

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 23.01.2004

OA No.333/2001

Smt. Adrija N.F. w/o Shri M.Harbour r/o Q.No. 315, Railway Quarters, Gangapurcity, now-a-days working as Matron, Railway Hospital, Western Railway, Gangapurcity.

.. Applicant

VERSUS

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai-20.
2. Divisional Railway Manager (E), Western Railway, Kota Division, Kota.
3. Chief Medical Superintendent, Western Railway, Kota.
4. Smt. Sushila Sirsat, Chief Matron, in the office of Chief Medical Supdt., Kota.

.. Respondents

Mr S.K.Jain, counsel for the applicant

Mr. Tej Prakash Sharma, counsel for respondent Nos. 1 to 3

Mr. Nand Kishore, counsel for respondent No.4

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

Hon'ble Mr. A.K.Bhandari, Member (Administrative)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The present application has been filed against the select list dated 20.7.2001 (Ann.A1) whereby the name of the applicant does not find mention in the said select list of Chief Metron in the pay scale of Rs. 7450-11500. In relief, the applicant has prayed that the impugned select list Ann.A1 may be quashed and the respondents be directed to give promotion to the applicant on the basis

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of base grade seniority to the post of Chief Metron grade Rs. 7450-11500 immediately on the basis of gradation list dated 29.7.96 (Ann.A3) and no promotion on the basis of reservation be given on the post of Chief Metron.

2. The facts of the case are that the applicant was initially appointed as Staff Nurse in the respondent Department on 13.12.1973 in the pay scale of Rs. 1400-2600 (revised scale Rs. 5000-8000). The applicant was subsequently promoted in the pay scale of Rs. 1640-2900/5500-9000 (revised pay scale) on 1.1.84. The aforesaid promotion was given according to the upgradation/structuring of the post. The applicant was further promoted as Metron in the pay scale of Rs. 2000-3200 (Rs. 6500-10500) vide letter dated 3.5.93 w.e.f. 1.3.93. The next promotional post available for Metron is that of Chief Metron in the pay scale of Rs. 7450-11500. The respondents No.4 admittedly joined in the Department as Staff Nurse on 16.12.1977 in the pay scale of Rs. 1400-2600 (Rs. 5000-8000). However, she was given restructuring benefit/upgraded scale of Rs. 1640-2900 (Rs. 5500-9000) w.e.f. 1.6.79 and further promoted to the post of Metron w.e.f. 1.1.84 in the pay scale of Rs. 2000-3200 (Rs. 6500-10500 much earlier to the applicant, being member of Scheduled Caste (SC) category. The respondents issued a seniority list dated 29.7.96 for the grade of Rs. 2000-3200 (Rs. 6500-10500) in the category of Metron based on base grade seniority, in which the name of the applicant appears at Sl.No.49 whereas the name of respondent No.4 was shown at Sl.No.63. Thereafter the respondents issued a seniority list vide letter dated 9.7.2001 (Ann.A4) on the basis of the judgment of the CAT-Jaipur Bench dated

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29.3.2001 for the post of Metron and Chief Metron. In the above seniority list, the applicant has been shown at Sl.No.2 whereas the respondent No.4 has been shown at Sl.No.6. The applicant has also placed on record seniority list dated 10.1.2000 (Ann.A5) whereby respondent No.4 has been shown senior to the applicant. The said seniority list was prepared on the basis of promotion and is not based on base grade seniority in the cadre. Since the respondents have taken into consideration the seniority list dated 9.7.2001 (Ann.A4) for promotion to the post of Chief Metron in which the applicant has been shown senior to respondent No.4, as such the apprehension of the applicant that the select list for the post of Chief Metron was prepared on the basis of the seniority list dated 10.1.2000 (Ann.A5) is without any substance and requires no consideration.

2.1 It may also be stated here that pursuant to the recommendations of the 5th Central Pay Commission, two posts of Chief Metron in the pay scale of Rs. 7450-11500 were created/upgraded for the first time vide order dated 9.4.99 in Kota Division, being 5% of total cadre strength of Metron. According to the applicant, these posts were required to be filled on the basis of seniority and no reservation was applicable to the upgraded posts. The action of the respondents in ignoring the seniority and promoting respondent No.4, who is junior to the applicant, vide the impugned select list (Ann.A1) is illegal and contrary to law. It is on these grounds, the applicant has filed this OA thereby praying for the aforesaid relief.

3. Notice of this application was given to the respondents. The official respondents as well as private

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respondent No.4 have filed two separate replies.

3.1 In the reply filed by the official respondents, the fact that two posts of Chief Metron in the pay scale of Rs. 7450-11500 were created vide letter dated 9.4.99 has not been denied. It is stated in the reply that against these two posts Smt. T.Pappan and Smt. Leelamma Mathew were promoted. Smt. T.Pappan took voluntary retirement from the post of Chief Metron on 20.8.2000 whereas Smt. Leelamma Mathew retired on 31.8.2001. The steps to fill these two vacancies were taken and according to rule, these posts have to be filled on the basis of seniority, one post from the general category and one from SC category. Accordingly, the impugned select list (Ann.A1) was prepared and Smt. M.G.Bliss has been promoted against general vacancy whereas respondent No.4 has been selected against SC category. The respondents have further stated that as per the circular/letter of the Railway Board dated 21.8.97, the fourth point is reserved for SC category, as such respondent No.4 was selected and given promotion against this point.

