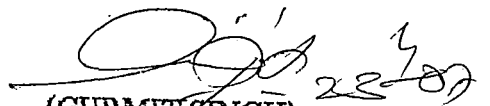


23.04.2007
OA 329/2006

Present : Mr. Nand Kishore, counsel for the applicant.
Mr. T.P.Sharma, counsel for the respondents.

This case has been listed before the Deputy Registrar due to non-availability of Division Bench. Be listed before the Hon'ble Bench on 18.07.2007.

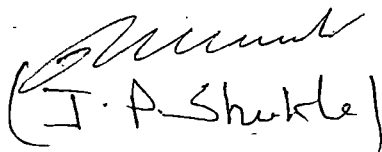

(GURMIT SINGH)
DEPUTY REGISTRAR

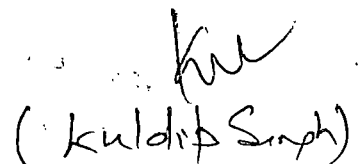
akv

18.7.07

Mr. Nand Kishore, Counsel for applicant.
Mr. T. P. Sharma, Counsel for respondents

Heard. The OA is disposed of by a separate order.


(J. A. Shukla)
M (A)


(Kuldip Singh)
Vc

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 18th day of July, 2007

ORIGINAL APPLICATION No.329/2006

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR. J.P.SHUKLA, ADMINISTRATIVE MEMBER

Zarina Khan
w/o Chhote Sahab,
aged about 45 years,
Nursing Sister,
West Central Railway, Kota
r/o Q.No.578-B, Railway Medical Colony,
Kota (Raj.)

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through
General Manager,
West Central Railway,
Jabalpur.
2. Divisional Rail Manager,
West Central Railway,
Kota (Raj.)

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

Shri Nand Kishore

Shri Tej Prakash Sharma

ORDER (ORAL)

The applicant has filed this OA seeking following reliefs:-

- (i) The official respondents may be directed by an appropriate order or direction to produce the entire record, concerning to the case and after examination of the same the respondents may be directed to arrange payment of the arrears of pay and allowances which become due as 1:11.2003 with interest @ 12%.
- (ii) Any other directions and orders which is deems proper in the facts and circumstances of the case may kindly be allowed to the applicant.

2. Facts, as alleged by the applicant in brief, are that the applicant was initially appointed as Staff Nurse in the pay scale of Rs. 1400-2600 on ad-hoc basis w.e.f. 23rd April, 1988 under Kota Division. Subsequently, she was selected by the Railway Recruitment Board, Ajmer and was allowed regular appointment on 29th June, 1989. She was further promoted in the scale of Rs. 5500-9000 on 28th June, 1994 and posted at Kota. In the seniority list issued on 24th March, 2003 her name was at Sl.No.4 as per Ann.A3.

The applicant further alleges that her working remained quite satisfactory during the period from 1989 to 2002 and she was never intimated about any slackness/misconduct about her duties. However, the respondents issued a select list for the post of Nursing Sister in the scale of Rs. 6500-10500 on 14th September, 2004 in which name of the applicant did not

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appear, but names of her juniors found place. A copy of the said select list has been annexed as Ann.A4.

The applicant made a representation against non-inclusion of her name in the select list and it is stated that adverse entries in the ACR of the applicant were expunged by the respondents vide their own letter Ann.A5 and after those adverse entries were expunged, respondents issued a letter dated 2nd May, 2006 (Ann.A1) wherein name of the applicant was added below S.No.2 and above S.No.3 of the select list Ann.A4 vide which pay scale of Rs. 6500-10500 was allowed to various candidates including juniors to the applicant. However, it is stated that vide Ann.A1, the respondents have denied her payment of arrears. It is further stated that pay of the applicant should have been fixed in the following manner:-

| | Fixed | Should be fixed |
|-------------------|------------|-----------------|
| Pay as on 1.11.03 | Rs. 7075/- | Rs. 7300/- |
| Pay as on 1.11.04 | Rs. 7290/- | Rs. 7500/- |
| Pay as on 1.11.05 | Rs. 7425/- | Rs. 7700/- |

The applicant now ^{states} ~~challenges~~ that she has been denied payment of arrears illegally. It is further stated that the provisions of Para 228 of IREM Vol.I, 1989 which denies arrears has been held to be invalid and arbitrary by the Bangalore Bench of this Tribunal as well as by the Ernakulam Bench of the Tribunal. It is further submitted that the applicant has never

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refused to perform duty in the scale of Rs. 6500-10500 but was refrained from performing her duties in the promotional scale. It is further stated that case of the applicant is fully covered with the case of B.S.Tyagi vs. Sh. S.P.Mehta, General Manager, Northern Railway, New Delhi and others, reported in Full Bench Judgments 2002-2003 and as such the applicant is entitled to arrears.

3. The respondents are contesting the OA. They have taken some preliminary objections that the present OA has been filed without exhausting the legal remedies. It is further stated that the applicant has not challenged the order of the competent authority in the present OA, so the OA is not maintainable. However, the fact regarding her seniority is admitted. It is also submitted that in view of restructuring of the post of Matron vide order dated 14th September, 2004, the respondents issued a list on 14th September, 2004, in which name of the applicant did not appear and was not approved as she was not found suitable for the said post while considering her service record and confidential record, therefore, the averment of the applicant that her junior was placed in the said list is contrary to the facts as the list was prepared after considering the service record as well as confidential record of the individual. It is also admitted that when representation was made through

Sumit

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Union, the respondents informed the Union that the adverse entries made in the service record of the applicant were expunged vide order dated 26th April, 2006 and it is after expunging of adverse remarks, case of the applicant was considered and she was placed in between S.No. 2 and 3 of the select list and was given proforma fixation w.e.f. 1st November, 2003 i.e. the date from which her junior was promoted. It is further stated that no arrears are admissible to the applicant as claimed by her.

4. We have heard the learned counsel for the parties

and gone through the record. *The central question which requires to be determined is whether the applicant is entitled to arrears or not although she has been given proforma fixation benefit.*

5. The facts of the case are fully covered by the Full Bench decision of the Principal Bench of this Tribunal in the case of B.S.Tyagi vs. Sh. S.P.Mehta, General Manager, Northern Railway, New Delhi and ors. wherein provisions of Paragraph 228 of the IREM were also taken note of by the Full Bench and the Full Bench, in which one of us was also a Member, has observed that benefit of upgradation on restructuring was given to the applicant on proforma basis and arrears of pay and allowances of upgraded post were denied under Para 228 of IREM but provisions of Para 228 of the IREM Vol.I are not applicable being declared invalid by various Court rulings.

Sumit

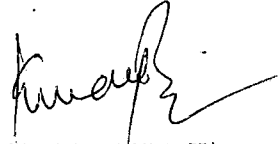
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6. Having regard to the facts of the present case, we find that the controversy regarding denying arrears particularly with regard to upgradation is no longer res-integra as the Full Bench has already decided the same and the facts of the present case are fully covered by the said judgment, so we hold that the applicant is also entitled to the arrears as prayed. However, with regard to prayer for interest at the rate of 12%, as made by the applicant, is not allowed, but it is further directed that in case the arrears are not paid to the applicant within a period of four months from the date of this order, in that event, the respondents are liable to pay interest at the rate of 9% till the payment is made.

7. The OA is disposed of accordingly with no order as to costs.


(J.P. SHUKLA)

Administrative Member


(KULDIP SINGH)

Vice Chairman

R/