

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 269/2001 &
Exx No. M.A. No. 285/2002

199

DATE OF DECISION 1.11.02

Mrs. J.J. Lal

Petitioner

Mr. P.V. Calla

Advocate for the Petitioner (s)

Versus

Union of India and 3 others Respondent

U.D. Sharma

Advocate for the Respondent (s)

HYCAI
30/9
Magistrate
27/9

CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman.

The Hon'ble Mr. A.P. Nagrath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? ✓PL
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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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR

Original Application No. 269/2001
& M.A. No. 285/2002

Mrs. J.J. Lal
W/o Shri J.P. Lal,
r/o Railway Quarter
No. 1465-B Kasari Nadi,
Ramganj
Ajmer : Applicant.

rep. by Mr. P.V. Calla : Counsel for the applicant.

-verses-

1. The Union of India through
the General Manager,
Western Railway
Churchgate,
Mumbai.
2. The Divisional Railway Manager
(Estt)
Western Railway,
Ajmer Division,
Ajmer.
3. The Chief Medical Superintendent
Railway Hospital
Western Railway,
Ajmer.
4. Mrs. Kamal A. Mane,
Matron Grade II
O/o Chief Medical Superintendent
Railway Hospital
Western Railway
Ajmer. : Respondents.

rep. by Mr. U.D. Sharma : Counsel for the respondents.

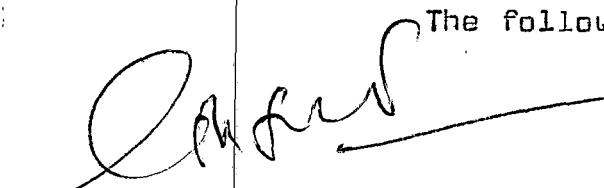
CORAM : The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman
The Hon'ble Mr. A.P. Nagrath, Administrative Member

Date of the Order: 1.10.02

Per Mr. Justice G.L.Gupta,

ORDER

The following reliefs have been claimed

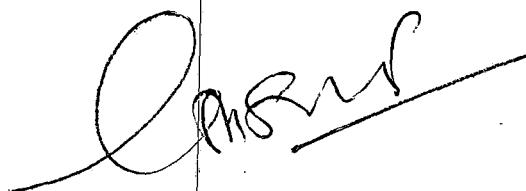


in this O.A.

- i) respondents be directed to include the name of the applicant in the eligibility list for consideration for promotion to the post of Chief Matron (Annex. A.1) dated 19.6.2001.
- ii) respondents be directed to exclude the name of R.4 from the list of eligible candidates for preparing the panel for promotion to the post of Chief Matron in the scale of pay of Rs.7450-11500
- iii) the respondents be directed to consider the candidature of the applicant for promotion to the post of Chief Matron in the scale of pay of Rs.7450-11500 treating the name of the applicant in the list of eligible candidates.

2. As per the Recommendations of the 5th Pay Commission, new post of Chief Matron has been introduced without changing the cadre strength of the post Matron. It is averred that out of the cadre strength of Matron which was 33, 5 posts have been upgraded. It is further averred that the Chief Matron post is a selection post and is required to be filled by written test followed by viva voce. It is stated that the administration has decided not to conduct the written test and the selection is to be made only on the basis of interview and the service record.

The administration issued a memorandum dated 18.11.99, specifying the names of eligible candidates for promotion to the post of Chief Matron. It is averred that while preparing the eligibility list, the Railway administration has applied reservation on the upgraded post. Aggrieved from the said memo some of the employees, who were working in the post of Matron Gr.II, filed O.A. before

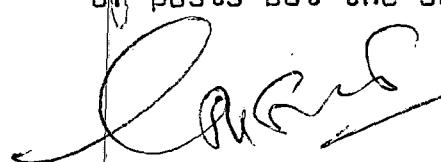


this Tribunal, seeking re-determination of the seniority of the general category candidates vis-a-vis the reserved category candidates. The said O.A was disposed of vide order dated 29.3.2001, wherein it was directed that the respondents would refix the seniority of the applicants therein and the private respondents in terms of the base level seniority.

Thereafter fresh seniority list of Matron in the scale of Rs.6500-10500 was issued on 21.3.2001. In that seniority list the name of the applicant is shown at Sl. No. 8 whereas the name of R.4 is shown at Sl. No. 9, which means the respondent No.4 who was earlier considered to be senior to the applicant in the seniority list dated 7.4.94, has been adjudged as junior to the applicant.

3. The grievance of the applicant is that in the eligibility list (Annex. A.1) dated 19.6.2001, the name of the applicant does not find a place and the name of R.4 has been included at Sl. No. 6. It is averred that the Model Roster issued by the Railway Board on 21.8.97 could not be followed in view of the decision of Jodhpur Bench of this Tribunal in O.A. No. 286/98.

