

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application Nos 230, 231 & 241/92.

~~Don't know the location of the~~

DATE OF DECISION

2/3/93

Mrs. Milan Parkar & Ors. Petitioner

Mr. Basil Menezes.

Advocate for the Petitioners

Versus

~~Union of~~ Central Hospital, Tiska & Ors. Respondent

Mr. G. R. Sharma.

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri S.K. Dhaon, Vice-Chairman,

The Hon'ble ~~Shri~~ Ms. Usha Savara, 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 ?

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(S.K. DHAON)
VICE-CHAIRMAN.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH,
BOMBAY.

1. Original Application No.230/92.

Mrs. Milan Parkar.

... Applicant.

V/s.

Central Hospital,
Tiska - 403 406,
Usgaon - Goa.

... Respondent.

2. Original Application No.231/92.

Smt. Lalita Shirodkar.

... Applicant.

V/s.

Central Hospital, Tiska.

... Respondent.

3. Original Application No.241/92.

Mrs. Savita Bodke.

... Applicant.

V/s.

Central Hospital, Tiska.

... Respondent.

Coram: Hon'ble Vice-Chairman, Shri S.K.Dhaon,
Hon'ble Member(A), Ms. Usha Savara.

Appearances:-

Applicant by Mr.Basil Menezes.
Respondent by Mr.G.R.Sharma.

JUDGMENT:-

[Per Shri S.K.Dhaon, Vice-Chairman]

Dated: 2/3/93

In this bunch of applications, the applicants are trained Auxiliary Nurse Midwife (hereafter referred to as, ANM) having completed training for a period of two years and registered with the Maharashtra Nursing Council. Their grievance is that they are neither being treated as Staff Nurse nor are they been paid the salary and allowances payable to a staff nurse although they are discharging the duties and functions of a staff nurse. The controversy raised in these applications is common. They have been heard together and they can be conveniently disposed of by a common Judgment. For the purpose

eliciting
of, ~~illustrating~~ the necessary facts we are treating
Original Application No.230/92 (Smt.Milan Parkar nee
Kum.Milan Verenkar) V/s. The Welfare Commissioner, Labour
Welfare Organisation, Government of India & Ors) as ^{the} ~~a~~ leading
case.

2. The material ~~leading~~ facts are these: On or
before 21st June, 1975 the applicant was working in
I.D.Hospital, Ponda, Goa in lieu of Staff Nurse since
7th September, 1968. On 16.4.1975 the Central Hospital,
Tiska called the applicant to an interview for the post
of Staff Nurse, she was not selected. On 7th February, 1975
the Assistant Welfare Commissioner, Labour Welfare Organisation
issued an advertisement inviting applications for the post
of staff nurses. She was called for an interview on
6th May, 1975. On 21st June, 1975 an order was issued by
the Welfare Commissioner appointing her as a staff nurse.
She commenced working as a staff nurse immediately after
and continued working as such
the said date without any interruption and with an unblemished
record. On 8.3.1982 an order purporting to be under
~~Rule~~ Rule 5 of the Central Service (Temporary Service) Rule,
1965 was passed by the Welfare Commissioner terminating
the services of ~~the~~ applicant as a staff nurse. On the
same day, an order was passed by the Welfare Commissioner
appointing her as an ANM, this order was served upon her
on the same day at 6.45 p.m. ~~She~~ She received it and also
made an endorsement thereon that she accepted the offer.
On 4.5.1982 she made a representation to the Secretary,
Ministry of Labour, Government of India praying that her
status as a staff nurse may be restored after setting aside
the order of termination of services as a staff nurse
passed by the Welfare Commissioner. Similar, representation

was made on 20.12.1983. On 25.1.1984 she addressed an appeal to the Hon'ble Member of Parliament of Panaji, Goa. Having failed to get any redress, on 8.1.1985 she made another representation to the Welfare Commissioner, but in vain. On 16/23.5.1990 the Welfare Commissioner issued an Office Order No.400/90 by means of which he purported to circulate an order of confirmation. This order contained a statement showing the details of the staff who were recommended for declaration of satisfactory confirmation/probation. The applicant was described therein as ANM, her date of appointment on regular basis was shown as 9.3.1982, the date on which she had satisfactorily completed the period of probation was shown as 8.3.1984 and the date of confirmation was shown as 9.3.1985. The said communication of the Welfare Commissioner was received by the applicant on 24.1.1991. She came to the Tribunal by means of this application on 26.8.1991.