3.2 The private respondent No.4 has also justified her selection thereby stating that as per Railway Board circular dated 21.8.97, she was rightly selected against point No.4 which is reserved for SC category.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 It is not in dispute that two posts of Chief Metron in the pay scale of Rs. 7450-11500 were upgraded in Kota Division from 5% of the cadre strength of the post of Metron, pursuant to the recommendations of the 5th Central Pay Commission and these posts were created vide letter

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dated 9.4.99. It is also not in dispute that against these two posts Smt. T.Pappan and Smt. Leelamma Mathew were promoted at the first instance. After voluntary retirement/retirement of these officials, steps for filling up these two posts were again taken by the respondents. According to the respondents while making selection to the post of Chief Metron, seniority list dated 9.7.2001 (Ann.A4) was taken into consideration. The method of selection is seniority. Admittedly, according to this seniority list, the applicant was senior to respondent No.4. Since according to the respondents the fourth point was reserved for SC category in terms of post based roster prepared by the Railway Board as circulated vide circular/letter dated 21.8.97, as such respondent No.4 was selected vide impugned order dated 20.7.01. Thus, according to the respondents, respondent No.4 has been kept against the reserved post and as such her name find mention in the select list at Sl.No.2.

4.2 According to us, such a course was not permissible for the respondents. The post based roster issued by the railway authorities vide circular/letter of the Railway Board dated 21.8.97 was subject matter of challenge before the Jodhpur Bench of the Central Administrative Tribunal in OA No.286/98, Rajendra Kumar Gaur and Anr. vs. Union of India and ors. The Jodhpur Bench has quashed this circular/letter of the Railway Board dated 21.8.97 vide its judgment dated 11.5.2001 which has been reported in 2001 (2) ATJ 438 and held that it was not permissible for the Railway Board to issue a post based roster contrary to the one issued by the Department of Personnel and Training vide letter dated January 6, 1981 and according to the L-type roster issued

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by the Department of Personnel and Training. In a case of two posts, a vacancy shall be reserved for SC only when 5th replacement is due. It will be useful to quote para 11, 12 and 13 of the said judgment which clinches the matter in issue:-

"11. The next question is whether Railway Board has authority to issue a roster which is at variance with the roster issued by the Department of Personnel. We find from the OM dated 2.7.97, the same has been sent to all the Ministries and Departments of the Government of India and no exception has been made for the department of Railways. In para 7 of the letter it has been clearly stated that :-

"All Ministries/Departments are requested to initiate immediate action of prepare rosters and operate them according to these guidelines."

12. Learned counsel for the respondents also was not able to place before us, any material to support that Railway Board had been given authority to issue a roster which is different from the one, issued by the Department of Personnel and Training. In terms of Department of Personnel and Training OM No.36001/15/79-Estd.(SCT) dated January 6, 1981 all Ministries/Departments have been advised that if they intend to depart from the policies laid down by the Department of Personnel, it is mandatory for them to consult the Department of Personnel, in terms of sub-Rule 4 of the Rule 4 of the Transaction of Business Rules; otherwise the policies laid down by the Department of Personnel

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are binding on them. If that is the policy of the Government, we do not see any reason for the Railway Board not to adopt the policy instructions relating to reservation roster as issued by the Department of Personnel. The orders issued by the Railway Board dated 21.8.97 Annexure-A/3 are thus, liable to be quashed and set aside.

13. As per 'L' type roster issued by the Department of Personnel, in a cadre of two posts, a vacancy shall be reserved for SC only when 5th replacement is due. In view of this, impugned notification at Annex. A/1 is liable to be quashed and set aside. This is a case of second replacement and this vacancy cannot be treated as reserved for SC."

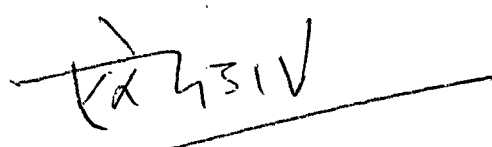
4.3 Thus, in view of the decision rendered by the Coordinate Bench in the case of Rajendra Kumar Gaur (supra) whereby the post based roster issued by the Railway Board vide letter dated 21.8.97 has been quashed vide its decision dated 11.5.2001, it was not permissible for the respondents to reserve second post for SC category vide the impugned order dated 20.7.2001 (Ann.A1). As can be seen from para 13 of the judgment as quoted above, as per L-type roster issued by the Department of Personnel, in a cadre of two posts, a vacancy shall be reserved for SC only when 5th replacement is due. Admittedly, it is not a case of the respondents that promotion of respondent No.1 is being made against 5th replacement and as such the vacancy have been treated as reserved for SC.

5. In view of the facts and circumstances discussed

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above, the impugned order dated 20.7.2001 (Ann.A1) so far as it relates to the selection of respondent No.4 for the post of Chief Metron against the post of SC category, is quashed and set-aside. The said vacancy shall be treated as unreserved and promotion against this vacancy shall be made as per rules.

6. The OA stands disposed of accordingly with no order as to costs.

  
(A.K. BHANDARI)

Member (A)

  
(M.L. CHAUHAN)

Member (J)