

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.244/1998

Date of Decision: 05.06.2002

Smt. Neela Shamsundar Ghodke. Applicant(s)

Shri D.V. Gangal. Advocate for applicants

Versus

Union of India & others Respondents

Shri S.C. Dhawan. Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN, MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

- (1) To be referred to the Reporter or not? *
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

Law &
(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 244/1998

THIS THE 05TH DAY OF JUNE, 2002

CORAM: HON'BLE SHRI S.L. JAIN. MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY . MEMBER (A)

Smt. Neela Shamsundar Ghodke,
working as Matron, Kurduwadi,
Railway Hospital, Residing at
RB-2, 135-D, Railway Colony,
Kurduwadi, Dist. Solapur.

... Applicant

By Advocate Shri D.V. Gangal

Versus

1. The Union of India through the
General Manager, Central Railway,
Mumbai CST.
2. The Divisional Railway Manager,
Solapur Division, Solapur.
3. The Chief Personnel officer
(Medical and Stores),
Central Railway,
Mumbai CST.
4. Smt. Sudha B. Wagaj,
working as Matron,
Kurduwadi Railway Hospital,
Kurduwadi, Dist. Solapur. .. Respondents

By Advocate Shri S.C. Dhawan.

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

The issue for consideration in this OA is about
the claim of the applicant that she is senior to
Respondent No.4 and therefore the placement of
Respondent No.4 above the applicant in the seniority
list dated 01.01.1997 is wrong. She has also impugned
the letter dated 21.01.1997.

2. The applicant was appointed as substitute staff nurse in the Railway Hospital at Kurduwadi on 22.6.1977. She worked as such till 27.01.1980 and was regularised on 28.01.1980. She was promoted as Nursing Sister on 30.3.1992.

3. The respondent No.4 Smt. S.B. Wagaj was appointed as Substitute Staff Nurse on 18.12.1979 and her services were regularised on 28.01.1980.

4. A seniority list of Staff Nurses was published on 01.8.1989 wherein the applicant was shown at Sl. No.24 and Respondent No.4 was shown at Sl. No.25. In this seniority list the date of regularisation of the applicant was shown as 29.01.1980 and that of Respondent No.4 as 30.01.1980. The applicant was thus shown senior to Respondent No.4. Later on, on a representation made by Respondent No.4, the Respondent No.4 was placed above the applicant after detecting that Respondent No.4 had been wrongly and inadvertently shown as junior to the applicant. A seniority list was published on 19.10.1992 and in this seniority list, Respondent No.4 was shown above the applicant. Again a seniority list was published in 1997 showing the position as on 01.9.1997. In this seniority list also the Respondent No.4 was shown above the applicant. The applicant made a representation against the downgrading of her seniority followed up with further representation. The same was

considered and it was informed to the CMS/SUR, RS/KWV, DD, DMO/WD, ANG, PVR that the seniority of Smt. S.B. Wagaj was adjusted on the basis of her merit position of RRB Bombay. Smt. Wagaj was senior to Smt. Ghodke according to the merit position. It was stated in this letter that the Staff Nurse whose seniority has been affected due to adjustment of seniority of Smt. S.B. Wagaj may be asked to represent if so desired. Aggrieved by the loss of seniority, the applicant has approached this Tribunal seeking to quash and set aside the impugned order dated 21.01.1997 and to hold and declare that the applicant is senior to Respondent No.4 and also that the seniority of the staff nurses should be determined on the basis of date of appointment and not on the basis of merit position. She has further prayed that the applicant be shown senior to Respondent No.4 in all the cadre and further promotion be regulated on the basis of such correct seniority.

5. The main contention of the applicant is that she was appointed earlier than Respondent No.4 as Substitute Staff Nurse. She was regularised on 29.01.1980 after screening and further she was promoted as Matron on 30.3.1992 whereas Respondent No.4 was regularised only on 30.01.1980. The services of Respondent No.4 from 18.12.1979 till 30.01.1980 were also not continuous, there were breaks in her service. In the seniority list of Staff Nurse published on

01.8.1989 the applicant's name appeared at Sl. No.24 and that of Respondent No.4 at Sl. No. 25.

6. The applicant has alleged that because she was senior and was promoted as Matron on 30.3.1992 she was retained at Kurduwadi, whereas Respondent No.4 being junior to the applicant was transferred on promotion as Matron to Daund, but Respondent No.4 did not comply with the transfer order and succeeded in retaining her at Kurduwadi and the applicant was transferred to Solapur. Respondent No.4's order of transfer was also cancelled and she was retained at Kurduwadi. The applicant submits that immediately when the seniority list of 01.10.1992 was published, she made a representation to the official respondents on 27.11.1992 requesting them to rectify her seniority position. No reply was given to the representation. According to the applicant she made several other representations and sent reminders but no reply was given and the official respondents continued to maintain the wrong seniority without giving any reason.

