

CENTRAL ADMINISTRATIVE TRIBUNAL: MUMBAI BENCH

ORIGINAL APPLICATION NUMBER 381 OF 1994.

WEDNESDAY, THIS THE 30TH DAY OF JUNE, 1999.

Shri Justice S.Venkataraman, .. Vice-Chairman.

Shri S.K.Ghosal, .. Member(A).

Miss Elizabeth V.Chacko,
204, Sneh Kunj Co-Op.Hsg.Scy.
Chakala, Andheri (E)
Bombay, C/o G.S.Walia,
Advocate, High Court,
16, Maharashtra Bhavan,
Bora Masjid Street, Fort,
Bombay-400 001.

.. Applicant.

(By Advocate Shri G.S.Walia)

v.

1. Union of India
through Controller, B.A.R.C.,
Trombay, Bombay-400 085.
2. Head, Personnel Division,
B.A.R.C., Trombay,
Bombay-400 085.
3. Head, Medical Division,
B.A.R.C. Hospital,
Anushakti Nagar,
Bombay-400 094.

.. Respondents.

(By Standing Counsel Shri R.K.Shetty)

O R D E R

Justice S.Venkataraman, Vice-Chairman:-

Previously Nurse, Hospital ('H') and Nurse, Dispensary

('D') were two separate cadres. The post of Nurse (H) had the scale of Rs.425-640 while the post of Nurse (D) had the pay scale of Rs.455-700. ~~That~~ the volunteers from Nurse (H) were being sent on promotion to the cadre of Nurse (D). As per recommendations of a committee constituted in 1987, the policy was changed and both the cadres of Nurse (H) and Nurse (D) were brought under a technical cadre and the distinction between the two cadres was done away with. A common cadre of Nurse was created with liability of transfer from Hospital to Dispensary and vice-versa. Under that scheme, the promotion to the next higher scale was merit based and not vacancy based. A Nurse after completing the prescribed number of years of service in one grade became eligible for being considered for promotion on the basis of merit to the next higher scale irrespective of the existence of vacancy. For such promotion, seniority was not relevant. Nurses were refixed in the new grade after the scheme came into force.

2. The applicant's grievance in this application is that her juniors who had opted to go as Nurses (D) had become seniors to her and the policy has ~~not~~ affected her seniority in Nurse (H) cadre and that she has to now work under her juniors. It is for this reason, the applicant contends that the scheme by which the two cadres were merged is violative of Articles 14 and 16 of the Constitution.

3. The applicant was transferred to a Dispensary and she challenged that transfer in O.A.No.76 of 1993. According to the applicant she was not aware of the change of policy and

h

that it was only when the respondents in that case referred to this change of policy she became aware of it. That application filed by her challenging the transfer was dismissed. She has now filed this application challenging the letter dated 14-7-1987 by which the committee constituted for that purpose suggested reclassification of the posts. She has also sought for a declaration that she is entitled to seek her promotion in the Hospital cadre and that she cannot be shifted to Dispensary cadre. As a consequence of quashing the letter dated 14-7-1987 she has also sought for a declaration that the order dated 5-1-1993 transferring her to Dispensary is unenforceable.

4. The respondents have taken up the pleas that the present application is time barred, that the applicant was aware of the reclassification of the posts and she had been informed about the new designation given to her in 1989 itself as per Annexure-R1, that she also got promotion to the cadre of Nurse (C) under the new scheme on 28-4-1989 and that the present application challenging the reclassification of posts is barred by time. They have also contended that the present application is barred by res judicata also as in the earlier application her prayer for quashing her transfer was dismissed.

5. On the question of limitation, the learned counsel for the applicant contended that there can be no limitation to challenge the constitutional validity of a law and that as the applicant is now challenging the validity of the reclassification order, the application cannot be said to be barred by time. It is by means of an administrative order the reclassification

2

of posts has been done. We do not think that the prayer of the applicant for quashing that reclassification order can be treated as a prayer for declaring ^{a law} ~~it~~ as unconstitutional. The applicant must have come to know that there has been such reclassification of Nurse (H) and Nurse (D) inasmuch as she has been informed by the respondents on 20-3-1989 that consequent on reclassification of posts ^{by} all Nurses and Pharmacists from Auxiliary to Technical with effect from 12-4-1988, the post of Nurse Grade-I held by her has been redesignated as Nurse (B). That memorandum also refers to the order dated 10-11-1988. Her pay has also been refixed. That apart, in 1989 itself she has been given promotion to Nurse-C on the basis of her merit. The applicant having taken the benefit of the scheme and having kept quiet till she was transferred to a Dispensary, ~~she~~ cannot now turn round and question the legality of the reclassification. The application is barred by time as well as delay and laches.

