

OA.No.170/00451/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00451/2017

DATED THIS THE 06th DAY OF FEBRUARY, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Smt. P. Durgabai,
 W/o Sri M.D. Prasad,
 Aged about 59 years,
 Now Retired as Chief Matron,
 Railway Hospital,
 Hubli
 Dharwad District.

...Applicant

(By Advocate Sri S.P.Kulkarni)

Vs.

1. The Union of India
 Represented by its Secretary,
 Ministry of Railways,
 Railway Bhavan,
 New Delhi – 110 001.

2. The Chief Personal Officer,
 Personal Department,
 South Western Railway Head Quarters,
 Hubli – 580 020,
 Dharwad District.

3. Senior Division Personal Officer,
 Hubli Division,
 South Western Railway,
 Railway Hospital
 Hubli – 580 020,
 Dharwad District.

....Respondents

(By Advocate Sri J.Bhaskar Reddy)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant in a nutshell is that she initially joined the service as Staff Nurse in the Railway Department in the year 1981. In the year 1995, she was promoted as Nursing Sister in the Railway Department. She was again

promoted as Matron during November 2003 and she was retained at Vascodagama, Goa in the same post for the reason that she had a deaf and dumb daughter whom she had to look after. In order to accommodate one Smt.Sharada Bandari, the applicant was asked to go to Hubli in the post of Matron. The applicant made representation to the Railway Authorities requesting to retain her at Goa but the respondents have passed an order on 18.11.2004 directing her to go and join at Hubli in the post of Matron. The said order was challenged in OA.No.327/2005 before this Tribunal which allowed the OA quashing the transfer order and directing that the applicant may be retained till 1.5.2006 at Goa(Annexure-A1). The respondents by order dtd.16.2.2006 stated that the applicant would be relieved on 1.5.2006 from the office of Vascodagama(Annexure-A2). The applicant submitted representation on 7.3.2006 to continue her at Vascodagama till completion of education of her deaf & dumb child(Annexure-A4). The WP.No.6302/2006 filed against the order of this Tribunal in OA.137/2006 was dismissed on 25.4.2006 by the Hon'ble High Court of Karnataka giving liberty to the applicant to redress the grievances before competent authority of Railways(Annexure-A5). The applicant made a detailed representation on 27.4.2006(Annexure-A8) requesting to continue her at Goa in the post of Matron. But the respondents passed order of reversion of the applicant from the post of Matron to Nursing Sister on 15.5.2006(Annexure-A11) which was challenged in OA.499/2009. The other two OAs.No.43/2010 & 44/2010 were also clubbed with OA.499/2009 which were disposed of by this Tribunal on 26.8.2011(Annexure-A12) holding that the reversion made on 15.5.2006 was to be continued till 15.5.2007 and all other consequential and promotional benefits have to be extended to the applicant.

2. The applicant submits that the 2nd respondent has issued a memorandum

OA.No.170/00451/2017/CAT/Bangalore Bench dtd.29.11.2012(Annexure-A15) whereby the applicant was issued with promotion order on 11.12.2012 to the post of Matron and she joined as such on 17.12.2012(Annexure-A16) at Railway Hospital, Hubli. An OA.No.849/2014 filed by the applicant against the memorandum dtd.29.11.2012 with prayer to treat her promotion retrospectively from November 2003 was allowed by this Tribunal by order dtd.22.7.2015(Annexure-A17) holding that the promotion of the applicant will take effect from the date on which the post become vacant for the first time with all its consequences. The applicant made representations on 7.9.2015 & 4.11.2015(Annexure-A18 & A19) to comply with the Tribunal's order. She also filed CP.No.98/2016, when the respondents have issued a corrigendum dtd.15/16.3.2017(Annexure-A20) whereby the order dtd.29.11.2012 is modified re-designating the promotion as Chief Matron, which, according to the applicant, is not full compliance. This Tribunal by order dtd.22.3.2017 dismissed the CP with liberty to file fresh OA(Annexure-A21). Accordingly, she filed the present OA with the following relief:

- i. *Quash the Corrigendum/Order dtd:15/16.3.2017 issued by the second respondent authority in No.SWR/P.535/VIII/Ch/Matron in so far as it relates to indirectly disallowing the prayer to declare that the applicant is promoted to the post of Chief Matron with effect from November 2003 or at least from 15.5.2007 when the reversion order was to end as per the order dtd:26.8.2011 made in O.A.No.499/2009 passed by this Hon'ble Tribunal and also to grant all consequential service benefits to the applicant. (Annexure-A20).*
- ii. *Quash order dtd.29.11.2012 in so far as the applicant is held to be suitable and eligible to hold the post of Chief Matron under promotion prospectively from 29.11.2012, though in fact the applicant has been already qualified, eligible and worked as Matron since November 2003 (Annexure-A15).*
- iii. *Direct the respondents to hold that the applicant is eligible and qualified and deemed to be promoted from the post of Nursing Sister to the post of Chief matron w.e.f. November 2003 continuously or in the alternative, at least w.e.f. 15.5.2007 when*

the Reversion Order was to end as per the Order of this Hon'ble Tribunal dtd.26.8.2011 made in OA.No.499/2009 with all consequential service benefits.

