

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 29/1996.....

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SECTION OFFICER (Judl.)

ORIGINAL APPLN.NO. 2 OF 1995
 TRANSFER APPLN.NO. OF 1995
 CONTEMPT APPLN.NO. OF 1995 (IN NO.)
 REVIEW APPLN.NO. OF 1995 (IN NO.)
 MISC.PETITION NO. OF 1995 (IN NO.)

..... Smt. Elsy. Varghese APPLICANT(S)

-VS-

..... W.O.I. RESPONDENT(S)

For the Applicant(s)

Mr. A.C. Sarma

Mr. D. Mahanta

Mr.

Mr.

For the Respondent(s)

Mr. B.K. Sharma

OFFICE NOTE

DATE

ORDER

This application is in
 form and within time
 E. F. of Rs. 50/-
 deposited vide
 IPO/BD No. 311719
 Dated 12.2.96

23.2.96

Mr. A.C. Sarma for the applicant.

Heard, Disputes regarding seniority. O.A.
 admitted. Issue notice to the respondents. Eight
 weeks for written statement. Adjourned to
 13.5.96 for orders.

Member

Vice-Chairman

trd

13.5.06

Mr A.C.Sarma for the applicant. None for
 respondents.

Written statement has not been submitted.

Adjourned to 17.6.96 for written
 statement and further orders.

Member

pg

OFFICE NOTE

DATE

ORDER

17-6-96

None present for the applicant.
Learned counsel Mr.B.K.Sharma for the
respondents. Written statement has not
been submitted. Adjourned for written
statement and further order on 8-7-96.

lm

Member

8.7.96

Learned counsel Mr A.C. Sarma for
the applicant. Written statement has not been
submitted.

List for written statement and
further orders on 2.8.96.

nkm

Member

2.8.96

Mr A.C.Sarma for the applicant.
None for the respondents. Mr Sarma submit
that the promotion of the applicant is
being delayed and requires expeditious
hearing.

List for hearing on 29.8.96. In the
meantime the respondents may submit
written statement with copy to the counsel
of the applicant.

pg

Member

29.8.96

Mr A.C.Sarma for the applicant. None
for the respondents.

Written statement has not been sub-
mitted.

List for hearing on 26.9.96.

pg

Member

W/ statement has not
been filed.

28/8/96

W/ statement has not
been filed.

28/8/96

W/ statement has not been
filed.

28/8/96

W/ statement has not been
filed.

25/9/96

26.9.96

None present.

Written statement has not been filed.

List for hearing on 14.11.1996. In the meantime the respondents may submit written statement.

Member

trd

14.11.96

None present.

List for hearing on 13.12.1996.

Member

nkm

13.12.96

Mr A.C.Sarma for the applicant. None for the respondents. No written statement have been submitted by them though notice have been duly served..

List for hearing on 3.1.97. In the meantime respondents may file written statement.

Member

pg

3.1.97

Learned counsel Mr A.C. Sarma for the applicant. Learned Railway counsel Mr B.K. Sharma for the respondents. Written statement has been submitted.. Let a copy of the same be served on Mr A.C. Sarma. Mr A.C. Sarma submits for early hearing.

List for hearing on 28.1.97.

Member

nkm

2-1-97

W/S filed by the Respts.

27-1-97

W/S filed by the Respts. at page- 31 to 37.

2/1

17 Notice duly served on O.P. No 1-3

27 W/S submitted has not been filed

26/11/96

W/S submitted has not been filed

26/12/96

17 Notice duly served on Respts no 1-3.

W/S submitted

2/1/97

28.1.97

Mr A.C. Sharma, learned counsel for the applicant and Mr B.K. Sharma, Standing Counsel, Railways, are present.

To be listed for hearing on 12.2.97.

Member

Vice-Chairman

12.2.97

Let this case be listed for hearing on

13.3.97.

Member

Vice-Chairman

nkm

13-3-97

Mr.A.C.Sarma counsel for the applicant is present. List for hearing on 16-4-97.

Member

lm

16.4.97

Mr B.K.Sharma, learned counsel for the respondents is unable to attend the court because of his personal reasons. The case is adjourned to 29.4.97.

Member

Vice-Chairman

pg

29.4.97

On the prayer of Mr S.Sarma on behalf of Mr B.K.Sharma, learned counse for the respondents the case is adjour to 1.5.97.

Member

Vice-Chairman

lm

30/4

12-3-97

1/ Notice duly served on R. No - 1-3.

2/ w/s filed on behalf of The Respondant.

24/12-3

14-3-97

against RTS
Rejoinder filed
on b/h of applicant.

11-4-97

The case is ready for hearing as regard Service & w/s.

24/11-4

w/s filed - & Rejoinder
on b/h of w/s

24/11/4

lm

30/4

1.5.97

This case be listed on 21.5.97 alongwith

O.A. 24 of 1991.

List on 21.5.97 for hearing.

Member

Vice-Chairman

trd

2/5

21-5-97

Left over. List for hearing on

28-5-97.

Member

Vice-Chairman

lm

23/5

28.5.97

Mr S. Sarma on behalf of Mr B.K. Sharma, learned counsel for the respondents, submits that Mr B.K. Sharma is attending the eye operation of his mother and therefore he is unable to attend court. Mr S. Sarma, therefore, prays for a short adjournment. Mr A.C. Sarma, learned counsel for the applicant is present and he has no objection.

List it on 25.6.97 for hearing.

Member

Vice-Chairman

nk m

29/5

25-6-97

Passed over for the day.

By order.

by

1) w/s. and Rejoinder
has been filed.
2) No. appearance has been filed.
28/5
29/5

1) w/s. and Rejoinder
has been filed.
2) No. appearance has
been filed.
28/5

1) w/s. and Rejoinder
has been filed.
24/6

O.A. 29 of 1996

26.6.97

On the prayer of Mr. A.C.Sarma, learned counsel for the applicant the case is adjourned till 4.8.1997.

List on 4.8.97 for hearing.

Member

Vice-Chairman

trd

2/8/97

4.8.97.

There is no sitting of Division Bench till 7-11-97.

By order

W/S. and Refrainder has been filed.

7.11.97

Adjourned to 13.01.98

By order

W/S and Refrainder has been filed.

13.1.98

Division Bench is not available today.

List for hearing on 25.3.98.

Member

W/S and Refrainder

pg

has been filed.

25.3.98

The case is otherwise ready for hearing. List it for hearing on 26.6.98.

Member

Vice-Chairman

W/S and Refrainder has been filed.

nkm

2/8/97

W/S and Refrainder has been filed.

26.6.98

Adjourned to 15.7.98.

25

By order

2/8/97

Notes of the Registry

Date

Order of the Tribunal

w/s and Rejoinder has been filed.

28/7

15.7.98

On the prayer of Mr D. Mahanta, learned counsel for the applicant, this case is adjourned till 29.7.98 as his senior is unable to attend court today.


Member


Vice-Chairman

nkm

29.7.98

The case is ready for hearing as regard Service.

28/7

On the prayer of Mr B.K.Sharma, learned Railway counsel the case is adjourned to 3.8.98.


Member


Vice-Chairman

pg

3.8.98

On the prayer of Mr B.K.Sharma, learned ~~xx~~ Railway counsel the case is adjourned to 24.8.98.


Member


Vice-Chairman

pg

24.8.98

Passover on the day.

By order
Vice-Chairman

25.8.98

w/s and Rejoinder has been filed.

28/9

10.9.98

Leftover. Adjourned to 10.9.98.

Records have not been produced before us as the registry could not trace out records. Mr. B.K.Sharma, learned counsel submits that records are necessary. In view of that the case is adjourned till 11.11.98.

List on 11.11.98.


Member


Vice-Chairman





trd





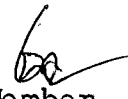
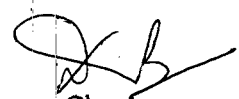
28/9

w/s and Rejoinder has been filed.

28/9

Notes of the Registry	Date	Order of the Tribunal
	11.11.98	Division Bench is not available. List for hearing on 7.12.98.
	pg <i>by</i>	By Order <i>by</i>
<u>7-12-98</u>	<u>7.12.98</u>	<i>passed in the day</i> <i>By order</i>
1) Memo of Appearance has been filed by Mr. B.K. Sharma, Rty. Counsel.	8.12.98	On the prayer for the counsel for the parties the case is adjourned till 11.12.1998.
2) Written statement of Respondent has been filed.		Fix it on 11.12.1998.
<i>7/12/98</i>	trd <i>AS</i> <i>9/12/98</i>	<i>by</i> Member
	11-12-98	There is no representation. Case is adjourned to 15-1-99 for hearing.
	lm	By Order <i>by</i>
<u>22.1.99</u>	<i>AS</i> <i>21/12/98</i>	
Case is ready for hearing.	15.1.99	There is no representation. Case is adjourned till 25.1.99.
<i>Don</i>		<i>by</i> Member
	trd	<i>by</i> Vice-Chairman
	25.1.99	Division Bench is not available. List on 27.1.99 for hearing.
<u>2-2-99.</u>	pg <i>27.1.99</i>	<i>by</i> Vice-Chairman
Written statement and Respondent has been filed.		<i>Adjourned to 3-2-99</i> <i>870 la</i>

Notes of the Registry	Date	Order of the Tribunal
	3.2.99	On the prayer made by Mr U.K. Nair on behalf of Mr B.K. Sharma learned Railway Counsel let this case be listed on 5.2.99.
	nkm	<div> <div>  Member </div> <div>  Vice-Chairman </div> </div>
ns 4/2/99	5.2.99	Adjourned to 8.2.99. By order,
	8.2.99	Prayer for adj. By order,
	9.2.99	Adjourned to 11.2.99. By order,
	11.2.99	There is no representation behalf of the parties. For the ends of justice we adjourn the case to 15.2.99.
	nkm	<div> <div>  Member </div> <div>  Vice-Chairman </div> </div>
ns 12/2/99	15.2.99	Prayer for adj. By order,
	16.2.99	There is no representation behalf of the applicant. For the ends of justice the case is adjourned to 18.2.99.

