

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 20.01.2016

ORIGINAL APPLICATION NO. 060/00759/2014

Chandigarh, this the 22nd day of January, 2016

...
CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
...

1. Agnes A. Nath (alias Agnes Sahota), w/o Sh. Dilbagh Masih Sahota,
File No. 484, Nursing Sister Grade-I, Advanced Trauma Centre
(Operation Theatre), PGIMER, Sector 12, Chandigarh.
2. Saroj Bala, w/o Sh. Sunil Pahwa, File No. 509, Nursing Sister
Grade-I, Advanced Kidney Unit, PGIMER, Sector 12, Chandigarh.

...APPLICANTS

BY ADVOCATE: SHRI BARJESH MITTAL

VERSUS

1. Post Graduate Institute of Medical Education and Research,
Sector 12, Chandigarh through its Director.
2. Medical Superintendent, Post Graduate Institute of Medical
Education and Research, Sector 12, Chandigarh.
3. Krishana Devi, File No. 960, Nursing Sister Grade-I/Assistant
Nursing Superintendent.
4. Jaswinder Kaur, File No. 962, Nursing Sister Grade-I.

....RESPONDENTS

BY ADVOCATE: MS. NIMRATA SHERGILL FOR RESPONDETNS NO.1&2
SHRI ROHIT SHARMA FOR RESPONDETNS NOS. 3&4.

ORDER**HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER(J):-**

Applicability of 'Catch-up Rule' has been claimed by the applicants in the instant O.A. The applicants are general category employees, whereas private respondents no. 3 & 4 are reserved category employees of Post Graduate Institute of Medical Education & Research (PGIMER), Chandigarh (Respondent no. 1). The applicants were selected and appointed as Staff Nurse/Sister Grade-II in the year 1984 and promoted as Sister Grade-I in the year 2000 and 2002 respectively. Private respondents no. 3 & 4 who belong to Scheduled Caste were initially appointed as Sister Grade-II in the year 1991 and promoted as Sister Grade-I in the year 1996 on roster points by grant of accelerated promotion due to reservation in promotion. The claim of the applicants is that although they were promoted as Sister Grade-I much after the promotion of private respondents no. 3 & 4 to the said post, yet by applying the 'Catch-up Rule', the applicants regained their seniority over private respondents no. 3 & 4 as Sister Grade-I because respondents no. 3 & 4 were junior to the applicants in the feeder cadre of Staff Nurse/Sister Grade-II to which posts the applicants had been appointed seven years prior to private respondents no. 3 & 4. The applicants alongwith other filed O.A. NO. 1195/CH/2011 titled Kamlesh Florence & Ors. Vs. Union of India & Others, challenging the seniority list in which reserved category candidates were shown senior to general category candidates. The present applicants as well as present private respondents no. 3 & 4 were party to the said O.A. This Tribunal vide common order dated

15.11.2012 allowed the said O.A. and connected bunch of O.As and directed the official respondents to grant the benefit of 'Catch-up Rule' to the applicants. The order was required to be implemented within one month. The said order was challenged by some of private respondents of the O.As belonging to reserved category by filing CWP No. 25792 of 2012 titled Gurmeet Bagi Vs. PGIMER & Ors. and CWP No. 25861 of 2012 titled Manjeet Sandila Vs. PGIMER & Ors. The said Writ Petitions were dismissed by the Hon'ble High Court vide judgment dated 07.01.2013. The official respondents also filed various Writ Petitions challenging the said common order of the Tribunal passed in various O.As. Some private respondents also filed Writ Petitions. All the said connected Writ Petitions have since been decided by the Hon'ble High court vide common judgment dated 13.01.2006 in CWP No. 10681 of 2013, titled The Director, PGIMER Vs. Central Administrative Tribunal & Ors. and connected Writ Petitions, upholding the order dated 15.11.2012 passed by the Tribunal.

2. In spite of the claim of the applicants having been allowed in the earlier O.A. No. 1195/CH/2011 vide order dated 15.11.2012, the applicants have been forced to file the instant O.A. because the official respondents without implementing the aforesaid order of the Tribunal promoted the private respondents without considering the applicants for promotion assuming that the private respondents were senior to the applicants although in view of 'Catch-up Rule' as upheld by the Tribunal in order dated 15.11.2012, the applicants were senior to the private respondents. Private respondents have been promoted as Assistant Nursing Superintendent vide order dated 25/26.08.2014

(Annexure A-1) which is under challenge in the instant O.A. The applicants have also claimed consequential reliefs.