4. In the reply, the respondents have come out with the case that the post of Chief Matron is a non-selection post and the promotion is required to be made on the basis of seniority-cum-fitness basis. It is averred that the creation of 5 posts of Chief Matron is not in the nature of upgradation of posts but the said posts have been created on

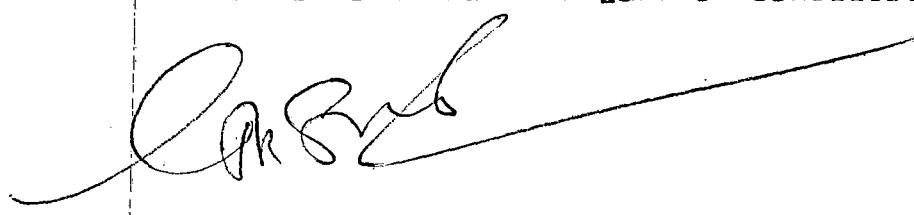


functional basis, therefore the roster for promotion will apply to them. It is further stated that there being only 5 posts, the applicant does not have locus standii to challenge the eligibility list as her name appears at Sl. No. 8 in the seniority list. It is stated that there are 5 posts and one post has been treated as anticipated vacancy which is to occur on the promotion of Smt. I.H Nathenial to Group 'B' Gazetted post. It is further averred that out of those 6 posts one post was required to be earmarked for SC candidate on the basis of 'L' type Roster prescribed by the Railway Board vide letter dated 21.8.97.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. Mr. Calla, learned counsel for the [redacted] applicant contended that in the matter of upgradation, roster is not applicable and therefore the name of the respondent No. 4, who is at Sl. No. 9 in the seniority list could not be included in the eligibility list. His further contention was that Roster rule could not be applied in cases where the number of posts is less than 13.

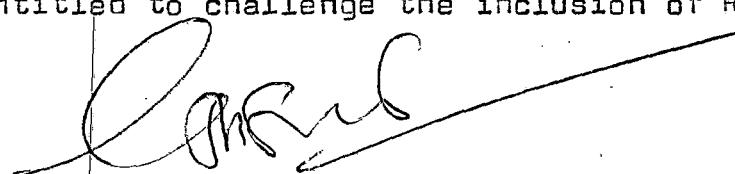
6. On the other hand, the learned counsel for the respondents contended that the applicant does not have locus standii to file this O.A. because even if her contention is accepted, she does not come within the zone of consideration.



7. We have given the matter our thoughtful consideration. We are satisfied with the second contention of Mr. Calla, that posts being 5 only, Roster Rule does not apply for filling up of the five posts. It may be pointed out that the Jodhpur Bench of this Tribunal has struck down the Railway Board's letter dated 21.8.97, in the case of Rajendra Kumar Gaur vs. Union of India and others (O.A. No. 286/98) decided on 11.5.2001. In the said decision the Railway Board was directed to adopt the 'L' type Roster issued by the Department of Personnel and Training, on 2.7.97 (i.e. the Post based Roster). A Model Roster for a cadre strength of 13 posts is provided as Appendix to Annex. 3. A reading of the Model Roster shows that where the cadre strength is less than 7 there is no reservation for reserved category candidates.

8. In the instant case, five posts have been created/upgraded for the first time. Therefore it is a case where initial recruitment is made to the post of Chief Matron in the scale of pay of Rs.7450-11500. Therefore, there could not be any occasion of considering the reserved category candidate whose name stands in the seniority list at Sl. No.9. The respondents have obviously erred when they included R.4's name in the eligibility list of 19.6.2001.

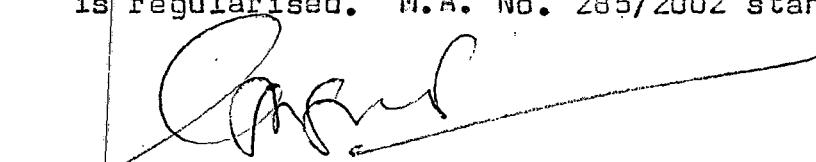
9. It is true that the applicant does not get a chance of consideration even if the name of R.4 is deleted from the eligibility list. However, it cannot be accepted that the applicant is not entitled to challenge the inclusion of R.4's name



in the eligibility list on the ground that two seniors to the applicant have not challenged the eligibility list. The application cannot be non-suited on the ground that her seniors have not come to Court. In our opinion, when person junior to the applicant was being considered, the applicant being senior to R.4 can very well challenge the action of the official respondents.

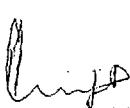
10. It is not necessary for us to decide whether or not the reservation principle applies to upgradation for the reason, the application is being allowed on the second contention raised by Mr. Calla.

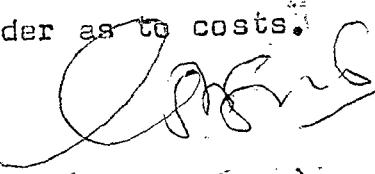
11. It may be stated that vide order dated 28.6.2001, the official respondents were directed not to promote R.4 on the post of Chief Matron. The interim order continues. Vide Order dated 5.4.2002, the earlier interim order dated 28.6.2001 was modified. The respondents were directed to go ahead with the selection process and complete the same within a period of three months. Since the respondents could not complete the exercise within the stipulated time, M.A. No. 285/2002, seeking extension of time for completing the selection process was filed. On 24.9.2002, the learned counsel for the respondents informed that the selection process was over. He also placed before us the result sheet. The time taken by the respondents in completing the selection process is regularised. M.A. No. 285/2002 stands disposed of.



12. We have held hereabove that R.4's name could not be included in the eligibility list. It has therefore to be held that even if R.4 has cleared the examination, she is not entitled for promotion on the basis of notification dated 19.6.2001.

13. Consequently, the C.A is allowed in part. The respondents are directed to exclude the name of R.4 from the eligibility list for promotion to the post of Chief Matron in the scale of pay of Rs.7450-11500. No order as to costs.


(A.P. Nagrath)
Administrative Member


(G.L. Gupta)
Vice Chairman.

jsv.