

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 364 of 2000

Jabalpur, this the 17th day of October, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

Smt Ursula Baxla,
Wife of Alexius Baxla (S.T.),
Nursing Sister, Railway Hospital
New Katni Junction, District
Katni, M.P.

APPLICANT

(By Advocate - Shri M.K. Sulakhe holding brief of
Shri P.S. Das)

VERSUS

1. Union of India, through Secretary,
Department of Indian Railways
New Delhi.
2. General Manager, Central Railway,
Chhatrapati Shiveji Terminal Bombay.
3. Divisional Railway Manager,
Central Railway, Jabalpur, M.P.
4. C.M.S.(Chief Medical Surgeon)
Central Railway, Jabalpur, M.P.
5. A.V. Mathew (Matron)
6. M. George (Matron)
7. S.S. Singh (Matron)
8. Geeta P.S. Roy (Matron)
9. Smt. M.T. Charlie (Matron)
Respondents Nos 5 to 9 through
Chief Medical Surgeon, Central Rly.,
Jabalpur, M.P.

RESPONDENTS

(By Advocate - Shri S.P. Sinha)

O R D E R

By J.K. Kaushik, Judicial Member -

Smt. Ursula Baxla has filed this application seeking
following reliefs :-

1. This Hon'ble Tribunal may be please to quashed the
order vide Annexure A/16, dated 17.2.2000 which
she received on 6.3.2000:
2. The respondents be commanded by suitable order or
direction to promote and post the applicant in the
post of Matron;



3. The petitioner/applicant has served on the post of Matron from 4.1.1992 for four years i.e. upto 1996 and hence the respondents be directed treat her promoted from 4.1.92 on the post of Matron and she should be paid all arrears and emoluments thereof;
4. The respondents be directed to promote and give the applicant her seniority over and above the respondents 5 to 9.


2. This is second round of litigation and the applicant has also filed an Original Application No. 724/99, wherein direction was given to the respondents to consider the case in accordance with rules if there exists any vacancy. A short profile of the facts leading to filing of the present case would suffice for resolving the controversy. The applicant was initially appointed as Staff Nurse in Central Railway Hospital on 7.3.1981 and thereafter she was allowed next promotion to the post of Nursing Sister on 7.12.82. One Smt. Antonia D. Minj was also appointed to the post of Staff Nurse along with the applicant, but she joined on 10.3.81 and also enjoyed the next promotion to the post of Nursing Sister from 7.12.82. Smt Antonia was allowed promotion to the post of Matron w.e.f. 1.1.1984, she has ^{as} been further promoted/Chief Matron. Applicant was allowed to officiate on the post of Matron in leave vacancy during 1986 to 1988 and thereafter the applicant ~~was~~ discharged duties ^{from} on the post of Matron /dated 4.1.1992 to 4.10.1996 without any allowance. Further case of the applicant is that certain promotion ~~of~~ order in the year 1993 without subjecting the individual to any selection. The seniority list was published on 11.3.93 for the post of Nursing Sister and the applicant's name found at serial No. 1. The respondents Nos. 5 to 9 whose name are placed on serial No. 2 to 7 in the said seniority list have been allowed to supersede the applicant by promoting them to the post of Matron. The applicant has submitted her representation, setting



out her grievances which was followed by number of reminders. In 1994 one selection was conducted for the said post in which the applicant did not appear due to her illness. The post of Matron had fallen vacant, still the applicant was not considered despite the direction of this Tribunal and case has been turned down vide order dated 17.2.2000 (Annexure-A-16). The application has been filed mainly on the ground that the applicant has been deprived of her lawful claim for promotion to the next post of Matron without assigning any reason, she is entitled ~~right~~ for the same from the year 1993.

3. The respondents have contested the case, they have filed their counter reply. They have submitted that the applicant was promoted to the post of Nursing Sister against ST quota arising out of 40 point roster. The post of Matron is a selection post. Smt Minj was promoted as Matron with effect from 1.1.84 against ST point and she was also senior to the applicant. Thereafter there was merger of the cadre. However, she was not been promoted to the post of Chief Matron while granting the benefit of upgradation. The applicant did not fulfil the general seniority criteria for the selection of Matron. The post of Matron is a selection post and no promotion can be made unless one qualifies the positive act of selection, the modified selection procedure was only one time exception. Further reservation policy was not applicable in the upgradation, therefore, the applicant has no cause of action in as much as she was not eligible for consideration in restructuring and she also did not qualify in the test.