3. We shall now briefly refer to the contents of the documents filed, along with the application. Exhibit 'A' is a certificate dt. 2.5.1975 issued by the Medical Officer of the I.D.Hospital, Ponda, Goa to the effect that the applicant had been working in the Hospital in lieu of staff nurse since 7.9.1968 and her service book indicated that she was in this profession for more than 6 years, during her career in this hospital she had proved herself as an efficient and dutiful nurse. By a communication issued some time before 6.5.1978, the Accounts Officer, an official of Iron & Manganese Ore Mines Welfare Organisation, Goa calling upon the applicant to appear for the interview of staff nurse on 6.5.1978 with her original certificates of qualification, experience, date of birth etc. Exhibit 'B'

is an order of appointment, a reference to which has already been made earlier. However, the relevant portion of the order may be extracted here:

"The undermentioned persons are hereby appointed in a temporary capacity in respect of posts mentioned against their"

We find the name of the applicant and the designation is Staff Nurse. Exhibit 'F' is a certificate dt.21.1.1980 issued by Dr.B.T.S.Kakodkar, M.S. (Surgeon Specialist), Medical Officer certifying that the applicant was working under him in the Hospital as Staff Nurse since May, 1975 to January, 1980. She knows all the major and minor procedures in Nursing and can manage the routine and emergency cases both indoor and outdoor quite efficiently. Though she has undergone only ANM Course she is equally efficient like a Staff Nurse which she has proved during this period.

4. We shall now refer to the documentary, as well as, oral evidence produced in the case to show that the applicant continued to perform functions and duties of a Staff Nurse even after the order dt. 8.3.1982. Ex. 'G' is the dated 24.1.1984 certificate of Dr.M.Thippeswamy, M.D. D.G.O., Medical Officer-in-charge of the Central Hospital certifying that even though the applicant is working as an ANM, she is doing all the duties of a Staff Nurse at present. The applicant produced before us at the time of hearing a certificate issued to her by one Dr.R.N.Sahoo, Chief Medical Officer, Central Hospital on 22.12.1992. This Doctor certified that the applicant has been discharging efficiently her day to day duty in the hospital care in every section i.e. Obstetrics-Gynec, Surgery and Medicine, and she had also been attached to Casualty and proved her efficiency in emergency care.

On 8.2.1993

5. / We heard the matter for quite some time. We adjourned the hearing to 10.2.1993 with a direction to Shri G.R.Sharma, learned Counsel for the respondents, to file an affidavit of the Chief Medical Officer concerned stating therein as to what is the nature of work that is really being taken from the applicants. On 10.2.1993 an affidavit of Dr.P.K.Ananda Dasan, Chief Medical Officer, Central Hospital, Tiska was filed. We perused the said affidavit. In it, he had narrated in detail the work and function of a staff nurse, as well as the work and function of an ANM. He had also annexed to the affidavit a list of the duties of Staff Nurse. However, in the affidavit there was not even a whisper as to what was the nature of work which was really being taken from the applicant. In the circumstances, we called upon Dr.P.K.Ananda Dasan, who was present in the Court Room, to enter the witness-box. We confronted him with the affidavit issued by Dr.R.N.Sahoo, who described himself as Chief Medical Officer, Central Hospital, Tiska. The witness stated that the certificate produced before us carried the signature of Dr.R.N.Sahoo, he also admitted that the hospital was taking the work, which was referred to in the certificate of Dr.R.N.Sahoo, from the applicant (Smt.Milan Parkar). However, Dr.P.K.Ananda Dasan ~~xxx~~ stated that the applicants were performing the duties referred to in the certificate of Dr.R.N.Sahoo under the direction of staff nurse and they were working under the staff nurse. He also stated that, in a given situation, the ANMs are required to perform night duties and often the ANMs are to perform night duties all alone when a staff nurse is not available. He clarified that ANMs are required to perform night duties even in the absence of staff nurse when the situation warrants.

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6. In the reply filed on behalf of the respondents, the material averments are these: It is denied that the functions and duties of ANMs are similar to those of staff nurse, the posts of ANMs and Staff Nurse are different carrying ^{different} duties with different pay scales.

7. The case set out by the applicant that, even after ~~the~~ order dt. 8.3.1982 removing her from the post of staff nurse and after her appointment as ANM she continued to perform the functions and duties of a staff nurse in the Central Hospital stands amply corroborated by the documentary evidence referred to above. We may remember that it is the admitted case of the parties that from 21.6.1975 onwards and till 8.3.1982 the applicant continued to perform the duties and do the work of a staff nurse and the respondents consciously took the work of a staff nurse from her. We are satisfied, that inspite of the appointment of the applicant as an ANM the work and duties of a staff nurse was taken from her by the respondents. Admittedly, after 8.3.1982, the applicant was to be in a lower grade and, therefore, admittedly she was not paid the emoluments which she was getting as a staff nurse prior to 8.3.1982. Justice and equity demands that the respondents should compensate the applicant for the work taken by them from her.

