

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

8

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 295/02

R.A/C.P No.

E.P/M.A No. 5103 and 75/03

- NP 5/43 and 1 Pg. 1 A 2
1. Orders Sheet..... 6/4 Pg. 1 to 7.....
NP 75/03 and 1 Pg. 1 Pg. 2
2. Judgment/Order dtd. 17.9.2004 Pg. 1 to 16. ~~16~~ 13. ~~13~~ 8 Sed
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... O.A 285/02 Pg. 1 to 38.....
5. E.P/M.P. 5103 Pg. 1 to 10.....
MP 75/03 Pg. 1 to 6.....
6. R.A/C.P..... Pg. to.....
W.S.R. No. 1 to 21 Pg. 1 to 65.....
W/S R. No 5x6 Pg. 1 to 5.....
7. Rejoinder..... Pg. 1 to 4.....
Rejoinder to the W.S.R. No 5x6 Pg. 1 to 3.....
8. Reply..... Pg. to.....
10. Any other Papers..... Pg. to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Sachita
04/12/17

(SEE RULE 2 & 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET

Original Application No : 385/02
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant(s): R. G. Bomile

• - V.S. -

11. Respondent(s): Mr. C. T. Fung

Advocate for the Applicant(s): Mr. C. Borneh, Mr. N.K. Bremen

Advocate for the Respondent(s): Mr. U. J. Sehgal
Case: B.C. Pathak

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time and <u>hence the petition is</u> filed / not filed C. E. for Rs. 50/- deposited vide IPO/B/ No. 26526192 Dated 2.12.02</p> <p><i>regd</i> By, Registrar <i>WTS</i> <i>10/12/02</i></p>	11.12.02	<p>Heard Mr. N.K.Boruah, learned counsel for the applicant.</p> <p>The application is admitted. Call for the records. Returnable by four weeks.</p> <p>Also, heard Mr. J.L. Sarkar, learned Standing counsel for the Railway.</p> <p>List on 13.1.2003 for orders</p>
<p>Slips & Envelopes taken. Cash amount is Rs. 5/- not deposited. Notice referred and sent to A/S for the defendant No. 1 to 6 Regd A/D. <i>do</i></p> <p>DINo. 3374679 Ad. 17/12</p>	mb	<p><i>CCUhar</i> Member</p> <p><i>Vice-Chairman</i></p> <p>13.1.2003 Due to vacation, the case is adjourned to 22.1.2003.</p> <p><i>own</i> <i>Ans</i></p>
	22.1.2003	<p>Presents:- The Hon'ble Mr. Justice D. N. Chowdhury, Vice-Chairman</p> <p>The Hon'ble Mr. S. K. Hajra, Administrative Member.</p> <p>Heard counsel for the parties. At the request of Mr. B. C. Pathak, learned Addl. C. G. S. C. fix further four weeks time is granted to the respondents to file written statement. List on 19.2.</p>

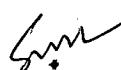
22.1.2003

Present:- The Hon'ble Mr. Justice D. N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. S. K. Hajra, Administrative Member.

On the prayer made by Mr. B. C. Pathak learned Addl. C.G.S.C. four weeks further time is allowed to the respondents to file written statement.

List the case on 19.2.2003 for order.



Member



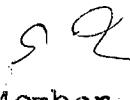
Vice-Chairman

bb

19.2.2003 Present : The Hon'ble Mr. Justice D. N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. S. Biswas, Administrative Member.

Put up the matter on 20.3.2003 to enable the respondents to file written statement.



Member



Vice-Chairman

mb

20.3.2003

The respondents are yet to file written statement. Mr. B. C. Pathak, learned Addl. C.G.S.C. prayed further time for filing of written statement.

Put up again on 23.4.2003 for filing of written statement.



Vice-Chairman

bb

23.4.2003

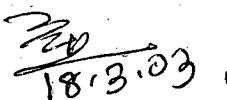
No written statement forthcoming, nor any steps taken. List the case again on 19.5.2003 enabling the respondents to file written statement.



Vice-Chairman

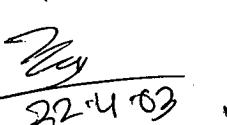
bb

No. of cases has been
billed.



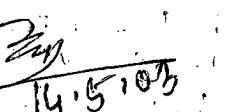
18.3.03

No. of cases has been
billed.



22.4.03

No. of cases has been
billed.



14.5.03

19.5.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. S.K. Hajra, Administrative Member.

Put up again on 17.6.2003 to enable the respondents to file written statement.

26/5/03

Written statement has been filed by the respondents No. 1-4 at pages. 39-53.

WS

26/5/03

Sum
Member

Vice-Chairman

17.6.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. R.K. Upadhyaya, Member (A).

Written statement has been filed. The case may now be listed for hearing on 6.8.2003. The applicant may file rejoinder, if any.

C. B. Ganguly

Member

Vice-Chairman

mb

6.8.2003 Mr. N.K. Baurah, learned counsel for the respondents stated prayed for little accommodation on the ground that he will file rejoinder. Prayer is allowed. It seems that the respondent Nos. 5 and 6 ~~also~~ have also filed written statement. Mr. A. Chakrabarty, learned counsel for the respondent Nos. 5 and 6 stated that he will serve a copy of the written statement in course of the day. The case is accordingly adjourned. Put up again on 1.9.2003 for hearing.

Member

Vice-Chairman

mb

1.9.03

Pt. Heard. Writ. on
8.9.03.

Box on

8.9.2003 Present : The Hon'ble Sri K.V. Prahaladan
Member (A).

List again on 27.10.2003 for
hearing.

KV Prahaladan
Member

mb

27.10.2003 Heard Mr.N.K.Baruah, learned coun-
sel for the applicant. List the case on
29.11.2003 in presence of the learned
counsel for the respondents.

KV Prahaladan
Member

Vice-Chairman

bb

29.10.03 The respondents were ordered to
produce the records. Mr B.C.Pathak,
learned counsel appearing for the res-
pondents stated that he is yet to get
hold of the records. Let him produce the
record within 3 weeks.

List on 21.11.03 for hearing. In the
meantime Mr Pathak shall produce the
record.

KV Prahaladan
Member

Vice-Chairman

pg

21.11.2003 Present : The Hon'ble Smt. Lakshmi
Swaminathan, Vice-Chairman

The Hon'ble Shri S.K.Naik
Administrative Member.

Mr.N.K.Barnah, learned counsel for
the applicant.

Mr.J.L.Sarkar, learned counsel for
respondent nos. 5 & 6.

Mr.B.C.Pathak, learned Addl.C.G.S.C.
for other respondents through proxy
counsel Mr.A.Deb Roy, learned Sr.
C.G.S.C.

List on 23.12.2003.

Deb Roy
Member

Vice-Chairman

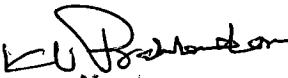
bb

23.12.2003 Present : The Hon'ble Mr. Justice
B. Panigrahi, Vice-Chairman.

The Hon'ble Mr. K.V. Prah
ladan, Member (A).

A prayer has been made on
behalf of the Mr. B.C. Pathak, learned
Addl. C.G.S.C. for the respondents for
adjournment of the case since he is
indisposed today. Accordingly, the
matter is adjourned for some other
date.

Let the matter appear in the
next available Division Bench.


Member

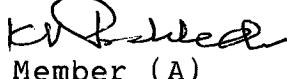

Vice-Chairman

mb

20.1.2004 Present: Hon'ble Shri Bharat Bhusan,
Member (J)

Hon'ble Shri K.V. Prah
ladan,
Member (A).

Mr U.J. Saikia, learned counsel
for the applicant seeks an adjournment,
which is not opposed by Mr B.C. Pathak,
learned Addl. C.G.S.C. Prayer allowed.
List the case for hearing on 23.2.04.


Member (A)

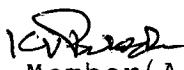

Member (A)

nkm

23.2.2004 Present: Hon'ble Shri Shanker Raju,
Judicial Member

Hon'ble Shri K.V. Prah
ladan,
Administrative Member.

None present for the applicant.
Let the case be listed on 25.2.04.


Member (A)


Member (J)

nkm

25.2.04

None for the parties.
List on 17.3. for hearing.

KV Prah
Member (A)

h
Member (J)

pg

11.5.2004 Present: The Hon'ble Shri Mukesh Kumar Gupta, Member (J).

The Hon'ble Shri K.V.Prahladan, Member (A).

List the case before the next
Division Bench.

KV Prah
Member (A)

sp
Member (J)

bb

15.9.2004 Present: The Hon'ble Mr. Justice R. K. Batta, Vice-Chairman.

h
The Hon'ble Mr.K.V.Prahladan
Member (A). Heard

List on 17.9.2004 for judgment.

KV Prah
Member

R
Vice-Chairman

bb

Notes of the Registry Date Order of the Tribunal

17.9.04

Heard counsel for the parties.
Hearing concluded. Judgment delivered in
open Court, kept in separate sheets.

The application is dismissed with
costs, in terms of the order.

K. Pradeep
Member

R
Vice-Chairman

19.10.04
Copy of the Judg
has been sent to the
D/See. for issuing the
same to the applicant
as well as to the
L/Advocates for the
respsns.
**

Copy to Advocate
received on 20/10/04
Baru
Advocate

9

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A. No. 385 of 2002

DATE OF DECISION 17-9-2004

Smt Rama Gandha Banik APPLICANT(S)

S/Sri C.Baruah, N.K.Baruah and U.J.Saikia ADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

Union of India & Ors. RESPONDENT(S)

Sri B.C.Pathak, Railway standing counsel ADVOCATE FOR THE
Sri J.L.Sarkar and Sri A.Chakrabarty for RESPONDENT(S).
Respondents No. 5 and 6.

THE HON'BLE MR. JUSTICE R.K.BATTA, VICE CHAIRMAN

THE HON'BLE MR. K.V.PRAHLADAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgment ?
 4. Whether the judgment is to be circulated to the other Benches ?
- Judgment delivered by Hon'ble Vice-Chairman
- 13.

10

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original application No. 385 of 2002.

Date of Order : This the 17th Day of September, 2004.

The Hon'ble Mr Justice R.K.Batta, Vice-Chairman

The Hon'ble Mr K.V.Prahladan, Administrative Member.

Smt Rama Gandha Banik,
Wife of Sri D.R.G.Banik,
resident of Barabari Railway Colony,
P.O. & P.S. Dibrugarh,
Dist. Dibrugarh, Assam

...Applicant

By Advocate S/Sri C.Baruah, N.K.Baruah & U.J.Saikia.

- Versus -

1. Union of India,
represented by the Secretary
to the Government of India,
Ministry of Railways,
New Delhi.

2. North East Frontier Railway,
represented by the General Manager(P)
N.F.Railway, Maligaon,
Guwahati-11.

3. General Manager (P),
N.F.Railway, Maligaon,
Guwahati.

4. Chief Medical Superintendent,
N.F.Railway, Dibrugarh.

5. Smt Chaya Rani Dey,
W/o Sri Swadesh Dey,
N.F.Railway Hospital,
Dibrugarh.

6. Smt Bandhuli Ganguli,
W/o Sri Dipankar Ganguli,
N.F.Railway Hospital,
Dibrugarh

...Respondents

By Sri B.C.Pathak, Railway standing counsel, Mr. J.L. Sarkar and
Mr. A. Chakrabarty for Respondents No. 5 and 6.

O R D E R (ORAL)

BATTA J, (v.C)

None for the applicant and for the respondents at the
time of judgment.

2. The case of the applicant is that she was appointed as
Nursing Sister on 30.1.79 in Dibrugarh Railway Hospital and

while she was serving in the said capacity she was given ad-hoc promotion on 25.10.90 as Matron Grade II for a period of 90 days and posted at Badarpur Railway Hospital. However, she made a representation on 30.11.90 that it was no possible for her to accept ad-hoc promotion for 90 days at Badarpur and she requested for her promotion at Dibrugarh Railway Hospital. The said representation of the applicant could not be considered as there was no vacancy of Matron Grade II at Dibrugarh Railway Hospital. The applicant was again promoted to the post of Matron Grade II vide order dated 12.5.92 and was transferred to Lumding. The applicant submitted another representation on 22.5.92 expressing her inability to go to Lumding as her husband was posted as Chargeman at Dibrugarh and she had 3 school going minor children. She again requested for her promotion as Matron at Dibrugarh Railway Hospital. By letter dated 6.8.92 the Chief Medical Superintendent, Dibrugarh informed the applicant that the post of Matron Grade II had since been decentralised and if the applicant is not willing to carry out her promotion order to Lumding, it would amount to her refusal to accept promotion and her case of promotion as Matron Grade II shall be considered after one year subject to availability of vacancy in her own seniority unit within the panel life i.e. upto 13.2.94 and if such vacancy is available within the said period of the panel life. The applicant, therefore, came under bar of promotion for one year. On 3.2.93 a circular was issued by the office of the Chief Personnel Officer, N.F.Railway, Maligaon regarding the restructuring of certain Group 'C' and 'D' cadre. In the said

circular certain instructions were issued. The applicant relies upon instructions 4.1 (i) and 15 which read as under :

"4.1. Vacancies existing on 1.3.93 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence :

- (i) from panels approved on or before 1.3.93 and current on that date;
- (ii) and the balance in the manner indicated in para 4 above."

"15. Such of the staff as had refused promotion before issue of these orders and stand debarred for promotion may be considered for promotion, in relaxation of the extant orders as a one time exception, if they indicate in writing that they are willing to be considered for such promotion against the vacancies existing on 1.3.93 and arising due to restructuring. This relaxation will not be applicable to vacancies arising after 1.3.93."