4. A short rejoinder has been filed wherein it has been admitted that the applicant was promoted to the post of Nursing Sister w.e.f. 7.12.1982 and respondents have taken a shelter of 40 point roster but no document has been filed in support of. She has been officiating on the promotional post and she was assured of consideration for promotion



It has also been averred that it is incorrect that the applicant fell short of seniority in the gradation on 1.3.93. Reply to the rejoinder has also been submitted, it has been specifically mentioned that though the applicant was serial No. 1 of the seniority but as per the general seniority she comes to serial No. 10 and therefore, she was not within the consideration zone. Subsequently, she did not appear in the first selection and failed in the subsequent selection.

5. We have heard the elaborate arguments advanced by the learned counsel for both the parties and have carefully perused the pleadings and records of this case.


6. The learned counsel for the applicant has reiterated his pleadings. He has submitted that the applicant was at serial No. 1 on the seniority list when the benefit of restructuring was being extended w.e.f. 1.3.93, she was not required to face any selection at the relevant time, but her candidature has been ignored. He has also submitted that the order Annexure-A-1 indicates that her candidature was considered but she did not come in the merit. She has further submitted that on the basis of long ad-hoc working, she ought to have been regularised on the promotional post.

7. On the contrary the learned counsel for the respondents has strenuously submitted that even though her name at serial No. 1 of the seniority list but as per general seniority her name would come serial No. 10 there were only 5 posts on which the benefit of upgradation was to be given. He has placed reliance on one of the judgment of Hon'ble High Court of Madhya Pradesh in G.C. Jain & Ors Vs. Divisional Railway Manager & ors. reported in 1986 M.P.L.J. page 4 wherein it has been held that one person who has been given benefit accelerated

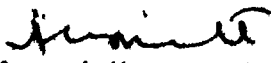
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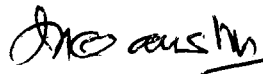
promotion, he would not be entitled for accelerated seniority. He has also submitted that the factum of this judgment is also indicated by DPC which considered the cases of candidates for grant of benefits and under restructuring scheme. He has also submitted that the Matron is a selection post and every time the case of the applicant was considered but at one time she did not appear in the examination and the other time she failed and until and unless a person qualifying in the selection one cannot be given regular promotion. As regards illness of the applicant in the first selection, the applicant did not adhere to the Rules of the Railway in as much as no certificate from the Railways was produced and therefore no action in the matter was wanted. However it would not make any difference in as much as even in the subsequent selection the applicant has failed. In this view of this position nothing wrong has been committed by the respondents and impugned order does not suffer from any infirmity.

8. We have considered the rival submissions and contentions raised on behalf of both the parties as regards the grant of benefit in the restructuring scheme applying the judgment which is relied upon by the learned counsel for the respondents and there remains hardly anything to adjudicate. The law position at relevant time was that no accelerated seniority was to be given incase one has got accelerated promotion. There is no dispute that the applicant was granted accelerated promotion and that was the reason she was placed on serial No. 1 of the seniority list. As per the general seniority list no junior to her was extended. the benefit under the restructuring scheme. It is also true that the applicant was considered for promotion and subjected to selection every time whenever it was held but she should thank to herself that at one time she did not appear and other time she did not qualify the selection. One has



fundamental right only for consideration for promotion and not for promotion as such. Since in the present case applicant has been duly considered for promotion no infraction of Article 14 and 16 can be complained of. In this view of the matter no interference in the action of the respondents is called for. In premises the Original Application is devoid of any merits and substance. The same stands dismissed. However without any order as to costs.


(Anand Kumar Bhatt)
Administrative Member


(J.K. Kaushik)
Judicial Member

SKM

पृष्ठान्कन सं ओ/न्या.....जबलपुर, दि.....


पुनर्विचार अर्पित -

- (1) जज, जज (अधीनस्थ) एवं जज (न्यायाधीश), जबलपुर
- (2) जज (अधीनस्थ) एवं जज (न्यायाधीश), जबलपुर
- (3) जज (अधीनस्थ) एवं जज (न्यायाधीश), जबलपुर
- (4) जज (अधीनस्थ) एवं जज (न्यायाधीश), जबलपुर

सूचना एवं आवश्यक कार्यवाही हेतु


28/10/03

P.S. Dora, D.C.
S.P. Sinha, D.C.


23/10/03