7. The applicant further states that the seniority list published on 01.01.1997 showing the applicant at Sl. No.3 as against Respondent No.4 being shown at Sl. No.2 came as a surprise to her and she made a representation in November, 1997 against the same, but no reply was given to her representation. Finally

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without giving any reply to her representation, directly Respondent No.2 issued the impugned letter dated 21.01.1997 regarding seniority of the applicant and that of Respondent No.4.

8. The applicant contends that both herself and Respondent No.4 were initially working as Substitute Staff Nurse. They were regularised after screening. There was no regular selection. Therefore, the question of merit position does not arise at all and since the applicant's services were regularised before that of Respondent No.4, applicant ought to have been shown senior than Respondent No.4. The applicant is relying on a letter dated 12.12.1996 of Respondent No.3 addressed to Respondent No.2. In this letter it was advised that "the result of screening has been declared vide their office letter dated 13.10.1993 in which the question of merit position did not arise as this was not a selection or recruitment from open market. However, result of screening had been duly declared. The list of screening Substitute Staff Nurse had not been arranged as per merit or as per date of substitute. Hence in this case it will be in order to assign the seniority to them as per the date of continuous service as substitute." The letter was in regard to the seniority of staff nurse in the grade of Rs.1400-2300 (RPS) in the medical department. The applicant, therefore submits that the aforesaid letter confirms the statement of the

applicant that there was no selection, but only a screening and this being a screening, there is no question of merit order and therefore, the applicant ought to have been shown as senior to Respondent No.4 having put in continuous service from 1977. The applicant has also relied on the judgment of the Supreme Court in the case of Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra 1990 ATC 348 wherein the Supreme Court held that if the initial appointment is not made following procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his services in accordance with the rules, the period of officiating service will be counted. Since the applicant had already been officiating in the post of Substitute Staff Nurse for a long period than Respondent No.4 she ought to have been shown senior to Respondent No.4. The applicant submits that she had brought out this point in her representation dated 11.5.1994. The applicant has also contended that the date of her regularisation is earlier than that of Respondent No.4. The applicant's seniority above Respondent No.4 was maintained from 1977 till 1992. That seniority cannot be changed after 20 years in 1997 and if the official respondents want to unsettle the settled position, they ought to have issued a notice to the applicant before changing her seniority position.

9. The official respondents submit that Respondent No.4 being higher in the merit list in the selection for the Staff Nurses, was shown as senior to the applicant in the seniority list of Substitute Staff Nurses. The official respondents averred that the regularisation of applicant and Respondent No.4 was done by a selection held by the RRB. In fact there is no question of screening. According to the recruitment rules the post of Substitute Staff Nurse is to be filled through direct recruitment for which a selection has to be held. It was not a screening as claimed by the applicant and therefore, the selection having been held, there was a proper merit list, according to which, the applicant was lower than Respondent No.4. The official respondents have also relied on a letter dated 09.01.1980 which again shows the applicant Sl. No.5 against Respondent No.4 at Sl. No.4. In this letter, it is stated that application together with its enclosures of the following candidates who have been selected for the post of Staff Nurse are sent herewith.

10. According to Rule 303 (b) of Indian Railway Establishment Manual seniority has to be determined on the basis of merit order sent by the RRB and the official respondents following the same, placed respondent No.4 above the applicant when it was detected that Respondent No.4 had been wrongly shown as junior to the applicant in the seniority list of 1989 and

therefore, the same was rectified in the seniority list of 19.10.1992. There is no question of favouring Respondent No.4. It was purely according to the merit position obtained by Respondent No.4 in the selection for the Substitute Staff Nurse. The official respondents maintained that there is no question of the applicant and Respondent No.4 being regularised on different dates. They both were regularised by the order dated 28.01.1980. The respondents have produced a copy of the orders No.4/80 and 5/80. Both dated 28.01.1980 whereby the applicant and Respondent No.4 were regularised. The official respondents submit further that the letter dated 12.12.1996 relied upon by the applicant was withdrawn subsequently by the Chief Personnel Officer vide letter dated 05.11.1997. The official respondents also submit that the representation of 1992 stated to have been submitted by the applicant had not been received by the official respondents. One representation dated 01.01.1996 was received from the applicant and the same was replied to on 21.3.1996 through the Medical Superintendent, Kurduwadi giving detailed position regarding seniority of the applicant and Respondent No.4. The official respondents have annexed a copy of the said letter.

1.1. The official respondents however, could not produce the merit order issued by the RRB as it was not traceable, instead they produced a copy of Recruitment

Register maintained on the basis of merit order. A copy of relevant extract from the Register was also enclosed by the official respondents wherein Respondent No.4 was shown at Sl. No.10 whereas the applicant was shown at Sl. No.14 and the date of regularisation of both is shown as 28.01.1980 as already averred by the official respondents. The official respondents also produced a copy of the judgment in OA No. 407/97, 586/97 and 587/97 dated 31st October, 2001 of this very Bench wherein it was held that the RRB is the Recruiting Agency and as such the applicants who were staff nurses in Kurduwadi were entitled to seniority from the date of regularisation and not earlier to it. It was also observed therein that the posts of staff nurse are to be filled by direct recruitment.

