

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 240/2013

DATE OF ORDER: 26.11.2015

CORAM

HON'BLE MR. JUSTICE HARUN-UL-RASHID, JUDICIAL MEMBER
HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Smt. Ammini P.T. W/o Shri Tulsi Dhar, aged about 48 years, R/o 70/305, Pratap Nagar Sheopur Sanganer, Jaipur and presently working as Nurse, Postal Dispensary No. 2, Tilak Nagar, Jaipur.

...Applicant

Ms. Gayatri Rathore, counsel for applicant.

VERSUS

1. The Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communication and Information Technology, Dak Bhawan, New Delhi – 110001.
2. The Chief Post Master General, Rajasthan Circle, Jaipur – 302007.
3. The Assistant Director, Staff and Training (T&G), Office of Chief Post Master General, Chomu House, Jaipur.

...Respondent

Mr. S.S. Sharma, counsel for respondents.

ORDER

PER MR. JUSTICE HARUN-UL-RASHID, JUDICIAL MEMBER

The Original Application is filed seeking to set aside Annexure A/1 order dated 18.09.2012 to the extent her regularization on the post of Nurse is made effective from the date of order. A direction is also sought to direct the respondents to regularize the services of the applicant from the date of her initial date of appointment i.e. 17.09.1985 with all consequential benefits.

2. Learned counsel for the applicant Ms. Gayatri Rathore submitted that this is the fourth round of litigation. Right from 1990, the applicant is agitating her grievances before the Central Administrative Tribunal, Jaipur Bench as well as Hon'ble Rajasthan High Court, Jaipur Bench seeking regularization of her appointment and for all consequential benefits. Finally, the respondents have issued Annexure A/1 order dated 18.09.2012 regularizing her service as Nurse at Postal Dispensary No. 02, Jaipur in the Pay Band-1, Rs. 5200-20200 with Grade Pay of Rs. 2800 with immediate effect. It is also mentioned therein that the applicant will be entitled the Pay and Allowances of the post of Nurse from the date of joining. The legality and propriety of this order dated 18.09.2012 (Annexure A/1) is under challenge in this OA.

3. Way back in 1990, the applicant filed an OA No. 161/1990 before the Central Administrative Tribunal, Jaipur Bench seeking a declaration that she is entitled to regular appointment as a Staff Nurse in the Postal Dispensary No. 02, Jaipur with all consequential benefits. It is not disputed that the applicant was initially appointed as a Staff Nurse on 17.09.1985 on daily wages and was allowed minimum of the regular pay scale plus usual dearness allowance. This Tribunal vide order dated 08.12.1994 (Annexure A/2) allowed the said OA directing the respondents to consider the case of the applicant for appointment as a Staff Nurse on a regular basis in accordance with the Recruitment Rules of 1978 as and when recruitment to the said post on regular basis is made. In the light of the direction given by this Tribunal, the case of the applicant for appointment on the post of

Staff Nurse (Non-resident) was examined and the respondents found that the applicant does not fulfill the condition required for appointment to the post of Staff Nurse as laid down in the recruitment rules. The applicant again approached the Central Administrative Tribunal, Jaipur Bench, by filing OA No. 20/2006 seeking a direction to regularize the services of the applicant on the post of Staff Nurse or any other suitable post and for a further direction to relax the condition which deprived the applicant in regularization and to allow at least benefits of allowances i.e. HRA/CCA etc. with all consequential benefits. Vide order dated 12th October, 2006 (Annexure A/2), this Tribunal disposed of the said OA holding that the applicant is not entitled to any relief. This Tribunal from the material placed on record found the following facts in para 2 of the said order:

"2.that keeping in view the fact that the applicant has worked with the Department for considerable long time the Chief Postmaster General, Jaipur referred the case of the applicant to the Director General, Department of Posts, New Delhi for approval of the Directorate to grant her temporary status treating her as full time Casual Labour in P&T Dispensary, Jaipur vide letter dated 28.10.2004 (Ann. A6). In the said letter the fact that the applicant does not fulfill the requisite qualification as per recruitment rules for the post of Staff Nurse has also been indicated. In the said letter it has also been mentioned that the record pertaining to the year 1985 whereby the applicant was engaged as Staff Nurse on daily wage basis are not now available/traceable by the Regional Office, Ajmer, as such, it is not possible to say as to how the applicant was appointed on daily wage basis when she does not possess the requisite qualification for the said post. Accordingly, case of the applicant was referred for approval of the Directorate for relaxation in condition for

appointment on regular basis either on the post of ANM in P&T Dispensary No. 1, Jaipur or Non-resident Nurse in P&T Dispensary No. 1, Jaipur. It was further mentioned that if the minimum qualification is not relaxable, approval of the directorate may be conveyed to grant her temporary status treating her as full time casual labour in P&T Dispensary. The matter was examined at Directorate level in consultation with the Department of Personnel and Training. The DoPT has not agreed to the proposal as the applicant does not possess the mandatory educational qualification/experience. It was observed that it will be inappropriate to regularize services of the applicant without proper experience for the post of Staff Nurse. The suggestion of the Chief Post Master General as made vide Ann. A/6 regarding grant of temporary status to the applicant was also turned down on the ground that Casual Labour (Grant of Temporary Status and Regularization) Scheme is not applicable for persons working in Group 'C' post. The respondents have placed copy of letter dated 19.4.2006 on record as ann. R1."