Notes of the Registry	Date	Order of the Tribunal
<p>24-2-99</p> <p>with state ment of rejoinder by Sarma for</p> <p>11/2/99</p>	<p>18.2.99</p> <p>pg</p> <p>ns 19/2/99</p>	<p>On the prayer of Mr S.Sarma on behalf of Mr A.C.Sarma, learned counsel for the applicant the case is adjourned to 25.2.99 for hearing.</p> <p> Member</p> <p> Vice-Chairman</p>
<p>19/3/99</p> <p>The case is ready for hearing.</p> <p>ns 19/3/99</p>	<p>25.2.99</p> <p>trd</p> <p>ns 1/3/99</p> <p>8.3.99</p>	<p>Mr A.C. Sarma, learned counsel for the applicant is not present today also. Mr S. Sarma submits that Mr A.C. Sarma is in bereavement. For the ends of justice as a last chance the case is adjourned till 8.3.99.</p> <p> Member</p> <p> Vice-Chairman</p> <p>There is no Division Bench present on this day.</p> <p>By order 1/3/99</p> <p>Adjourned to 22.3.99.</p> <p>By order 1/3/99</p>
<p>22.3.99</p> <p>pg</p>	<p>22.3.99</p> <p>pg</p>	<p>Counsel for the applicant is not present. As a last chance the case is adjourned to 25.3.99.</p> <p> Member</p> <p> Vice-Chairman</p>

Notes of the Registry

Date

Order of the Tribunal

25.3.99

Heard the learned counsel for the parties. Hearing concluded. Judgment reserved.


Member


Vice-Chairman

nkm

14.5.99

Judgment delivered in open Court, kept in separate sheets. The application is disposed of as indicated in the order. No order as to costs.


Member


Vice-Chairman

pg

27.5.99
Copies of the Judgment have been sent to the d/sec. for issuing the same to the parties, vide the Despatch No. 1914 to 1917 dated 2-6-99.

Notes of the Registry

Date

Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 29 of 1996.

DATE OF DECISION... 14-5-1999.

Smt. Elsy Varghese

(PETITIONER(S))

Sri A.C. Sarma.

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Sri B.K.Sharma, Railway counsel.

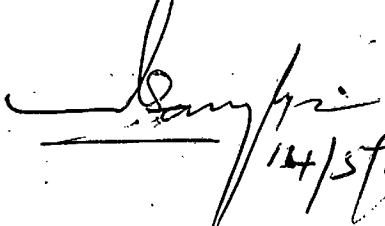
ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE SHRI JUSTICE D.N.BARUAH, VICE CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Administrative Member.


14/5/99

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 29 of 1996.

Date of Order : This the 14th Day of May, 1999.

Justice Shri D.N.Baruah, Vice-Chairman.

Shri G.L.Sanglyine, Administrative Member.

Smt. Elsy Varghese,
Wife of Sri P.P.Varghese,
Quarter No. 280/A,
Adarsha Colony, Guwahati-11.

. . . Applicant

By Advocate Sri A.C.Sarma.

- Versus -

1. Union of India,
through the General Manager(P),
N.F.Railway, Maligaon,
Guwahati-11.

2. The Chief Medical Officer(P),
N.F.Railway, Maligaon,
Guwahati-11.

3. Chief Hospital Superintendent,
N.F.Railway, Maligaon,
Guwahati-11.

. . . Respondents.

By Advocate Sri B.K.Sharma, Railway
standing counsel.

O R D E R

G.L.SANGLYINE, ADMN. MEMBER,

The applicant was appointed as a Substitute Staff Nurse in the North East Frontier Railway with effect from 3.4.1968. Such appointment was to be regularised through selection test. Selection test was held on 2.4.1969, 19.5.1970 and 10.8.1971. The applicant was not however, called for the test in spite of her application. This was due to administrative error by wrongly showing the maximum age as 25 years instead of 35 years. This mistake was subsequently corrected and the applicant was called for the selection test held on 26.11.1977. She qualified in the test and was selected. The applicant submitted representation for fixation of her seniority and the respondents had by letter No.P/Case/L.C.

L

VP

Varghese dated 18.8.1981 decided that the service of the applicant was ^{to} be assigned below the candidate approved in the recruitment selection held on 10.8.1971 and that her seniority was being recast. A provisional seniority list of Staff Nurse in the scale of pay of Rs.425-640/- as on 1.4.1982 was published vide Memo No.E/255/102/3 Pt.III(MED) dated 26.9.1983 in which the seniority position of the applicant was shown at serial No.162. After the publication of the provisional seniority list the seniority position of the applicant was upgraded from serial No.162 to serial No.85 A. The applicant was promoted to the next higher post of Nursing Sister with effect from 1.1.1984. The applicant submitted further representation for further upgradation of her seniority position as according to her she was entitled to be called for the selection test held on 2.4.1969. The Railway authority upgraded the seniority position of the applicant in the cadre of Staff Nurse to serial No.53 A by Order No.E/255/102/3 Pt.IV(MED) dated 29.4.1986. The applicant was thereafter promoted to the next higher post of Matron with effect from 5.3.1987. The above order dated 29.4.1986 was challenged by Smt Marry Mathew and other Nurses in G.C. No.72 81, 84 and 85 of 1987. The impugned orders were set aside by the Tribunal in the order dated 15.2.1988 with a direction that the seniority list as on 1.4.1982 as published vide No. E/255/102/3 Pt.III(MED) dated 26.9.1983 shall prevail and promotions to the higher ranks made on that basis. The applicant alongwith some other similarly affected staff preferred an appeal before the Hon'ble Supreme Court but the Hon'ble Supreme Court while declining to interfere with the judgment the Central Administrative Tribunal desired that the Railway

administration may consider to adjust the petitioners by creating supernumerary posts. The Railway administration did not create any supernumerary post. The applicant alongwith Smt.P.Radhakrishnan were reverted from the post of officiating Matron by order dated 1-7-1991. The applicant was reverted from Matron to Staff Nurse whereas Smt.Radhakrishnan was reverted to Nursing Sister with effect from 1-7-1991. The applicant submitted O.A.No.124/91 before the Central Administrative Tribunal, Guwahati Bench challenging the order of reversion dated 1-7-1991 and claimed that, at best, she should be reverted to the post of Nursing Sister only with effect from 1-7-1991 like other similarly affected staff. During the pendency of the O.A.124/91 the applicant was promoted to the post of Nursing Sister with effect from 1-3-1993. In the order dated 15-6-1995 the Central Administrative Tribunal set aside the order of reversion dated 1-7-1991 insofar as it relates to the applicant and directed that the applicant shall be deemed to have been reverted to the post of Nursing Sister with effect from 1-7-1991. The respondents were directed further to give proforma appointment to the applicant as Nursing Sister in the scale of pay of Rs.1640-2900/- with effect from 1-7-1991. All other consequential and incidental questions are left to be decided by the respondents. Before coming to the aforesaid conclusion the Tribunal had held that the earlier application of 1987 related to the change of position of the applicant from serial No.162 to 53(A) and the position assigned to her at serial No.85(A) in the seniority list of 1-4-1982 was not the subject matter of challenge in those application. The position therefore remains that the applicant held the seniority position at serial No.85 (A) in the cadre of Staff Nurse as on 1-4-1982. Further the fact that Smt.P.Radhakrishnan, who was at serial No.94 of the seniority list of staff Nurse, was

contd/4.

reverted to Nursing Sister only whereas the applicant was reverted to Staff Nurse would show that it was the result of not taking into account applicant's position at No.85(A) in the seniority list.

2. Consequent to the order dated 15.6.1995 of the Central Administrative Tribunal the respondents issued order vide Memo No.E/255/102/3 Pt.V (Med) dated 17.11.1995. In this order the order of reversion of the applicant to Staff Nurse was modified to reversion to the post of Nursing Sister in the scale of pay of Rs.1640-2900/- with effect from 1.7.1991 with proforma benefit. It was directed that since she had not shouldered higher responsibility she was not entitled to any arrears of pay. In view of the above the applicant can be extended no other seniority benefit. She would be granted seniority vis-a-vis other Nursing Sisters taking her regular appointment as Staff Nurse as on 26.11.1977 and as per seniority list published under GM(P)/MLG's No.E/255/102/3 Pt.III(MED) dated 26.9.1983. Further her service as Nursing Sister from 1.7.1991 to 28.2.1993 be treated as fortuitous and hence ^{does} not confer upon her any benefit of seniority in the grade of Nursing Sister. Thereafter the applicant submitted the present O.A.No.29/96.

3. In this application the applicant has sought the following reliefs :-

- i) the applicant may be granted seniority vis-a-vis other Nursing Sisters taking her date of regular appointment as Staff Nurse as on 10.8.71 and that of Nursing Sister as on 1.1.84, for the purpose of her further promotion;
- ii) payment of difference of pay and allowances for the post of Nursing Sister during the period from 1.7.91 to 28.2.93 and

iii) promotion to the post of Matron with retrospective effect from 8.7.93 (when Lakhi Rani Das promoted) with all financial benefits.

