipur.
5. Krishna Kumari, D/o Sh. Ramji Choudhary presently posted as Staff Nurse, Divisional Railway Hospital, Samastipur.

..... **Respondents.**

By Shri R.N.Choudhary, ASC
Shri S.R.Saran for private respondent.

O R D E R

Justice Anwar Ahmad, Member [Judicial] : - This OA has been filed by Chanchla Kumari, Nursing Sister, Divisional Railway Hospital, Samastipur for the following reliefs :

“[i] For quashing of the order issued by the Divisional Rail Manager [Personnel], Samastipur [Respondent No.2] vide order bearing no. E/255 dated 18.07.2005, Annexure-A/10, whereby and whereunder the seniority



list of Staff Nurse of Samastipur Division in the pay scale of Rs. 5000-8000 published vide letter no. E/255/4/Medical/ dated 01.04.2005 of Respondent No.2 has been partially modified to the extent that the name of the applicant has been shown at serial no.2 and one Krishna Kumari has been shown at Serial No.1 and thereafter restore the seniority of the applicant over Krishna Kumari, i.e. to its original place at serial no.1.

[ii] Consequent upon quashing of the order bearing Revised Letter No.E/255/4/Medical/ dated 18.07.2005 and restoration of the seniority of the applicant to its original place, also quash order issued by the Respondent No.2 contained in Office Order No. 216 dated 1/3.8.2005 Annexure-A/11 whereby and whereunder order has been issued reverting the applicant from the post of Nursing Sister to the post of Staff Nurse.

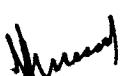
[iii] For a direction to the Respondents not to interfere in the smooth working of the applicant on the post of Nursing Sister.

[iv] Any other relief[s] as your Lordships deem fit and proper.

[v] For any other consequential benefit[s] be allowed.

[vi] Cost of litigation be awarded."

2. The learned counsel for the applicant submits that for appointment on the post of Staff Nurse pursuant to selection made by the Railway Recruitment Board, Muzaffarpur, a panel of successful candidates was prepared, vide panel No. RRB No.2-3/96-97/3/Staff Nurse dated 09.09.1999, wherein the applicant was placed at Sl. No. 5 and one Krishna Kumari at Sl. No. 4. Appointment letter was issued to successful candidates from the said panel. However, appointment was made subject to being declared medically fit besides other conditions as mentioned in the appointment letter [Annexure-A/1]. After medical test, a list of 10 successful candidates found medically fit was prepared on 28.10.1999 [Annexure-A/2] The applicant was found medically fit and he was placed at Sl. No.3 of the successful list. He was posted at Samastipur Division. He submits that Krishna Kumari was



not found medically fit, hence her name did not find place in the list of successful candidates. The applicant was posted at Samastipur Railway Hospital under order dated 12.11.1999 [Annexure-A/3], and she submitted her joining report there. He submits that Krishna Kumari thereafter submitted a representation for re-examination of the medical fitness test, and in the re-examination, she was declared fit, vide certificate dated 16.12.1999, and she was posted in Samastipur Division under order dated 31.12.1999 [Annexure-A/4]. She joined there. The learned counsel submits that the first provisional seniority list was published on 01.04.2002 [Annexure-A/5] wherein the applicant was shown at Sl. No.6 with the date of appointment as 12.11.1999 and Krishna Kumari at Sl. No.7 with the date of appointment as 24.11.1999. Krishna Kumari raised no objection to this seniority list. He submitted that seniority list was again published on 01.04.2005 [Annexure-A/6] showing the applicant at Sl. No.1 and Krishna Kumari at Sl. No.2. He submits that Krishna Kumari again raised an objection to this seniority list. He further submits that the applicant being senior to Krishna Kumari was called for interview for promotion to the post of Nursing Sister under letter dated 25.05.2005 and she was declared successful [Annexure-A/7]. She was granted promotion to the post of Nursing Sister under order dated 01.06.2005 [Annexure-A/8]. Her salary was fixed in the pay scale of Nursing Sister [Annexure-A/9].