4. This Tribunal after placing reliance on the decision of the Constitution Bench of the Hon'ble Apex Court in the case of Secretary, State of Karnataka and others vs. Uma Devi and others, 2006 (3) SLR 1, and in National Fertilizers Ltd. and ors. vs. Somvir Singh JT 2006 (11) SC 279, held that the applicant has no legal right to be regularized in service and in view of the law laid down by the Hon'ble Apex Court, the applicant is not entitled to any relief.

5. This order of the Tribunal dated 12th October, 2006 in OA No. 20/2006 was challenged by the applicant before the Hon'ble High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur by filing D.B. Civil Writ Petition No. 3588/2010 (Smt. Ammini P T

vs. Union of India & Ors.). The Hon'ble Rajasthan High Court ultimately decided the matter vide order dated 13.03.2012 (Annexure A/4).

6. The Hon'ble Rajasthan High Court, Jaipur Bench found that the applicant possessed the qualification of 1st pre-degree from the University of Kerala and final from the International Nursing Institute, Thiruvalla, Kerala State and she completed the course of nursing and midwifery and that she is working on the post of Staff Nurse from 17.09.1985. It is also mentioned in the order that the applicant was only being granted minimum of the pay scale plus usual D.A. without other allowance.

7. The Hon'ble Rajasthan High Court observed that the Tribunal has declined to pass an order in favour of the petitioner for regularization on the basis of the judgment of the Hon'ble Apex Court in **Umadevi's case** (supra). The Hon'ble High Court also observed that even as per the judgment of the Hon'ble Apex Court in **Umadevi's case**, it is clear that the Hon'ble Apex Court gave a direction to formulate a scheme for the persons, who are working for more than 10 years and to consider the case of those persons for regularization. The Hon'ble High Court further held that the petitioner is working for the last about 27 years, therefore, the judgment of the Hon'ble Apex Court in **Umadevi's case** was not coming in the way of petitioner for consideration of her case for regularization, rather this judgment was supporting the case of the petitioner.

8. Finding of the Hon'ble Apex Court in **Umadevi's case** is with regard to a direction to formulate a scheme for the persons, who are working for more than 10 years and to consider the case of those persons for regularization but while passing the order dated 12th October, 2006 in OA No. 20/2006, the Tribunal ignored the finding of the Hon'ble Apex Court, therefore, the Hon'ble Rajasthan High Court referring the relevant paragraph of the observation made by the Hon'ble Apex Court in **Umadevi's case** observed that the **Umadevi's case** is rather supporting the case of the applicant that the conclusions and findings of Umadevi's case are not against the case of the petitioner. But unfortunately, the Tribunal did not pay any attention to the relevant portion of the judgment in **Umadevi's case** and held that the applicant is not entitled to any relief since she has no legal right to be regularized in service.

9. The Hon'ble Rajasthan High Court also noticed the fact that the applicant was appointed as Staff Nurse on daily wages on 17.09.1985. Subsequently, she was granted minimum scale of the regular pay scale and she is continuously working on the said post for last about 27 years. The High Court considered the issue "as to whether a direction can be issued to the respondents to consider the case of petitioner for regularization on the post of Staff Nurse, treating her to be qualified as she has already got an experience of the post in last about 27 years continuously, without any complaint against her work". The High Court relied on the decision of the Hon'ble Apex Court in the case of **Bhagwati Prasad vs. Delhi State Mineral Development Corporation**, (1990) 1 SCC 361 wherein the Larger Bench of

the Hon'ble Supreme Court considered the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. In that case, the petitioners were appointed between the period from 1983 to 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. The Hon'ble Apex Court observed that practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack prescribed educational qualifications.

10. In the order dated 13.03.2012, DB Civil Writ Petition No. 3588/2010, in the case of the applicant, the Hon'ble Rajasthan High Court, Jaipur Bench also referred to umpteen number of the decisions on the issue including the decision of the Hon'ble Supreme Court in the case of **Umadevi** (supra). In para 23 of order it has been mentioned that in **Umadevi's case** itself, the Hon'ble Apex Court further clarified that there may be cases where irregular appointments have been made and employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be

considered on merits in the light of the principles settled by the Court. The Hon'ble Apex Court directed the Union of India, State Governments and their instrumentalities, to take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts.

11. The Hon'ble High Court, Jaipur Bench allowed the said writ petition filed by the applicant challenging the order of the Tribunal dated 12.10.2006 in OA No. 20/2006. The Hon'ble Rajasthan High Court set aside the impugned order of the Tribunal and directed the respondents to consider the case of the petitioner for regularization on the post of Staff Nurse. The decretal para 25 of order dated 13.03.2012 (DB Civil Writ Petition No. 3588/2010) is extracted below: -

"25. Consequently, we allow the writ petition and set aside the impugned order of the Tribunal and direct the respondents to consider the case of the petitioner for regularization of her services on the post of Staff Nurse treating her to be qualified on the basis of her continuous satisfactory work of 27 years of the said post, as observed by Larger Bench of Hon'ble Apex Court in **Bhagwati Prasad's case (supra)** that practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The necessary exercise be done, as early as possible, but not later than a period of three months."

