

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Date of Order : 4.05.2001.

ORIGINAL APPLICATION NO. 103/1996

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Mrs. S.R.James Wife of Shri Randhir James, Aged about 44 years, R/o. Railway Quarter No. 332-A, Railway Colony, Bandikui, presently posted as Nursing Sister, Railway Hospital, Bandikui (Rajasthan).

.....Applicant.

VERSUS

1. The Union of India through General Manager, Western Railway, Church Gate, Bombay.
2. Divisional Railway Manager (Establishment), Jaipur Division, Western Railway, Jaipur (Rajasthan).
(since deceased),
3. Smt.Krishna Rani/ Matron, Divisional Railway Hospital, Jaipur (Rajasthan).

.....Respondents.

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Present :

Mr. M.Siromani, proxy for Mr.A.P.Singh, for applicant.
Mr.U.D.Sharma, for the respondents.

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CORAM :

Hon'ble Mr. A.K.Misra, Judicial Member
Hon'ble Mr. S.K.Agrawal, Administrative Member

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ORDER

(Per Mr.A.K.Misra, Judl.Member)

The applicant had filed this Original Application with the prayer that the panel dated 4.9.1995 (Annex.A/1) and the posting order dated 8.9.1995 (Annex.A/1-A), passed by the respondents be

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quashed and the respondents be directed to include the anticipated vacancy of the post of Matron ~~by promotion~~ on the post of Matron (Group 'B') for determining the vacancy available for selection and consequently the notification dated 9.5.1995, Annex.A/4, indicating one vacancy of general candidate and one vacancy of ST candidate, be quashed and two vacancies of general candidates and one vacancy of reserved candidate be ordered to be declared by the respondents. It is also prayed by the applicant that the respondents be directed to pay officiating allowance to the applicant for the period of dual duty during which the applicant discharged the duties of a Matron in addition to his own duties.

2. Notice of the Original Application was given to the respondents who have filed their reply to which a rejoinder was filed.

3. The facts are not much in dispute. Vide Notification dated 9.5.1995, two posts of Matron were notified to be filled-in. Out of these two posts, one post was a general post and the another was reserved for a ST candidate. Four candidates were identified as eligible candidates for appearing in the said examination. The applicant is figuring at No. 3. The respondent No. 5 is figuring at No. 1 in the seniority list. One Smt. Chanchal Kapur is figuring at No. 2. So far as the seniority position is concerned, there is no dispute. The respondent No. 3 Smt. Krishna Rani, was sick since number of months earlier than the said notification. During that period, a written examination was conducted as per the notification. Before the successful candidates could face the interview, Smt. Krishna Rani, applied for a supplementary test on the ground of her sickness. Considering the ground of sickness she was allowed in the supplementary test so organised. Thereafter, as per the result of the written test, the applicant and Smt. Krishyna Rani, were

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directed to appear before the selection board for viva voce as per Annex.A/8 and finally a panel of two persons i.e. Smt. Krishna Rani (General) and one Smt. Cicily Jojo (ST), was issued on 4.9.1995 which is under challenge. It is contended by the applicant that in the first instance Smt. Krishna Rani should not have been permitted to appear in the supplementary test because permitting her to appear in the supplementary test has resulted into different yard-scales having been adopted in relation to different candidates who had undertaken the examination at two different times. But, we are not convinced of this argument. The Rule provides for a supplementary test being organised in respect of a candidate who is under sick-list, therefore, if the applicant had appeared earlier in the main examination and respondent No. 3 was permitted to appear in a supplementary test, it cannot be said to be violative of any rules. When rules provide for such test then no fault could be found with the action. It is an admitted position that there were only two vacancies for the post of Matron, one for general and one for a scheduled tribe candidate. Smt. Krishna Rani ^{was} the senior most as per the seniority list and she was working as an ad hoc Matron at that time. She qualified the test and was empanelled as number one candidate. Smt. Chanchal Kaur who was second in the seniority list in the seniority list. ^{The} had failed applicant Smt. S.R. James, was at No. 3, / No doubt, she was successful but could not have been empanelled because only one post was required to be filled in out of the general category candidates. Had Smt. Krishna Rani not joined on the post of Matron after her promotion and posting order, the second successful candidate i.e. the applicant could have been benefited. But, it was not so and, therefore, the applicant cannot claim to be empanelled on the basis of her successful result for the post of Matron. The second post was for a reserved category candidate and the same was not in dispute. Therefore, the contention of the learned counsel for the applicant that the applicant was left-out because of the

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supplementary examination of Smt. Krishna Kumari, does not carry any weight.