4. Consequent to the order dated 15.6.1995 in O.A.124/91 of this Tribunal the applicant was reverted to the post of Nursing Sister with effect from 1.7.1991 instead of Staff Nurse with proforma benefit. The respondents also directed that in accordance with the standing instruction she is not entitled to any arrear of the difference of pay of Staff Nurse and Nursing Sister for the period from 1.7.1991 to 28.2.1993 as she did not shoulder higher responsibility of Nursing Sister during the period. The applicant has felt aggrieved against this denial of difference of pay for the relevant period and has contested the same in this application. According to the applicant she was wrongly reverted, from Matron to Staff Nurse instead of to Nursing Sister and she was therefore illegally deprived of her pay and allowance of Staff Nurse. In the circumstances, according to her, she is entitled to the difference of pay of the period. We have heard learned counsel of the parties and perused the written statement. In the order dated 17.11.1995, Annexure-G, the decision to reject the difference of pay and allowances for the period from 1.7.1991 to 28.2.1993 was made on the basis of a particular Standing Instruction. The respondents have not however, disclosed this Standing Instruction in the aforesaid order or in the written statement or during the course of hearing. We are therefore of the view that the order of rejection is arbitrary and liable to be set aside. Further, in the absence of such full facts we are unable to consider the contention of Mr B.K.Sharma that the issue is covered by the decision of the Hon'ble Supreme Court in State of Haryana and others vs. O.P.Gupta and others

reported in (1996) 7 SCC 533. While modifying the reversion of the applicant to that of Nursing Sister the respondents in the order dated 17.11.1995 had directed that no seniority benefit is available to her in the cadre of Nursing Sister on account of this modification. Though her reversion is with effect from 1.7.1991 no benefit of seniority is available to her on account of the period from 1.7.1991 to 28.2.1993 as her service for the said period is treated as fortuitous. Her seniority vis-a-vis other Nursing Sisters will be regulated by taking her regular appointment as Staff Nurse as on 26.11.1977 and as per seniority list published under GM(P)/MLG's No. E/155/102/3 Pt.III(MED) dated 26.9.1983. The applicant in this application is not aggrieved with the order that there would be no benefit of seniority in the grade of Nursing Sister for the service from 1.7.1991 to 28.2.1993 as the service is treated as fortuitous. But she is aggrieved with the order that her seniority would be determined by taking her regular appointment as Staff Nurse as on 26.11.1977 and as per seniority list published under GM(P)/MLG's No.E/155/102/3 Pt.III(MED) dated 26.9.1983. She prays that she be granted seniority vis-a-vis other Nursing Sisters taking her date of regular appointment as Staff Nurse on 10.8.1971 and as Nursing Sister as on 1.1.1984 for the purpose of her further promotion. We have heard learned counsel for the parties in this regard also and perused the written statement. We are firmly of the view that the respondents had issued the order in this regard without taking into consideration also the fact that her seniority had once been assigned by them with effect from 10.8.1971 and the views and findings of the Tribunal in the order dated 15.6.1995 in O.A.124/95 in respect of seniority position No.85A. Therefore, we are of the view that this part of the order is also liable to be set aside.

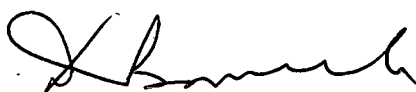
5. In the light of the above the following portions of the order are hereby set aside :

"in accordance with the Standing Instruction since she has not shouldered higher responsibilities, she is not entitled for any arrears."

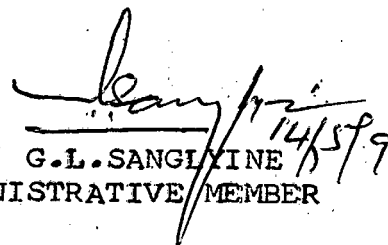
"Smt. Elsy Varghese can be extended no other seniority benefit. She would be granted seniority vis-a-vis other Nursing Sisters taking her regular appointment as Staff Nurse as on 26.11.1977 and as per seniority list published under GM(P)/MLG's No. E/255/102/3 Pt.III(MED) dated 26.9.83."

The respondents are directed to issue fresh orders after taking into consideration all relevant aspects in this regard and communicate to the applicant an order containing reasons and details within 90 days from the date of receipt of this order. The applicant may, if she desires, submit a representation to the respondents in this regard including for retrospective promotion to the post of Matron giving her grounds in details. This must be done within 20 days from the date of her receipt of copy of this order. If such representation is received the respondents shall take it into consideration before issuing the fresh order in this regards.

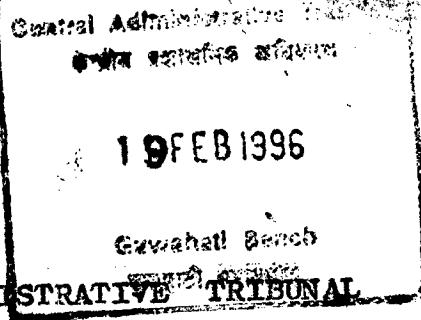
Application is disposed of as above. No order as to costs.



(D.N.BARUAH)
VICE CHAIRMAN



14/5/79
(G.L.SANGLI)
ADMINISTRATIVE MEMBER



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.

AN APPLICATION UNDER SECTION 19 OF THE C.A.T.
ACT, 1985

Elsy Varghese
Filed through
A.C. Ganna

O.A. NO. 29 of 1996.

Smti. Elsy Varghese

-Vs-

Union of India and others

I N D E X

<u>Sl.NO.</u>	<u>Annexure</u>	<u>Particulars</u>	<u>Page No.</u>
1.	A	Copy of the letter No.E/255/102/3/Pt-III (Med) dtd. 10.8.81 issued by the C.M.O. (P) Maligaon.	-15-
2.	B.	Copy of the letter No. P/Case/Elsy Varghese dtd. 18.8.81 issued by the A.C.M.O. Maligaon	-16-
3.	C.	Extract of the Seniority list dtd. 26.9.83.	-17-
4.	D.	Extract from the Selection list of the Nursing Sister dtd. 30.12.85.	-19-

contd...2

Recd copy
B. Mehta
Advocate
19.2.86
P.K. Sharma
Adv.

<u>Sl.No.</u>	<u>Annexure</u>	<u>Particulars</u>	<u>Page No.</u>
5.	E.	Extract from the office order dtd. 13.3.86.	-20-
6.	F.	Copy of the Judgment dtd. 15.6.95 passed by this Hon'ble Law Tribunal.	-21-
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1. Particulars of the applicant

Smti. Elsy Varghese, Wife of
Sri P.P. Varghese, Qrs. No.280/A.
Adarsha Colony, Gauhati-11.

2. Particulars of the Respondents

1. Union of India

Through the General Manager(P)
N.F.Railway, Maligaon,
Gauhati-11.

2. The Chief Medical Officer(P),
N.F.Railway, Maligaon,
Gauhati-11.

3. Chief Hospital Supdt,
N.F.Railway, Maligaon,
Gauhati-11.

3. Particulars for which the application is made.

The application is made against the Office Order No. E/255/102/3/Pt.V(MED) dated 17.11.95 issued by the General Manager (P), N.F.Railway, Maligaon in regard to the fixation of Seniority, promotion and payment of arrear pay etc. which are due to the applicant.

4. Jurisdiction

The applicant declares that the subject matter for which the application is made is within the jurisdiction of this Hon'ble Tribunal.

5. Limitation

The applicant declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985.

6. Facts of the Case.

6.1. That, the applicant is a citizen of India and as such she is entitled to all the rights and privileges guaranteed by the Constitution of India. She is a holder of 'A' Grade Nursing Certificate from D.K. Hospital, Raipur, Madhya Pradesh. She was initially appointed as

substitute staff Nurse with effect from 3.4.68.

She was discharging her duties very efficiently to the satisfaction of the Superior Officers.

6.2. That, the Service of the applicant was to be regularised by calling her for Selection test held by the Railway Recruitment Board from time to time.

But due to the Administrative error on the part of the respondent Railway in regard to the stipulation of maximum age limit the applicant was not called for the selection test which were held on 2.4.69, 19.5.70 and 10.8.71 inspite of the applications submitted by the applicant every time. It was only after long 9 years of her appointment she was called for the selection held on 26.11.77 against employment Notice No.2/77 and she was selected also.

6.3. That, the applicant submitted representation for giving her seniority with retrospective effect as she was due to be regularised in the post of Staff-Nurse long back and the Railway Administration on consideration of her representation fixed her Seniority just below the candidates approved in the recruitment selection held on 10.8.71. The Railway Administration was pleased to come into final conclusion that the applicant was entitled to be regularised in the post of Staff Nurse through the selection held on 10.8.71 but for the departmental error she was deprived from

the same and as such to ensure justice to the applicant she should be considered to have been regularised in the selection test held on 10.8.71 and her seniority is to be recasted accordingly. The Chief Medical Officer(P) Maligaon wrote a letter being No. E/255/102/3 Pt.III (Med) dtd. 10.8.81 in this regard to the A.C.M.O., Maligaon and the A.C.M.O. Maligaon vide his letter No.P/Case/Elsy Varghese dated 18.8.91 informed the above decision accordingly to the applicant.

(Copies of the letters dated 10.8.81 and 18.8.91 are annexed as Annexure 'A' and B).

6.4. That accordingly the name of the applicant was shown at serial No. 83A in between serial No. 84 and 85 in the seniority list of Staff Nurse as on 1.4.82 which was published on 26.9.83. The date of her regular appointment in the grade was also shown as 10.8.71.

(Extract from the Seniority list dated 26.9.83 is annexed as Annexure 'C').