8. To recapitulate, the applicant was working in the I.D.Hospital, Ponda, Goa since 7.9.1968 in lieu of a staff nurse. The respondents once rejected her for being appointed as a staff nurse. Later on, they revised their opinion and gave her an appointment on 21.6.1975 as a staff nurse presumably after looking into the certificates produced by her at the time of interview. The respondents knew that the applicant would lose her seniority etc. and also the advantage of length of service in the I.D.Hospital, Ponda where she commenced working w.e.f. 7.9.1968.

9. We may now deal with the plea of limitation raised on behalf of the respondents and upon which a great deal of argument was advanced ^{at the Bar.} ~~on behalf of the respondents~~. In the rejoinder affidavit filed on behalf of the applicant it is stated that an order in the nature of office order No.400/90 was issued on 12/23.5.1990 by the Welfare Commissioner for the first time during the career of the applicant. Be that as it may, it is averred by the applicant, and this averment is corroborated by ^{a recital in the} ~~the~~ application sent by her on 25.1.1991 to the Welfare Commissioner, that the said order No.400/90 was received by the applicant on 24.1.1991. We see no reason to disbelieve the assertion that this communication was in fact received by the applicant on 24.1.1991. We have already stated that this application was presented in this Tribunal on 26.8.1991.

10. The cause of action for filing an application under sec.19 before this Tribunal surely accrued to the applicant upon the publication of the afore mentioned statement of details as annexed to the afore-mentioned communication of the Welfare Commissioner dt.16/23.5.1990. Therefore, there can be no hesitation in taking the view that this application has been presented well within time.

11. To the reply filed by the respondents, a photo stat copy of a notification dt. 19.10.1967 has been filed at Ex-R-2. By means of this notification the Iron Ore Mines Labour Welfare Fund (Class III and IV posts) Recruitment Rules, 1967 purported to have been framed under Article 309 of the Constitution by the President were published. The schedule annexed to the rules contains a classification, scale of pay, etc. of some posts one of them being staff nurse. The qualification mentioned for the appointment of staff nurse is that a candidate must be a registered nurse and and Mid-wife with two years experience. Rule 5 of the rules empowers the Central Government to order, for reasons to be recorded in writing, the relaxation in any

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Curiously enough, the service of the applicant as a staff nurse was terminated on 8.3.1982 and on the same day an appointment was given to her as an ANM. This was treated to be a fresh appointment. In this background, we may examine the statement showing the details of staff who are recommended for declaration of Satisfactory completion of Probation/Confirmation annexed to the communication of the Welfare Commissioner dt.16/23.5.1990. A perusal of this document shows that the applicant and others similarly situated were not treated fairly. The date of the regular appointment of the applicant was shown as 9.3.1982, the date following the service of the appointment letter upon her as an ANM. In any view of the matter, the applicant should have been deemed to have been appointed as ANM on 21.5.1975 and thereafter the date of completion of the period of probation and the date of confirmation should have been fixed accordingly. We are saying so, because it is the respondents' own case, in the reply filed, that the reason for passing the order on 8.3.1982, terminating the services of the applicant as a staff nurse, was that on 21.6.1975, when she was appointed as a staff nurse, a mistake had been committed and, therefore, the order dt.8.3.1982 was passed to rectify the mistake. Whether a mistake was committed or not is a different matter. Even if a mistake had been committed, facts and circumstances of the case indicate that the respondents were feeling the shortage of staff nurses and that is why they appointed the applicant and others as staff nurses, inspite of the fact that they had earlier declined to give them such appointments. There was, therefore, no difficulty in the way of the respondents in treating 21.6.75 as the date of appointment of the applicant and others /
as ANMs.

of the provisions of the rules in respect of any class, category of persons. The case set out by the respondents is that the applicant was appointed as a staff nurse in dis-regard of the qualification laid down in the rules. It has to be remembered that the applicant was a trained ANM registered with the Maharashtra Nursing Council after completing training for a period of two years. It has also to be remembered that in 1975 when she was appointed as a staff nurse she already had an experience of working in the I.D.Hospital, Ponda, Goa in lieu of a staff nurse since 7.9.1968. These facts will be presumed to be in the knowledge of the authority which interviewed the applicant and also of the authority which issued the order of appointment as a staff nurse. It should also be remembered that the respondents, according to their own case, realised their mistake after about 7 years. The respondents have pleaded that it would be unjust to those who fulfilled the requisite qualification at the time of appointment as a staff nurse, if we issue a direction that the applicants should be treated to have been legally appointed as a staff nurse. It has been emphasised by the respondents that such a direction will have impact on the staff nurses, in the employment of the Government of India, all over the Country.

