

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 800 of 1999

Jabalpur, this the 4th day of February 2004.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. G.Shanthappa, Judicial Member

1. Smt.K.Gedwin
Aged years,
Working as Senior Nurse, Grade I
Ordnance Factory Khamaria Hospital,
Ordnance Factory, Khamaria,
Jabalpur(M.P.)
2. Smt. J.N. Kujur
Aged years,
Working as Senior Nurse Grade I
Ordnance Factory Khamaria Hospital,
Ordnance Factory, Khamaria,
Jabalpur - 482 00
3. Smt. S. Timothi
Aged years
Working as Senior Nurse Grade I
Ordnance Factory Khamaria Hospital
Ordnance Factory, Khamaria,
Jabalpur
4. Smt. R.David
Aged years
Working as Senior Nurse Grade I
Ordnance Factory Khamaria Hospital
Ordnance Factory, Khamaria,
Jabalpur
5. Smt. G. Kujur
Aged years
Working as Senior Nurse Grade I
Ordnance Factory Khamaria Hospital,
Ordnance Factory, Khamaria,
Jabalpur.

APPLICANT

(By Advocate - Shri S. Ganguli on behalf of Shri M.Sharma)

VERSUS

1. Union of India
Through Secretary,
Ministry of Defence
New Delhi.
2. Ordnance Factory Board
Through its Chairman
10-A, S.K. Basse Road,
Calcutta - 700001
3. General Manager,
Ordnance Factory
Khamaria, Jabalpur(M.P)

G.S.

4. Principal Medical Officer
Ordnance Factory Khamaria
Hospital, Ordnance Factory,
Khamaria, Jabalpur (M.P.)

5. Smt. K.A. Benjamin
Public Health Nurse,
Ordnance Factory Khamaria
Hospital, Ordnance Factory,
Khamaria, Jabalpur (M.P.)

RESPONDENTS

(By Advocate - Sri B. da. Silva)

O R D E R

By G. Shanthappa, Judicial Member -

The above OA has been filed by the applicant for a direction to quash the order dated 24.11.1999 (Annexure-A-2) and further direction "to declare the Part 'C' of the Rules of 1989 pertaining to non-industrial Posts (Group C Paramedical Staff) in Ordnance and Ordnance Equipment Factories with reference to promotion to the post of Matron, in Column 12 that Public Health Nurse is not entitled to be placed in the Feeder Cadre, and placement of the same is 'ultra-virus' to the Constitution under-articles 14 and 16."

2. There are 5 applicants in the above OA. The applicant No. 1 is the Senior Nurse Grade I in the Ordnance Factory Hospital Khamaria. She was appointed in the year 1978 as Staff Nurse Grade-II; thereafter she got promoted in the year 1991 as Senior Nurse Grade-I. The other applicants were also Senior Nurse Grade I working in the same hospital. The respondents have published the Rules in the year 1989—"Ordnance Factories Group 'C' & 'D' Supervisory Non-gazetted cadre (Recruitment & Condition of Service) Rules, 1989" for Non-Industrial Posts (Group C) Paramedical staff in Ordnance and Ordnance Equipment Factories as Annexure-A-1 in which the method of recruitment to the post of Matron is prescribed for. According to that, the feeder cadre for promotion to the said post is given in column 12 in the said Rule. The qualifications required are that the incumbents ought to



have passed Matriculation or equivalent examination, must be fully qualified both as a Nurse and as Mid Wife, ought to be registered as such by State Nursing Council, must be trained in Operation Theatre duties for one year, and ought to possess not less than 10 years or working experience as such. These qualifications fall under the category of 'Essential Qualifications'. In the column pertaining to the Feeder Cadre, it has been laid down that promotion to the post of Matron, in case of recruitment by promotion, can be done by promoting a Senior Nurse Grade I, who has put in 3 years' Service in the Grade-I or a Public Health Nurse having 3 years experience in the Grade in a recognised hospital after their registration as Nurse and Mid Wife and should also possess 3 years service in OGOF Organisation of which one year as Senior Nurse Grade I, if such a Public Health Nurse gives an option to this effect.

3. The grievance of the applicants is that the respondents No. 5 is not qualified for the post of Matron, She has been allotted the duties as Senior Nurse Grade-I in the hospital for a period of 1 year. The applicants urged only to accommodate her as Matron in future.

3.1 The respondents have made differentiation in the duties and responsibility of Public Health Nurse and the Senior Nurse. Hence the chances to the applicants for getting promotion to the post of Matron are remote. Hence, they have filed the above OA challenging the Rules on the ground of the malafides and colourable exercise of power.