6.5. That the applicant was thereafter selected for promotion to the next higher post of Nursing Sister and was appointed as such w.e.f. 1.1.84 vide Office order No. 5/86 dated 13.3.86 issued by the Chief Medical Officer(P), Maligaon.

(Extract from the Selection list dated 30.12.85 and that from the Office Order No.5/86 dated 13.3.86 are annexed as Annexure-D and E respectively).

6.6. That the applicant not being fully satisfied with the fixation of seniority vide letter dated 18.8.81 submitted further representation for further improvement of her seniority and the Railway Administration on giving fresh consideration to the matter re-fixed the seniority of the applicant at serial 53A in between the Serial 53 and 54 vide corrigendum dated 29.4.86 issued by the C.M.O (P) Maligan.

6.7. That the applicant was subsequently promoted as Matron (On adhoc basis) by an order dated 10.3.87 w.e.f. 5.3.87 and this promotion was antedated w.e.f. 1.1.84.

6.8. That, five staff of the seniority unit filed different applications before this hon'ble Tribunal challenging the order dated 29.4.86 by which the seniority of the applicant as well as those of seven others were improved. The honourable Tribunal by a common order and judgement dated 15.2.88 passed in the G.C. Nos. 72/87, 81/87, 84/87, 85/87 set aside and quashed the order dated 29.4.86. The applicant and others filed SLP before the hon'ble Supreme Court but the hon'ble Supreme Court also did not interfere with the order of the hon'ble Tribunal.

6.9. That, the Railway Administration in pursuance with the judgement dated 15.2.88 passed by this Hon'ble Tribunal reverted the applicant two grades below i.e. to the Post of Staff Nurse w.e.f. 1.7.91 vide office order dated 1.7.91

while all other respondents of the Case Nos. G.C.72/87, 81/87, 84/87, 85/87 were reverted only one grade below i.e. to the post of Nursing Sister.

6.10. That, the applicant filed an application being No. O.A. 124/91 before this hon'ble Tribunal challenging the order of reversion dated 1.7.91 mainly on the ground that even in compliance of the judgement dated 15.2.88, the applicant could be at best reverted to the post of Nursing Sister only like others. The hon'ble Tribunal after hearing of the application passed an elaborate order on 15.6.95 setting aside the impugned order of reversion ~~that~~ ~~the applicant~~ dated 1.7.91 and it was ordered that the applicant shall be deemed to have been reverted to the post of Nursing Sister instead of Staff Nurse w.e.f. 1.7.91. The respondents were also directed to give proforma appointment to the applicant as Nursing Sister in the Scale of Rs. 1640-2900/- w.e.f. 1.7.91.

(A copy of the judgement dated 15.6.95 is annexed as Annexure F).

6.11. That, it has been clearly mentioned in the above judgement that the applicant's seniority will be at Serial 85-A of the Seniority list of the Staff Nurse as on 1.4.82 considering her to be regularised in the post of Staff Nurse through the Selection test held on 10.8.81 and as such obviously the date of regularisation of the applicant in the post of Staff Nurse is held to be 10.8.81

and the applicant is entitled to promotion to higher post on the basis of this seniority position only.

6.12. That, the date of actual promotion^{of} the applicant to the post of Nursing Sister remains unchanged as 1.1.84 even after all the controversies and the applicant is also entitled to promotion to the post of Matron considering her date of promotion to the post of Nursing sister as on 1.1.84 only.

6.13. That, after wrongful reversion of the applicant to the post of Staff Nurse w.e.f. 1.7.91 the applicant was however again promoted to the post of Nursing Sister from a later date⁽¹⁻³⁻⁹³⁾ during the pendency of the O.A.124/91 and as such the applicant is entitled to the difference of pay and allowance for the ~~next~~ period from 1.7.91 to the date of her reappointment as Nursing Sister as it has been held by this Hon'ble Tribunal in the Judgement dated 15.6.95 that the applicant has been wrongly deprived the benefit of the post of Nursing Sister from 1.7.91 without there being any fault on her part and due to obvious mistake on the respondents.

6.14. That, some of the juniors of the applicant as per the seniority list as on 1.4.82 viz-i) Lakhirani Das (Sl.91), (ii) P. Radhakrishnan (Sl.94), (iii) Amini Iype (Sl.95), (iv) Niva Dhar (Sl.109), (v) Premi Newton (Sl.No. 117), (vi) Gita Purkayastha (Sl.123), (vii), G.Lalita Kumary (Sl.130), and (viii) Mina Adhikari (Sl.142) have

already been promoted to the post of Matron in Super-session to the applicant. Smti. Lakhi Rani Das (Sl.91) was first promoted as Matron w.e.f. 8.7.93 ~~date~~ and the others were promoted subsequently. Applicant's case was not considered for promotion perhaps due to non consideration of her seniority position as 85-A. Therefore, in view of the judgement dated 15.6.95 passed by this Hon'ble Tribunal the applicant is entitled to promotion as Matron retrospectively w.e.f. 8.7.93 when her junior Smti. ~~Lakhi~~ Lakhirani Das was promoted.

6.15. The applicant submitted a representation on 31.7.95 before the Chief Medical Officer(P), N.F.Railway, Maligaon, praying for the above benefits in compliance with the judgement dated 15.6.95 passed by this Hon'ble Tribunal, but the General Manager(P), N.F.Railway, Maligaon has issued the office order No.E/255/102/3/Pt-V(MED) dated 17.11.95 which have denied the benefits entitled to the applicant under the judgement dated 15.6.95.

(A copy of the above letter is annexed as Annexure-G).

6.16. That although through the above order the wrongful reversion of the applicant to the post of Staff Nurse w.e.f. 1.7.91 has been modified to the post of Nursing sister with proforma benefit but it has been ordered that in accordance with the standing instructions the applicant is not entitled for any arrears. It is further mentioned

in the above order that the applicant would be granted seniority vis-a-vis other Nursing Sisters taking her regular appointment as Staff Nurse as on 26.11.77 to and her service as nursing sister from 1-7-91 to 28.2.93 would be treated as fortuitous and hence will not confer upon her any benefit of seniority in the grade of Nursing sister all of which are against the principle of natural justice and against the spirit and meaning of the judgement dated 15.6.93 passed by this Hon'ble Tribunal.

7. Reliefs Sought For:

Under the above facts and circumstances the applicant prays for the following Reliefs:

i) That the applicant may be granted Seniority ^{date of regular appointment as} vis-a-vis other Nursing Sisters taking her as on 10.8.71 ^{Nu} and that of Nursing Sister as on 1.1.84, for the purpose of her further promotion.

ii) Payment of difference of pay and allowances for the post of Nursing Sister during the period from 1.7.91 to 28.2.93.

iii) Promotion to the post of Matron with retrospective effect from 8.7.93 (when Lakhi Rani Das promoted) with all financial benefits.

The above prayer is made on the following amongst other grounds:

G R O U N D S

- i) For that, the impugned order dated 17.11.95 is liable to be modified as prayed above in as much as the date of regular appointment of the applicant as Staff Nurse can not be considered as 26.11.77 for the purpose of her seniority in view of the earlier decision of the Respondent Railway and in view of the judgement dated 15.6.95 passed by this Hon'ble Tribunal in O.A.No.124/91.
- ii) For that, under the facts and circumstances of the case the date of the regular appointment of the applicant as Staff Nurse is to be considered as 10.8.71 only on the basis of which she was conferred seniority position of serial 85 A of the Seniority list of the Staff Nurses as on 1.4.82 and this seniority is to be considered for the purpose of further promotion of the applicant.
- iii) For that, the service of the applicant as Nursing Sister for the period from 1.7.91 to 28.2.93 cannot be treated as fortuitous but as due to her as she was deprived from the same only due to the mistake of the respondent Railway which has been clearly mentioned in the earlier judgement dated 15.6.95 of this Hon'ble Tribunal.
- iv) For that, the period of wrongful reversion of the applicant as Staff Nurse from 1.7.91 to 28.2.93

cannot any way affect the seniority of the applicant in the grade of Nursing Sister. The seniority of the applicant in the grade of Nursing Sister is to be considered with effect from 1.1.84 only from which date she was regularly promoted as Nursing Sister (Annexure-D).

v) For that, the wrongful reversion of the applicant to the post of Staff Nurse w.e.f. 1.7.91 being set aside as it has been declared to be due to the mistake of the respondent Railway, the applicant cannot be deprived of the benefit of pay and allowances of Nursing Sister for the period from 1.7.91 to 28.2.93.

vi) For that, as the juniors of the applicant have already been promoted to the post of Matron without consideration of the case of the applicant on the basis of her due seniority. The applicant is entitled to be promoted retrospectively to the post of Matron w.e.f. 8.7.93 when her junior Shrimati Lakshmi Rani Das (Serial No.91) was promoted.

vii) For that, non consideration of the applicant's case for promotion to the post of Matron in due time due to departmental mistake only has violated the promotion ~~is the post of Matron in due time~~ provisions laid down in Article 14 and 16 of the Constitution of India and it has denied natural justice to the applicant.

8. Matters not previously filed or pending before any other Court.

That the applicant declares that she has not filed any other case/application in any other Courts/Tribunal.

9. That the applicant further declares that there is no other remedy for the relief prayed for and as such the applicant has filed this application before this Hon'ble Tribunal.

10. Particulars of Postal Order:

Postal Order No. : 09 344749

Date : 12-2-96

Issuing Post Office : Gauhati

Payable at : Gauhati

11. Index:

An Index of documents is enclosed.

13. Documents:

As per Index.