12. Having given a thoughtful consideration to the matter, we feel that any direction that the applicants should be treated to have been validly appointed as staff nurse will not only result in injustice to the regularly appointed staff nurses, but may also result in the infringement of Article 16 of the Constitution. The rules as contained in the notification dt. 19.11.1957 do not talk about ANM. Therefore Staff ^{nurses} constitute a class distinct and separate from ANMs. Yet,

the respondents, in the facts and circumstances of the instant case, cannot escape the liability of paying to the applicants the same emoluments etc. which were paid and are being paid to staff nurses.

13. In Writ Petition No.69/B/82 (Smt.Usha Gopi Lotlikar alias Usha V.Shanbag V/s. The Welfare Commissioner and others, ^{by} decided on 6th August, 1984 /a Division Bench of the High Court of Bombay, the facts were these: The petitioner there an ANM was offered appointment of a staff nurse. Like the applicants, she was served with an order on 8.2.1982 terminating her services on the footing that she was a temporary government servant. She immediately challenged the order of termination by means of a writ petition, she declined to accept the appointment of an ANM, she therefore ceased to be in the service of the respondents w.e.f. 8.3.82, her writ petition was eventually dismissed on the ground that she was not qualified to be appointed as a staff nurse. ^{case} This is not opposite and, therefore, the respondents cannot derive any benefit from it. Unlike the instant case, the petitioner there had not done the work ~~of~~ and performed the duties of a staff nurse after being appointed as ANM. On the risk of repetition, we reiterate that the petitioner before the High Court ceased to be in employment after 8.3.1982.

14. This application succeeds in part. The statement showing the details of Staff who are recommended for declaration of Satisfactory completion of Probation/ Confirmation (Annexure -A) to the office order No.400/90 dt. 16/23.5.1990 of the Welfare Commissioner is quashed

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insofar as it pertains to the applicants. The respondents are directed to treat the applicants as having been appointed as ANM w.e.f. 21.6.1975. That date should be considered to be the date of appointment of the applicants on regular basis and the respondents shall accordingly fix the date of the satisfactory completion of period of probation and the date of confirmation. The respondents will also re-fix their salary on 9.3.82 after giving them notional increments in the grade of ANM. The respondents shall compute upto date the emoluments payable to the applicants on the footing that w.e.f. 9.3.1982 they were entitled to be paid the same emoluments which were payable to staff nurses as they were performing the same duties. The respondents shall continue to pay to the applicants the emoluments payable to a staff nurse so long as they take the work of a staff nurse from them (the applicants). The respondents shall carry out these directions within a period of four months from the date of the production of a certified copy of this order before the relevant authorities by any one of the applicants. The applicants are permitted to transmit a certified copy of this order to the relevant authority under Registered Post A.D.

15. There shall be no order as to costs.

Usha Savara
(Usha Savara) 2/3/93
Member(A)

S.K. Dhaon
(S.K. Dhaon)
Vice Chairman

trk/-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH. BOMBAY

- (1) RA No.31/93 in
Regn.No.OA 241/92. Date of decision: 23/8/93
- Central Hospital ... Petitioners
vs.
Mrs.Savita Bodke .. Respondent
- (2) RA No.32/93 in
OA No.231/92
- Central Hospital .. Petitioners
vs.
Mrs.Lalita Shirodkar .. Respondents
- (3) RA No.33/93 in
OA No.230/92
- Central Hospital ... Petitioners
vs.
Mrs.Milan Parkar ... Respondent

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON. VICE CHAIRMAN (J)
THE HON'BLE MS.USHA SAVARA.MEMBER(A)

ORDER

(Passed by Hon'ble Mr. Justice S.K.
Dhaon, Vice Chairman(J) in circulation)


These Review Applications are directed against the same order passed by us and, therefore, are being disposed of by a common order. These Review Applications have been presented by the Union of India.

2. OA Nos.241/92. 231/92 & 230/92 raised the same controversy. They were heard together and were disposed of by a common order on 2.3.93.

3. The contents of the three Review Applications are the same. We have read and re-read the order dated 2.3.93 i.e. the order under review. We are unable to discern any error apparent on the face of the record in it. Our power of review is circumscribed by the provisions of Order 47 Rule 1 of the CPC.

4. The Review Applications are rejected.

5. We are disposing of these Review Applications by adopting the process of circulation which is permissible under the Rules.


(USHA SAVARA)
MEMBER(A)


(S.K. DHAON)
VICE CHAIRMAN(J)

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