- iv. *Direct the respondent herein to extend the benefit of entire appropriate gratuity accruable to her (Since she has been made to retire in the lower scale with lesser gratuity) in her account and also to extend the benefit of pension further family pension for her entire life of self and family with interest thereon.*
- v. *Direct the respondents to extend the benefit Modified Assured Career Progression Scheme and also to extend all consequential service benefits even including seniority, promotion, arrears of pay, fitment of pay and all consequential service benefits counting her seniority in the post of Chief Matron from November 2003.*
- vi. *Grant such other and further relief as are just even including the costs of this application in the interest of justice and equity.*

3. Per contra, the respondents have filed reply statement stating that due to pinpointing of post of Matron post-restructuring to Railway Hospital, Hubli, there was no sanctioned post of Matron at Health Unit/Vasco. Hence, she was transferred to Railway Hospital, Hubli vide Chief Personnel Officer letter dtd.16.11.2004, in response to which the applicant made a representation on 1.12.2004 stating that she is refusing her promotion and remained to serve as Nursing Sister at Vasco pleading her inability to join at Hubli on personal reasons. Considering her request and also in compliance of the order of this Tribunal, she was retained at Vasco till 30.4.2006 in the promoted post and was advised to be relieved on 1.5.2006 to carry out her transfer to Hubli. Subsequently, one Smt.Sharada Bandari was promoted as Matron w.e.f. 19.4.2006 as the applicant has willingly foregone her promotion to the said post at Hubli. As such, the applicant was reverted back as Nursing Sister for want of the post of Matron at Vasco and was retained at Vasco against the existing vacancy of Nursing Sister on her own request. When the applicant herself has declined the promotion and accepted the reversion order issued in

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2006, her claim for quashing the orders of 2006 now and seeking promotion to be effected from 2003, has no merit. It is not true that there was a post of Matron at Vasco. Even to this day, there is no sanctioned post of Chief Matron at Health Unit/Vasco. The order in OA.499/2009 indicates that the applicant shall be considered for promotional post on expiry of one year period from the date of reversion, if such post is available at present or prospectively when it is available at earliest. When the above order was passed, the applicant was under punishment of withholding of her annual increment which was due on 1.7.2009 for a period of 3 years (non-cumulative). Hence, on expiry of the said punishment, the applicant has been promoted to the post of Chief Matron prospectively and posted to Railway Hospital, Hubli which the applicant has accepted. With regard to another OA.849/2014 filed by the applicant seeking her elevation from back date i.e Nov., 2003, the Tribunal passed order on 22.7.2015 directing the Railway administration to promote her against the first available post on the first available date after 26.8.2011 whenever it is available and her promotion will therefore date back from that particular date. In response to the above, the respondents have submitted that the process of promoting the applicant as Chief Matron was already initiated on 29.4.2010 but could not be finalized in her favour due to the penalty of withholding of annual increment and hence she was promoted against the first available post after 26.8.2011 which the applicant has carried out on 17.12.2012.

4. The respondents submit that the applicant has been considered for all the benefits that could accrue to a Railway servant in the normal course of her service. She has resorted to falsehood by seeking to appropriate the provision of Annexures-A6 & A6A to her advantage, which refer

exclusively to employees who are having mentally retarded children.

Nowhere in the OA, the applicant has made the claim that she has mentally retarded child but has deaf and dumb child who is now serving as a Junior Clerk-cum-Typist with the respondents. In view of the above facts, the OA being devoid of merit is liable to be dismissed.

5. Rejoinder to the reply statement is filed by the applicant reiterating the submission made in the OA and further submitted that on the day of issuing the transfer order, the post of Matron was not pinpointed but stated that the applicant was posted on request. Thereafter pinpointing of the posts was done after a long time. The respondents have failed to follow the order dtd.22.7.2015 of this Tribunal in OA.No.849/2014 wherein they were directed to follow the circular 75/2000 supplementary Circular No.10 to Master Circular No.24 dtd.18.4.2000 regarding posting of Govt. employees who have children with disability following the DoPT OM dtd.18.2.2000. In Annexure-A6 & A6A, the wordings are 'not only mentally retarded but also deaf and dumb' have to be retained at the place of work of parents. This is not properly understood by the respondent authorities. Her disabled child who is not mentally retarded has now been employed as Junior Clerk and Typist cannot be a matter of prejudice to her. The applicant has also filed written argument note.