4. It was also contended by the learned counsel for the applicant that the second post, which was available on account of placement of the name of Smt. S.G.Alexander in the list Annex.A/10 dated 29.3.1995 for the post of Matron 'B', should have been notified at the time of issuing the notification dated 9.5.1995, Annex.A/4, as anticipated vacancy because as per the enlistment of Smt. Alexander the post could have been available to be filled-in soon thereafter. But, we are not convinced by this argument. Mere enlistment of a candidate in the list of a promotional post cannot help in calculating the vacancies on the ground that the enlisted candidate would be promoted in the near future. Some times, a panel is prepared much in advance but posting orders on promotional post are issued when actually a promotional post is available. In this case, the process of filling the available vacancy had started on 9.5.1995 and the empanellment of Smt. S.G.Alexander for the post of Matron 'B' was ordered on 8.6.1995 vide Annex.A/11. The actual vacancy of the post of S.G.Alexander occurred much thereafter. In such circumstances, if the respondents had gone ahead to complete the process of selection in terms of their earlier Notification dated 9.5.1995, no fault can be attributed to them on the ground that subsequent vacancy had not been taken into account by amending the notification. The process of selection for the higher posts in an organisation is a perinial process. By the time first process had started, few more vacancies may occur, therefore, such vacancies can be taken into consideration in the subsequent process. It is not done so then each initiated process would come to stand still due to incorporation of new vacancies which may have occurred in the mean time. While working-out the vacancies it cannot be expected

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that few promotional vacancies would be available in the near future. In fact, the Notification Annex.A/4 was published on 9.5.1995 and no post of Matron for the second general candidate was either available or could have been anticipated ^{at that time}, therefore, we do not find any fault in the Notification Annex.A/4 and consequent selection of the respondent No.3. The contention of the learned counsel for the applicant is devoid of any force.

5. The learned counsel for the applicant in the last, argued that the applicant had worked on the post of Matron from 1.10.1993 as per the Office Orders dated 1.10.1993 and continued to work as ad hoc Matron till 15.10.1995 when she was relieved by a regularly selected Matron but, the respondents have not paid any officiating allowance to the applicant for the said period. On the other hand, it was argued by the learned counsel for the respondents that the applicant was promoted on the post of Nursing Sister w.e.f. 11.2.1992, therefore, even if she had worked on the higher post she could be granted officiating allowance only after she had completed two years ^{the} on promotional post. She completed her two years on 10.2.1994. The post of Matron was thereafter temporarily down-graded w.e.f. 15.4.1994, therefore, the applicant was granted officiating allowance of Rs. 409/- for the period w.e.f. 10.2.1994 to 15.4.1994 vide Annex.R/4. The applicant had claimed officiating allowance for the earlier period but she was not ^{for the same and not} entitled ^{to} for the subsequent period as the post was down-graded. Therefore, the claim of the applicant is devoid of any force. Moreover, it was argued by him that the claim relating to officiating allowance is not related to the main relief and, therefore, the applicant cannot get any relief in this regard.

6. We have considered this aspect. No doubt, the relief of

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the applicant relating to the officiating allowance is not related to the main relief which is in respect of quashing the notification and empanelment of Smt. Krishna Rani but there is nothing on record to show that a newly promoted candidate cannot be allowed any officiating allowance for working on still higher post. If that was so, why the applicant was made to work on that higher post. There is nothing on record also to show that the post on which the applicant was working on officiating basis, was subsequently down-graded. If that is so, the applicant should have been informed or she could have been relieved of her dual charge. Even otherwise, if the applicant has worked on two posts by this arrangement then the respondents should have examined her case for grant of dual-duty allowance. But, this has not been done. By incorporating the relief for grant of officiating allowance in the present O.A. the applicant may have been under a bonafide belief that she may be granted the relief ^{for,} prayed /therefore, totally rejecting her case in this regard would be un-just. In this respect the applicant can be given a liberty of making a fresh representation for grant of officiating allowance or double-duty allowance as the case may be, to the concerned authorities. Therefore, the present application can be disposed of accordingly.

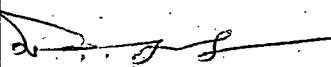
7. In view of the above discussions, the Original Application of the applicant so far as it relates to quashing of the ^{non} Notification and applicant's empanelment, deserves to be rejected. However, the applicant can be given a relief of representing her case for grant of Officiating Allowance as mentioned above, by making a representation to the concerned authorities.

8. The Original Application is, therefore, partly accepted. The applicant is directed to make a representation to the competent

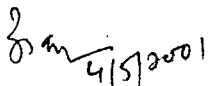
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authority for grant of officiating or double-duty allowance for the period starting from 1.10.1993 to 15.10.1995, within a period of two months from today and the respondents shall thereafter dispose of the representation of the applicant within a further period of two months, as per rules. Needless to say the amount received earlier by her in this regard, shall be adjustable as per the final conclusion of the authorities. Applicant's claim relating to quashing of the impugned Notification dated 9.5.1995 (Annex.A/4) and the Panel dated 4.9.1995 (Annex.A/1), is hereby rejected.

9. The parties are left to bear their own cost.



(S.K.Agrawal)
Adm.Member



(A.K.Misra)
Judl.Member

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