

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00782/14**

**With
MA/050/00467/18**

Reserved on: 11.12.2018
Pronounced on: 14.12.2018

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

1. Smt. Usha Kumari, D/o Late J. Mahto wife of Shri P.P. Sahu.
2. Binita Kujur D/o B. Oraon
3. Sanju Kumari, D/o D. Prasad
4. Mridula Kumari D/o A. Singh.

All are Chief Matron, Central Hospital, East Central Railway, Patna (Bihar).

..... Applicants.

- By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali (Bihar).
3. The Chief Medical Director, East Central Railway, Hajipur, District- Vaishali (Bihar).
4. The Divisional Railway Manager, East Central Railway, Danapur, PO- Khagaul, District- Patna- 801105 (Bihar).
5. The Senior Divisional Personnel Officer, East Central Railway, Danapur, PO- Khagaul, District- Patna-801105 (Bihar).
6. The Medical Director, Central Hospital, East Central Railway, Patna (Bihar).
7. Kumari Sunaina Sinha, D/o J.K. Prasad
8. Renu Sinha, D/o Yamuna Singh

Both are Chief Matron, Central Hospital, East Central Railway, Patna (Bihar).

..... Respondents.

- By Advocate(s): - Mr. S.K. Pandey for official respondents.
Mr. J.K. Karn for private respondents.

ORDER

Per Dinesh Sharma, A.M.:- The request of the applicants is against the seniority list dated 27.10.2014 (Annexure A/7). According to them, the respondent no. 7 and 8 who have come at Central Hospital, Patna on the basis of their own request should not have been placed above the applicants since it is in violation of Rule 311 and 312 of the Indian Railway Establishment Manual (IREM) which clearly says that the employees who come on their own request from one Division to another shall be placed on bottom seniority.

2. The respondents Department have countered the claim of the applicants. They have alleged that the Chief Medical Officer, EC Railway, Hajipur had invited applications from willing staff to join in the Central Hospital/ECR/Patna. Out of total 84 applications from various categories of para medicals received, applicant no. 1 to 3 had given options and the respondents no. 7 and 8 had also given application for option. However, though a total number of 15 staff from the optees were ordered for working in Central Hospital vide order no. 454/2008 dated 28.08.2008, the names of respondent no. 7 and 8 were not included. The respondent no. 7 and 8 later requested for transfer to Central Hospital, Patna and the competent authority considered their case and along with other candidates issued transfer order dated 18.12.2013. The Department had again sought options from willing staff by their letter dated 20.07.2010 and received 25 options under various categories. A total 15 staff of various categories were accepted to join at the second time of option. Respondent no. 7 and 8 could

not opt since respondent no. 7 had already been transferred to Central Hospital, Patna before the date of notification. Thereafter, a general meeting was held on 10.09.2013 between the Railway Administration and the recognized Union of the Railway to decide the closing date of the cadre of the Central Hospital/ECR/Patna. In this meeting it was decided to close the cadre of Central Hospital/ECR/Patna on 10.09.2013. It was further decided that any future requestees for Central Hospital, Patna will be placed at bottom seniority while all others who join before this closure date on option basis or on their own request will be treated to have joined on administrative grounds. This, according to the official respondents, is the reason for issuing the seniority list by the impugned order dated 27.10.2014.

3. The applicants in their rejoinder have reiterated their earlier claim. They have argued that the statutory provisions of Rule 311 of IREM cannot be violated on the basis of any understanding reached with Union representative.

4. During the pendency of the application, the applicants filed an MA/050/00467/18 in which they have requested for staying the order for selecting a panel for the post of Assistant Nursing Officer since a decision in the matter of seniority under this OA is likely to have an effect on the selection process for the post of Assistant Nursing Officer.

5. After going through the pleadings and hearing the learned counsel for both the parties, it is clear that the only issue which needs to be decided in this matter is whether the persons transferred on their own

request and others who have come in response to a request for exercising option can be treated at par for the purpose of deciding their inter-se seniority. It is not disputed that the respondent no. 7 and 8 were transferred to this Hospital on their own request. They might have opted for getting posting in the Hospital but for some reasons they could not be accommodated at the time when they gave those options. The only reason which the official respondents have cited for treating them at par with the applicants is the understanding reached by way of a meeting with the Union representatives which was held on 10.09.2013. An arrangement made on the basis of such understanding in a meeting with the Employee's Union cannot override the express provisions of the IREM. It is very clear from the orders annexed at Annexure A/3 and Annexure A/6 that respondent no. 7 and 8 have been posted to the Central Hospital, Patna on their own request and the impugned seniority list in which they have been put as per their original position before their transfer is only on the basis of the understanding reached in a meeting with the Union (Annexure R/7). Since it is apparently incorrect to revise the seniority on the basis of any cadre closure date which is itself decided ex-post facto, we find merit in the applicants' claim. We, therefore, direct the official respondents to revise the seniority list by placing those candidates, who have come on the basis of their own request, at the bottom of the seniority list. This should be done within three months from the date of receipt of this order. Once the seniority list gets revised there would be no reason to take any decision on

the MA seeking interim relief for stay or further action to the selection process to the post of Assistant Nurse Officer.

6. In view of the above observation and direction, the OA as well as MA/050/00467/18 are disposed of. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member