12. It is only after the positive directions were issued to the respondents by the Hon'ble Rajasthan High Court to regularize the services of the petitioner on the post of Staff Nurse, Annexure A/1 order dated 18.09.2012 was passed by the Assistant Director (Staff & Trg.) for Chief Postmaster General,

Rajasthan Circle, Jaipur. The Annexure A/1 order if as such is given effect to the appointment of the applicant will take place only from the date of order i.e. 18.09.2012. Her long services of more than 28 years will not be reckoned and no benefits will come out out of her long experience as a Staff Nurse.

13. The applicant claims that she is entitled for regularization of her services from the date of her initial appointment i.e. 17.09.1985 with all consequential benefits along with interest and her seniority is to be determined accordingly. According to her, the respondents in a highhanded manner have passed impugned order Annexure A/1 dated 18.09.2012 treating her to be a new recruitee of the year 2012. It is also pointed out that this impugned order is in violation of their own notification dated 29.08.2008 as circulated to the various departments vide letter dated 18.02.2009 wherein all the fresh recruitees, who were appointed on or after 01.01.2006 were entitled to be fixed in Pay Band-2 Rs. 9300-34800 with Grade Pay of R. 4600.

14. A short and simple question before us is "whether the applicant is entitled to regularization from the date of her initial appointment i.e. 17.09.1985 or from a subsequent date or from the date of Annexure A/1 order i.e. 18.09.2012 as ordered by the respondents.

15. Annexure A/1 order is silent about her services as Staff Nurse rendered for a considerable length of time i.e. for about 28 years as on the date of passing of the impugned order. The Hon'ble Rajasthan High Court vide order dated 13.03.2012 in DB

CWP No. 3588/2010 in para 24 of the order taken a note of the fact that her case for regularization was ordered to be considered way back in the year 1994 by the Tribunal. There is no complaint against her and her work was found to be satisfactory in last about 27 years and even after the order of 1994 of Tribunal, the services of petitioner were allowed to be continued or the same were not dispensed with. Even as per the judgment of the Hon'ble Apex Court in Umadevi's case (supra), a scheme was ordered to be framed to regularize the services of those persons, who are working for ten years or more.

16. The Hon'ble Apex Court in **Bhagwati Prasad vs. Delhi State Mineral Development Corporation** (supra) observed that practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability and that the initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with but it is so at the time of the initial entry into the service. It was also held that once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications.

17. We are of the considered view that no doubt the applicant is entitled to be regularized in service but not from her initial date of appointment. Following the principles laid down by the Hon'ble Apex Court in **Umadevi's** case (supra), we find solution

to this issue. The Hon'ble Apex Court in **Umadevi's** case (supra) directed the department to formulate a scheme for the persons, who are working for more than 10 years and to consider the case of those persons for regularization. In the present case also, we are not inclined to accept the contentions of the applicant that her services should be regularized from the date of her initial appointment, but we fix the minimum 10 years experience as a minimum period required for her regularization in the services of Staff Nurse appointed temporarily.

18. In view of the clear legal positions and principles enunciated by the Hon'ble Apex Court in the case of **Umadevi** (supra) and **Bhagwati Prasad** (supra), we are of the considered opinion that the applicant is entitled to be regularized in service at least from the date when she completed 10 years of service as Staff Nurse.

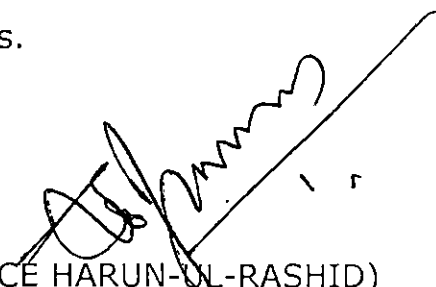
19. Consequently, we allow the Original Application and set aside the Annexure A/1 impugned order dated 18.09.2012 to the extent it orders the applicant to be appointed as Nurse with immediate effect i.e. 18.09.2012. We, therefore, direct the respondents to regularize the services of the applicant on the post of Staff Nurse treating her to be qualified from the date when she completed 10 years of service i.e. with effect from 18.09.1995. We further direct the respondents to grant her all consequential benefits i.e. seniority, promotion(s), pay scales, other emoluments etc. It is declared that the applicant is entitled to arrears of pay and allowances in the revised pay scale only from the date prior to a period of three years i.e. from three

years prior to the date of issuing Annexure A/1 order dated 18.09.2012. The respondents shall pass consequential orders within a period of three months from the date of receipt of a copy of this order. In case, the respondents fail to comply with the said directions within the time prescribed, they are liable to pay interest thereof at the rate of Rs. 9% per annum from the date of default. There shall be no order as to costs.

The applicant shall produce a copy of this order before the respondents within a period of fifteen days.



(MS. MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER



(JUSTICE HARUN-UL-RASHID)
JUDICIAL MEMBER

Kumawat