

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

DATE OF ORDER:

11/05/04

OA 414/2003

Smt. Chanchal Kaur aged about 37 years wife of Shri Rajendra Singh resident of Railway Building No. 1903, Block No. F, Hazari Bagh, Ajmer at present posted as Staff Nurse, Railway Hospital, Ajmer.

.... Applicant.

VERSUS

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager (Establishment), North Western Railway, Ajmer.
3. Chief Medical Superintendent, Railway, Hospital, North Western Ajmer.

.... Respondents.

Mr. Vinod Goyal, Proxy counsel for

Mr. Virendra Lodha, Counsel for the applicant.

Mr. R.G. Gupta, Counsel for the respondents.

CORAM:

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

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

ORDER

PER HON'BLE MR. A.K. BHANDARI

This OA u/s 19 of the CAT ACT, 1985 has been filed against the impugned order dated 25.8.2003 by which seniority of Smt. Chanchal Kaur, applicant, was lowered. The exact prayer clause reads as under:-

"(i) By an appropriate order or direction the Hon'ble Tribunal may kindly call for the entire record pertaining to issuance of impugned order dated 25th Aug. 2003 and after examining the same, be pleased to declare the impugned order dated 25th August 2003 (Annexure A/1) null and void and be quashed and set aside.

(ii) By further appropriate order of direction, the earlier seniority list dated 14.3.2003 be restored and the assignment

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of seniority of the applicant at sl. No. 25 in the final seniority list dated 14.3.2003 be quashed and be allowed to be maintained.

(iii) By further order or direction, the respondents be directed to restore back the seniority of the applicant at sl. No. 25 which was subsequently relegated to sl. No. 33A in pursuance to impugned order dated 25th August, 2003 and this action of the official respondents be declared null and void and be quashed and set aside.

(iv) By further order or direction, during the pendency of this OA, the respondents be directed to call upon the applicant by treating her to be within the zone of consideration or placing/restoring her name at sl. No. 25 and thereupon to consider her case for the purpose of enabling her to appear in the written examination for the purpose of promotion to the post of Nursing Sister.

(v) By further order or direction, any order prejudicial/detrimental to the interest of the applicant is passed during the pendency of this OA, the same may kindly be taken on record and be quashed and set aside.

(vi) Any other order or direction which the Hon'ble Tribunal may deem fit and proper, the same may kindly be passed in favour of the applicant.

(vii) Cost of the OA may kindly be granted."

2. The facts of the case, as mentioned in the application are that the applicant is a qualified Nurse and was appointed through Railway Recruitment Board in 1991 according to panel of 1990 and posted to Kota Division. Due to some family circumstances, she sought a request transfer to Ratlam Division in October, 1994, forgoing the seniority of Kota Division and as per rules, she was placed at the bottom in the seniority list of substantive staff nurse working in Ratlam Division. In the year, 1997, she had to again seek transfer from Ratlam Division to Ajmer Division due to family circumstances. She joined the Ajmer Division on 08.07.1997. There again, she was placed at the bottom seniority of staff nurses of Ajmer Division. The respondents have issued a seniority list dated 23.4.2001, extract copy of which has been placed as Annexure A/5 in which the applicant has been shown at sl. No. 40 whereas the same should have been shown at sl. No. 31-A just below Ms. Sunder Kaur, whose name appears at sl. No. 31 and just above Shakuntala Charles, whose name appears at sl. No. 32. Since persons whose name

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appears from sl. no. 32 onwards were juniors to the applicant inasmuch as their date of appointment/joining on the post of Staff Nurse is at a later date than that of the applicant. Aggrieved by this, the applicant submitted a detailed representation dated 16.5.2001 (Annexure A/6) but the respondents did not give any reply and she presumed that her request must have been considered favourably. That she was made to work against a leave work vacancy and not against the substantive post/vacancy in Ajmer Division. The respondents issued seniority list of substantive staff nurses on 14.3.2003, the relevant extract of which has been placed as Annexure A/7. In this, the applicant was shown at sl. No. 25 just below Ms. Surendra Kaur and above Ms. Shakuntala as per her request mentioned above. She thus presumed the earlier mistake in the seniority list dated 23.4.2001 has been corrected by the respondents. However, after a lapse of five months, a show cause notice dated 5.8.2003 was received by her by which she was informed that a mistake in seniority list dated 14.3.2003, placing her at sl. No. 25, was sought to be corrected by placing her at sl. No. 33A i.e. just below Pushpa Ajabsingh, whose name appears at sl. No. 33 and just above Ms. Swarnlata Masse, whose name appears at sl. No. 34. A copy of this show cause is annexed as Annexure A/8. In this show cause, no reason or rule under which the action is sought to be taken has been mentioned. However, applicant submitted reply dated 22.8.2003 (Annexure A/9) to this show cause wherein she categorically pleaded that the proposed action has no justification and the seniority list dated 14.3.2003 should not be changed to her disadvantage. It was also explained that persons who now proposed to be placed above the applicant joined the Ajmer Division after 8.7.1997 on which date, she had joined her duties on transfer in Ajmer Division and thus as per rules, her seniority cannot now be disturbed. However, without any regard to her request, impugned order dated 25.8.2003 has been issued. By this order, she has been placed far junior to people who joined the service much later than her. Therefore, the OA was filed.

2.1 In the ground for relief, it is stated that the order is illegal, arbitrary and unjustified and the in contravention of the provisions of Article 14 & 16 of the Constitution of India. The same is not sustainable in the eyes of law as seniority as assigned is in violation of rules, according to which persons joining latter cannot supersede those who join the cadre earlier. While contending this, names of persons who have been placed above in the seniority list and their date of joining at Ajmer are mentioned. It is also stated that she is a direct entrant of panel of 1990 whereas all the

persons now placed above her belonged to panel of 1995 on the basis of recruitment held by RRB Ajmer. As such, she is senior to them.