According to the applicant, she filed an application on 17.5.93 before the Chief Medical Superintendent, N.F.Railway Hospital, Dibrugarh for consideration of her promotion as Matron Grade-II in her own seniority unit within the panel life i.e. upto 13.2.94 and in this application she drew the attention of the department to circular dated 3.2.93. By office order dated 23.8.93 four Nursing Sisters including the applicant and respondents No.5 and 6 were given promotion to the post of Matron Grade-II with effect from 1.3.93 as a result of restructuring of certain Group 'C' and 'D' cadre. While giving these promotions, the name of the applicant appeared at serial No.4 while the respondents 5 and 6 appeared at serial No.1 and 2 respectively. The applicant filed a representation before the Chief Medical Superintendent, N.F.Railway, Dibrugarh on 3.9.93

Q

contending that her seniority was wrongly assigned showing her name at serial No.4 and instead her name should have been shown at serial No.1. In this representation also the applicant drew the attention of the authorities to circular dated 3.2.93. The applicant states that no action was taken by the authorities on her representation dated 3.2.93, even though the applicant approached the concerned authorities several times personally and also through N.F.Railway Mazdoor Union. After a lapse of 7 years the Chief Medical Superintendent, N.F.Railway Hospital, Dibrugarh vide letter dated 17.4.2000 issued show cause notices to respondents No.5 and 6 in relation to fixing up of seniority of the applicant and in the said letter the applicant was shown at serial No.1 and respondents No.5 and 6 were shown at serial No.2 and 3 respectively. The applicant has categorically stated that no objections were filed by respondents No.5 and 6 regarding the recasting of seniority position of the applicant showing her name at serial No.1 and the seniority was, therefore, treated as final. This statement, of course, is not correct. The Chief Medical Superintendent, N.F.Railway, Dibrugarh vide letter dated 17.8.2001 forwarded the representation to General Manager(P), N.F.Railway, Maligaon, Guwahati alongwith the representation of the applicant dated 17.5.93. By order dated 9.4.2002 it was decided that the claim of the applicant for assigning seniority over her erstwhile seniors and her claim for grant of overriding seniority on the basis of para 4.1 of Railway Board's circular dated 21.1.93 was

Q -

not tenable. The applicant seeks to challenge the said office order dated 9.4.2002 and seeks setting aside of the same as also directions to the respondents to reconsider the seniority of the applicant in Matron Grade-II above that of respondents No.5 and 6. According to the applicant, the impugned order is not in conformity with para 4.1 of circular dated 27.1.93, in as much as the applicant was entitled to be considered from the existing panel in which her name had figured, pursuant to which she was entitled to rank senior to the respondents No.5 and 6.

3. Respondents No.1 to 4 raised the issue of latches and have contended that the application is hopelessly barred by law of limitation and it is liable to be rejected on that count alone. It is contended that the applicant was initially appointed as Nursing staff on 30.1.79 and not as Nursing Sister as stated by the applicant in the application. In respect of application dated 17.5.93 it is submitted that no record is available with the office of Chief Medical Officer to show that any such application was ever received from the applicant nor such application reached the authority concerned for taking any action. The respondents had in fact made queries with Mrs Renu Lahiri who is alleged to have received the said application dated 17.5.93, but she has confirmed that she had neither received application dated 17.5.93 nor purported signature acknowledging the same are her signatures. The communication to this effect of Mrs Renu Lahiri dated 3.2.91 has been filed on records by the respondents as Annexure R-II. The case of the respondents is that the selection of Matron Grade-II conducted

Q -

before 1993 was done at the Headquarter level, while restructuring promotion to the senior most person was done at the Divisional level on the basis of seniority. While restructuring on the basis of divisional seniority, the senior most Nursing Sisters who were to be given promotion to the post of Matron were placed above the applicant. According to the respondents, show cause notice to respondents No. 5 and 6 were sent to them at the instance of the one of the recognised Union.

4. The respondents No. 5 and 6, who will be directly affected, in their statement also contended that the applicant was initially appointed as Nursing staff with effect from 30.1.79 and was promoted as Nursing Sister vide letter dated 24.3.86 against cadre restructuring of Group 'C' and 'D' alongwith respondents No. 5 and 6, where respondents No. 5 and 6 were placed in 1st and 2nd position and the applicant was placed at serial No. 6. It is further contended that for selection of Matron Grade - II in 1992, the vacancy in question was existing in other divisions, particularly at Lumding Division only, but the applicant refused promotion in Lumding Division. The respondents No. 5 and 6 further state that the applicant was selected against reserved vacancy. According to the respondents, restructuring promotion has been on the basis of Divisions and the respondents being senior in feeder cadre of Nursing Sister were rightly shown as senior to the

R

applicant in Matron Grade II at the time of restructuring promotion.

5. In the rejoinder filed by the applicant it is stated that there was typographical mistake while stating that the applicant was first appointed as Nursing Sister on 30.1.79. It was reiterated therein that the applicant has submitted application dated 17.5.93 which was duly received by the authority concerned with signature. It was further stated therein that the respondents No. 5 and 6 did not file objection within 30 days, but objections dated 16.5.2000 have been prepared by respondent authorities and shown to have been filed by the respondents No. 5 and 6.

6. We have heard learned counsel for the parties at length. Learned counsel for the applicant has placed before us facts of the case and after placing reliance on para 4.1 and 15 of Circular dated 3.2.93 has submitted that since the applicant was empanelled on the panel of Matron Grade II which was in force till 13.2.94, her case was required to be considered in the sequence referred to in para 4.1 of circular dated 3.2.93 and if it is considered as per sequence mentioned therein, the applicant is entitled to be placed above respondents No. 5 and 6. According to him, there is absolutely no delay on the part of the applicant in approaching this Tribunal since she had already claimed promotion to Matron Grade II vide letter dated 17.5.93 and also made representation on the question of seniority vide letter dated 3.9.93 which were not considered by the

R

Contd...8

authority and kept pending for 7 years after which case of the applicant was considered as can be seen from letter dated 17.4.2000 wherein she was proposed to be placed at serial No. 1 and respondents No. 5 and 6 were placed at serial No. 5 and 6 respectively. However, by order dated 9.4.2002 her claim of seniority on the basis of para 4.1 of the Railway circular dated 27.1.93 was held to be not tenable. This order dated 9.4.2002 is challenged by the applicant. Accordingly, learned counsel for the applicant has submitted before us that the applicant's case may be considered in terms of para 4.1 of the Railway Board's circular dated 27.1.93.

7. Learned Advocate for respondents have urged that application dated 17.5.1993 was never filed by the applicant in the department. In this connection our attention has been drawn to letter dated 3.9.2001, wherein the alleged recipient of the letter Mrs Renu Lahiri has stated that she neither received any such application nor the signatures acknowledging the same are hers. It is, therefore, contended that letter dated 17.5.1993 cannot be taken into consideration for the purpose of giving benefit under circular dated 27.1.93. According to them, the applicant has approached this Tribunal with great delay and the application is liable to be dismissed on the count alone. Learned counsels for the respondents further submitted that the applicant has not approached this Tribunal with a clean hands in as much as there has been misrepresentation and suppression of facts on account of which applicant should not



Contd...9

be granted any relief. It was contended before us that the applicant was initially appointed as Nursing staff and not as Nursing sister. Letter dated 17.5.93 is a forged letter prepared by the applicant in order to show that she filed the application in terms of para 4.1 of circular dated 27.1.93. On the question of pleadings which are not controverted, reliance has been placed on Smt Naseem Bano Vs. State of UP & Others, AIR 1993 S.C. 2592. Learned Advocate for respondents No. 1 to 4 has also placed before us the departmental records for perusal.

8. We have perused the records placed by learned counsel for the respondents 1 to 4 before us as also records of the application. The first question which we like to deal with in this application relates to the contention advanced by the learned counsels for the respondents to the effect that the applicant has not approached this Tribunal with clean hands and the application in question is barred by latches. The applicant has stated that she was initially appointed as Nursing sister on 30.1.79. This is factually incorrect. The applicant was infact appointed as Nursing staff on 30.1.79 as can be seen from the appointment letter, which is in the records of the department - Xerox copy of which is taken on record. It appears that the applicant has intentionally not filed this appointment letter in order to give impression to this Tribunal that the applicant right from the beginning was appointed as Nursing sister. The contention of the applicant in rejoinder that there was typographical error in stating that she was appointed as Nursing sister whereas

Q -

Contd...10

in fact she was appointed as Nursing staff cannot be obviously accepted. Respondents No. 5 and 6 have stated in para 3 of their reply that the applicant was promoted as Nursing sister vide letter dated 24.3.86 against cadre restructuring of Group C and D alongwith answering respondents No. 5 and 6, wherein respondents No. 5 and 6 were placed in first and 2nd position and the applicant was placed at serial No. 6. In respect of this statement of fact the applicant in her rejoinder to written statement stated that the statements made against para 4(iii), 4(iv) and 4(v) in para 3 of the written statement are not at all correct and the applicant denied the same. This denial is totally incorrect as can be seen from the record placed before us by learned counsel for Railways. This order dated 24.3.86 shows that the applicant and respondents No.5 and 6 were promoted in terms of order dated 24.3.86 as a result of restructuring of cadre. Xerox copy of the said order dated 24.3.86 from the records produced by the learned counsel for the respondents No.1 to 4 is taken on record. This order dated 24.3.86 shows that the respondents No.5 and 6 are at serial No.1 and 2 respectively and applicant in fact at serial No.6. This vital fact relating to promotion of applicant from Nursing Staff to Nursing Sister was very cleverly withheld and suppressed by the applicant so that interse seniority of the applicant vis-a-vis respondents No.5 and 6 and true facts do not come before the Tribunal. This, in our


contd..11

opinion, is the real intention of the applicant in withholding the said fact and typographical error is merely an excuse put forward to cover up the same. Even the pay of the applicant which is fixed under this order in the pay scale of Rs.455-700/- is Rs.530/- as on 1.1.84, Rs.545/- as on 1.1.85 and Rs.560/- as on 1.1.86. The pay of respondent No.5 in the scale of Rs.455-700/- has been fixed at Rs.680/- as on 1.1.84 and Rs.700/- as on 1.1.85 and likewise the pay of respondent No.6 in the said scale has been fixed at Rs.640/- as on 1.1.84 and Rs.660/- as on 1.1.85 and Rs.680/- as on 1.1.86. Thus not only respondents No.5 and 6 had been placed senior to the applicant in the category of Nursing Sister, but their pay has also been fixed at a higher level in relation to the applicant. In Office Order 5/86 dated 13.3.86 also the respondents 5 and 6 were shown senior to the applicant. Xerox copy of the said office order is taken on record. In this order 5/86 the respondent No.5 is at serial No.14, respondent No.6 is at serial No.29 and the applicant was shown at serial No.50. It is also pertinent to note that the records show that respondent No.5 was initially appointed as Staff Nurse on 8.1.72, respondent No.6 was appointed as Staff Nurse on 16.6.73 and the applicant was appointed as Staff Nurse only on 30.1.79. The record further shows that as on 1.4.86 in the cadre of Staff Nurse the respondents had already been confirmed but the applicant was only officiating against the said post.

R -

9. Coming to the letter dated 17.5.93, the case of the applicant is that she had filed the said application before the Chief Medical Superintendent, N.F.Railway, Dibrugarh.

The respondents after placing reliance upon letter dated 3.9.2001 from Mrs Renu Lahiri have stated that the said

letter was neither received by her nor the signatures of acknowledgement on the said letter are her's. The record of

~~es~~Chief Medical Officer, Dibrugarh also shows that no such application had never been received. In rejoinder the

applicant has only stated to the extent that the application dated 17.5.93 was duly received by authority concerned with signature on the original application. There is no specific

averment that the said application was received by Mrs Renu Lahiri or categorical averment that application dated 17.5.93 was in fact acknowledged by Mrs Renu Lahiri. In the

light of this position, it is difficult to accept the case of the applicant that she had in fact filed the said application which was received by Mrs Renu Lihiri. Moreover,

if we scrutinise the said application and the cutting at the

dated 17.5.93

end of the said application with x-ray eyes, it is clear

that initially below the name of the applicant what was written was Matron Grade-II and after cutting the same it

has been written below in hand Nursing Sister. This would

also go to show that this application has been manipulated

after applicant had already been promoted to Matron Grade-II

in order to show somehow or the other that she, in fact,

fulfills the qualification for consideration under circular

R -

dated 27.1.93. Para 15 of Circular dated 27.1.93 speaks for consideration of candidates under bar of promotion, as one time exception if such candidate indicate in writing willingness for consideration. This special concession was given for restructuring the cadre. In the absence of any such willingness in writing, para 15 of Circular dated 27.1.93 does not entitle the applicant for any preference under para 4.1 of the said Circular. It is hard to believe that the applicant orally pursued for years together with the authority several times personally in respect of this application dated 17.5.93 or in respect of her application dated 3.9.93 challenging the seniority. It is worth mentioning that respondent No.5 was promoted as Chief Matron at Dibrugarh vide order dated 27.7.99 and it appears from the record produced by the Railways that it is only thereafter that the applicant through Railway Unions tried to raise the issue of seniority after a lapse of 7 years of her representation. It is settled law that in service matters the question of seniority should not be reopened after a lapse of reasonable period because that results in disturbing the settled position which is not justifiable. This view has been taken by the Hon'ble Supreme Court in B.S.Bajwa and another vs. State of Punjab and others, reported in AIR 1999 SC 1510. It is pertinent to note that it was only in the year 2000 that the respondents No.5 and 6 and one Mrinalini Mitra were given show cause notice for

Q

correction of seniority of the applicant by showing the applicant at serial No.1, respondents No.5 and 6 at serial No.2 and 3 and Smt. Mrinalini Mitra at serial No.4. The claim of the applicant for overriding seniority was rejected. In fact, the case of the applicant could not have been considered under para 4.1 of circular dated 27.1.93 in as much as she was under bar of promotion for one year and she had not indicated in writing that she was willing to be considered for promotion as provided under para 15 of the said circular dated 27.1.93. It was with a view to fulfill the condition of application in writing that application dated 17.5.93 was fabricated by the applicant in order to strengthen her claim of seniority on the basis of para 4.1 of the said circular. Moreover, it is pertinent to note that according to Respondents No.5 and 6 while restructuring promotion to Matron Grade-II, seniority of employees at Divisional ~~provisional~~ level was considered and senior most persons were promoted as a result of which Respondents No.5 and 6 were placed above the applicant. Thus even on merits the applicant has no case, since respondents No.5 and 6 were always senior to the applicant in the Nursing Staff Grade but also in the Nursing Sister Grade, as also in the Matron Grade-II. Both the respondents had joined service many years prior to the applicant and both the respondents have now been promoted as Chief Matron. Respondent No.5 was promoted on 27.7.99 and respondent No.6 was promoted on 11.7.2003. In the circumstances, it is not possible to unsettle the

Q

settled position of seniority which is in force for years together.

