

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO. : 290/95

Dated this Thursday the 20th day of January 2000.

Mrs. Sosamma John

Applicant

Shri C.M. Jha

Advocate for the
Applicant.

VERSUS

Union of India & Another

Respondents.

Shri V.S. Masurkar

Advocate for the
Respondents.

CORAM :

Hon'ble Shri B.N. Bahadur, Member (A)
Hon'ble Shri S.L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? No
- (iii) Library. Yes

B. N. Bahadur

(B. N. BAHADUR)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.290/95

This Thursday the 20th Day of January 2000.

Coram : Hon'ble Shri B.N. Bahadur, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

Mrs.Sosamma John,
Lady Health Visitor,
Family Welfare Centre,
Bandra, Western Railway,
Bombay.
Residing at F-1, Panchal
Nagar, Nav-Ghar Vasai Road,
District Thane.
(By Advocate Shri C.M.Jha)

.. Applicant.

Vs.

1. Union of India, through
General Manager,
Western Railway, Churchgate,
Mumbai - 400 020.
2. Divisional Railway Manager,
Bombay Central,
Mumbai - 400 020.
(By Advocate Shri V.S.Masurkar)

.. Respondents.

O R D E R

[Per : Shri B.N. Bahadur, Member (A)]

This is an application made by Mrs.S. John seeking the relief for upgradation in the grade of Rs.1400-2300 with effect from 1.8.1994, through a direction in this regard to the Respondents. Back-wages and consequential benefits are also claimed as reliefs.

2. The facts of the case, as brought forth by the applicant are that she was appointed in October, 1972 as Lady Health Visitor in the grade of Rs. 150-280. She continued to work without any blemish and was placed at sl.no.5 in the combined seniority list of Lady Health Visitor. Upgradation of 3 posts of

...2.

Bn B

(5)

Lady Health Visitor was sanctioned from the scale of Rs.1200 - 2040 to the scale of Rs.1400-2300. The Respondents had appointed the seniors of the applicant to the upgraded scales from time to time, but the grievance of the applicant is that when her turn came on 13.7.1994 (on superannuation of Mrs.Longsom) she was not provided the upgradation. Her representation in this regard was of no avail.

3. The applicant contends, that as per government policy, at least one promotion should be provided in a span of 15 years service. The applicant has worked and retired only on one scale of pay. It is on these grievances that the applicant is before us, seeking the relief as described above.

4. The Respondents in the case have ^v filed a parawise reply, where the basic facts of the postings and scales etc. are not disputed. They do mention however that the applicant was placed at Sl.No.6 of the seniority list notified on 23.9.87. Allegations and claims are not accepted.

5. The Respondents go on to say that the Railway Board had restructured the cadre of family welfare organisation, providing for upgradation of 3 posts, as indicated above. They describe how these posts were filled in from time to time by persons who were senior to the applicant. However, on 11.5.1994 the Railway Board took a decision that vacancies of family welfare staff should not be filled in; and subsequently as per further instructions issued vide letter dated 25.11.1994, the cadre of Lady Health Visitor was frozen and redeployment of staff ordered. The Respondents contend that it was because of this decision that the applicant was not provided with the benefits sought.

Don't

...3.

6. The Respondents further refer to the ⁹ scheme whereby Gr. 'C' and Gr. 'D' employees would get at least one promotion in their service career. A copy of the scheme circulated by Railway Board vide letter dated 5.2.1992 (Annexure R-10) is enclosed by Respondents who take the defence that since the applicant had not reached the maximum of the scale of Rs.1200-2040, she could not be provided with this benefit in view of the terms of the scheme.

7. Learned Counsel for the applicant, who argued the case in detail took us over the facts of the case, which we have reproduced above, in brief. Various dates etc. were cited and the point sought to be made that even if the orders were that vacancies should not be filled in, these orders did not mean that promotions were also to be withheld. Learned Counsel went on to contend the hardship suffered by applicant, in that she did not even get one promotion right upto her superannuation and pleaded for the relief of upgradation through an appropriate direction to the Respondents.

8. Counsel for applicant cited the case of A.K. Raizada vs. Union of India in his support (1991(18)ATC 363). Support was also sought by citation of the case of Rabindra Mohanty vs. Director of Printing (1990(14)ATC 298).

9. Learned Counsel for Respondents also argued the case in detail asserting that the decisions were taken consequent to a general policy decision, through which restructuring was ordered at the highest level. It was not an action that was taken in isolation against the applicant in this case. A ban had come about because of a general decision and was not motivated against the applicant or anyone in particular. The Counsel for

...4.

B.S.

BvB
Respondents stressed ~~made~~ two points. The first one was that no post was ~~not~~ BvB vacant when the freeze order came (22.6.1994). Her claim itself is from a later date viz. 1.8.1994. The second point made was that there was no stagnation in the case of applicant inasmuch as she has not even reached the maximum of her scale.

10. On an analysis of facts in the cases, we see that the orders of Railway Board are indeed general orders, which have come about because of policy decisions taken at the highest level. It has been settled by the highest court that government is well within its power to decide how many posts it needs at any stage in time. This action being a part of a general decision of restructuring cannot be said to have illegally hit the rights of the applicant for promotion. This argument of the Learned Counsel Respondents thus holds force.

11. It is indeed also relevant to see the copy of the communication annexed at R-10. This follows the recommendations of the 4th Pay Commission. Here also it is seen that the applicant does not satisfy the condition that one year should have elapsed after the official concerned has reached the maximum of his/her scale of pay.

12. We have gone through the copies of the judgments referred to in para 8 above. We have carefully considered the judgments and find that in neither case are the facts such that they bear any kind of direct similarity to the facts in the case. In fact, it is clear that the decision in neither of the two cases can help the case of the present applicant.

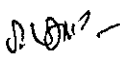
13. The stand taken by the Respondents in not being able to provide the benefit of the aforesaid scheme is therefore valid as


BvB
...5.

per the rules, and cannot be faulted. There is also force in the contention of the Respondents that the freeze order had come before the applicant was due for promotion, and that there were no laches on the part of the administration in this regard. We are, therefore, not convinced that the applicant had made out a case for any of the reliefs sought by her.

14. Before parting ^{with B.S.} ~~this case~~ however, we would like to make the following observations. We were informed that some orders have now been issued regarding a similar scheme based on the recommendations of the 5th Pay Commission. We were also informed in passing, during arguments that the applicant has since superannuated. We are not aware whether such latest instructions would provide any benefit to the applicant or not. Nor is this an issue before us. We would only state here that should the Respondents find that the applicant has become entitled to some benefits, on later orders of Government, the present order will not come in the way of the Respondents in taking a decision on merits, and in accordance with rules, in the case of the applicant. These observations are not an intention, however, to provide the applicant with further opportunity for continued litigation on this count.

15. In the consequence, this applicant is hereby dismissed. There will be no order as to costs.


(S.L. Jain)
Member(J)


B.N. Bahadur 20/01/2000
Member(A)

H