Verivication P/14

VERIFICATION

I, Shri Elsy Varghese, wife of Shri P.P.Varghese
aged about 51 years, resident of Adarsa Colony, P.O.
Guwahati-11 do hereby verify that the statements made
in paragraphs 3 to 6 and those made in the grounds above
are true to my knowledge and that I have not suppressed
any material facts.

Elsy Varghese
19-2-76
Signature

/Copy/

N.F.Railway

Office of the
Chief Medical Officer(P)
Maligaon.

No. E/255/102/3 Pt.III(Med)

Dated 10.8.81.

ACMO/Maligaon.

Sub: Fixation of seniority of Smt. Elsy Varghese,
Staff Nurse.

The representation of Smt. Verghese dated 30.6.81 regarding fixation of her seniority as a Staff Nurse has been considered.

2. Smt. Verghese was appointed as a Substitute Staff Nurse with effect from 3.4.68. In order to regularise her appointment as Staff Nurse she applied to the N.F.Railway Recruitment Committee through proper channel for recruitment to the post of staff nurse in to the Employment Notice Nos. 1/69 and 7/69 but she was not considered eligible on the score that her age was above 25 years at that time. Subsequently Railway Board under their letter No. E(NG)169RCI/29 dated 20.10.69 clarified that the age limit of Staff Nurse should be between 20-35 years and not 20-25 years.
3. Smt. Verghese again applied for recruitment to the post of Staff Nurse to the N.F.Railway Recruitment Committee in response to the Employment Notice No.2/71 but she was not called in the Recruitment selection held up August, 1971 although her application was duly forwarded through her controlling officer; the circumstances leading to this error are not known as the old relevant papers are not readily available. Smt. Verghese was however called for selection in response to her application against Employment Notice No.2/77 and she came out successful in the Selection. Apparently it appears to be a fact that she was due to be called in the selection test held on 10.8.71 against Empl. Notice No.2/71. On account of omission/error she was not however called in the said selection held on 10.8.71 and was subsequently called in the selection held on 26.11.77 against Employment Notice No.2/77 in which she was selected also. It is, therefore assumed that she was not considered for selection earlier due to administrative error.
4. In view of the extenuating circumstances of the case and also that justice is not denied to her it is decided in the context of the rules vide paras 112/113 of Indian Railway Establishment Manual that the seniority of Smt. Varghese may be assigned below the candidates approved in the recruitment selection held on 10.8.71 in response to Employment Notice No.2/71.
5. The seniority of Smt. Verghese is being recast, accordingly.
6. Smt. Verghese may be advised accordingly.

Sd/-

for Chief Medical Officer(P).

Attested by
A. C. Sharma
Private
14.2.86.

N.F. Railway

Office of the
A.C.M.O./Maligaon

No. P/Case/Elsy Varghese.

Dated 18.8.1981.

To

smt. Elsy Varghese,
Staff Nurse /Maligaon.

(Through Matron/Maligaon)

Sub: Fixation of Seniority of Smt. Elsy Varghese,
Staff Nurse/Maligaon.

Ref: CMO(P)/Maligaon's letter No. E/255/102/3
pt.III(Med) dated 10.8.81.

In terms of CMO(P)/MLG's lette No. cited above,
your service will be assigned below the candidate approved in the recruitment selection held on 10.8.71.

Your seniority is being recast by CMO(P)/MLG
accordingly.

Sd/-

A.C.M.O./Maligaon.

Copy to: CMO(P)/Maligaon in reference to his
letter ~~dated~~ cited above.

A.C.M.O./Maligaon.

*Attended by
A.C. Caluwa
Private
19.2.96.*

EXTRACT TAKEN FROM SENIORITY LIST

N.F.RAILWAY

PROVISIONAL SENIORITY LIST OF STAFF NURSES IN SCALE Rs. 425-600/- AS 1.4.82

S1.No.	Names of the employees in order of Seniority	Community	Station	Date of birth	Date of appointment	Date of promotion to the grade	Confid.	Length of Service in the grade	Remarks
1	2	3	4	5	6	7	8	9	10
1 to 80								Y M D	
81	Smti.Achamma Joseph		NJP	28.9.38	29.2.68	10.8.71	Confid.	10.7.21	
82	Smti.Jutika Dasgupta		NJP	4.10.41	13.10.70	10.8.71	Obtg.	10.7.21	
83.	Smti.Susamma Philip(Mathew)		NJP	25.11.37	4.4.48	10.8.71	Confid.	10.7.21	
84.	Smti.Anita Chatterjee		APDJ	31.1.48	23.7.70	10.8.71	-do-	10.7.21	
* 85.	Smti.Meena Sen		MLG	12.11.37	3.3.64	15.11.71	-do-	10.4.16	
86.	Smti. Kalyani Roy		ApDJ	6.1.48	7.1.72	7.1.72	-do-	10.2.24	
87.to									
90.									
91.	Smti.Lakhirani Das		MLG	30.10.47	5.1.72	5.1.72	Offg.	10.2.26	
92 to 93.									
94.	Smti.P.Panikar		APDJ	1.8.42	16.1.69	17.5.72	-do-	9.7.14	
95.	Smti. Amini Iype		MLG	13.4.40	13.10.70	17.8.72	-do-	9.7.14	
96 to 108.									
109.	Smti. Niva Dhar		MLG	4. .40	12.6.73	12.6.73 same	Confid.	8.9.19	

contd...

Attested by
R. C. Gaur
19.2.96

-2-39

1	2	3	4	5	6	7	8	9	10
110 to 116.									
117. Smti. Premi Newton			LMG	26.4.47	2.3.74	2.3.74	-do-	8-0-29	
118 to 127									
128. Smti. Gita Purkayastha			MLG	21.4.51	27.1.75	27.1.75	Offg.	7-2-4	
129. 130. Smti. G.Lalita Kumary(Dey)			APDJ	14.7.48	4.4.71	21.8.75	-do-	6.7.10	
131 to 141.									
142. Smti. Mina Adhikari			NBQ	1.4.53	22.1.76	22.1.76	Confid.	6-2-9	
143 to 211.									
Sl.No.85A Smti. Elsy Varghese						10.8.71			
Sl.162 changed.									

No. E/255/102/3 Pt. III(Med)

Dated 26.9.83

Sd/-
For Chief Medical Officer(p)
Maligaon.

49

EXTRACT TAKEN FROM OFFICE MEMORANDUM NO. E/41/205/
Nursing Staff/Med dated 30.12.85

NORTHEAST FRONTIER RAILWAY

MEMORANDUM

Sub: provisional result of the selection for filling up
of the post Nursing Sister in scale ~~Rs.~~ Rs.455-700(Rs)
against the posts available due to restructuring of the
Cadre.

The following Staff Nurse in Scale Rs. 425-640/-(Rs)
of Medical Department have been selected as a result of
modified selection for promotion to the post of Nursing
Sister in Scale Rs.455-700/- (Rs) against the posts avail-
able due to restructuring of the Nursing cadre.

1 to 10.

11. Elsy Verghese

12 to 16.

17. Lakhi Rani Das

18.

19. P. Radha Krishnan.

20. Amini Iype

21 to 30.

31. Niva Dhar.

32 to 35.

36. premi Newton

37 to 51

Names of certain Staff Nurse whose C/Rs are due from
Divisions, will be published soon.

The selection proceeding has been approved by CMO on
12.12.95.

This is provisional and shall be subject to the result
of Writ petition pending with the Hon'ble Supreme Court.

sd-Illegible
for CHIEF MEDICAL OFFICER(P)MLG.
No.E/41/205/Nursing Staff/Med. Dated Maligaon, dt. 30.12.85

Copy forwarded for information and necessary action please.

1. ACH/MLG 2) Dy. CMO(MLG) 3) DPH(P) KI, APDJ, LMG.
4. HS/KTR. 5) DY/IC-APDJ, HJP, KPAN, NBQ, DAT, TPD/ADK/TDLIXB,
SPO/MTP/Cal.

AD/27-12

sd/-Illegible
for CHIEF MEDICAL OFFICER(P)MLG.

*Attested by
Accountant
19-2-96*

EXTRACT TAKEN FROM OFFICE ORDER NO. 5/86

NORTHEAST FRONTIER RAILWAY

OFFICE ORDER No.5/86

As a result of restructuring of cadre of Nursing Sisters on terms of Railway Board's letter No. PC/III/84/UPC/9 dated 16.11.84 circulated under CPO/MLG's No. RP/426-E/205/73/PC PT.IV dated 28.11.84 the following Staff Nurse in scale Rs. 425-640, on being declared suitable for promotion as Nursing Sister in scale Rs. 455-700/- in terms of CMO(p)/MLG's memorandum No. E/41/205/Nursing Staff /Med dated 30.12.85 and 22.1.86 are promoted as such w.e.f. 1.1.84 and posted at station as noted against.

Sl.No.,	Name	Designation	Caste	Present Station	Station of posting on promotion	Remark
1	2	3	4	5	6	7

1 to

10.

11. Smt. Elsy Verghese

12 to

16.

17. Smt. Lakshmi Das

18.

19. P. Radhakrishnan

20. Smt. Amini Iype.

21 to

30.

31. Niva Dhar

32 to

36.

37. Smt. Premi Newton

38 to

51.

The promotion of the above staff is provisional subject to the finalisation of the writ petition pending before the Hon'ble Supreme Court of India.

Staff concerned will get the benefit of proforma fixation of pay from 1.1.84 without payment of arrears. They will get the benefit of pay from the date they assume the charge of Higher grade post.