10. We may also point out at this stage that the applicant had initially in para 4(xvi) of the application made categorical statement that respondents No.5 and 6 had not filed any objections pursuant to show cause notice dated 17.4.2000. This statement is found at para 4(xvi). The applicant had verified the application by stating that the statements made in para 1 to 5 and 7 of the application were correct and true to her knowledge which she believe to be true. The respondents have in fact produced objections filed by them on 16.5.2000 and in the affidavit in rejoinder the applicant has now changed her stand that the objections were not filed within 30 days which again is misleading and incorrect statement. Objections were called by show cause notice dated 17.4.2000 and the objections were filed on 16.5.2000 which are well within the time limit fixed therein.

11. In view of the above, we find that the applicant has not only placed misleading facts before this Tribunal but also suppressed certain relevant facts and has approached this Tribunal with grave latches under the garb of order dated 9.4.2002 even though she had not pursue her case of seniority after filing representation on 3.9.93 for long period of 7 years. It appears that it was only at the

R -

instance of the Union who took up the cause of the applicant that the issue was sought to be reopened but it was again decided against the applicant.

For the aforesaid reasons, the application is dismissed with costs, which shall be borne by the applicant.



(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER



(R.K.BATTA)
VICE CHAIRMAN

10
28

General Administrative Tribunal Guwahati Bench 9 DEC 2002	This application is in form but not in the Condonation stage. This is filed on 9 DEC 2002 C. F. and for Rs. 50/- deposited vide F.P.U.B/2002 Dated 9 DEC 2002 Guwahati Bench
--	--

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH,
GUWAHATI *By Register*

ORIGINAL APPLICATION NO. 385 /2002.

Smti. Rama Gandha Banik ... Applicant.

- Vs -

Union of India & Ors. ... Respondents.

I N D E X

<u>Sl.No.</u>	<u>Particulars</u>	<u>Page Nos.</u>
1.	Particulars	1 to 18
2.	Verification	19
3.	Annexure-0A Order dtd. 27-1-88	20
4.	Annexure-0B Representation dtd. 30-11-90	21
5.	Annexure-0C Letter dtd. 30-11-90	22
6.	Annexure-0D Letter dtd. 10-1-92	23
7.	Annexure-0E Letter dtd. 12-5-92	24
8.	Annexure-0F Representation dtd. 12-5-92	25
9.	Annexure-0G Letter dtd. 6-8-92	26
10.	Annexure-0H Circular dtd. 3-2-93	27 to 31
11.	Annexure-0I Representation dtd. 17-5-93	32
12.	Annexure-0J Order dtd. 23-8-93	33
13.	Annexure-0K Representation dtd. 3-9-93	34
14.	Annexure-0L Letter dtd. 17-4-2000	35 - 36
15.	Annexure-0M Letter dtd. 17-8-2001	37
16.	Annexure-0N Order dtd. 9-4-2002	38

Filed by : Smti. Rama Gandha Banik
 through :- Mr. N.K. Barua, Advocate
 Date of filing :- 3-12-02

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH AT GUWAHATI.

File No. 87
Smti. Rama Gandha Banik
-Applicant
Through. Banik
(Chabu Kali Banik) Advocate
Rama Gandha Banik, 27

An application under Section 9 of the
Administrative Tribunal Act, 1985.

Original Application No.

/2002.

Smti. Rama Gandha Banik
W/o Sri D.R.G.Banik, resident of
Barabari Railway Colony,
P.O. & P.S. Dibrugarh,
District-Dibrugarh, Assam.

...

Applicant.

-Versus-

1. Union of India, represented by
the Secretary to the Govt. of
India, Ministry of Railways,
New Delhi.
2. North East Frontier Railway
represented by the General
Manager(P) N.F.Railway, Maligaon,
Guwahati.
3. General Manager(P), N.F.Railway,
Maligaon, Guwahati.
4. Chief Medical Superintendent,
N.F.Railway, Dibrugarh.

Contd. 2

5. Smti. Chaya Rani Dey,
W/o Sri Swadesh Dey,
N.F.Railway Hospital,
Dibrugarh.

6. Smti. Bandhuli Ganguli,
W/o Sri Dipankar Ganguli
N.F.Railway Hospital,
Dibrugarh.

Respondents.

1. PARTICULARS OF ORDER AGAINST WHICH THIS APPLICATION IS MADE :

Office order No.E/PC/02/BANIK RG/Grievance dated 9-4-02 issued by APO/ADMN for General Manager (P) N.F.Railway, Maligaon (Annexure-N).

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the order against which the relief is sought for is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :-

The applicant declares that the application is within the period of limitation as prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :-

(i) That the applicant is a citizen of India and at present residing in the Barabari Railway Colony, Dibrugarh in the district of Dibrugarh, Assam. The applicant belong to 'Namasudra' community which is recognised as Schedule Caste Community of Assam.

~~not produced
app. order~~
Staff Nurse
Nursing S.c

(ii) That the applicant was initially appointed as Nursing Sister in the year 1979 (30-1-79) in the Dibrugarh Railway Hospital and while the applicant was serving as Nursing sister the Divisional Medical Officer, Dibrugarh vide letter No.E/254/1 dated 27-1-1988 informed the applicant along with 2 others that a decision has been taken to form a panel for the post of Matron Grade-II in scale of Rs. 2000-3200/- and advised the applicant to keep herself ready to appear in the selection on short notice.

1.3.93
A copy of the letter dated 27-1-1988 aforesaid is annexed as Annexure-A.

(iii) That the applicant states that in pursuance to the letter dated 27-1-1988 a panel was formed for the post of Matron and accordingly vide office order No.E/90/5/P-IV(Med) dated 25-10-90 the

applicant was given ad-hoc promotion as Matron Grade-II for a period of 90 days and posted at Badarpur Railway Hospital. It may be pertinent to mention herein that from the panel for the post of Matron which was formed in pursuance to the letter dated 27-1-88, the applicant was the only person to be selected and promoted to the post of Matron Grade-II. The respondents No.5 & 6 who also appeared in the selection were not selected..

iv) That the applicant states that on receipt of the office order No.E/90/5/P-IV(Med) dated 25-10-90 for promotion to Matron Grade-II and posting at Badarpur, the applicant submitted a representation dated 30-11-90 before the Chief Medical Officer, N.F.Railway, Maligaon through the Medical Superintendent, N.F.Railway, Dibrugarh stating therein that it is not possible for her to accept ad-hoc promotion for 90 days at Badarpur and requested to arrange for her promotion as Matron Grade-II at Dibrugarh Railway Hospital instead of Badarpur.

A copy of the representation dated 30-11-90 is annexed as Annexure-B.

v) That the representation submitted by the applicant was forwarded to the Chief Medical Officer, Maligaon by the Medical Superintendent, Dibrugarh

- 5 -

vide letter dated 30-11-90 stating therein that as requested by the applicant there is no vacancy of Matron Grade-II at Dibrugarh Railway Hospital and consequently the representation of the applicant could not be considered and as such the applicant could not accept her promotion as Matron Grade-II, and thereby had to forego/waive her promotion.

A copy of the letter dated 30-11-90 is annexed as Annexure-C.

vi) That the applicant states that again in the year 1992 the Medical Superintendent, Dibrugarh vide letter dated 10-1-92 directed the applicant along with five other Nursing sisters including respondents No.5 & 6 to appear in the written cum-viva-voca test on 22-1-92 for selection for the post of Matron. Accordingly the applicant appeared and got selected for the post of Matron Grade-II. This time also the applicant was the only candidate to get the selection from amongs the total number of 6 candidates who appeared in the said selection. The respondent No.5 and 6 who were also amongs the 6 candidates for the post of Matron however did not get selected.

A copy of the letter dated 10-1-92 aforesaid is annexed as Annexure-D.

vii) That on being selected for the post of Matron Grade-II, the applicant was again promoted

and transferred to Lumding as Matron Grade-II in the scale of Rs.2000-3200/- per month Vide letter No.E/283/1 dated 12-5-92 issued by the Medical Superintendent, N.F.Railway, Dibrugarh.

A copy of the letter No.E/283/1 dated 12-5-92 aforesaid is annexed as Annexure-E.

viii) That after issue of the order/letter dated 12-5-92 by which the applicant was promoted to the post of Matron Grade-II and transferred to Lumding the applicant submitted another representation before the Chief Medical Officer, N.F.Railway, Maligaon on 22-5-92 stating therein, her inability to go to Lumding as her husband has been posted as chargeman under Dy.C.M.E/DBWS at Dibrugarh and that she has three minor school going children studying at Dibrugarh, and by the said representation requested the authorities to arrange for her promotion and posting as Matron Grade-II at Dibrugarh Railway Hospital instead of Lumding.

A copy of the representation dated 22-5-92 aforesaid is annexed as Annexure-F.

ix) That on receipt of the representation dated 22-5-92 submitted by the applicant, the Chief Medical Superintendent, Dibrugarh vide letter No. E/283/1 dated 6-8-92 informed the applicant that

the post of Matron Grade-II has since been decentralised and if the applicant is not willing to carry out her promotion order to Lumding it will tantamount to her refusal to accept promotion and that her case for promotion as Matron Grade-II may be considered after one year subject to availability of vacancy in her own seniority unit within the panel life i.e. upto 13-2-94, and if such/vacancy is available after one year of refusal of promotion and within the panel life her promotion may be considered. Ultimately after receipt of the letter dated 6.8.92, the applicant did not carry out her promotion order to Lumding and it amounted to refusal to accept promotion and the applicant came within the 1 year bar for promotion.

A copy of the letter dated 6-8-92 aforesaid is annexed as Annexure-G.

- x) That the applicant states that in the meanwhile a circular dated 3-2-93 was issued from the office of the Chief Personnel Officer, N.F.Railway, Maligaon to all the Heads of Departments regarding the restructuring of certain group 'C' and 'D' cadres. In the said circular dated 3-2-93 regarding restructuring of certain group 'C' and 'D' cadres vide Railway Board's letter dated 27-1-93 certain instructions were issued which were to be strictly

- 8 -

and carefully adhered to while ~~xx~~ implementing the orders. Among the said instructions, instruction 4.1 reads as follows -

✓ "4.1. Vacancies existing on 1-3-93 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/~~existing~~ resultant vacancies should be filled in the following sequence :

- (i) from panels approved on or before 1-3-93 and current on that date;
- (ii) and the balance in the manner indicated in para 4 above".

The said circular has also framed provisions for consideration of promotion of the persons who were debarred from promotion for refusal to accept promotion, and the said provision was formulated by instruction 15 which reads as follows -

✓ "15. Such of the staff as had refused promotion before issue of these orders and stand debarred for promotion may be considered for promotion, in relaxation of the extant orders as a one time exception, if they indicate in writing that they are willing to be considered for

such promotion against the vacancies existing on 1-3-93 and arising due to restructuring. This relaxation will not be applicable to vacancies arising after 1-3-93".

A copy of the circular dated 3-2-93 aforesaid is annexed as Annexure-H.

No Vacancy
at Dibrugarh

xi) That the applicant states that after the 1 year debarred period for promotion had expired, the applicant submitted an application before the Chief Medical Superintendent, N.F.Railway Hospital, Dibrugarh on 17-5-93 for consideration of her promotion as Matron Grade-II in her own seniority unit within the panel life i.e. upto 13-2-94. In the said application dated 17-5-93, the applicant also drew reference to the circular dated 3-2-93 regarding Cadre restructuring, and requested the authorities to absorb her at Dibrugarh against the vacancies arising out of Cadre restructuring reviewed enhanced percentage. The said application was received by the authorities on 17-5-93.

A copy of the said application dated 17-5-93 is annexed as Annexure-I.

xii) That on 23-8-93 an office order was issued from the office of the Chief Medical

- 10 -

Superintendent, N.F.Railway, Dibrugarh whereby 4 numbers of Nursing sisters including the applicant and respondents No.5 and 6 were given promotion to the post of Matron Grade-II in the scale of Rs.2000-3200/- p.m. w.e.f. 1-3-93 as a result of restructuring of certain Group 'C' and 'D' cadre. While giving the promotions the authorities had prepared a seniority position of the promoted Nursing sisters and in the seniority position the name of the applicant appeared at serial No.4 while the seniority position of the respondents No.5 and 6 appeared at serial No.1 and 2 respectively. It may be pertinent to mention herein that on the earlier occasions the respondents No.5 and 6 did not find place in the panel for promotion to the post of Matron Grade-II and it is only for the first time they have been included, whereas on both the earlier occasions only the applicant's name was included in the panel for selection and promotion to the post of Matron Grade-II and accordingly the applicant on both the occasions was promoted to the post of Matron Grade-II which were waived/refused by the applicant. Had the applicant accepted her promotion to the post of Matron Grade-II in the year 1990 and 1992 the applicant definitely would have been senior to the respondent No.5 and 6, as the person appearing at serial No.3 - Smti. Mrinalini Mitra has already retired on 31-3-02.