3. The learned counsel for the applicant further submits that to the utter surprise of the applicant, DRM [P], Samastipur issued an order dated 18.07.2005 [Annexure-A/10], whereby the seniority list of Staff Nurse dated 01.04.2005 was partially modified to the extent that the applicant was now shown junior to Krishna Kumari and she was shown at Sl. No.2 whereas Krishna Kumari was shown at Sl. No. 1. He submits that consequent upon the modification in the seniority list, the applicant, under order dated 03.08.2005 [Annexure-A/11], was reverted from the post of Nursing Staff to the post of Staff Nurse. He submits that being aggrieved by the order of partial modification in the seniority list and reversion,



the applicant has filed the present OA to set aside the orders. He submits that seniority is to be counted from the date of initial appointment and in the instant case, the applicant having been found medically fit, was appointed and posted in Samastipur Division under letter dated 28.10.1999. She joined the post of Staff Nurse on 04.11.1999. He submits that Krishna Kumari on the other hand was initially not found medically fit but later on, on her request, she was re-examined and declared medically fit. She was, thereafter, issued appointment letter on 21.11.1999. Thus, she became junior to the applicant and she is to be placed at the bottom of the merit list. He submits that the first seniority list was published on 01.04.2002 showing the applicant at Sl. No.6 and Krishna Kumari at Sl. No.7 but Krishna Kumari made no objection. He submits that second seniority list was published on 01.04.2005 showing the applicant at Sl. No. 1 and Krishna Kumari at Sl. No. 2. He submits that with the passage of time, the seniority list once finalized became final and binding on both the parties. In support of his contention, he refers to the decision given in **Jagjit Singh vs. State of Bihar**, reported in **2003 Vol. 3 PLJR 340**, Bishwanath Dubey vs. State of Bihar, 2003 [3] PLJR page 205 and **Pradeep Kumar Choudhary vs. State of Bihar**, 2003 [4] PLJR page 114.

4. The learned counsel for the applicant further submits that it is well settled principle of law that prior to revision of seniority list, even if redetermination has been done to correct an error, the affected person should be given show cause as it affects his civil right but no show cause has been issued in this case and the respondent authorities, therefore, acted in an arbitrary manner and in violation of principles of natural justice in revising the seniority list, adversely affecting the civil right of the applicant, and reverting to the post of Staff Nurse from Nursing Sister.

5. The learned counsel for the applicant on the basis of the aforesaid submissions asserts that the OA be allowed and the relief be granted.

6. The learned counsel for the respondents on the other hand submits that



admittedly in the panel of successful candidates Smt. Krishna Kumari figured at Sl. No. 4 and the applicant Chanchla Kumari at Sl. No. 5 and thus Krishna Kumari was senior to Chanchla Kumari on the basis of merit order. He submits that Krishna Kumari could not join with Chanchla Kumari as she was not fit in medical test but subsequently she was found medically fit in the re-medical test held on her request and she was allowed to join. He further submits that inadvertently and under the wrong notion, Krishna Kumari was placed below the applicant Chanchla Kumari in the seniority list and due to her position in the seniority list, Chanchla Kumari was promoted to the post of Nursing Sister denying the claim of Krishna Kumari. He submits that on the representation of Krishna Kumari, the matter was considered and it was found that a mistake has been committed. So the seniority position was corrected in view of Rule 303[b] of Indian Railway Establishment Manual Vol.I which reads as under :-

“The seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under :-

[b] In the case of candidate who do not have to undergo any training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority.”

7. He, therefore, submits that the impugned orders were accordingly passed and no illegality was committed. He, therefore, submits that the OA be dismissed.

8. The learned counsel for the private respondents supporting the case of the official respondents submits that the private respondent, when she came to know about her seniority position, she filed a representation and on her representation the impugned orders were passed in accordance with law. He submits that there is no illegality in the said orders.

9. The learned counsel for the applicant in reply submits that Rule 305 [b] will apply in the present case. He submits that Rule 305 provide as under :-

“When, however, a candidate whose seniority is to be determined under paragraphs 303 and 304 above cannot join duty within a reasonable time after the receipt of orders of appointment, the appointing authority may



determine his seniority by placing him below all the candidates selected at the same examination/selection, who have joined within the period allowed for reporting to duty or even below candidates selected at subsequent examination/selection before him.” [Annexure-A/13].

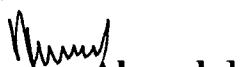
10. Considered the facts and circumstances of the case and rival submissions made. It is settled principle of law that for down-grading a person in the seniority list and for reverting the person to a lower grade, he must be given a show-cause, and in the present case, no show case was given to the applicant. Thus, there is violation of the principles of natural justice on the part of the respondents. Hence the impugned orders is bad in law and fit to be set aside..

11. In the result, the impugned orders are set aside with the directions to the respondents to give show cause notice to the applicant as to why her seniority be not disturbed and she be not reverted from Nursing Staff to Staff Nurse, and also to give her a personal hearing, and thereafter to pass appropriate order in accordance with law.

12. Accordingly, the OA is disposed of. No costs.



[Sudhir Kumar]
Member [Administrative]
mps.



[Anwar Ahmad]
Member [Judicial]