Staff concerned may exercise their option for fixation of pay within one month from the date of their promotion in terms of Railway Board's letter No. E(p&A) II-81 PP-4 dated 13.11.81 and E(p&A) II-81-PP-4 dt. 13.1.8-5.

This has the approval of CMO.

Sd/- Illegible

for CHIEF MEDICAL OFFICER(P)

No. E/41/205/Nursing Staff (Med) Maligaon dt. 13.3.1986.

Attested by
A.L. Sarma
19.2.96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.124 of 1991

Date of decision: This the 15th day of June 1995

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative)

Smt Elsy Varghese
Qrs. No. 280/A
Adarsha Colony,
Guwahati.

... Applicant

By Advocate Shri A.C. Sarma

-versus-

1. Union of India
(through the General Manager,
N.F. Railway, Maligaon,
Guwahati).
2. Chief Medical Officer(P)
N.F. Railway, Maligaon,
Guwahati.
3. Chief Hospital Superintendent,
N.F. Railway, Maligaon,
Guwahati.

... Respondents

By Advocate Shri B.K. Sharma, Railway Counsel.

....

ORDER

CHAUDHARI, J. V.C.

Shri A.C. Sarma for the applicant.

Shri B.K. Sharma for the Railways.

The applicant challenges the order dated 1.7.1991 issued by the Senior Divisional Medical Officer, N.F. Railway, Maligaon (Annexure-F) reverting her from the post of officiating Matron to the post of Staff Nurse.

2. The applicant entered the service of the N.F. Railway in the post of Staff Nurse. In the seniority



list of Staff Nurses prior to 1982 she was holding the position at serial No.162. She had made a representation in that respect and by order dated 18.8.1981 issued by the ACMD/Maligaon (Annexure-B) her seniority was recast. In consequence in the seniority list of the Staff Nurses as on 1.4.1982 published on 26.9.1983 (Annexure-A) she was assigned the position at serial No.85A. Subsequent thereto by order dated 13.3.1986, she was promoted as Nursing Sister in the scale of Rs.465-700. The seniority position was further improved under the corrigendum issued by the Chief Medical Officer(P) on 29.4.1986 (Annexure-D) and the applicant was marked as 53A between serial Nos.53 and 54 in the seniority list dated 26.9.1983 (as on 1.4.1982, Annexure-A). She was promoted to the next higher post of Matron on adhoc basis by order dated 10.3.1987 with effect from 5.3.1982 and that promotion was antedated so as to ^{be} effect ^{ive} that promotion from 1.1.1984.

3. The amendment of the seniority list dated 26.9.1983 vide corrigendum (Annexure-D) was challenged by Smt Mary Mathew and others who were also Staff Nurses in case Nos. G.C. 72, 81, 84 and 85 of 1987 in this Tribunal. The present applicant was respondent No.5 in G.C.72 that application. Since by that time she had been promoted as Nursing Sister she was described in the title of that application as Nursing Sister. Those applications were disposed of by common judgment by this Tribunal on 15.2.1988. It was held that the impugned order refixing the seniority of the applicants (in those cases) and the respondents (in those cases) could not be sustained and the corrigendum and the consequential order thereto were

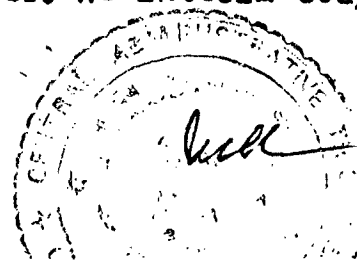
quashed....



Quashed and a direction was given to the respondents that the seniority list as on 1.4.1982 as published on 26.9.1983 shall prevail and promotions to the higher ranks were ^{to be} made on that basis. The said decision was carried in appeal to the Supreme Court by the respondents in those cases including the present applicant in SLP (Civil) Nos. 5254 to 5257 of 1988. The Hon'ble Supreme Court was pleased to pass the following order disposing of those petitions on 19.2.1991:

" After hearing the learned counsel for the parties and having regard to the special facts and circumstances of the case we do not consider it fit to interfere with the impugned order of the Central Administrative Tribunal. Railway Administration, however, if it is so advised adjust the petitioners by creating supernumerary posts."

4. Relying upon the decision of this Tribunal as affirmed by the Supreme Court the respondents issued a show cause to the applicant on 4.6.1991 (Annexure-E) informing her that it was proposed to revert her to the post of Staff Nurse. In pursuance of that notice and possibly as the applicant had not made any representation the impugned order (Annexure-F) was issued by the senior DMO in the office of Chief Hospital Superintendent dated 1.7.1991 reverting the applicant to the post of Staff Nurse in the scale of Rs. 1400-2600. The applicant has, therefore, approached this Tribunal on 4.7.1991 praying for the relief that the said order dated 1.7.1991 be set aside and quashed. It may be mentioned that this is the only prayer in the application. As at the time of filing the original application the applicant was working as Matron on adhoc basis she applied for interim stay of the impugned order. Ad interim stay was granted, but by ^a reasoned order....

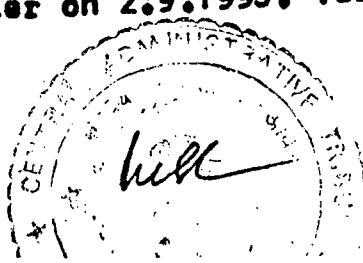


order dated 29.7.1991 passed after hearing the parties the then learned Vice-Chairman vacated the said order subject to the condition that the result of the application will govern future service benefits of the applicant. By the same order the submission made on behalf of the applicant that in any event the applicant should not have been reverted to the post of Staff Nurse and at the highest she could be reverted to the post of Nursing Sister it was observed that that was a matter which could be agitated before the General Manager and if agitated the General Manager would certainly pass an order according to law. However, neither the applicant agitated on that aspect before the General Manager nor the General Manager on his own had gone into that question.

5. Since the applicant was holding the post of Matron on adhoc basis and had not been regularly promoted to that post we cannot interfere with the order of reversion from that post, but we are not satisfied that the impugned order can be sustained to the extent of reverting the applicant two grades below to the post of Staff Nurse instead of reverting her only to the post of Nursing Sister from where she had been promoted on adhoc basis to the post of Matron.

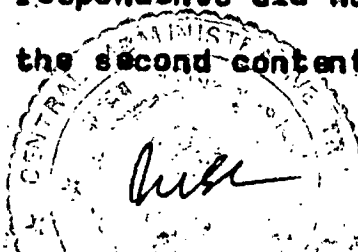
6. In the written statement there is absolutely no explanation offered as to why the applicant was reverted to the post of Staff Nurse and not the post of Nursing Sister. The omission to offer any explanation assumes importance because the observation in the interim order noting the submission to that effect had been made in the order dated 29.7.1991. The written statement was, however, filed much thereafter on 2.9.1993. Two things are stated

in



in the written statement. Firstly, that it was not considered feasible to create supernumerary posts and as such, it was decided by the competent authority to revert the applicant and others and restore their original positions as on 1.4.1982. Consequently, it is stated that the decision that was taken by the General Manager extending the benefit of seniority to the applicant with effect from 3.4.1968, that is the date of appointment of her as ^{a substitute} Staff Nurse ^{overridden as that was} was not permissible under any provision of rules and in view of the decision of the Tribunal in Mary Mathew's case (Supra) her position has to be restored according to the rules as was assigned (her position) in the seniority list as on 1.4.1982.

7. The first of the aforesaid contentions would imply that the question of creating supernumerary posts in the cadre of Matron was not found feasible and the applicant could not be accommodated. We say so because from the narration of facts in the earlier decision of the Tribunal dated 15.2.1988 we gather that impression. The respondents have not been explicit that they have considered this aspect in regard to the posts of Nursing Sisters. It is well settled that even an observation of the Supreme Court ^{has} amounts as a binding effect. Even though the respondents were within their rights to find that it was not feasible to create supernumerary posts they ought to, having regard to the desire expressed by the Supreme Court in the order ^{on} of the SLP quoted above, have seriously applied their mind and ^{explained} justify as to for what reasons it was not feasible to do so. There is absolutely nothing stated in the written statement on that aspect. The fact therefore remains that the respondents did not create any supernumerary posts. As far as the second contention is concerned even though....



though what is stated in para 12 of the written statement ~~is~~ ^{may be} ~~totally~~ accepted notwithstanding the fact that it is surprising as to how the Deputy Chief Personnel Officer could say that the earlier decision of the General Manager was not permissible under any provision of rules and overruled that decision yet the respondents have committed themselves to the position that the applicant was entitled to be restored to her seniority position as reflected in the seniority list relating to 1.4.1982, Annexure-A. The respondents have not stated in the written statement that they would read the seniority list as on 1.4.1982 by reading the serial number of the applicant as 162 and not 85A which was the result of amendment of the position of the applicant by letter dated 18.8.1981 (Annexure-B). It must be remembered that the earlier applications to the Tribunal related to the change of position of the applicant from serial No.162 to 53A. The position assigned to her at serial No.85A in the seniority list of 1.4.1982 was not the subject matter of challenge.

8. Even in the earlier order dated 15.2.1988 the learned Members of the Bench had made the following observations in para 14 of the judgment:

" Before parting with the record it is observed that the General Manager's order dated 14.2.1987 in the file shows that the seniority of R.7 (Varghese) has been antedated deeming her to have passed the test held on 10.8.1971. From her representation dated 20.8.1985 at Annexure 8(10) it also appears that this was done vide letter of CMD(P) LMG No.E/255/102/3 Pt III (Med) dated 10.8.1981. Applicants had no occasion to challenge this order as the 1983 seniority list as on 1.4.1982 does not depict the position as alleged to contain in the aforesaid letter dated 10.8.1981. The above direction therefore shall not be subject to this letter and in the event the seniority list No.E/255/102/3/Pt III (Med) dated 26.9.83 is further amended in accordance with the aforesaid order dated 10.8.1981 any person aggrieved by it shall be at liberty to challenge it."