A copy of the office order dated 23-8-93 showing the seniority positions is annexed as Annexure-J.

- 11 -

xiii) That the applicant states that regarding this matter the applicant filed an appeal in the form of a representation before the Chief Medical Superintendent, N.F.Railway, Dibrugarh on 3-9-93 stating therein that her seniority has been wrongly assigned showing her name at serial No.4, but instead her name should have been shown at Serial No.1. In the said Appeal/representation, the applicant also drew inference to the circular dated 3-2-93 which says that vacancies existing on 1-3-93 should be filled from the panels appeared on or before 1-3-93 and current on that date, and as such the applicant whose name appeared in both the panels of 1990 and 1992 for promotion to the post of Matron Grade-II ought to have been recognised as senior to the respondents No.5 and 6 and the name of the applicant should have been placed at Serial No.1 in the list dated 23-8-93.

A copy of the Appeal/representation dated 3-9-93 is annexed as Annexure-K.

xiv) That after receipt of the Appeal/representation dated 3-9-93 no action was taken by the authorities concerned and the Appeal/representation of the applicant was kept pending. Regarding this matter the applicant approached the concerned authorities several times personally and also through

- 12 -

the N.F.Railway Mazdoor Union, but no action was taken.

xv) That after a lapse of about 7 years after the applicant had submitted for Appeal/ representation before the authorities concerned, the Chief Medical Superintendent, N.F.Railway, Dibrugarh vide letter dated 17-4-2000 issued show cause notices to the respondents No.5 and 6 in connection with fixing up of correct seniority position of the applicant who has been shown at Serial No.4 instead of Serial No.1, and in the said letter the Chief Medical Superintendent, N.F.Railway Dibrugarh also showed a correct seniority position of Matron Grade-II wherein the applicant was shown at Serial No.1 and the respondents No.5 and 6 were shown at serial No.2 and 3 respectively. By the said notice the respondents No.5 and 6 were also asked to file objections within 30 days from the date of issue of the notice regarding the recasting of seniority otherwise it may be treated as final.

A copy of the letter dated 17-4-2000 along with the show cause notice is annexed as Annexure-L.

xvi) That in reply to the show cause notice dated 17-4-2000 aforesaid no objections were

W.M.P.
See p. 43
Annex (B) 24

however filed by the respondents No.5 and 6
regarding the recasting of the seniority position
of the applicant showing her name at Serial No.1
and the seniority positions were therefore treated
as final.

xvii) That in connection with the assignment of seniority of the applicant as no objection was received from respondent No.5 and 6 the Chief Medical Superintendent, N.F.Railway, Dibrugarh vide his letter No.E/225/1 (Med)/Grievance/99 dated 17-8-2001 addressed to the General Manager (P) N.F. Railway, Maligaon Head Quarter, Guwahati forwarded the appeal/representation of the applicant dated 17-5-93 for disposal.

A copy of the letter dated 17-8-2001 is annexed as Annexure-M.

xviii) That thereafter an office order No. E/PC/02/Banik RG/Grievance dated 9-4-02 was issued wherein it has been stated that regarding the assignment of seniority of the applicant a final decision has been taken by the General Manager (P) Maligaon that the case of the applicant for assignment of seniority over her erstwhile seniors and her claim for grant of over-riding seniority on the basis of para - 4.1 of Railway Board's circular.

- 14 -

dated 27-1-93 is not tenable.

A copy of the office order dated 9-4-02
is annexed as Annexure-N.

xix) That the applicant states that the office order dated 9-4-02 has been passed by the respondent authorities without application of mind and without assigning proper reasons. The said order dated 9-4-02 is also not in conformity with the circular and Railway Board's letter No.PC-III/91/CRC/1 dated 27-1-93 issued along with the circular dated 3-2-93, in as much as vide the Railway Board's letter No.PC-III/91/CRC/1 dated 27-1-93 vacancies existing on 1-3-93 should be filled from the panels appeared on or before 1-3-93. In the instant case of the applicant though she was debarred from promotion for a period of 1 year to the post of Matron Grade-II, but ultimately the applicant was promoted to the post of Matron Grade-II in the year 1993 after the 1 year bar was over, and the said promotion was given to the applicant against the vacancy existing on 1-3-93 and from the panel appearing before 1-3-93 in which the applicant was the only selected candidate to be given promotion to the post of Matron Grade-II. In the said panels prepared before 1-3-93 the respondents No.5 and 6 were not selected and their names do not reflect in the

said panel, and as such the seniority of the applicant should have been considered above that of the respondent No.5 and 6 as per instruction 4.1 of the Railway Board's letter dated 27-1-93. But this aspect of the matter was not considered by the authorities while passing the order dated 9-4-02.

5. RELIEF SOUGHT FOR :

In the facts and circumstances as mentioned above the applicant prays for the following relief -

(I) The Office order No.E/PC/02/BANIK RG/ Grievance dated 9-4-02 issued by APO/AIMN. for General Manager(P) N.F.Railway may be set aside and quashed.

(II) The respondent authorities may be directed to reconsider the seniority of the applicant as Matron Grade-II above that of the respondents No.5 and 6.

6. The above relief are sought for on the following among other;

G R O U N D S

A) For that the name of the applicant having found place in the panels of 1990 and 1992.

for selection to the post of Matron Grade-II and the applicant also having been selected on both the occasions she is senior to the respondents No.5 and 6 within her own seniority unit. Therefore, the impugned order dated 9-4-02 is extremely erroneous, without application of mind and unreasonable and liable to be quashed.

B) For that the Railway Board's Circular No.PC/III/91/CRC/I dated 27-1-93 having categorically laid down that the vacancies existing on 1-3-93 except direct recruitment quota and those arising on that date from the cadre restructuring including chain/resultant vacancies should be filled from panels approved on or before 1-3-93 and current on that date, the instruction 4.1 of the circular is squarely applicable in the case of the applicant as her name was included and approved in the panels formed before 1-3-93 when she was given promotion to the post of Matron Grade-II much earlier to that of the respondents No.5 and 6 whose names were not included in the panel for selection and promotion to the post of Matron Grade-II during that period when the applicant was promoted. Therefore, the decision taken by the authorities that the claim of the applicant for grant of over-riding seniority on the basis of para 4.1 of Railway Board's Circular No.PC/III/91/CRC/I dated 27-1-93

- 17 -

is not tenable and the same having been communicated to the applicant vide office order dated 9-4-02 is extremely illegal, erroneous, without application of mind and deceptive and as such is liable to be quashed.

C) For that the applicant having already been promoted on two earlier occasions from the panels of 1990 and 1992 in which the respondents No.5 and 6 were not included, now the applicant cannot be held to be junior to the respondent No.5 and 6 whose names were not included in the panel for promotion to the post of Matron Grade-II during the period when the applicant was first selected. The Railway Board's circular dated 27-1-93 also having laid down that vacancies existing on 1-3-93 should be filled from panels appearing on or before 1-3-93, the applicant was the first person to be promoted to the vacant post of Matron Grade-II on 23-8-93 w.e.f. 1-3-93 and as such the seniority position of the applicant should be at Serial No.1. Therefore, the office order dated 9-4-02 is illegal, arbitrary and extremely erroneous and liable to be quashed.

D) For that the respondents No.5 and 6 having not objected to the correction of the seniority position of the applicant showing her position at serial No.1 vide notice dated 17-4-2000, the decision of the authorities not to grant

- 18 -

seniority to the applicant in terms of the instruction 4.1 of the Railway Board's circular is totally unjustifiable, illegl and arbitrary and as such the office order dated 9-4-02 is liable to be quashed.

E) For that the applicant being senior to the respondents No.5 and 6, the respondent authorities may be directed to reconsider the seniority of the applicant at serial No.1 as Matron Grade-II as per the relevant Rules.

7. That the applicant declares that the matter regarding which the present application is made is not pending in any other court.

Particulars of the Bank Draft/I.P.O. in respect of the application fee. I.P.O No. 76 576192, P.O- Uzan Bazar.

Index is enclosed. List of documents as per index.

Verification

VERIFICATION

I, Smti. Rama Gandha Banik, W/o Sri
D.R.G. Banik, aged 49 years, resident of Barabari
Railway Colony, P.O. Dibrugarh, District-
Dibrugarh, Assam, do hereby declare and verify
that the statements made in paragraphs 1 to 5 & 7
of the application are correct and
true to my knowledge which I believe to be true.

And I sign this verification on the 1st .
day of Dec 2002.

Rama Gandha Banik
Signature

-20-

N.F.RAILWAY.

Annexure A

N. E/254/1.

To :

Office of the Divisional
Medical Officer, Dibrugarh,
Dated, 27-1-1988.

- 1) Smt. Chhayareni Dey, N/Sister/NWSP.
- 2) Smt. Roma Biswas (Gandhabanik), -do-
- 3) Smt. Theresa Kujur (Ahmed), -do-

Sub :- Selection to form a panel of Matron in scale
Rs. 2000-3200/- (RPS).

Ref :- CMO(P)/MLG's: No. E/90/5/1/P. IV(Med) dtd. 19-1-88.

It has been decided to form a panel for the post of
Matron in scale Rs. 2000-3200/- (RPS) shortly.

You are advised to keep yourself in readiness to appear
in the selection on short notice. In case you are not willing
to appear in the selection a written declaration in duplicate
to the effect should be submitted through proper channel
immediately.

P.D. 1.84
Divisional Medical Officer.

Copy to :- Matron/NWSP Hospital/DERT for information.

Divisional Medical Officer.

Attested -
Baru (C.N. & Baru)
Advocate

To

The Chief Medical Officer,
N.F.Railway, Maligaon.

Through :- Matron/N.F.Rly Hosp/DBRT and Medical Superintendent/N.F.Rly/DBRT(NWSP).

Sub :- Ad-hoc promotion of Matron Gr.II for a period of 90 days.

Ref :- Your office order No.E/90/5/P-IV(Med) dt. 25.10.90.

Sir,

I beg to represent before you the following :-

I have been working at Dibrugarh Rly.hospital since the end of January/79.

That my husband has also been working at Dibrugarh Rly.Workshop under Dy.CME/DBWS.

I have three minor children out of which two are school going at Dibrugarh.

It may also here be mentioned that I belong to SC/Community.

Besides the above officiating arrangement has been made purely as a local and ad-hoc measure for 90 days in terms of your office order under reference. Since the arrangement is enlocal basis, hence my transfer from DBRT to BPB is not feasible.

Under the above circumstances it is not possible on my part to accept Ad-hoc promotion for 90 days at Badarpur at present, But it is possible on my part to accept the promotion at Dibrugarh Rly.Hospital.

You are therefore requested to arrange my promotion as Matron Gr.II at Dibrugarh Rly.Hospital instead of BPB and oblige.

Dated, Dibrugarh
The 30th November/90.

Yours faithfully,
Sd/- Rama Gandha Banik
(Biswas)
Nursing Sister/NWSP/DBRT.

*Attested
Rama
(N.K. Banik)
Advocate*

N. F. Railways.

Annexure - C

Office of the
Medical Superintendent,
N. F. Railways, Dibrugarh.
Dated - 30.11.90.

NO. E/283/1.

To
CMO/P/Maligaon.

Sub - Application dated 30.11.90 of Smt. Roma Gandhabanik, N/Sister/DBRT Hospital for her promotion as Matron Gr.II in scale Rs.2000-3200/- for a period of 90 days on ad-hoc measure and postings at SPB.

Ref - Your office order No. E/90/283/1 P.IV(Med) dt. 25.10.90.

Reference above, one application dated 30.11.90 submitted by Smt. Roma Gandhabanik, N/Sister/DBRT Hospital in respect of her transfer and promotion is sent herewith for your disposal please.

In this connection this is to inform you that there is no vacancy of Matron Gr.II in scale Rs.2000-3200/- (RPS) under MS/DBRT at DBRT Hospital.

Enclo - One application.

Medical Superintendent,
Dibrugarh.

Copy to - 1. Smt. Roma Gandhabanik, N/Sister/DBRT HOSP. (Through Matron/DBRT Hospital) for information.
2. Matron/DBRT for information please.

Medical Superintendent,
Dibrugarh.

Attested
Barua
(N. K. Barua)
Advocate

tm-

Annexure-D

N.F.Railway.

Office of the
Medical Superintendent,
N.F.Railway/Dibrugarh

No.E/254/1.

Dated- 10.1.92.

To

- RS* 1. Smt.Chaya Rani Dey, N/Sister/DBRT Hosp.
RB 2. Smt.Bandhuli Ganguli, -do-
3. Smt.Mrinalini Mitra, -do-
4. Smt.Supriya Das -do-
5. Smt.Rama Biswas (Gandha Banik) -do-
6. Smt.Tarasa Kujur (Ahmed) -do-

Sub : Absentee selection of Matron
in scale Rs.2000-3200/- (RPS).

Ref : GM/P/MLG's letter No.E/90/5/1 Pt.IV(Med)
dt. 31.12.91.

GM/P/MLG's informed vide his letter cited
above, that the selection for the post of Matron in scale
Rs.2000-3200/- (RPS) will be held on 22.1.92 at
10.00 hrs. in GM/MLG's office. You are hereby directed
to appear before the written cum-vive-voca test on
22.1.92 at 10.00 hrs. positively. You are spared from this
end w.e.f. 20.1.92 (FN).

Pass to cover your journey is enclosed.

Enclo - One case.

Sd/- Illegible
13.1.92
Medical Superintendent,
Dibrugarh.

Copy to -

1. GM/P/M.G for information in reference to your letter
No.E/90/7/1 Pt.IV(MED) dt. 31.12.91.
2. Matron/DBRT Hosp. for information and necessary action
please.
3. E/Pass at office for information. He will please issue
passes accordingly.

Sd/-
Medical Superintendent,
Dibrugarh.

*Affected -
Banna
(N. K. Banna)
Advocate*

Annexure-E

N.F.Railway.