6. We have heard the Learned Counsel for both the parties and gone through the records placed before us. The points raised in the OA have gone through several rounds of applications with this Tribunal starting from OA.No.327/2005 wherein the order of transfer of the applicant was set aside and she was permitted to remain in Goa in the promoted post of Matron till 01.05.2006. As stated by the respondents, the applicant herself vide Annexure-R1 requested

OA.No.170/00451/2017/CAT/Bangalore Bench for foregoing the promotion and to retain her in the Health Unit/VSG to look after her daughters one of whom had hearing and speech impairment. She had also committed that she was willing to be retained as Nursing Sister instead of being a Matron. Her further applications in OA.No.499/2009, 43/2010 & 44/2010 were disposed of vide order dtd.26.8.2011 wherein it was ordered that she shall be considered for a promotional post on the expiry of one year period from the date of reversion she has suffered i.e. 15.5.2007, if such post was available as at present or prospectively when it was available at the earliest. The punishment imposed on the applicant was also retained to the fullest degree which was covered in OA.No.43/2010. Inasmuch as the spell of punishment of withholding of annual increment on 1.7.2009 for a period of 3 years was continuing, even though the necessary process was initiated in April 2010 for promotion of the applicant to the post of Chief Matron, the currency of punishment was up to November 2012 and therefore she could be promoted only on 29.11.2012 and she assumed charge in the promoted post w.e.f. 17.12.2012. As can be seen from the above orders of this Tribunal in the various applications filed by this applicant, it is clear that she could be retained in Goa to take care of her physically challenged daughter for a short period on promotion but later only after reversion till the year 2012. There is no new ground to entertain for consideration of her promotion with effect at least from 2007 in view of the punishment imposed on the applicant. The OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

Annexures referred to by the applicant in OA.No.170/00451/2017:

Annexure-A1: Copy of the order dated 26.10.2005 made in O.A.No. 327/2005
Annexure-A2: Copy of the order dated 16.02.2006
Annexure-A2A: Typed copy of the same
Annexure-A3: Copy of the copy of the order dated 28.02.2006
Annexure-A3A: Typed copy of the same
Annexure-A4: Copy of the representation dated 07.03.2006
Annexure-A4A: Typed copy of the same
Annexure-A5: Copy of the order dated 25.04.2006 made in Writ Petition No. 6302/2006
Annexure-A6: Copy of the circular dated 12.06.1991
Annexure-A6A: Typed copy of the same
Annexure-A7: Copy of the OM dated 18.02.2000
Annexure-A8: Copy of the representation dated 27.04.2006
Annexure-A8A: Typed copy of the same
Annexure-A9: Copy of the recommendation dated 28.04.2006
Annexure-A9A: Typed copy of the same
Annexure-A10: Copy of the recommendation dated 08.05.2006
Annexure-A10A: Typed copy of the same
Annexure-A11: Copy of the order dated 15.05.2006
Annexure-A11A: Typed copy of the same
Annexure-A12: Copy of the order dated 26.08.2011 made in O.A. No. 499/2009
c/w OA.No.43 & 44/2010 passed by the Hon'ble CAT,
Bangalore
Annexure-A12A: Typed copy of the same
Annexure-A13: Copy of the OM dated 05.09.2007 along with the list of eligible
candidates (Annex-A)
Annexure-A14: Copy of the Office Order dated 03.06.2010 indicating the
postings and transfers of promoted Chief Matron in the Dept.
Annexure-A15: Copy of the OM dated 29.11.2012 holding that the applicant is
eligible for promotion from 29.11.2012 prospectively
Annexure-A15A: Typed copy of the same
Annexure-A16: Copy of the Joining Report dated 17.12.2012 submitted by the
applicant in the post of Chief Matron
Annexure-A16A: Typed copy of the same
Annexure-A17: Copy of the order dated 22.07.2015 in O.A. No. 849/2014
passed by Hon'ble CAT, Bengaluru
Annexure-A18: Copy of the Memo dated 07.09.2015 along with disability
Medical Certificates submitted by applicant
Annexure-A18A: Typed copy of the same
Annexure-A19: Copy of the representation dated 04.11.2015 submitted by
applicant
Annexure-A20: Copy of the corrigendum/order dated 15/16.03.2017 passed by
respondents
Annexure-A21: Copy of the order dated 22.03.2017 made in CP No. 98/2014
passed by CAT, Bengaluru

Annexures with reply statement:

Annexure-R1: Copy of the application of the applicant dated 11.05.2006

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Annexure-R2: Copy of the certificate of PWD issued by Medical Department

Annexure-R3: Copy of the application of the applicant dated 08.05.2006

Annexure-R4: Copy of the notification dated 24.08.2017 for the post of Matron

Annexure-R5: Copy of the application of the applicant dated 12.09.2007

Annexures with rejoinder:

-NIL-