That indicates that the fact of amendment of the list dated 1.4.1982 under which the position of the applicant was improved to serial No.85A from serial No.162 was left open. However, neither the respondents amended the said list so as to reassign the original position at serial No.162 instead of serial No.85A to the applicant. ^{now there is} ~~There is~~ ^{any} ~~also~~ no material to show that any of the parties to the earlier applications had challenged the amended position assigned to the applicant in that list at serial No.85A. Although, therefore, in Annexures E and F as well as in the written statement the respondents have purported to act consistently with the decision of this Tribunal in the earlier applications and the order of the Hon'ble Supreme Court on the SLPs they have totally misconceived the position that arose by reason of the order dated 18.8.1981 assigning the improved seniority position to the applicant in the list dated 1.4.1982 at serial No.85A. They have simply ignored that position. The respondents have also not set aside the order dated 18.8.1981. The position, therefore, remains that the applicant held the seniority position at serial No.85A in the cadre of Staff Nurse as on 1.4.1982. The promotion of the applicant to the post of Nursing Sister by order at Annexure-C which was much later than publication of the aforesaid seniority list necessarily had to be on the basis of her seniority position as held in the cadre of Staff Nurse as reflected in the seniority list dated 1.4.1982. That it is so also appears from the fact that in Annexure-C the name of P. Radhakrishnan appears at serial No.19, whereas the name of the applicant finds place at serial No.11. P. Radhakrishnan earlier held the position at serial No.94 when the seniority position....



position of the applicant was at serial No.162. However, after the applicant was assigned the seniority at serial No.85A she became senior to P. Radhakrishnan. The promotion order in Annexure-C is consistent with this later position. The impugned order also purported to revert P. Radhakrishnan who was also officiating Matron to the post of Nursing Sister. Obviously in doing so the respondents appear to have taken the position of the applicant at serial No.162 and that of P. Radhakrishnan as at serial No.94 ignoring the fact that the position of the applicant had to be taken as at serial No.85A. The fact that P. Radhakrishnan who was also officiating Matron was reverted only to the next below stage, namely, of Nursing Sister the reversion of the applicant to one stage still below shows that it was the result of not taking into account the applicant's position as at serial No.85A. Thus consistently with the above position and in the absence of any explanation offered by the respondents justifying reversion of the applicant to the post of Staff Nurse we hold that the impugned order to that extent is not sustainable in law. Consistently with this conclusion we hold that the applicant has been wrongly deprived the benefit of the post of Nursing Sister from 1.7.1991 without there being any fault on her part and due to obvious mistake on the part of the respondents. She is, therefore, entitled to be restored her rightful position.

9. In the result the impugned order dated 1.7.1991 is set aside to the extent that it reverts the applicant to the post of Staff Nurse and instead thereof it is ordered that the applicant shall be deemed to have been reverted to the post of Nursing Sister with effect from

1.7.1991.....



1.7.1991. The rest of the order is maintained. The respondents are directed to give proforma appointment to the applicant as Nursing Sister in the scale of Rs.1640 - 2900 with effect from 1.7.1991. All other consequential and incidental questions are left to be decided by the respondents. At the hearing we have called for the original record of case No. G.C. 72/1987 etc decided on 15.2.1988.

10. The original application is partly allowed to the extent indicated above. No order as to costs.



Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

TRUE COPY .

प्रतिलिपि

Section Officer (J)

आवृत्त प्रतिलिपि (न्यायिक सलाह)
Central Administrative Tribunal
राष्ट्रीय प्रशासनिक उपाय
Guwahati Bench, Guwahati-5
गुवाहाटी न्यायपीठ, गुवाहाटी-5

21/7

N.F.Railway

OFFICE ORDER

In terms of GM(P)/MLG's Office order No.E/255/102/3pt. V(Med) dated 28.6.91, Smt. Elsy Varghese and 4(four) others, while working as Metron, Gr.II in scale Rs. 2000-3200/-were reverted to their substantive posts. This reversion was done in compliance with the judgement of CAT/GHY in G.C. No.72/87, 81/87 84/87 and 85/87 on 15.2.1988 and the Supreme Court's Order dated 19.2.91 on upholding the CAT/GHY's judgement.

Aggrieved on the above order of reversion Smt. Elsy Varghese filed a suit in CAT/GHY in Vide O.A. No.124 of 1991 on 4.7.1991. The Hon'ble CAT/GHY/ in their judgement on the above case No. OA.124 of 1991 dated 15.6.95 vide para No. 9 thereof passed the limited order quashing the reversion of Smt. Elsy Varghese to the post of Staff Nurse and ordered that she should be deemed to have been reverted to the post of Nursing Sister (1640-2900/-) with effect from 1.7.1991 and the rest of the order was maintained.

In compliance with the Hon'ble CAT/GHY's above order in OA No.124 of 1991, the order of reversion of Smt. Elsy Varghese issued vide this Office order No. quoted above in the post of Staff Nurse (1400-2600/-) with effect from 1.7.91 is hereby modified to the post of Nursing Sister (1640-2900/-) with effect from 1.7.1991 with proforma benefit. (in accordance with the Standing instruction since she has ~~been~~ not shouldered higher responsibilities, she is not entitled for any arrears) ✓

In view of what has been stated above, Smt. Elsy Varghese can be extended no other seniority benefit. She would be granted seniority vis-a-vis other Nursing Sisters taking her regular appointment as Staff Nurse as on 26.11.1977 and as per seniority List published under GM(P)/MLG's No. E/255/102/3pt.III(MED) dated 26.9.83. Her service as Nursing Sister from 1.7.91 to 28.2.93 would be treated as fortuitous and hence will not confer upon her any benefit of seniority in the grade of Nursing Sister.

Memo No.E/225/102/3pt.V(MED)

For General Manager(P)/MLG.
Maligaon, dated 17.11.95.

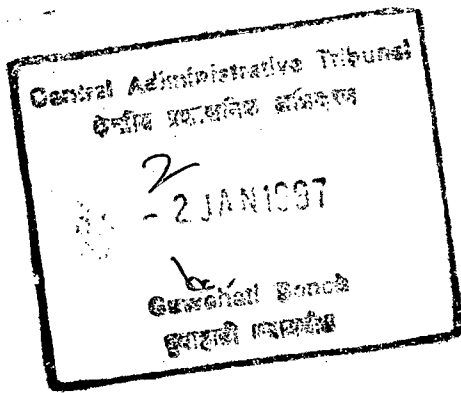
Copy forwarded for information and necessary action to:

- 1) Md/OH/Maligaon.
- 2) APO(MED) OH/MLG. He will take immediate action for fixation of the pay of Smt. Elsy Varghese, on promotion basis as Nursing Sister in Scale Rs.1640-2900/-w.e.f. 1.7.91 to 28.2.93 (the date on which she has been promoted as Nursing Sister on a regular basis. Her further promotion as Matron etc. would be based on the position assigned to her as per seniority list as on 1.4.82 published vide GM(P)MLG's No.E/225/102/3pt. III(MED) dated 26.9.83.
- 3) Smt. Elsy Varghese, Nursing Sister/OH/MLG through Matron/OH/MLG.
- 4) PA & CAO /Maligaon.
- 5) CMD/Maligaon.

Sd/- Illegible
for GENERAL MANAGER(P)MLG

G.C.17/11.

Attested by
A.C. Gaur
19.2.96



File in P.O. &
for S.K. Sharma
Reg. S
31/1/97
S.K. Sharma

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.
GUWAHATI BENCH.

IN THE MATTER OF :

O.A. No. 29 of 1996

Smt. Elsy Verghese ... Applicant.

Vs.

Union of India & Ors. Respondents.

AND

IN THE MATTER OF :

Written statement for and on
behalf of the respondents.

The answering respondents beg to state as follows :-

1. That the answering respondents have gone through a copy of the applicant filed by the applicant and have understood the contents thereof.
2. That save and except the statements which are specifically admitted here-in-below, other statements made in the application are categorically denied. Further, the statements which are not borne on records are also denied, and the applicant is put to the strictest proof thereof.

Ctd.....2

3. That with regard to the statements made in paragraph 6.1 of the application, the answering respondents do not admit anything contrary to relevant records of the case.

4. That with regard to the statements made in paragraph 6.2 of the application, it is stated that the applicant was appointed as substitute staff Nurse on 3.4.68. She was finally approved through selection held on 26.11.77 through RRB, Guwahati, against employment notice No. 2/77.

5. That with regard to the statements made in paragraphs 6.3 and 6.4 of the application, the answering respondents state that the applicant applied against the employment notice No. ^{2/71}~~2/74~~, the selection of which held on 10.8.71. She was not erroneously called for in the selection. Subsequently she represented the matter to GM/NR Railway. The General Manager in consideration of the fact that she applied for the selection held on 10.08.71 but was not called for, decided to assign her seniority w.e.f. 10.8.71. Accordingly her position was assigned.

6. That with regard to the statements made in paragraph 6.5 of the application, it is stated that the applicant was promoted against the upgraded vacancy created as a result of cadre restructuring w.e.f. 1.1.84, the benefit of promotion was extended on proforma to her w.e.f. 1.1.84.