6. Admittedly, the applicant had challenged her transfer order in the earlier application. If she was aggrieved by the reclassification memo she ought to have challenged the same in that application.

7. Though she has alleged that she came to know ^{of} the reclassification of the post only when the respondents filed their reply in that case, we have already pointed out that she must have been aware of it even earlier. At any rate even when that application was pending, when she came to know about the reclassification of the post which permitted transfer of a Nurse from Hospital to Dispensary, she could have challenged the same

in that application. When her transfer order has been upheld and it has become final, she cannot now try to challenge the very same transfer under the pretext of challenging the reclassification itself. It is obvious, that the applicant has resorted to this method of challenging the reclassification only to get over the transfer order.

8. The learned counsel for the applicant has relied on the decision of the Supreme Court in OM PRAKASH SHARMA AND OTHERS v. UNION OF INDIA AND OTHERS [1985 SCC (L & S) 854] and JAGDISH PRASAD SINHA AND OTHERS v. BHAGWAT PRASAD AND OTHERS [(1989)3 SCC 610] in support of his contention that the merger of two cadres or bifurcation of the two cadres which would have adverse effect on the seniority of the employees were unconstitutional. In Om Prakash Sharma's case there was a common seniority list for members of the staff of 3 departments. In that list the appellants were seniors to the respondents. Subsequently, the 3 departments separated, each ~~other~~ having separate seniority lists and one of the departments merged with a fourth department. Respondents belonging to the merged department got accelerated promotions on account of availability of vacancies there. But, after 23 years the original position of three departments with combined seniority was restored. The respondents consequently became seniors to the appellants. It was held that the merger was violative of Article 14 and that the respondents must get their original place qua the appellants and as such rank below the appellants. In the other case, the Supreme Court has approved the finding of the High Court that those who ^{have} together and fell in line to proceed further have to be provided all

opportunities in respect of their avenues of promotion alike without breaking that order, so that one who ranks higher in the grade may not go down in due course of service.

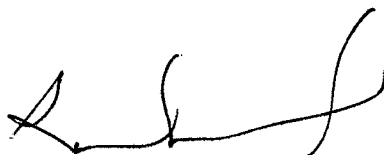
9. The above decisions have no application to the facts of this case. Admittedly the cadre of Nurse (D) was having higher scale than the cadre of Nurse (H). It is not ~~a~~ case where some Nurses in the hospital cadre were posted as Nurses Dispensary by the administration and ^{on account of} ~~while~~ merger of two cadres those Nurses (D) would become seniors to the Nurses (H). This is a case where options were called for from all the Nurses (H) to go over to the cadre of Nurses (D) and it is only those persons who opted to go to that cadre were promoted and those who did not want to go to that cadre remained in the cadre of Nurse (H). The applicant also knowing fully well that the post of Nurse (D) was a higher post and promotional post did not choose to go ^{to} that cadre and preferred to stay as Nurse (H). She herself has stated in her application ^{about} ~~as to~~ the advantages which she would have lost if she had gone to the cadre of Nurse (D). If a Nurse (H) on her ^{own} ~~own~~ vilitation choses to remain in the lower scale and if her juniors who were prepared to give up certain advantages and go to the other cadre and were promoted to that cadre, the applicant cannot now put forth a grievance that Nurse (H) cadre should be given ^{original} seniority ^{after the} ~~on account of~~ the merger.

10. The Apex Court has held in several cases that the question of merging cadres or bifurcating cadres is the policy decision and the Tribunals cannot interfere with such decisions unless such change in policy is arbitrary or it takes away any

h

vested right of the employees. In the instant case, this classification has been done after the committee was constituted for that purpose and after the committee submitted a report suggesting the merger of the two cadres into one technical cadre under a new scheme which also provided for merit based advancement. We do not find anything arbitrary in the scheme which has been challenged. No vested right has also been taken away by the scheme.

11. After careful consideration of the contentions urged by the learned counsel for the applicant and the material on record, we do not find any merit in this application. The application is, accordingly, dismissed. No costs.



(S.K.GHOSAL)
MEMBER (A)



(S.VENKATARAMAN)
VICE-CHAIRMAN.

np/