

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION NO.060/00146/2017

Chandigarh, this the 6th day of July, 2018

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

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Anita Kumari w/o Sh. Jasbir Singh Kherra, aged 46 years, presently working as Assistant Nursing Superintendent, Group-C in Govt. Medical College & Hospital, Sector 32, Chandigarh.

....APPLICANT

(Present: Mr. Jagdeep Jaswal, Advocate)

VERSUS

1. Chandigarh Administration through the Secretary, Department of Medical Education and Research, UT Secretariat, Chandigarh.
2. Director-cum-Principal, Govt. Medical College & Hospital and College, Sector 32, Chandigarh.
3. Amanveer Kaur w/o Surinder Pal Singh, presently working as Assistant Nursing Superintendent Group-C, in Govt. Medical College & Hospital, Sector 32, Chandigarh.

....RESPONDENTS

**(Present: Mr. Arvind Moudgil, Advocate proxy for Mr. Gagan Deep Singh, counsel for respondents no.1 & 2.
Mr. R.S. Dadwal, counsel for respondent no.3)**

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J):-

The applicant assails the final seniority list dated 12.10.2009 (Annexure A-8) of Nursing Sister, whereby the respondents have placed respondent no.3 senior to the applicant. She seeks further directions to the respondents to treat her senior to respondent no.3 and further grant benefit

of promotion to the post of Assistant Nursing Superintendent from due date with all consequential benefits.

2. The facts, which led to filing of the present Original Application (OA) are that the applicant was initially appointed as Staff Nurse w.e.f. 11.01.1996, whereas the respondent no.3 was appointed as such w.e.f. 15.01.1996, after four days. As per Recruitment Rules of 1964, a Nursing Sister with two years experience becomes eligible for promotion to the post of Nursing Sister. As per Rules of 1964, there are two methods for filling the post of Nursing Sisters i.e. by direct recruitment and by promotion. When the applicant was not considered for promotion, she approached this Tribunal by filing OA No.1026-CH-1999, with a prayer to direct the respondents to consider her promotion as Nursing Sister. The said OA was allowed on 01.07.2002 (Annexure A-2), with a directions to the respondents to convene the DPC for promotion of applicant, with retrospective date, and grant all the consequential benefits. It is the plea of the applicant that the order of this court, granting her retrospective promotion, has already been approved up to the Hon'ble Supreme Court. While implementing the order dated 01.07.2002 of this court, in earlier round of litigation, the respondents vide their order dated 21.10.2008 (Annexure A-5) granted promotion as Nursing Sister w.e.f. 15.10.1999 to the applicant. Subsequently, she was promoted as Assistant Nursing Superintendent and Nursing Superintendent and her juniors were promoted w.e.f. 24.03.2005. The grievance of the applicant is that the respondent no.3, was initially appointed as Nursing Sister on 15.10.1999, as Staff Nurse and subsequently, came to be appointed as Nursing Sister on 16.10.1999, by way of direct recruitment, but while issuing the tentative seniority list, the applicant was rightly placed over and above respondent

no.3 at serial no.3, whereas respondent no.3 was placed at serial no.5. But while finalizing the seniority list, respondents have changed the position and placed applicant junior to respondent no.3.

3. Sh. Jaswal, learned counsel for the applicant submitted the impugned seniority list is illegal, arbitrary and against the rule formation. Since the applicant has been given retrospective promotion as Nursing Sister w.e.f. 15.10.1999, than as per rule formation, she has to be shown senior to respondent no.3, who was offered appointment after the promotion of the applicant i.e. 16.10.1999. Therefore, he submitted that impugned seniority list is bad in law and be set aside.

4. The official respondents have filed separate written statement and taken two preliminary objections of misrepresenting the facts and maintainability of the OA. Firstly, the OA is stated to be hit by delay and latches as the applicant is impugning the seniority list circulated in the year 2009, by filing the OA in the year 2017, thus, it is prayed that the OA be dismissed on the ground of delay and latches. Secondly, the OA is hit by res-judicata as the applicant has not claimed this relief in earlier OA No.1478-CH-2012, which was decided on 21.11.2014. On merit also, they submitted that the applicant has no case because they have rightly fixed the seniority of the applicant as per relevant rule.

5. Learned counsel for respondent no.3 has also filed a separate reply taking the plea that as per rule governing the services of the respondent-department i.e. Punjab Government Medical and Health Department, Nursing Superintendent, Matrons, Sister Tutors, Public Health Nurses (Teaching), Nursing Sisters, Public Health Nurses, Staff Nurses and Male Nurses of the said services Clause-III Rules, 1964, the seniority has

rightly been fixed, when the employees were offered appointment. Therefore, it is prayed that the OA be dismissed.

6. We have learned counsel for the parties, and perused the pleading available on record.

7. The pleadings would indicate that 1964 Rules govern the inter-se seniority of the employees working in the respondent-department, wherein particularly Rule 11 is relevant, which reads as under:-

“11. The seniority interse of members of the service shall be determined by the dates of their continuous appointment in the service.

Provided that in the case members recruited by direct appointment the order of merit determined by the commission or the board shall not be disturbed and persons appointed as a result of an earlier selection shall be senior to these appointed as a result of a subsequent selection:

Provided further that in the case of two or more members appointed on the same date their seniority shall be determined as follows:

(a) a member recruited by direct appointment shall be Senior to a member recruited otherwise.”

8. A perusal of Clause-A of Rules 11 aforesaid makes it clear that members recruited by direct appointment shall be senior to the members recruited by promotion, if the same is done on same very day. Respondents filled up the posts by two methods i.e. appointment by promotion and appointment by direct recruitment on the same day, thus person who was appointed as direct recruit was treated senior to the other persons appointed by way of promotion.

9. Considering the above, the respondent no.3 was offered appointment, vide appointment letter dated 15.10.1999, copy of which is appended as Annexure R-3/1, and the applicant was given retrospective promotion in view of judicial pronouncement by this court. Since they were appointed on the same very day, as per rule formation, the direct recruitment

will rank senior to the applicant appointed by way of promotion. We also find support in our view from judgment of Hon'ble Supreme Court in case of **K.R. Babu versus State of Kerala** reported as 2017 (4) SCT 801 wherein identical issue came up for consideration and the Lordships have held that seniority is to be determined on the basis of effective date of appointment and not on the basis of date of joining.

10. Not only that, the OA is prima facie found to be barred by law of limitation as impugned seniority list is of 2009 and the OA has been filed only on 09.04.2017. Limitation cannot be counted from 29.08.2016, when order on Review Application in OA No.1478/CH/2012 was passed, as the OA had been dismissed on 21.11.2014. Secondly, the applicant having not claimed seniority in earlier round of litigation is barred by constructive res-judicata to raise it in this OA. The reliance placed by the applicant on decision of Hon'ble Apex Court in case of **Union of India and others versus K.B. Rajoria** 2000 SCC (L&S) 665 is totally misconceived and does not help the applicant at all.

11. In view of the above noted facts, we are of the view that the petition deserves to be dismissed on the ground of delay as well as on point of res-judicata as well, because the applicant has not claimed, which was available to her in earlier OA, and she also took no permission from the court to agitate the matter subsequently.

12. In the light of the aforesaid reasons, the instant O.A. is hereby dismissed. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 06.07.2018.

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