Office of the
Medical Superintendent,
N.F.Railway/Dibrugarh.

No.E/283/1.

Dated - 12.5.92.

To.

Smt.Rama Biswas (Gandha Banik)
N/Sister/DBRT Hospital,

Through Matron/DBRT Hospital

Sub - Promotion and transfer toas Matron
Gr.II in scale Rs.2000-3200/- (RPS).

Ref - GM/P/MLG's C.O.No.E/283/140/7 (MED) Pt.VIII
dated 7.4.92.

In terms of GM/P/MLG's Office order No.E/283/
140/7(MED) Pt.VIII of 7.4.92, you are hereby transferred on
promotion as Matron Gr.II and posted at LMG under CMS/LMG
with immediate effect.

You may apply for passes accordingly.

Sd/-
Medical Superintendent,
N.F.Railway/Dibrugarh.

Copy to -

1. CMS/LMG
2. GM/P/MLS
3. GMO/P/MLS
4. Matron/MWSP/NCSP/DBRT for information. She will please
spare and direct the staff concerned immediately to
carry out the transfer on promotion.
5. DAO/Tsk. & LMG. for information please.
6. F/Bill at Office.
7. P/Case of staff.

Sd/- Illegible
Medical Superintendent,
N.F.Railway/Dibrugarh.

Attested
Rama
(Rama)
(N.K. Rama)
Advocate

Annexure - F
G

-25-

To
The Chief Medical Officer,
N.F.Rly.Maligaon.

Through:-MS/DDRT. Proper Channel

Sir,

Sub:-Promotion & Transfer to LMG as
Matron Gr.II in scale Rs.2000 - 3200/-
(RPS).

Ref:-GM(P)/MLG's D.O.No.E/283/140/7(Mod) ~~REXXED~~
PT.VIII dated 7.4.92.

Respectfully I beg to represent before you the following
for your kind consideration please.

I have been working at Dibrugarh Rly.Hospital since the
end of January/79.

That Sir, my husband has also been working as Chargeman
under D.C.M.E/DDWS.

I have three minor school going children in English
medium schools. So it is not possible on my part to be
transferred to LMG in the middle of Scholastic Session.

Moreover I belongs to SC/ Community. Besides this, there
will be a vacancy in the category of Matron Gr.II at DBRT
shortly due to normal retirement against which I may be
absorbed.

You are therefore requested to arrange my promotion as
Matron Gr.II at DBRT Hospital instead of LMG & oblige.

Dated, Dibrugarh.
The 12th May/92.

Yours faithfully,

Rama Gandhi Banik

(Mrs.Rama Gandhi Banik)
Sister/Nurse/DDRT.

Copy to:- GM(P)/MLG
MS/DDRT } for information please.

After feel
Banch
(N. K. Banch)
(N. K. Banch)
Advocate

-26-

N. F. Railway.

Office of the : Chief
Medical Superintendent,
N. F. Railway/Dibrugarh.
Dated - 6.8.92.

NO. E/283/1.

To
Smt. Rama Gandhi Banik,
N/Sister/DBRT Hospital.

(Through Matron/DBRT Hospital)

Sub : Transfer of Smt. Rama Gandhi Banik,
N/Sister/DBRT Hospital.

Ref : GM/P/MLG's letter No. E/283/140/7(Med)
Pt. VIII of 21/22-7-92.

An extract of GM/P/MLG's letter No. E/283/140/7(Med)
Pt. VIII of 21/22-7-92 on the above subject is appended
below for information please.

~~In reference to your letter quoted above, this is
to inform you that the post of Matron/Gr. II has since
been decentralised. If Smt. Gandhi Banik is not willing
to carry out her promotion order to Lumding, this will
tantamount to her refusal to accept promotion. Her case
for promotion as Matron/Gr. II may be considered after
one year subject to availability of vacancy in her own
seniority unit within the panel life (i.e.upt. 13.2.94).
if such a vacancy is available after one year of her
refusal of promotion and within the panel life, her
promotion may be considered at your end.~~

✓
for Chief Medical Supdt.
Dibrugarh.

Copy to - Matron/DBRT hospital for information and
necessary action please.

Attested
Rama
(N. L. Rama)
(N. L. Rama)
Advocate
tm: 6.8.92.

for Chief Medical Supdt.
Dibrugarh.

SLB
SL25
SL142

RS
Rf
A

8.17.2
11.3.45
15.8.51
3.10.55
16.7.73
30.1.79

27-1-1-
Annexure - H

16-2-93 By CME/NBWS

N. F. Railway.

Office of the
Chief Personnel Officer
Maligaon: Gauhati-11.

NO. RP-482
E/205/73(PC)Pt.V.

Dated, the 3-2-93.

To

All Heads of Departments.
All DRMs with 10 spare copies.
Dy. CME/NBWS & DBWS.
All DAOs, WAO/NBWS and DBWS.
All District and Assistant Officers
in Non-divisionalised Offices.
All Cadre SPOs/APOs of Hd.Qrs.

General Secy./NFRMU/PNC } with 40 spare copies. to each.
General Secy./NFRMU/PNO }

General Secy./AISCTREA/MLG with 20 spare copies.

Sub:- Re-structuring of certain group
'C' & 'D' cadres.

A copy of Rly. Board's letter No. POIII/91/CRO/1 dated 27.1.93
on the above subject together with its enclosures is sent herewith
for information, guidance and necessary action early for implementation
of the orders.

The Controlling Officers of the Divisions/Units as well as
Hd.Qrs. should immediately take up the work of implementation in
respect of the categories involved in these up-gradation orders in
accordance with the instructions contained in Board's letter in con-
sultation with the Associated Finance.

A progress report of the implementation of the up-gradation
orders should be sent to SPO/HQ in the prescribed proforma enclosed
along with the monthly PCDO for the month ending March/93.

Attested
Barua
(N. K. Barua)
Advocate

for Barua
Chief Personnel Officer: MLG.

(Contd..... 2/-)

(Copy of Railway Board's letter No.PO-III/91/CRC/1 dated 27.1.93.)

Sub:- Restructuring of certain Group C&D cadre.

The Ministry of Railways have had under review Cadres of certain Groups of C&D staff in consultation with the staff side in the Committee of the Departmental Council of the JCM(Rlys) for some time. The Ministry of Railways with the approval of the President have decided that the Group C&D categories of staff as indicated in the Annexure (Department wise) to this letter be restructured in accordance with the revised percentages indicated therein. While implementing these orders the following detailed instructions should be strictly and carefully adhered to:

Date of effect. 1. This restructuring of cadres will be with reference to the sanctioned cadre strength on 1.3.93. The staff who will be placed in higher grades as a result of implementation of these orders will draw pay in higher grade w.e.f. 1.3.93.

Applicability to various Cadre. 2. These orders will be applicable on the regular cadres of the Open Line establishments including Workshops and Production Units and will include Rest Giver & Leave Reserve posts.

2.1 These orders will not be applicable to ex-oadre & work-charged nests which will continue to be based on worth of charge.

2.2 These instructions will also not be applicable to construction Units and Projects. However, for creation of posts in these Units the percentage distribution may be generally kept in view, taking into account the availability of funds.

Pay fixation (FR-22-C) 3. Staff selected and posted against the additional higher grade posts as a result of restructuring will have their pay fixed under Rule 1316(FR-22-C)RII w.e.f. 1.3.93 with necessary option for pay fixation as per extant instructions.

Affected
Baru
(N. K. Baru)
Advocate

(Contd. 314-)

~~classi- /tion and lining up of vacancies.~~ 4. The existing classification of the posts covered by these restructuring orders as selection and non-selection as the case may be remain unchanged. However for the purpose of implementation of these orders, if any individual Railway servant become due for promotion to a post classified as a selection post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and Confidential Reports without holding any written and/or *viva voce* test. Similarly for posts classified as non-selection at the time of this restructuring the same procedure as above will be followed. Naturally under this procedure the categorisation as 'outstanding' will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation, in view of the numbers involved, with the objective of expediting the implementation of these orders.

~~4.1. Vacancies existing on 1.3.93 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence:~~

~~i) from panels approved on or before 1.3.93 and current on that date; (ii) and the balance in the manner indicated in para 4 above.~~

~~4.2 Such selections which have not been finalised by 1.3.93 should be cancelled/abandoned.~~

~~4.3 All vacancies arising from 2.3.93 will be filled by normal selection procedure.~~

~~4.4. Extant instructions for D&V/Vigilance clearance will be applicable for effecting promotions under these orders with the critical date being 1.3.93.~~

~~minimum years service in cadre.~~

5. While implementing the restructuring orders, instructions regarding minimum period of service for promotion with Gr. 'C' issued under Board's letter No. E(NG) I/85/PM-I/12(RRC) dated 19.2.87 and Board's letter No. E(NG) I/75/PM-1/44 dated 26.5.84 will stand modified to the extent that the minimum eligibility period for the first promotion for filling up vacancies covered in Para 4.1 would be reduced to one year as a one time exception. Thereafter the normal minimum eligibility condition of 2 years will apply.

Aftered
Baru
(N. K. Baru)
Advocate

(Contd. 4/-)

Basic functions, duties and responsibilities.

6. In all categories covered by this letter even though more posts in higher scales of pay have been introduced as a result of restructuring the basic functions, duties and responsibilities attached to their posts at present will continue, to which may be added such other duties and responsibilities as considered appropriate.

Excess No. of posts.

7. If prior to issue of this letter the number of posts existing in any grade in any particular cadre exceeds the number admissible on the revised percentages, the excess may be allowed to continue to be phased out progressively with the vacation of the posts by the existing incumbent.

Specific instructions given in the foot-note of Annexure.

8. While implementing these orders specific instructions given in the foot note if any, under each category in the enclosed annexure should be strictly and carefully adhered to.

Annual review.

9. Annual reviews should be suspended till further instructions from this Office.

Provision of reservation.

10. The existing instructions with regard to reservation of SC/ST will continue to apply while filling additional vacancies in the higher grades arising as a result of restructuring.

Retired Employees.

11. Employees who retire/resign in between the period from 1.3.93 i.e. the date of effect of this restructuring to the date of actual implementation of these orders, will be eligible for the fixation benefits and arrear under these orders w.e.f. 1.3.93.

Direct recruitment percentages.

12. Direct recruitment percentages will not be applicable to the additional vacancies arising out of these restructuring orders as on 1.3.93. The percentage will apply for normal vacancies arising on or after 2.3.93. Also the direct recruitment quota as on 28.2.93 will be maintained.

Pin pointing of posts.

13. Excepting the highest grade posts in each category, the promotion should be effected as is the basis, as a result of this restructuring. However the administration may later on pin-point these posts as per administrative requirement, as and when the present incumbent vacates the post on retirement, promotion transfer etc.

*Attested
Rama
(N. S. Rama)
Advocate*

: 5 :

Provisions of Rest givers.

14. As a measure of rationalisation the Railways should provide rest givers staff in the appropriate grade most convenient to the administration at any particular location and need not necessarily be in the same grades.

Refusal of promotion.

15. Such of the Staff as had refused promotion before issue of these orders and stand debarred for promotion may be considered for promotion, in relaxation of the extant orders as a one time exception, if they indicate in writing that they are willing to be considered for such promotion against the vacancies existing on 1.3.93 and arising due to restructuring. This relaxation will not be applicable to vacancies arising after 1.3.93.

16. Instructions for improvement of productivity, rationalisation and economy are being issued separately.

Provision of funds in the Budget.

17. The Railways will carefully assess requirement of funds on account of this restructuring for the year 1993-94 and include the same in the Revised Estimate for 1993-94. Payment due to staff on account of the restructuring should be made and booked in the Financial Year 1993-94. The Board desire that the restructuring and posting of staff after due process of selection should be completed expeditiously.

ad/-3.2.93

Attested
 Adarva
 (Adarva)
 (N. K. Adarva)
 (N. K. Advocate)

To
The CMS/DBRT,
N.F.Rly, Hospital, Dibrugarh.
(Through Proper Channel).

Sub:- Effective of promotion.

Ref:-1) GM(P)/MLG's L/No.E/283/140/7(Med)Pt.VIII dt.
21/22-7-92.

2) CMS/DBRT. L/No. E/283/1 dt. 6.8.92.

311

Respectfully I beg to state ~~think~~ a few lines for
your consideration please.

That Sir, myself being debarred from promotion for the period of one year, and my case for promotion as Matron gr.II may be considered after one year in my own seniority unit within the panel life (i.e.upto 13-2-94) in accordance with your o/order No.E/283/1 dt.6.8.92.

Now the review enhanced percentage of cadre restructuring arrived w.e.f 1.3.93 and it has been laid down in CPO/MLG's Circular No.RP-482 dt.3.2.93 for filling up of the vacancies. Moreover I belongs to SC community.

So, I therefore now request your honour to please absorb me at DBRT against the vacancy arises out of Cadre restructuring reviewed enhanced percentage.

Thinking you.

Dated, Dibrugarh.
The 17.5.93.

Yours faithfully,

Rama Gandhi Bank

(Ratna Gandha Banik)

~~██████████~~ / NWSP / DDRT.
Nursing Sister

Recd

© Catharine
17/5/93.

Affected -
Barua
(N. K. Barua)
Advocate

-33-

N.E.Railway.

Annexure - J 9

OFFICE ORDER.

Office of the
Chief Medical Supdt.
N.E.Rly. Dibrugarh.
Dated 23.8.93.

The following under noted Nursing Sisters in scale Rs. 1640-2900/(RSRP) are hereby promoted to the post of Matron Gr. II in scale Rs. 2000-3200/- (RSRP) w.e.f. 1.3.93 as a result of restructuring of certain Group 'C' and 'D' cadre created vide this office memorandum No. E/205/1 dated 7.5.93, in terms of BD's letter No. P.D.III/91/CRC/S of 11.5.93 and circulated vide DBM(P)/TSK' No. E/227/Re-structuring / Con/V-TSK dated 29.3.93.