3. Respondents have given detailed reply and denied the contention of the applicant, ~~in working~~ rules under which the seniority position as per order dated 14.3.2003 has been changed. In parawise reply, not denying the facts upto the date of joining at Ajmer Division on 8.7.1997, it is stated that seniority of the applicant has been rightly assigned as per provisions under Para 312 of IREM. Copy of the seniority list dated 23.4.2001 has been placed as Annexure R/l. As per this seniority list, following employees are placed above the applicant, whose name has been placed at sl. No. 40.

Col. No.1 Seniority No.	Col. No.2 NAME OF Employee	col. No.8 Date of working as Staff Nurse in grade of 5000-8000
31.	Surendra Kaur	28.1.97
32.	Shakuntala Charls	13.9.97
33.	Vinita Agnihotri	10.9.97
34.	Kumud Kumari	5.11.97
35.	Rakesh Kumari	12.10.98
36.	Sandhiya S,Charme	19.12.96
37.	Sunita Pakhaira	2.1.97
38.	Pushpa Rani	7.12.1996
39.	Pushpa Ajab Singh	13.12.96
40.	Chanchal Kaur (THE APPLICANT)	28.3.91/ 8.7.97

As per the above chart, persons at sl. nos. 32 to 39 although assumed their duties at Ajmer Division on different dates, few of which are even later than 8.7.97, the date on which the applicant joined Ajmer Division but this seniority position has been arrived at by application of rule contained in Para 303(b) of IREM according to which RRB selected candidates who do not have to undergo any training prior to joining their duties, their seniority should be determined on the basis of merit order assigned to them by the RRB. It is then clarified that nursing staff in scale Rs.5000-8000/- appointed through RRB are not required to undergo any training in training centre before their appointment. Therefore, their merit or seniority is to be assigned as a group irrespective of their date of joining. It is further clarified that although persons whose name

appeared at sl. nos. 36 to 39 joined at Ajmer Division much earlier than those whose names appeared at sl. nos. 31 to 35, their seniority as given by RRB has not been changed in compliance to said rule. That persons at sl. nos. 36 to 39 were given appointment and they joined earlier because they belonged to Reserved category and their appointment orders were issued earlier than the others as and when vacancies as per Reservation Policy arose in Ajmer Division. Even though their date of joining at Ajmer Division is prior to some persons whose names has been placed above, the same is in compliance of the aforesaid Rule and, therefore, the impugned order is fully legal and justified.

4. It is further stated that the representation dated 16.5.2001 (Annexure A/6) had been wrongly considered when seniority list dated 14.3.2003 (Annexure A/7) was issued assigning the applicant seniority at sl. no. 25. However, when the mistake came to notice, the same was corrected by issuing the show cause notice dated 5.9.2003 and that administrative error can always be rectified as held by the Apex Court in many cases. Making her work on leave vacancy was justified because as per the seniority position, she was the junior most employee. It is also clarified that the applicant has not filed reply to the show cause notice within 15 days of its issue on 5.9.2003 and the respondent No. 2 had decided the seniority matter on 25.8.2003. While replying to the grounds, the correctness of application of Rule contained in Rule 303(b) of IREM is reiterated. Arbitrariness and violation of fundamental rights are denied by stating that show cause notice was given before issuing the impugned order and that the respondents are bound to rectify the mistake because perpetuation of the same would have amounted to illegality on their part.

5. The applicant has filed rejoinder trying to re-establish her case. on the logic of Para 312 of IREM concerning transfer on request, according to which the date of joining the cadre is relevant and according to the same persons placed above her at sl. nos. 32 to 39 should have been placed below her name. Therefore, there was no justification in issuing the impugned order.

6. During arguments both the learned counsel read through the rules and defended their case. The applicant read Para 312 of IREM and the learned counsel for the respondents read Para 303 of IREM and tried to justify their pleadings. The learned counsel for the respondents asserted his contention by saying that show cause notice

was issued before correcting the seniority position and the Department has the right to setright the mistake committed by them by adopting this method.

7. We have given careful consideration to the pleadings and find that counsel for the applicant's insistence on application of Para No. 312 in relation to her date of joining at Ajmer Division is correct in its own place but impugned order was issued to rectify the mistake that respondents had made while issuing seniority list dated 14.3.2003 inasmuch as the same was contrary to provisions contained in Para No. 303 of IREM. Undoubtedly, the applicant joined earlier than the ~~list~~ of few of the persons who have been placed above her in the seniority list but the same has been done in order to maintain their position enmass as they belonged to the group selected by RRB and did not have to go for any training before resuming duties. That they were recruited for the vacancies of 1995-1996, which is much earlier than the issuance of applicant's transfer order from Ratlam Division to Ajmer Division came in 1997. The claim that the applicant is also RRB selected candidate of 1990 panel does not stand in view of <sup>the fact</sup> that ~~seen~~ voluntary transferees have to be assigned bottom seniority in the new place of posting. The respondents are correct in having issued the show cause notice before resorting to the correctional exercise and under no logic, show cause notice date 5.8.2003 and impugned order dated 25.8.2003 can be considered lacking explicitness and transparency.

8. Due to these reasons, the relief claimed by the applicant cannot be granted and the impugned order dated 25.8.2003 cannot be quashed. The OA is accordingly dismissed. No order as to costs.

  
(A.K. BHANDARI)  
MEMBER (A)

  
(M.L. CHAUHAN)  
MEMBER (J)