Contd....3

7. That with regard to the statements made in paragraph 6.6 of the application, the answering respondents state that the seniority fixed by corrigendum No. E/25/102/3 Pt.IV(Med) dt 29.4.86, was refixed by corrigendum No. E/255/102/3 Pt.V (Med) dt 5.3.87.

The Hon'ble CAT/Guwahati, under their order dated 15.2.88 against G.C. No. 72/87, 81/87, 84/87, 85/87 quashed the above order of seniority and set aside with a direction that the seniority list of 1.4.82 published vide No. E/255/102/3 Pt.III(Med) dtd 26.9.83 shall prevail and promotion to the higher rank made on that basis.

8. That with regard to the statements made in paragraphs 6.7 and 6.8 of the application, the answering respondents do not admit anything contrary to the relevant records of the case.

9. That with regard to the statements made in Paragraph 6.9 of the application, it is stated that the applicant was reverted two grade below i.e. the post of Staff Nurse w.c.f. 1.7.91 as per seniority as on 1.4.82 according to Hon'ble CAT, Guwahati's order dtd 15.2.88 as indicated above.

10. That with regard to the statements made in Paragraph 6.10 of the application, the answering respondents state that in compliance with the Hon'ble CAT/Guwahati's judgment in O.A. No. 124 of 1991 dt 15.6.95, the reversion order of the applicant issued under O.O. No. E/255/102/3 Pt.V (Med) dt 28.6.91 has been modified to Nursing Sister

w.c.f. 1.7.91 vide order No. E/255/102/3 Pt.IV(Med) dtd 17.11.95 with proforma benefit.

11. That with regard to the statements made in paragraph 6.11 of the application, it is stated that the applicant was granted seniority of Staff Nurse as per seniority list published as on 1.4.82 issued under No. E/255/102/3 Pt.IV (Med) dt 26.9.83 which prevails as per CAT's order dtd 15.2.88. Accordingly, her seniority position at SL No. 162 stands.

12. That with regard to the statements made in paragraph 6.12 of the application, it is stated that the applicant's reversion order was modified and she was given the status of Nursing Sister in scale Rs. 1640-2900/- w.c.f. 1.7.91 with proforma benefit in accordance with Hon'ble CAT/Guwahati's order dtd 15.6.95. As such, no ~~seniority~~ further benefit of seniority or arrears benefit can be extended.

13. That the answering respondents deny the contentions made in paragraph 6.13 of the application. As per seniority list as on 1.4.82 published on 26.9.82 ~~and~~ the applicant was promoted to Nursing Sister in scale Rs. 1640-2900/- w.c.f. 1.3.93 vide O.O. No. E/41/205/Nursing Staff (Med) Pt.I dtd 8.7.93. But as per Hon'ble CAT/Guwahati's order dt 15.6.95 her date of effect as Nursing Sister was antedated to 1.7.91 with fixation of pay w.c.f. 1.7.91 and actual benefit from 1.3.93 i.e. from the date of shouldering the responsibility of higher post.

Ctd....5

14. That the answering respondents deny the contentions of the applicant made in paragraph 6.14 of the application. As per seniority list as on 1.4.82 published on 26.9.83 all the staff as mentioned are senior to the applicant. Her seniority position is at SL No. 162 of the Seniority List. The subsequent corrigendum refixing the seniority of the applicant to Sl.No. 53(A) issued under No. E/255/102/3 Pt.IV(Med) dtd 29.4.86 has been quashed by the Hon'ble CAT/Guwahati, vide judgment dt 15.2.88. So her seniority position at Sl. No. 162 stands.

15. That with regard to the statements made in paragraph 6.15 of the application, the answering respondents while reiterating and re-affirming the statements made here-in-above, beg to annex a copy of the order No. E/255/102/3/Pt.V(Med) dtd 22.11.95 and the same is annexed as Annexure 'A'.

16. That with regard to the statements made in paragraph 6.16 of the application, the answering respondents state that the Hon'ble Tribunal's verdict has been followed. No further benefit can be extended.

17. That the answering respondents submit that the instant application has been preferred entirely on a wrong notion of the matter and the applicant is not entitled to any further benefit.


Contd....6

18. That under the facts and circumstances stated above, the instant application is not maintainable and liable to be dismissed with cost.

VERIFICATION.

I, Shri A. K. Brahmo, aged about 40 years, by occupation Railway Service, working as the Deputy Chief Personnel Officer of the N.F. Railway administration, do hereby solemnly affirm and state that the statements made in paragraphs 1 and 2 are true to my knowledge, those made in paragraphs 3 to 16 are true to my information, derived from the records of the case which I believe to be true and the rests are my humble submission before this Hon'ble Tribunal.

And I sign this Verification on this _____ day of _____, 1996 .


DEPUTY CHIEF PERSONNEL OFFICER
NORTHEAST FRONTIER RAILWAY
MALIGAON :: GUWAHATI
FOR & ON BEHALF OF
UNION OF INDIA.

अप मुख्य कामिक अधिकारी (प्रम.)
Dy. Chief Personnel Officer (d/c)

पू. सो. रेलवे, गुवाहाटी-781011.
N F. H.y., Guwahati-781011

...

N.F. RAILWAY.

Office of the
General Manager(P)
Maligaon, Guwahati-11.

NO. E/255/102/3 Pt.VI(Med)

Dated 22.11.95.

Smt. Ensy Vershese,
Nursing Sister, CH/MLG.

Through : Matron/CH/MLG.

Sub: Implementation of the order dtd 15.6.95
passed by the Hon'ble CAT/GHY in the case
NO. OA 124 of 1991 and grant of consequential
relief.

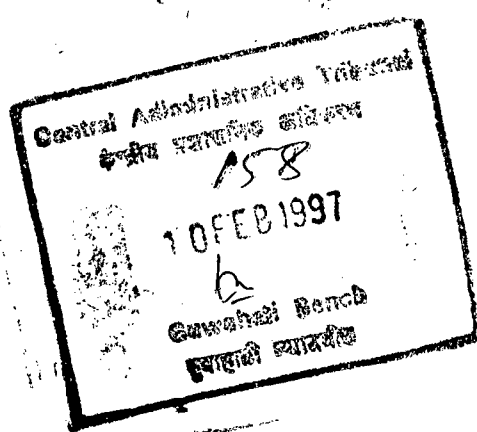
Ref: Your appeal dated 31.7.91.

A copy of CAT/GHY's judgment dated 15.6.95 in
the above case was received alongwith your above
application.

In compliance with the judgement of CAT/GHY
dtd 15.6.95, in the above case your reversion order
as Staff Nurse in scale Rs. 1400-2600/- issued vide
this office order No. E/255/102/3 Pt.V(Med) dtd
28.6.91 has been modified to Nursing Sister in scale
Rs. 1640-2900/- w.e.f. 1.7.91. Accordingly office order
endorsed under No. E/255/1 2/3 Pt.V(Med) dtd 17.11.95
has been issued endorsing a copy to you. As already
pointed out in the endorsement copy, your further
promotion will be based on the position assigned to
you as per seniority list as on 1.4.82 published vide
GM(P)/MLG's No. E/255/102/3 Pt.V(Med) dtd 26.9.83.

Sd/-
(P.C. Kesavan)
Sr. Personnel Officer (T & Med)
for General Manager (P)/MLG.

...



Elsy Verghese
Filed by
A.C. Sarma
Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

IN THE MATTER OF :-

O.A. 29 of 1996

Smti Elsy Verghese Applicant

- Vs -

Union of India and Others

.....Respondents

- AND -

IN THE MATTER OF :-

A rejoinder of the applicant in
respect of the written statement
filed by the respondents.

The applicant files her rejoinder as follows :-

1. That, the applicant has gone through the copy of the written statements filed by the respondents and has understood the contents thereof.

Received copy
M.K. Choudhury
for S.C. Ry
10/2/97

2. That, the plea taken by the respondent in their written ~~xxx~~ statement regarding correct complain~~ee~~ with the judgement and order dated 15-6-95 passed by this honourable Tribunal in O.A. 124/91 is not true.

3. That, it is reiterated that the seniority list in the cadre of staff Nurse as on 1-4-82 published vide No. E/255/102/3 pt III(Med) dtd. 26-9-83 was uphold by this Hon'ble CAT/Guwahati vide their judgement and order dated 15-2-88 passed in G.C. No. 72/87, 81/87, 84/87, 85/87 and it has been finally decided by this Hon'ble C.A.T./ Guwahati vide their judgement and order dated 15-6-95 passed in O.A. 124/91 that the seniority position of the applicant in the above seniority list will be at serial 85-A only. But the respondents in the paragraph 11 and 14 of their written statements state that the applicant still holds the seniority position at SL. 162 only which is not correct and against the decision of this honourable Tribunal.

4. That, as regard to the statements made in the paragraph 14 of the written statement the applicant reiterates that her seniority position being already decided to be at 85-A all the staff as mentioned in the paragraph 6.14 of the original application are junior to the applicant and as such the applicant is lawfully entitled to be considered for promotion to the post of Matron as prayed for.

5. That, it is further submitted that in compliance with the judgement and order dated 15-6-95 passed by this Hon'ble C.A.T. in O.A. 124/91 the respondents aught to

have allowed the benefits to the applicant as claimed in the original application while deciding the consequential and incidental questions as per the order of this Hon'ble Tribunal, but those were denied by respondents.

VERIFICATION

I, Shri Elsy Varghese, wife of Shri P.P. Verghese, aged about 51 years, resident of Adarsa colony, P.O. Guwahati-11 do hereby verify that the statements made in the above paragraphs are true to my knowledge and, I sign this verification to-day the 10th day of February, 1997 at Guwahati.

Elsy Varghese

S I G N A T U R E