Pay in scale Rs. 2000-3200/- (RSRP) is fixed as under in reference to their respective substantive day.

SL. NO.	Name & Designation.	Pay in scale Rs. 1640-2900/- as on 1.3.93.	Pay fixed in scale Rs. 2000- 3200/- as on 1.3.93.	Remarks
25. 1. Rb	Smti. Dheye Rani Dey, N/Sister/DBRT	Rs. 2480/-	Rs. 2600/-	(UR)
2. "	Gandhuli Ganguli, -do-	Rs. 2420/-	Rs. 2525/-	(UR)
3. "	Arinalini Nitro, -do-	Rs. 2300/-	Rs. 2375/-	(RS)
4. "	Rama Gondha Banik, -do-	Rs. 2050/-	Rs. 2120/-	(SC)

No. E/205/1

For CMS/NFR/DBRT.

Dt. 23.8.93.

Copy forwarded for Information and necessary action to:-

1. Staff concerned.
2. Matron / IC/DBRT Hospital.
3. DBM(P)/TSK.
4. DAO/TSK.
5. P/ceo of staff concerned.
6. E/SII section at office.
7. OS 'C' II at office.
8. E/Cadre at office.

Ranu

For CMS/NFR/DBRT.

Affected
Bawa
(Bawa)
N. K. Bawa
Advocate

To

The CMS.

N.F.Railway, Dibrugarh. (

(Through Proper channel)

Subject:- Wrong assignment of Seniority.

Ref:- 1) CMS/DBRT.L/No.E/283/1 dt.6.8.92.

2) Your O/Order No.E/205/1 dt.23.8.93.

Sir,

Respectfully I like to represent before you the following for your consideration please.

In your O/order stated above, it has been indicated that my name has been shown in serial no.4. which should have been in serial no.1. and consequently there is greater violation of prescribed rules with impunity.

Myself being debarred from promotion for the period of one year, my case for promotion as matron Gr-II may be considered after one year subject to the availability of vacancy in my own seniority unit within the panel life (i.e. upto 13-2-94) in accordance with your office order No.E/283/1 dt.6.8.92.

Since it has been laid down in CPO/MLG'S circular No.RP-482 dt.3.2.93. that vacancies existing on 1-3-93. should be filled from the panels appeared on or before 1.3.93. and current on that date. So, there is no point of denying my promotion reckoning my seniority in top (i.e. serial no.1) Moreover I belongs to SC Community.

So, it is my request to your honour kindly look into the matter and modify your office order No.E/205/1. dt.23/8/93 and reckon the seniority of me as per rule and oblige thereby.

Thanking you.

Yours faithfully.

Rama Gandha Banik.

(RAMA GANDHA BANIK.)

Matron G-II/DBRT.

Dated, Dibrugarh.

the 3rd. sept. 1993.

Copy to:- Br.Secy/N.F.R.M.U/Dibrugarh.

Attested
 (N. K. Banik)
 (N. K. Banik)
 Advocate

6

Annexure-L

N.F.Railway

Office of the
Chief Medical Supdt.
N.F.Railway, Dibrugarh

Dated : 17-4-2000

No.E/255/1

To,

1. Smti.C.R.Dey,Matron-Gr.II/DBRT
2. " Bandhuli Ganguli,Matron-Gr.II/DBRT.
3. " Mrinali Mitra,Matron-Gr.II/DBRT

Ref - Show cause notice to Matron Gr.II in Scale of Rs.2600-3200/- in connection with fixing up of correct seniority position of Smti. Rama Gandha Banik, earlier shown at Sl. No.4 instead of Sl.No.1.

Smt.Rama Gandha Banik, N/sister was selected and empanelled for promotion to the post of Matron Gr.II in scale of Rs.2600-3200/- before 1-3-93 vide CM(P)/MLG's O.O No./285/7(Med)Pt.VIII dated 7-4-92.

In terms of para 4-1 of Rly. Board's L/No. Pt.III/91/CR 4/1 dated 27-1-93 Smti.R.G.Banik had to be promoted earlier than those were promoted under Restructuring effecting from 1-3-93.

As such, seniority of Smti.R.G.Banik is to be recorded and levelled as above Smti.C.R.Dey, Matron-Gr.II i.e. at Sl.No.1 instead of Sl.No.4 shown previously in the seniority list published under this office No.E/255/1(Med) dated 13-10-98.

*Attested
Rama
(N.K. Banik)
Advocate*

Contd.....2

Now, seniority position of Matron Gr.II in scale of Rs. 2600-3200/- (6589-19,500/-) will be as under -

1. Smt.Rama Gandha Banik, Matron-Gr.II
2. Smt.C.R.Dey, -do-
3. Smt.Bandhuli Ganguli -do-
4. Smt.Mrinalini Mitra -do-

If there is any representation regarding re-casting of seniority may be presented within 30 days from the date of issue of this notice otherwise, it may be treated as final.

Sd/- Illegible
Chief Medical Supdt.
N.F.Rly, Dibrugarh.

Copy to -

1. The Secy's NFREO/TSK & DBRT
2. The Secy.NFRMD/TSK & DBRT

✓

Sd/-
Chief Medical Supdt.
N.F.Rly, Dibrugarh

Attested
N. K. Datta
(N. K. Datta)
Advocate

37
N.F.RAILWAY

Annexure - M

63

Office of the
Chief Medical Supdtt.
N.F.Railway, Dibrugarh

NO : E/255/1(800)/Grievance/99

DT : 17.06.2001

To

General Manager(P)
N.F.Railway : MLC.HQ
GUNJHAYE - 11.

Sub : Assignment of Seniority of Smt. Rangamatha
Debnik, Matron, Gr.II/DRS/DRT

Ref : GM(P)/MLC's No. E/203/140/7(Med)pt. I
dated 23.07.2001.

With reference to the above and as desired the
original application of Smt. Rangamatha Debnik, Matron, Gr.II/
DRS/DRT dated 17.05.03 now submitted by the applicant
concerned at this end is hereby sent for your disposal and
acknowledgement please.

Enclos : 1 (one)

Chief Medical Supdtt.
N.F.Railway, Dibrugarh

Copy for information to :-

- 01. DRM(P)/TSK, APO II/TSK
- ✓ 02. Staff concerned through Chief Matron
DRT Mly. Hospital.
- 03. P/case for records.
- 04. CDS/NIREU/PNO (at DRT/Com. (o))
- 05. Branch Secy, NIREU/DRT

Chief Medical Supdtt.
N.F.Railway, Dibrugarh

Affected
Narwa
(N. K. Narwa)
(N. K. Narwa)
Advocate

38
Annexure-N

N.F.Railway

Office of the Chief Medical
Supdt. N.F.Rly, Dibrugarh

OFFICE CRDER

As per GM(P)MLG's L/No.E/283/140/7(Med) Pt.I dated 17/18-01-2002, addressed to DRM(P) TSK, the final decision regarding assignment of seniority of Smt. Ramagandhar Banik, Matron Gr.II of DBRT Railway Hospital under QMS/DBRT has been communicated for all concerned that :

The case of Smt. Ramagandha Banik, Matron Gr.II under GMS/DBRT for assignment of seniority over her erstwhile seniors, has been examined at length, at the level of OPO/ADMN/MLG, and it has been decided that her claim for grant of over-riding seniority on the basis of para-4.1 of Railway Board's circular No. PC/III/91/CRC/I dated 27-01-93 is not tenable, the staff concerned may be advised accordingly.

This issues with the approval of competent authority.

Sd/- Illegible
(S. Devi)
APO/ADMN.
for General Manager (P)

No. E/PC/02/BANIK RG/Grievance dated 09-04-2002

Copy foeward for information and necy. action to :

01. GM(P)MLG, CMD/MLG, Dy. CMD/MLG
02. DRM/TSK, DPO/TSK, DAO/TSK, APO II/TSK
03. Divisional/Branch Secy. NFRMU/TSK & DBRT.
04. Divisional/Branch Secy. NFREU/TSK & DBRT.
05. Party concerned, Through Chief Matron/DBRT Rly. Hospital.
06. E/Bills of Cadre.

Sd/- Illegible
Chief Medical Supdt.
N.F.Rly, Dibrigarh

*Attested
Baru
(N. K. Baru)
Advocate*

26/5/2002
Central Admin. Trib.
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

- 39 -

O.A. No.385/2002

Smti. R.G.Banik ...Applicant

-versus-

Union of India & others ...Respondents

(Written Statements filed by the respondents No. 1 to 4)

The written statements of the above noted respondents are as follows:

1. That a copy of the O.A. No.385/2002 (referred to as the "application") has been served on the abovementioned respondents. The said respondents have gone through the same and understood the contents thereof. The interest of all the above respondents being common and similar, the written statements is filed as common for all of them.
2. That the statements made in the application which are not specifically admitted by the answering respondents, are hereby denied.

3. That with regard to the statements made in para 1 of the application, the respondents state that there is no cause of action in the application and hence the application is liable to be dismissed with cost.
4. That the respondents have comment to offer to the statements made in para 2 of the application.
5. That with regard to the statements made in para 3 of the application, the respondents state that the application is hopelessly barred by law of limitation and hence the same is liable to be dismissed with cost.
6. That with regard to the statements made in para 4.I and 4.II, the respondents state that as per first page of the Service Book of the applicant which was filled up by herself, there is no mention that she belongs to Schedule Caste community. It is also not a fact that she was initially appointed as Nursing Sister but in fact she was appointed as Nursing staff on 30.1.79. This fact is explicit from the service book of the applicant.

The copies of the first and second page of the service book of the applicant are annexed as Annexure-R1.

7. That with regard to the statements made in para 4.III, 4.IV and 4.V, the respondents state that the applicant was offered adhoc promotion for 90 days at Badarpur vide Office order No. E/90/5/Pt.IV(Med) dt.25.10.90. Although the applicant was informed to keep herself ready for selection, no such selection was made in this case. The applicant did not accept the said promotion on the plea that it was not feasible to work at Bardarpur as her husband was working at Dibrugarh and her children's education at Dibrugarh would be dislocated as they would be required to be shifted to Badarpur. The respondents also state that the request of the posting of the applicant on adhoc promotion at Dibrugarh could not be considered as there was no vacancy available at Dibrugarh.

D.P.T.C.
D.P.T.C.

8. That with regard to the statements made in para 4.VI and 4.VII of the application, the answering respondents state that these being matter of records nothing is admitted which are not born out of records.
9. That with regard to the statements made in para 4.VIII and 4.IX, the answering respondents state that the applicant was promoted and posted vide office order No. E/283/1 dated 12.5.92 and she was posted as Matron Gr. II in the scale of Rs. 2000-3200 per month at Lumding. But this time also the applicant refused the promotion on the plea that her husband was working as Charge-man at Dibrugarh and their children were also studying at Dibrugarh. The applicant made a representation on 22.5.92 and requested the authorities to give effect of her promotion only at Dibrugarh instead of Lumding. The respondents informed the applicant that in case she refuses to carry out the order of promotion, she will come under the bar of promotion for one year and she will not be promoted during that period of bar. Accordingly, the applicant refused to carry out the promotion.
10. That with regard to the statements made in para 4.X and 4.XI, the answering respondents state that vide Railway Board's letter dated 27.1.93 and the circular dated 3.2.93 issued by the NF Railway, the respondents restructured certain Group C and D Cadres and by the aforesaid letter and circular certain conditions were laid down to get benefit under the restructuring cadres. But the applicant failed to fulfill the requirements to get the benefit of the restructuring of cadre. So far as the application dated 17.5.93 alleged to have been submitted to the Chief Medical Officer, Dibrugarh is concerned, the answering respondents state that there is no record available with any authority that they had ever received such application from the applicant. If such application was submitted to somebody else without authority and was managed to have got acknowledged by any such incompetent person, the said application had never reached the competent authority for taking any such decision. The respondents, in order to find out the truth about the alleged application dated 17.5.93, made some queries to Mrs. Renu Lahiri who was alleged to have acknowledged the receipt of the said application and could confirm that it was not her signature and she did not receive any such application from the

No
specific
denial

applicant. This was communicated by said Mrs. Renu Lahiri, the retired Matron vide her letter dated 3.9.2001. In view of the above fact, the allegation of submission of application on 17.3.93 with a request to consider her case under the restructuring of cadre is baseless and it has no bearing with the present claim of the applicant.

In this connection it is also worth mentioning here that the selection of Matron Gr. II earlier conducted before 1993 (in which the applicant was empanelled) was done at the Head Quarter level while restructuring promotion to the senior most person was done at the Divisional level on the basis of seniority. The selection in which the applicant was empanelled was on the basis of seniority of NF Railway as a whole. The restructuring is due on the basis of the Divisional seniority and as such it cannot be linked together.

A copy of the said letter dated 3.9.2001 is annexed as Annexure-R2.

11. That with regard to the statements made in para 4.XII, the answering respondents state that the senior most nursing sisters who were to be given restructuring promotion were placed above the position of the applicant and the applicant's seniority position as per her own seniority. But the fact remains that the case of the applicant for promotion as Matron Gr. II against restructuring promotion was also considered in the aforesaid order of seniority. Had it been a case if the applicant had accepted her promotion prior to 1993, she would have been definitely been senior to the other senior staff promoted due to restructuring. But the applicant due to her own action lost her seniority as stated above.
12. That with regard to the statements made in para 4.XIII, the answering respondents state that reiterate and reassert the foregoing statements particularly para 10 of this written statement.
13. That with regard to the statements made in para 4.XIV, the answering respondents state that the representation was made by the applicant only after the issue of restructuring promotion to the eligible candidates. As the case of the applicant

was also considered with her respective seniority, her case was deemed to have been examined thoroughly by the administration and there was no scope to make a reply.