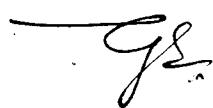
4. Per contra, the respondents have filed their reply denying the averments made in the OA. They have stated that the applicants are challenging the anticipated promotion of respondent No. 5 and the vires of Ordnance Factories Group 'C' & 'D' Supervisory Non-gazetted cadre(Recruitment & Condition of Service Rules 1989. The respondents submit that,

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in Ordnance Factories, the cadre of nursing staff consists of (i) Matron(ii) Sr. Nurse Grade-I and equivalent i.e. Staff Nurse and Public Health Nurse(iii) Sr. Nurse Grade II Sr. Nurse Grade-I, Public Health and Staff Nurse are in the same grade of pay scale of Rs.5500-9000/-(pre-revised scale Rs. 1840-2900/-) and as per provision laid down in the existing SROs, Sr. Nurse Gr.-I, Public Health Nurse(in short PHN) and Staff Nurse are in the feeder grade for promotion to the post of Matron. In terms of column 12 of SRO 14(E) dated 4.5.89 for the post of Matron at Sl. No. 52 of the SRO Sr. Nurse Grade-I and PHN were in the feeder grade which has subsequently been amended vide SRO 109 dated 25.5.89 published in part-II Section 4 of the Gazette of India on 26.6.99. In this amendment, staff Nurse also has been included in the feeder grade along with Sr. Nurse Grade-I and PHN for promotion to the post of Matron.

4.1. Besides the identical pay scale, the Sr.Nurse Grade-I, PHN and Staff Nurse are having comparable recruitment qualifications, duties and responsibilities. However, in normal circumstances, the area of work of Sr. Nurse Grade-I, PHN and Staff Nurse are different. Sr.Nurse Grade-I performs the duties at hospital wards and OPDs, PHN renders out door/house-to-house services and deals with the public health and prevention of diseases, Staff Nurse is exclusively meant for operation theatre duties.

4.2 The respondents have not shown any favour to the respondent No.5 in order to facilitated her promotion to the post of Matron. A plain reading of the rule establishes that the fundamental rights of the applicants have not been violated and nor are being bestowed with unchannelised power as contended by the applicants. During the pendency



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of the said OA the respondent No.1 has been promoted on 31.12.01.

5. We have heard the learned counsel for the parties and also perused the pleadings and documents on record.

6. On perusal of order dated 24.11.99(Annexure-A-2) passing the respondent No.5 as Sr. Nurse Grade-I, which is an administrative matter, we find that the respondents have assigned the duty to respondent No.5 by allocating the work for a period of one year. Hence we do not find any illegality in passing the said order for allocation of the duties to respondent No.5. Accordingly we decline to interfere with the administrative order passed by the official-respondents.

6.1. The applicants have challenged the vires of the Rules as per Annexure-A-1. The applicants have tried to distinguish the duties assigned to the Public Health Nurse and Sr. Nurse stating that Sr. Nurse Grade-I, Public Health Nurse and Staff Nurse are having different qualifications, duties and responsibilities. The areas of works of Sr. Nurse Grade-I and Public Health Nurse and Staff Nurse are also different. The Sr. Nurse Grade-I performs the duties at hospital wards and OPDs, Whereas Public Health Nurse renders out door/house-to-house services and deals with the public health and prevention of diseases. The Staff Nurse is exclusively meant for operation theatre duties. Such being the case of the applicants they have not demonstrated, how their fundamental rights are violated under the Rules part-C Non-Industrial posts-(Group C)- Paramedical staff in Ordnance and Ordnance Equipment, as per column 12 regarding the promotion to the post of Matron. For the promotion to the post of Matron, there are 3 feeder cadres:(1) Sr. Nurse Grade-I (2) Public



Health Nurse and (3) Staff Nurse. Admittedly the applicants are Sr. Nurse Grade-I. When the Rules provide to give an opportunity to the Public Health Nurse and Staff Nurse, the applicants have to compete with those 2 cadres for which they have separate eligibility criteria. If the applicants fulfill the conditions prescribed in the said Rules, the case of the applicants will also be considered for the post of Matron. Hence we do not find any illegality and irregularity in framing the Rules for promotion to the post of Matron. The applicants have also not demonstrated how the said Rules violate their fundamental rights. Accordingly we do not find any reason to interfere with the Rules. The application is devoid of merits.

G.Shanthappa
(G. Shanthappa)
Judicial Member

M.P. Singh
(M.P. Singh)
Vice Chairman

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~~For Soddy
10.2.04.~~