12. The official respondents submit that the letter dated 13.10.1993 does not pertain to the selection of the applicant and is therefore not required for the purpose of deciding this OA. Similarly, the letter dated 05.11.1997 withdrawing the letter of 12.12.1996 also does not pertain to the selection of the applicant and therefore, is not relevant for deciding the claim of the applicant in this OA. The official respondents also submit that there was no relaxation. A regular selection was held through RRB and therefore, no need to produce the said letter.

13. The official respondents have also taken the objection that the application is beyond the period of limitation. The cause of action if any, arose for the first time in 1992 when the seniority list was published showing the applicant below Respondent No.4. Merely because the applicant kept making representations and a reply was given by the respondents in 1997, cannot extend the period of limitation. Even the impugned order was dated 21.01.1997, the applicant has approached this Tribunal on 04th February, 1998 i.e. beyond the period of limitation.

14. Respondent No.4 has also filed a separate reply and has rested her case on the same grounds as taken by the official respondents.

15. We have heard the learned counsel for both the sides and have given our careful consideration to the pleadings. First we deal with the question of limitation.

16. The applicant states that she had preferred a representation on 27.11.1992 in respect of seniority list dated 01.10.1992. While the respondents have not replied to the same, the applicant was within her rights to come to this Tribunal within a period of one year and six months which she failed.

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17. Even thereafter, she claims that she had made several other representations and reminders but no reply was given and the official respondents continued to maintain the wrong seniority. It is the case of the official respondents that a representation of the applicant dated 01.01.1996 was replied vide letter dated 21.3.1996. Even taking the same date i.e. 21.3.1996 when the OA is filed on 04th February, 1998 the OA is barred by time.

18. In case when the applicant had represented and the respondents have failed to reply the same within a period of six months, the cause of action accrues in favour of the applicant. If the applicant fail to file the OA within one year, the OA becomes barred by time. In our considered view, the relief in respect of cause of action which has become barred by time is not available. A fresh cause of action cannot accrue to the applicant when in respect of other representation the respondents replied to the applicant. As such in our considered view the cause of action does not arise in favour of the applicant on 21.01.1997. The view expressed by the Apex Court in Sualal Yadav Vs. The State of Rajasthan & Others AIR 1977 SC 2050 which was prior to the enactment of Administrative Tribunals Act, 1985 cannot be taken as precedent in view of a change in legal position referred above i.e. enacting Section 20 & 21 of the A.T. Act, 1985. However, if we have taken

a contrary view, our opinion on merit is also recorded below.

19. The claim of the applicant for seniority above Respondent No.4 is based mainly on the fact that according to the applicant she was appointed earlier than Respondent No.4 and she was regularised one day earlier than Respondent No.4. More over the applicant had put in continuous service from the date of appointment and that service prior to regularisation needed to be counted. Also according to the applicant Respondent No.4 had not put in continuous service prior to regularisation. The applicant's seniority above Respondent No.4 is confirmed in the seniority list of 1989. We however find that the applicant has not produced any material to show that she was regularised earlier than Respondent No.4 except for the seniority list of 1989. But in the face of the actual letters of regularisation produced by the official respondents we have to hold that the correct date of regularisation of both the applicant and Respondent No.4 is 28.01.1980 only i.e. the same day. In regard to the counting of adhoc service prior to regularisation it was made abundantly clear in the letter of offer to the applicant that the said service would not count for seniority. The applicant had accepted this and had never raised this issue with the official respondents nor had she got

it confirmed. The major point which has been disputed by the applicant is about regularisation of the applicant through selection process. According to her, it was only screening, there was not even an interview. Therefore, there could not have been any order of merit. She has produced a letter of 12.12.1996 of the official respondents in this connection to show that there was no selection, but only screening. The respondents have averred that the regularisation of the applicant and the Respondent No.4 was only through RRC/RRB by selection process. They could not produce the proceedings of the RRC or the result. However, they have produced a copy of the register maintained on the basis of merit order which show the name of Respondent No.4 above that of the applicant. Though the official respondents stated that the letter of 12.12.1996 was withdrawn, they were not able to produce a copy of the letter of withdrawal. The respondents have again produced another letter of 09.01.1980. As the extract of the register produced and the letter of 09.01.1980 are prepared in official course of business at the relevant time and in absence of any other record, in our considered view these two are sufficient to arrive to the conclusion about the seniority of Respondent No.4. More over the letter of 12.12.1996 issued sixteen years after 1980 when the selection had taken place, cannot be made applicable in this case. Apart from this the recruitment rules provide only for selection. The applicant has not shown

any material to substantiate that there was any relaxation or deviation in the recruitment rules to forego the procedure of selection. We therefore, cannot go beyond the recruitment rules and we hold that the applicant and Respondent No.4 were regularised by selection.

20. In view of the discussion recorded above, in our considered view, the OA fails and is accordingly dismissed. The parties to bear their own costs.

Shanta S
(SMT. SHANTA SHASTRY)
MEMBER (A)

S.L. Jain
(S.L. JAIN)
MEMBER (J)

dh-5/6/02
Gajab Applicant, respondent (s)
3/7/02
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