14. That with regard to the statements made in para 4. XV and 4.XVI, the answering respondents state that the appeal/ representation submitted by the applicant was hopelessly barred by limitation. Law is well settled that by repeated representation the limitation cannot run afresh. Law is also well settled that the long settled promotion of respondent No.4 and 5 cannot be unsettled which will create administrative chaos. So far as the show caused notices to the respondent No. 5 and 6 asking for their reaction if the applicant was placed in the Sl. No. 1 in the seniority list, the respondents state that this was done on the instance of one of the recognized Union. This exercise was carried on within the administration and which never resulted in reality and actual fixation of seniority. It may be mentioned that the concerned staff had vehemently opposed the said show caused notice proposing to place the applicant at Sl. No. 1 and they demanded that the applicant was much junior to them and the restructuring promotion has been given on the basis of Divisional seniority.

||| The copies of the objection to the show caused notice submitted by the respondent No. 5 and 6 are annexed as Annexure-R3 and R4 respectively.

15. That with regard to the statements made in para 4.XVII, the answering respondents state that the statements are not correct and are misleading. The appeal of the representation referred to in the para was sent to the competent authority for disposal.
16. That with regard to the statements made in para 4.XVIII, the answering respondents state that the matter being pertaining to records, nothing is admitted which are not supported by such records.

17. That with regard to the statements made in para 4.XIX, the answering respondents state that the case of the applicant was considered for restructuring promotion on the basis of her seniority and not on the basis of her empanelment in the selection for the post of Matron Gr.II prior to 1.3.93 on the basis of NF Railway seniority as a whole. In view of the above facts and the settled position, the applicant's claim that she should be placed at Sl. No. 1 cannot be considered as the same is not tenable in law.
18. That with regard to the statements made in para 5.I and 5.II thereby seeking the relief in the application, the answering respondents state that under the facts and circumstances of the case as clarified hereinabove and the provisions of law, the applicant is not entitled to any relief whatsoever and the application is liable to be dismissed with cost as devoid of any merit.
19. That with regard to the statements made in para 6.A, 6.B, 6.C, 6.D and 6.E, the answering respondents state that in view of the facts of the case and the point of law involved, the grounds attempted to show cannot sustain in law and the application is liable to be dismissed with cost.

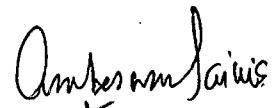
In the premises aforesaid, it is therefore prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall also be pleased to dismiss the application with cost.

VERIFICATION.....

VERIFICATION

I, Shri Amreshwar Saikia, at present working as Divisional Personnel Officer in the office of the Divisional Personnel Officer Jhansi Guwahati, being competent and duly authorized to sign this verification do hereby solemnly affirm and state that the statements made in para 1 to 5, 7, 8, 9, 11, 12, 13, 15, 16, 17, 18 and 19 — are true to my knowledge and belief, those made in para 6, 10, 14, —, being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 5 ^{May} th day of April, 2003 at Guwahati.



DEPONENT

D. Redimukh - 31-10-2011. 10-8-

ANNEXURE : R
P.D. No. 407892

सेवा पस्तिका / SERVICE BOOK

Ann - A

Dt 7 Jan 82 - 1 3/80 X

आरंभिक पृष्ठ / OPENING PAGE

Service Book Number : 0407892

1. पूरा नाम (साफ साफ जक्षरों में) Name in full (Block Capitals) SMT. RAMA BISWAS GANDHA BANIK
surname changed into cmo/MLG's no E/44/4/4. III (old add. 13-7-82)
2. पिता का नाम / Father's Name Shri Lakshmi Kanta Biswas
3. राष्ट्रीयता / जाति / धर्म Nationality / Caste / Religion Indian / Hindu
4. अधिवास जो सिद्ध हो चुका है Domicile as established
5. निवास का पूरा पता Residence (in full) P.O. Alipurdoar Court
Distt Jalgajuri, West Bengal.
6. जन्मतिथि / Date of birth 03-10-53 (Third October Nineteen hundred and fifty three)
7. जन्म स्थान / Place of birth Alipurdoar जिला / District Jalgajuri
8. शिक्षा योग्यता Educational qualification Higher Secondary & Passed.
9. शिनारूत के लिए वैयक्तिक चिह्न Personal mark for identification Passed for certificate of nursing and midwifery.
10. बाये हाथ के अंगुठे और अंगुली का निशान Left hand thumb and finger impression

कनिष्ठिका / Little finger

जनामिका / Ring finger

अंगुठा / Thumb

तर्जनी / Fore finger

मध्यमा / Middle finger

11. लंबाई / Height

फीट / Feet

इंच / inches.

12. सरकारी कर्मचारी का हस्ताक्षर / Signature of Government Servant.

Rama Biswas

13. कार्यालय प्रधान या अन्य साक्ष्यकर अधिकारी का हस्ताक्षर और पदनाम

Signature and designation of the Head of the office or other Attesting Officer.

टॉटल / Note :- इस पृष्ठ पर दर्ज की गयी जानकारी कम से कम पांच वर्ष बाद नये से दर्ज को जायगी, उसे पुनः साक्षित किया जायगा तथा 12 और 13 यांक में किये गये हस्ताक्षरों के साथ तारीख दी जायगी / The entries on this page should be renewed or re-attested at least every five years, and the signature in lines 12 and 13 should be dated.

Prints need not be taken afresh every five years under this rule.

उत्तरायण कार्यालय
Basis of Service
B.M. Railway, Tinsukia

R

From:

Mrs. Renu Lahiri
Retd Matron, N.F.Rly.
Hospital, DBRT
Gauripur, Dist-Dhubri
PIN: 783331 (Assam)
Phone: (03662)81489.

Date: 3-7-2001

Re:

To
The Branch Manager/Secretary
N.F.R.E.U.Dibrugarh.

Dear Sir,

Sub: Effective of promotion application dt. 17.5.93
of Smti Renu Gandhabanik, N/Sister, DBRT/

I have received your letter quoted above and in this context I write to inform you that my signature which appears in Smti Gandhabanik's application dt. 17.5.93 and attested by C.M.S. on 17.8.01 is not my signature, repeat not. I never sign in that way. I confirm it.

Further I like to mention that there is no instance during my tenure as Matron, DBRT Rly Hospital where the staff has submitted application to the Higher authority e.g. C.M.S. through me (Matron) and I have not forwarded their applications.

Moreover there is clerk posted in Matron's Office who keeps records of all letter, enters in the Register and then delivers to C.M.S Office/ with proper acknowledge receipt. So these records should be properly checked before arriving any opinion or decision.

My personal view is that Smti Gandhabanik is an inquisitive Staff knews importance of her application very well and she did not pursue her application dt. 17.5.93 after submission is unbelievable.

I thank you for bringing the matter to my notice even after my retirement of 7 years. I pray and hope that the Administration shall do proper justice to the staff and maintain "Rule of Law" in true prospective.

My best wishes to you and all.

Yours sincerely,

Renu Lahiri
(Renu Lahiri)

3/7/2001

Attest

Renu Lahiri
Retd Matron, N.F.Rly.
Hospital, DBRT
Gauripur, Dist-Dhubri
PIN: 783331 (Assam)

To

The Chief Medical Superintendent,
N.F.Railway/Dibrugarh.

Sir,

Sub. : Show Cause Notice to Matron Gr-II
in scale Rs. 2000-3200/- in connection
with fixing up of correct seniority
position of Smt Rama Gandha Banik,
earlier shown at Sl.No.4 instead of
Sl.No. 1.

Ref. : Your Letter No. E/255/1 dt. 17.4.2000

I am surprised to receive such a notice which should have cleared by the 'P' branch considering all circulars and norms adopted for assignment of seniority of the employees.

However, I do not agree with this proposed decision for fixing up seniority of Smt. Rama Gandha Banik over me for the following reasons.

1. Since my appointment I was always senior to Smt. Gandha Banik and promoted accordingly.
2. Smt. Gandha Banik was selected against one post of Matron Gr-II but she refused to accept the promotion prior to 1-3-93.
Accordingly she was intimated vide CMS/DBRT's letter No. E/255/1 dt. 6-8-92. She was further intimated that her promotion will be within her seniority unit where one vacancy would occur and also before the panel life (i.e. upto 13-2-94).
3. Smt. Rama Gandha Banik was selected for a post at Limding on 12-5-92 and there was no post remained vacant at TSK Division.
4. As per extent order of the Rly. Board (Ref. Pona 15 of RBE No. 19/93 enclosed vide PC/iii/91/CRC/1/dated 27-1-93) Smt. Rama Gandha Banik was eligible for posting as Matron Gr.-II and she was promoted w.e.f. 1-3-93 alongwith other seniors.

contd....p/2

Attested
[Signature]
NATIONAL RAILWAY MEDICAL SUPERINTENDENT
T.S.K. DIVISION
Dibrugarh

R₃

- 2 -

5. This effective date of promotions were same and all the four employees were promoted as per roster point i.e. identifying the post as 'UR', 'SC' etc.

6. As per extend rule when this effective date of promotion of a group of employees were same the seniority should be assigned as per this seniority of the next below grades :

7. And I was senior to Smt. Rama Gandha Banik in all the grades since my joining this Railways on 08.01.1972.

In view of this above I strongly feel that I am very much senior to Smt. Rama Gandha Banik in all respect and there is no reason for changing the current seniority list published vide your No. E/255/1(Med.) dt. 13-12-98.

I shall remain ever grateful if you kindly examine the issue from the correct and realistic perspective so that senior employees are not mentally disturbed unnecessarily.

Thanking you,

Yours faithfully,

Chaya Rani Dey
(CHAYA RANI DEY)
Chief Matron/DBRT Hospital

Dated the DBRT,
.. 6/5/2000.

Copy to :

Branch Secretary/NFREU/DBRT
Divisional Secretary/NFREU/TSK
General Secretary/NFREU/PNo

for information &
necessary action please.

Yours faithfully,

(CHAYA RANI DEY)
Chief Matron/DBRT Hospital.

Received on
16/5/2000
Put up to C.M.S./D.A.
for taking decision
16/5/2000 - 13 -

- 51 -

ANNEXURE : R4

Ann - C

ANNEXURE : R4

To

The Chief Medical Superintendent,
N.F.Railway Hospital/Dibrugarh.

Dated the 16.../05/2000.

Sub. : Show Cause Notice against re-casting
of seniority as Matron Gr-II.

Ref. : Your Letter No. E/255/1 dt. 17-04-2000

Sir,

I have the honour to represent as under with the hope that the elaboration will waive up the confusion in maintaining my correct seniority on promotion to Matron Grade - II in scale Rs. 2000-3200/- (RSRP)IV CPC as a result of re-structuring of Cadre w.e.f. 1.3.93.

My promotion as Matron Gr-II is a service benefit based on seniority due to review/restructuring of Cadre. The use of the harsh term "Show Cause Notice" is not applicable in my case and the precept hurts me. The contradiction if any, on the seniority position of Smti Rama Gandha Banik over me could have been easily set right under the applicable rules and guidelines of Bly. Board's Circular published from time to time against restructuring benefit of Cadre w.e.f. 1-3-1993. The promotional benefit against the re-structured vacancies as well as all normal vacancies occurred in the grade was given under modified selection based on service record/confidential record. Since, there was nothing adverse against me, I got the benefit of promotion as Matron Gr.II with arrears against re-structured vacancies w.e.f. 1.3.93 on merit of seniority.

The Cadre of Nursing Sisters & Matrons Gr.II were decentralised in 1991 vide GM(P)/MLG's memorandum No. E/210/9(Med.)pt.I dt. 18/19-2-91. Was it not irregular therefore for the General Manager(P) to conduct selection including candidates posted in divisions and issue promotion of Matron Gr.II vide his Order No. E/283/140/7(Med) Pt.VIII dt. 7.2.92 i.e. ; one year after decentralisation of the

Contd..p/2

Attested
[Signature]

R4

Cadre needed a point for consideration. Moreover, Smt. Rama Gandha Banik refused to carry out her above promotion & posting order as Matron Gr.II selected against the vacancies of H.Q. controlled post & thus her claim for promotion was defunct as on 1.3.93 i.e. on the date of restructuring of the Cadre. In terms of Rly. Bd's Circular No. PC/III/91/CRC/1 dt. 27.1.93, Para 4.2 followed by their Circular of even number dated 21.4.1993 and R.B. Circular No. PCIII/93/CRC/1 dt. 18.3.1993 para (III) her selection needed to be cancelled/ abandoned. The procedure of selection to fill up all restructured vacancies by senior employees and to pay arrears w.e.f. 1-3-93 is indicated in Para 4 of the circular. In Para 4.5. of the circular dt. 21.4.1993 procedure to fill up the normal vacancies as existed on 1.3.93 by junior employees had been indicated. In Para 15 of the Rly. Bd's Circular dt. 27.1.93 there was clear indication that refusal cases of promotion before issue of re-structuring of Cadre may not be considered without written consent of the candidate for such consideration against vacancies of 1.3.93. The factual position being so, Smt. Rama Gandha Banik who refused her promotion as Matron Gr.II against the available H.Q. controlled post was not eligible for promotion till completion of one year duration on 6.8.93. in terms of CMS/DoRT's Letter No. E/283/1 dt. 6.8.93.

Under the circumstances indicated above and norms of prescribed procedure of modified selection against restructuring benefit my seniority cannot be challenged by Smti Rama Gandha Banik who was pretty junior to me in the lower Grade of Nursing Sister. My date of joining in the Railway service is on 16.08.1973. Our seniority was correctly assigned in the promotion order of Matron Gr. I's publish vide CMS/DoRT's office order No. E/205/1 dt. 28.8.93 which does not require a re-casting process. In view of the position narrated above, it was unnecessary for the administration to be harsh by issuing a Show Cause Notice, not even applicable in such cases. In fine I hope that the matter will be decided with

contd..p/3

true prospective of Riy. Bd's guideline and amendment
from time to time and oblige thereby.