3. Official respondents no. 1&2 in their written statement admitted factual position as pleaded by the applicants. It was, however, pleaded that DPC for promotion to the post of Assistant Nursing Superintendent was held on 11.07.2014 on the basis of final seniority list of Sister Grade-I circulated in the year 2009 and not according to seniority list of 2011 which was under challenge in the previous O.As. Respondents have thus justified their action in promoting the private respondents no. 3 & 4 without considering the applicants for promotion.

4. Private respondents, no. 3 & 4 also justified the impugned promotion order dated 25/26-08-2014 (Annexure A-1). They also took similar stand as that of the official respondents. It was also pleaded that order dated 15.11.2012 passed by the Tribunal was under challenge in the Hon'ble High Court in various Writ Petitions. Various other pleas were also raised:

5. The applicants by filing replications and controverted the stand of the respondents and reiterated their version.

6. We have heard counsel for the parties and perused the case file.

7. Counsel for the parties reiterated their respective versions. We have carefully considered the matter. The 'Catch-up Rule' has been stated and upheld by the Hon'ble Supreme Court and Hon'ble High Court in various judgments. Judgments of the Hon'ble Supreme Court in the case of **M. Nagraj & Ors. Vs. Union of India & Ors**, (2006) 8 SCC 212 and **Suraj Bhan Meena Vs. state of Rajasthan**, (2011) 1 SCC 467 may be referred to. The same have also been relied upon by

the Hon'ble High Court in its decision dated 13.01.2016 in CWP No. 10681/2013 titled **The Director, PGIMER Chandigarh & Ors. Vs. Central Administrative Tribunal & Ors.**, wherein also the 'Catch-up Rule' was reaffirmed, upholding the order dated 15.11.2012 passed by this Tribunal. All these judgments were also considered by us in our order dated 21.01.2016 in O.A. No. 060/01147/2014 titled K Ramesh Babu & Anr. Vs. UOI & Ors. No judgment to the contrary has been cited on behalf of the respondents. Consequently, 'Catch-up Rule' has to be applied while fixing the seniority of the applicants, private respondents and others in Sister Grade-I. In fact, this relief has already been granted to the applicants and others vide order dated 15.11.2012. However, in spite thereof, without implementing the said order, the official respondents promoted private respondents no. 3 & 4 and others belonging to the reserved category to the post of Assistant Nursing Superintendent on the plea that Writ Petitions against order dated 15.11.2012 were pending in the Hon'ble High Court. However, the said Writ Petitions have now since been decided affirming the aforesaid order of the Tribunal. Thus the relief already granted to the applicants vide order dated 15.11.2012 has now to be implemented and promotions to the post of Assistant Nursing Superintendent have to be made thereafter. In view of the admitted factual position, the applicants would be senior to private respondents no. 3 & 4. Consequently, the applicants have to be considered for promotion before considering private respondents 3 & 4. It may also be added that even the impugned order of promotion of private respondents (Annexure A-1) has been made subject to outcome of various seniority/'Catch-up Rule' cases of the Institute pending in different Courts. Now the matter has been concluded by the Hon'ble High Court

with judgment dated 13.01.2016 in the case of Director, PGIMER (Supra). Counsel for official respondents in fact fairly conceded this position. Thus, impugned promotion order dated 25/26.08.2014 (Annexure A-1) cannot stand and has to be quashed and set aside. The entire exercise has to be redone after redrawing the seniority list of Sister Grade-I by applying the 'Catch-up Rule'. There is no escape from this conclusion.

8. Resultantly, the instant O.A. is allowed. Impugned promotion order dated 25/26.08.2014 (Annexure A-1) is quashed. O.M. dated 29.04.2014 requiring action as per O.M. dated 07.01.2014 (Annexure A-2 collectively) to continue practice of reservation in promotion as per existing procedure (being contrary to 'Catch-up Rule') are also quashed. Respondents are directed to redraw the seniority list of Sister Grade-I by applying 'Catch-up Rule' and to hold review DPC thereafter for promotion to the post of Assistant Nursing Superintendent and to grant promotion accordingly from due dates with all consequential benefits. The applicants may also accordingly be considered for promotion and be granted promotion, if found fit for the same. There shall be no order as to costs.


(JUSTICE L.N. MITTAL)
MEMBER(J)


(RAJWANT SANDHU)
MEMBER(A)

Dated: 22.01.2016

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