

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION NO. 060/00689/2016

Chandigarh, this the 12th day of March, 2018

...

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

...

Smt. Darshan Kaur Cheema, aged about 59 ½ years, wife of Sh. Balvinder Singh Sahi, File No.588, Sister Grade-I/Officiating Assistant Nursing Superintendent, Main OT Complex, Nehru Hospital, PGIMER, Sector 12, Chandigarh (Group C).

....APPLICANT

(Argued by: Shri. Barjesh Mittal, Advocate)

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.

....RESPONDENTS

(By Advocate: Shri D.R. Sharma)

ORDER

SANJEEV KAUSHIK, MEMBER (J)

The present Original Application (O.A.) has been filed by the applicant seeking the following relief:

“i) Respondents be directed to produce complete record to show the present in position strength of the cadre of ANS in PGIMER and also the original file with notings pertaining to the reasons for delay in convening of DPC by the respondents in accordance with DOPT OM dated 28.01.2015 (Annexure A2) for kind perusal of this Tribunal.

ii) Respondents be directed to convene DPC to consider the case of the applicant belonging to general category for promotion to the post of ANS pursuant to the decision of this

Tribunal dated 22.01.2016 (Annexure A30) by granting the benefit of Catch-up Rule and consider the case of the applicant for promotion to the post of ANS being in the zone of consideration being fully eligible and fulfilling the requisites 5 years regular service in the grade of Sister Grade-I as there were vacancies available under the quota of UR at the time of holding the DPC dated 11.07.2014 and if found fit, to promote her from the date her juniors/colleagues were promoted i.e. 26.08.2014 (Annexure A7) to the cadre of ANS with all consequential benefits in the interest of justice.

iii) Respondents be directed to convene a fresh DPC strictly in accordance with the instructions as laid down in model calendar issued by DOPT OM dated 28.01.2015 (Annexure A2) and consider the case of the applicant for promotion to the cadre of ANS and if found fit, to promote her as Assistant Nursing Superintendent in accordance with the dates as mentioned in the model calendar dated 28.01.2015 with all consequential benefits in the interest of justice.”

2. After exchange of the pleadings, the matter came up for hearing.

3. We have heard the learned counsel for the parties and perused the record.

4. Mr. Barjesh Mittal, learned counsel for the applicant vehemently argued that the stand taken by the respondents in the written statement for not following the catch-up rule is that since the SLP on the subject matter is pending adjudication before the Hon'ble Supreme Court, therefore, they will not implement the order and follow the catch-up rule. He further argued that in a similar matter where the Post Graduate Institute of Medical Education and Research (PGIMER) has not followed the catch-up rule has been decided by this Tribunal in O.A. NO. 060/00348/2016- Kesang Jamwal Vs. PGIMER & Another decided on 29.1.2018, where the same plea raised by the PGI has been negated by this Tribunal by holding that they have to follow the

catch-up rule as laid down by the Lordships in the case of **B.K. Pavitra & Ors Vs. Union of India & Ors**, (2017) 4 SCC 620. He submitted that in B.K. Pavitra case (supra) in Contempt Petition vide order dated 29.1.2018 the Lordships have held that pending legislation the decision of the Supreme Court in the case of B.K. Pavitra (supra) cannot be withheld. Therefore, he argues that the stand taken by the respondents in the written statement that the matter be kept pending till the decision in the SLP is not sustainable.

5. Mr. D.R. Sharma, learned counsel for respondents did not dispute the facts and also not in a position to cite any law contrary to relied upon by the learned counsel for the applicant. He argues that since the matter is pending before the Hon'ble Supreme Court in which notice has been issued for stay, therefore, till the matter is finally decided, the present O.A. be adjourned sine die or be disposed of subject to final outcome of pending SLP. He also did not dispute the fact that coordinate bench of this Tribunal in case of Kesang Jamwal (supra) has decided the issue by negating the plea raised by the respondents, which they have raised in the present O.A.

6. We have given our thoughtful consideration to the entire matter and are of the view that once the issue of catch-up rule has been settled by the Hon'ble Supreme Court in SLP (C) No.6385/2010, decided on 07.12.2010 in the case of Suraj Bhan Meena & Ors V/s State of Rajasthan & Ors., which has been followed later on in the case of B.K. Pavitra (supra), therefore, the

respondents cannot take plea that the matter be kept pending till the SLP is decided in another case or in the case which the applicants are relying upon. There is another reason for not accepting the contention of the respondents as the order passed by the Hon'ble Supreme Court on 29.1.2018 where the Lordships have categorically held that pending legislation the judgment passed by the Supreme Court cannot be put to hold, which reads as under:-

“It is made clear that any proposed legislation will be no justification not to carry out the judgment of this court. Needless to say that if any legislation is brought on the subject, the same can be applied, subject to its validity, as and when such legislation is made. We do not express any opinion with regard to permissibility of such a legislation at this stage.

This order need not hold up the process wherever seniority list is finalized and the state is free to proceed in the matter.”

7. In the light of aforesaid, we left with no option, but to dispose of the instant O.A. in terms of judgment rendered in the case of B.K. Pavitra (supra). The relevant observations made by the Lordships in para 26 reads as under:-

“It is clear from the above discussion that exercise for determining inadequacy of representation, backwardness and overall efficiency, is a must for exercise of power under Article 16(4A). Mere fact that there is no proportionate representation in promotional posts for the population of SCs and STs is not by itself enough to grant consequential seniority to promotees who are otherwise junior and thereby denying seniority to those who are given promotion later on account of reservation policy. It is for the State to place material on record that there was compelling necessity for exercise of such power and decision of the State was based on material including the study that overall efficiency is not compromised. In the present case, no such exercise has been undertaken. The High Court erroneously observed that it was for the petitioners to plead and prove that the overall efficiency was adversely affected by giving consequential seniority to junior persons who got promotion on account of reservation. Plea that persons promoted at the same time were allowed to retain their seniority in the lower cadre is untenable and ignores the fact that a senior person may be promoted later and not at same time on account of roster point reservation. Depriving him of his seniority affects his further chances of promotion. Further plea that seniority was not a fundamental right is equally without any merit in the present context. In absence of exercise under Article 16(4A), it is the ‘catch up rule’ which fully applies. It is not necessary to go into

the question whether the Corporation concerned had adopted the rule of consequential seniority.”

8. The O.A. is disposed of accordingly in the above terms. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 12.03.2018

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