Thanking you,

Yours Faithfully,
Bandhuli Ganguly
(BANDHULI GANGULY)
Matron/II/DBRT Hospital.

Copy to : 1. The General Secretary
N.F.R.E.U/PRO.

2. The Divisional Secretary,
NFREU/TSK

3. The Branch Secretary,
NFREU/DBRT

- for information & necessary action please.

Yours Faithfully,
(BANDHULI GANGULY)
Matron/II/DBRT Hospital.

Enclo:- RB's Circular
1) dt 27.1.1993
2) dt 18.3.1993
3) dt 21.4.1993.

महाराष्ट्र रेलवे अधिकारी-II
ASSISTANT PERSONNEL
ग्र. बा० २०३, पृ० ११
M. F. Railway, Thane

80
Filed by Mr.
Respondent No.5 & 6
through P. Choudhury
5/8/02

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

O.A. NO. 385/2002

Smt R. G. Banik

- Vs. -

Union Of India & Ors.

In the matter of :

Written Statement on behalf of
the respondent no.5 and 6.

The respondent No.5 and 6 in the above case
most respectfully beg to state as under :

1. That the answering respondents have gone
through the original application and have understood the
contents thereof.

2. That the answering respondents do not admit
any statement except those which are specifically admitted
in this written statement. Statements not admitted are
denied.

3. That in reply to the statements in para 4(ii)
to 4(v) it is denied that the applicant was initially
appointed as Nursing Sister. In fact she was appointed as
Staff Nurse w.e.f. 30.01.1979. It is stated that the
applicant was promoted as Nursing Sister vide Letter
No.E/254/1 dated 24.03.1986 against cadre restructuring of
Gr. C and D along with answering respondent No. 5 and 6.

denied
by
App
P 63

** 2 **

where respondent No. 5 and 6 were placed in 1st and 2nd position and the applicant was placed at serial No.6.

IT is stated that for the selection of Matron Grade II in 1992 the vacancy/vacancies in question was/were existing in other Divisions, particularly at Lumding only (Lumding Division). No vacancy was available at Dibrugarh (Tinsukia Division). The applicant refused promotion in Lumding Division and preferred to be in lower scale at Dibrugarh (Tinsukia Division).

4. That in reply to para 4(vi) to 4(ix) it is stated that the applicant was selected from the vacancy of reserve community and the answering respondents belongs to unreserved community and there was no unreserved candidate selected as Matron Gr.II of the said selection who were junior to the answering respondents. It is also stated that all the posts of Nursing Sister and Matron Grade II have since been decentralised vide GM(P)/MLG's letter No. E/210/9(Med) Pt I dated 18/19-02-1991. After the decentralisation promotions to the post of Matron Grade II in a Division shall be made from the feeder seniority unit of the respective Division only. Therefore, after decentralisation the applicant had no scope of promotion to Matron from Tinsukia Division seniority unit to Lumding Division or to any other unit (except Tinsukia Division). Her refusal exhausted her claim for promotion to Matron. It is further stated that the applicant was working as Nursing Sister as on 1.3.1993.

5. That in reply to the statements in para 4(x) it is stated that on 1.3.1993 there was no existing panel for any vacancy existing upto 1.3.1993. It is categorically stated that for the selection held in 1992 the assessed vacancies did not include any vacancy for Tinsukia Division. As already stated during the selection of 1992 there was no vacancy for Tinsukia Division, nor any vacancy was anticipated for Tinsukia Division. The applicant has further no scope for promotion from the panel of 1992 in any vacancy of Tinsukia Division, moreso by upgradation by restructuring. It is stated that the Railway Board scheme for restructuring/upgradation is prospective from 1.3.1993. Under the scheme the answering respondents have been correctly promoted as Matron Gr.II before the applicant on the basis of the modified selection based on seniority in feeder cadre i.e. Nursing Sister where the applicant was junior to the answering respondents.

It is further stated that by instruction in para 15 railway Board relaxed the ban of one Year promotion on refusal ground on the vacancies existing on 1.3.1993. On 1.3.1993 the vacancy, if any existed at Lumding Division as assessed in 1992 selection applicant had the scope to apply for that as one time exception. However, in view of the decentralisation her claim would be considered by the Railways according to the changed situation (i.e. decentralisation). But such occasion did not arise because applicant still preferred to continue her refusal and did not indicate in writing her willingness to be considered for promotion against the earlier existing vacancies. It is

** 4 **

stated that the applicant never gave such indication in writing.

6. That in reply to the statements in para 4(XI) it is stated that the statement of the applicant that she applied for consideration of her promotion as Matron Gr.II is not correct and the answering respondents deny the correctness of the statements in the para. It is reiterated that the applicant has not submitted any such application. The answering respondents have come to know that the alleged Annexure I of the OA is not genuine and the then Matron Mrs Renu Lahiri has never received such application nor forwarded any application as alleged. It is submitted that even if the applicant submitted such representation (not agreeing) the Railway Board's instruction shall not permit her promotion before the answering respondents.

7. That in reply to the statements in para 4(xii) to 4(xix) the answering respondents beg to reiterate the statements in foregoing paras. It is stated that the answering respondent No.5, the senior most Matron/II of the Division correctly promoted and posted as chief Matron in the scale of Rs.7450-11500/- at Dibrugarh hospital vide Letter no.E/254/Pt.I(loose) Med dated 27.07.1999.

It is also stated that answering respondents submitted their objection to the recasting of seniority and the matter has been correctly judged in favour of the answering respondents. It is further stated that answering

** 5 **

respondent No.6 has been promoted to the post of Chief Matron in scale of Rs. 7450-11500/- and posted at Dibrugarh Hospital by letter dated 11.07.2003. It is also stated that the respondent No. 6 joined the post w.e.f. 17.7.2003 and she has also given her option for fixation of pay in new scale.

8. That in the facts and circumstances of the case the application deserves to be dismissed with cost.

Verification

We, Smt Chaya Rani Dey and Smt Bandhuli Ganguli, working as Chief Matron at Dibrugarh Hospital, N.F.Rly, ~~Malligaon~~, do hereby verify that, the statements made in the paragraphs 1 to 8 are true to our knowledge.

C.R. Dey
B. Ganguli
Signatures

Guwahati

Ch. 1/9/63
C. 1/9/63
RBI

59

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.

O.A. NO. 385/2002

Filed by -
The applicant
Through (N. S. Banik)
Rama Gandha Banik Advocate
1/9/03

Sri Rama Gandha Banik.
- Applicant.

-Versus-

Union of India & Ors.
- Respondents.

(Rejoinder by the applicant to the Written Statement
filled by the respondents No. 1 to 4.)

The rejoinder of the applicant is as follows:-

1. That with regard to the statements made in paragraph 3 of the Written statement, the applicant state that they are not at all correct and denies the same. The applicant begs to state herein that the cause of action in the application arose on 09-04-02 when the office Order No. E/PC/02/Banik RG/Grievance dated 09-04-02 was issued.
2. That the statements made in paragraph 5 of the Written statement the applicant begs to state that they are not at all correct and are denied. The O.A.No. 385/02 has been filed on 3-12-02 i.e. within 1 year of the order dated 9-4-02 which has been assailed in the application and is within the Limitation prescribed u/s 21 of the Administrative Tribunals Act, 1985.
3. That the statements made in paragraph 6 of the Written statement against para 4.1 of the application are not at all correct and are denied. It may be

Contd.

mentioned herein that in the first page of the Service Book of the applicant filled up by herself in column 1 against her name it has clearly been mentioned as S.C. in bracket (Annexure- R₁ of the Written statements). The respondents No. 1 to 4 only to bring false allegations against the applicant has made the baseless statements against para 4(i) of the application. The applicant states that there was a typographical mistake in para 4(ii) of the application and it is admitted that the applicant was first appointed as Nursing staff on 30-1-79.

4. That with regard to the statements made in paragraph 7 of the Written statements, the applicant begs to reiterate what has been stated in para 4(iii), 4(iv) and 4(v) of the Original application.

5. That with regard to the statements made in paragraph 9 of the Written statements, the applicant reiterate what has been stated by her in para 4(viii) and 4(ix) of the Original application.

6. That the statements made in paragraph 10 of the Written statements are denied by the applicant. The applicant states that the statement made by the respondent No.1 to 4 against para 4(x) of the application are false and baseless as the respondent No 1 to 4 have failed to point out the certain condition which are laid down to get the benefit of the restructuring cadre, which they alleged the applicant has failed to fulfill. The statement made against para 4(xi) of the application to the extent that the application dated 17-5-93 was not received by the authorities is false. The application submitted by the applicant dated 17-5-93 was duly received by the authority concerned as 17-5-93 with signature as annexed (Annexure-1) to the Original application. It

No
specifi
denied

may be pertinent to mention herein that the applicant was empanelled in the selection of Matron Grade II conducted before 1993.

7. That with regard to the statements made in paragraph 11 of the Written statements, the applicant states that the respondent No.1 to 4 have not been able to substantiate the said facts with the help of records, but is only trying to point out a mistake committed by the applicant. In this connection the applicant begs to reiterate what has been stated by her in para 4(xii) of the Original application.

8. That with regard to the statements made in paragraph 13 of the Written statements, the applicant states that the representation dated 3-9-93 was made after the seniority of the applicant was wrongly assigned showing her at Serial No. 4, but as admitted by the authorities no proper examination was done to consider the seniority of the applicant. The applicant begs to reiterate what has been stated by her in paragraph 4(xiii) of the Original application.

9. That the statements made in paragraph 14 of the Written statements are not at all correct and the applicant denies the same. The appeal/representation dated 3-9-93 was preferred by the applicant against the office order and seniority position dated 23-8-93 and as such there is no question of it being barred by limitation. It may be pertinent to mention herein that the show cause notice dated 17-4-2000 was issued to the respondents No.5 and 6 by the respondent No.4 himself and now the respondent No.4 in the Written statement is disputing the facts. The applicant also begs to state herein that after receipt of the show cause notice, the respondent No.5 and 6 did not file any objection within 30 days, but now only for show both the objection dated

Rama Gandha Banik.

16-5-2000 prepared by the respondent authorities have been shown to have been filed by the respondents No.5 and 6 on the fag end of 30 days and annexed as Annexure-R₃ and R₄ of the Written statement. The respondents No.5 and 6 in their Written statement however have only stated that objections have been filed, but no copy of any objection have been annexed.

10. That with regard to the statements made in paragraphs 15,16,17,18 and 19, the applicant begs to reiterate what has been stated by her in para 4(xviii), 4(xix), para 5(i) and para 5(ii) and the grounds mentioned in the Original application.

VERIFICATION

I, Smt Rama Gandha Banik, W/o Sri D.R.G. Banik, aged 49 years, resident of Barabari Railway Colony, P.O. Dibrugarh, Distt-Dibrugarh, Assam, do hereby verify that the statements made in paragraphs 1 to 10 are true to my knowledge.

Rama Gandha Banik.

Signature.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.

O.A. NO. 385/2002

Sri Rama Gandha Banik.

- Applicant.

-Versus-

Union of India & Ors.

- Respondents.

(Rejoinder by the applicant to the Written Statement filled by the respondents No. 5 and 6.)

The rejoinder of the applicant is as follows:-

1. That with regard to the statements made in paragraph 3 of the Written Statements in answer to para 4(ii) of the application the applicant admits that she was initially appointed as Staff nurse, but due to typographical error it has been stated as Nursing Sister. But the statements made against para 4(iii), 4(iv) and 4(v) in the said paragraph 3 of the Written Statements is not at all correct and the applicant denies the same. The applicant states that the statements made against para 4(iii), 4(iv) and 4(v) are not supported by any records. The applicant begs to reiterate what has been stated by her in paragraphs 4(iii), 4(iv) and 4(v) of the Original application.

2. That with regard to the statements made in paragraph 4 of the Written statement the applicant states that the respondents No. 5 and 6 have rightly admitted that the applicant belongs to the reserve community (i.e. S.C.) which has been denied by the respondents No. 1 to 4 in para 6 of their Written statement which is

Contd.

Filed by:
The applicant
through: L.M.K. Banik
Rama Gandha Banik 1/9/03

confusing. The applicant denies the other statements made in para 4 of the Written Statement against what has been stated by the applicant in para 4(vi) to 4(ix) of the original application. The applicant begs to reiterate what has been stated by her in para 4(vi) to 4(ix) of the Original application.

3. That the statements made in paragraph 5 and 6 of the Written statements are not correct and the applicant denies the same. The applicant begs to reiterate what has been stated by her in paragraph 4(x) and 4(xi) of the original application.

4. That with regard to the statements made in paragraph 7 of the Written statements, the applicant states that after she had challenged the Office order dated 23-08-93 showing the seniority positions of the applicants No. 5 and 6, and the appeal/representation of the applicant dated 03-09-93 was kept pending for 7 years and during this period the respondent No. 5 was given promotion in the year 1999. But when the show cause notice dated 17-04-2000 was issued by the respondent No. 4 to the respondent No. 5 and 6 to submit their objection within 30 days regarding recasting of seniority, no objection were filed and no copy of any objection have been annexed to the Written statement. During the pendency of the Original application the respondent No. 6 has also been given promotion on 11-07-03. Therefore, from the facts and circumstances aforesaid it is very much clear that everything has been done in a planed manner only to deprive the applicant of her seniority and promotion. The applicant begs to reiterate what has been stated by her in paragraph 4(xii) to 4(xix) of the Original application and the ground stated therein.

Contd..

Rama Gandhi Banik

65

VERIFICATION

I, Smt Rama Gandha Banik, W/o Sri D.R.G. Banik, aged 49 years, resident of Barabari Railway Colony, Dibrugarh do hereby verify and state that the statements made in paragraphs are true to my knowledge.

Rama Gandha Banik
Signature.

Rama Gandha Banik
Signature