

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 707/2013

Reserved on: 24.07.2019

Pronounced on: 30.07.2019

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

Anita Joyce D/o Shri John Patriok W/o Simon Joseph
aged about 51 R/o Plot No.17, Shiv Vatika Colony,
Lachhu Baba Ki Baghichi, Manbagh, Jaisinghpura
Khor, Delhi Road, Jaipur.

...Applicant.

(By Advovate: Shri A.K.Garg)

Versus

1. Union of India through the Secretary,
Department of AYUSH, Ministry of Health and
Family Welfare, INA Building, B-Block, GPO
Complex, New Delhi-23.
2. The Director, National Institute of Ayurved,
Madhav Vilas Palace, Amer Road, Jaipur.
3. Murari Lal Sharma at present Assistant Matron
working in the National Institute of Ayurved C/o
Director, National Ayurved Institute,
Madhovilas, Amer Road, Jaipur.

...Respondents.

(By Advocate: Shri Anurag Agarwal with Shri Satish
Pareek for respondent No.2
None for respondents No.1 and 3)

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ORDER**Per: A.Mukhopadhyaya, Member (A):**

As per the applicant, the brief facts of this Original Application, (OA), are that she was appointed to the post of Nursing Sister in the National Institute of Ayurveda, (NIA), on 04.11.1987 and this post was re-designated as Staff Nurse subsequently. As per the seniority list of Nursing Sister/Staff Nurse issued by the respondent institution, (NIA), on 10.05.1994, (Annexure A/15), she is the senior most Staff Nurse in the Institution. The applicant avers that by virtue of this, she was eligible for promotion to the post of Assistant Matron since the year 1990 as per the provision of National Institute of Ayurveda Service Rules, 1982, (hereafter referred to as "**1982 Rules**"). When this post became vacant on 25.08.2009 as a result of the promotion of the incumbent to the post of Matron, she should therefore have been promoted to the post of Assistant Matron. The applicant contends that this promotion was her entitlement as the post of Assistant Matron did not fall in Group A or B and was therefore to be filled strictly by promotion on the

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basis of seniority-cum-merit as provided vide Rule 28(2) of the "**1982 Rules**" for posts of Group C and Group D. However, the official respondents unauthorisedly amended the "**1982 Rules**" with effect from 29.03.1997, (hereafter termed the "**1997 Rules**"), and wrongly promoted respondent No. 3, who was a Pharmacist in the respondent institution and therefore not eligible for this promotion under the original "**1982 Rules**", vide impugned order dated 13.10.2011; (Annexure A/2). Aggrieved by this, the applicant made several representations to the official respondents and thereafter filed OA No.481/2013 before this Tribunal. This OA was disposed of by this Tribunal vide its order dated 04.07.2013 directing the official respondents to decide the representation made by the applicant in this regard; (Annexure A/18). In compliance, the respondent institution passed the impugned order dated 14.08.2013, (Annexure A/1), rejecting the applicant's representation. Aggrieved by this, the applicant has now approached this Tribunal in the present OA seeking the following relief:-

- i. To set aside the order dated 13.10.2011 by which the Respondent No.3 was wrongly promoted over and above the rightful claim of

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the applicant for such promotion and also set aside the letter cum order dated 14.08.13 vide which the representation has been rejected.

- ii. To direct the Respondents to accord promotion to the applicant on the post of Assistant Matron from the date on which she became eligible for such promotion in the year 2009 if not from 1990 as mentioned above and the post was available.
- iii. To direct the Respondents to convene review DPC after seriously analysing the situation of year wise determination of vacancies of the post as per mandatory rule 10 of the Rules, 1982 and also by adhering to the procedure in matters of promotion.
- iv. Any other relief which is deemed fit in the facts and circumstances of the case be allowed to the applicant.
- v. Exemplary costs of the litigation be also directed to be paid from Respondent Institute to the applicant.

2. In reply, the official respondents, while confirming the aforementioned direction of this court in OA No. 481/2013, (Annexure-A/18), aver that the representations of the applicant in this instance, (Annexures A/4 to A/8), are essentially the request made by the applicant to consider her candidature for promotion to the post of Assistant Matron; (para 1 of reply refers). They state that the candidature of the applicant was considered along with other candidates

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coming under the zone of consideration as per the **"1997 Rules"** by the Departmental Promotion Committee, (DPC), and it was on the specific recommendation of the DPC which was subsequently approved by the competent authority that respondent No.3 was promoted to the post of Assistant Matron vide the impugned order dated 13.10.2011; (Annexure A/2). The respondents aver that vide its letter dated 27.01.1998, (Annexure R/2/1), the Ministry of Health and Family Welfare, Department of ISM&H designated the post of Assistant Matron as a Group 'B' post. Therefore, as per the **"1997 Rules"** which are the relevant rules at the time of promotion to this post, the promotion has to be made on the basis of merit-cum-seniority and not seniority-cum-merit. Further, as per the **"1997 Rules"**, this post is to be filled up from the feeder cadres of Pharmacist (Ay.)/Staff Nurse(Ay)/Staff Nurse (Modern); (page 43 of the Paper Book refers). Since respondent No. 3 being a Pharmacist was also eligible for promotion as Assistant Matron, his name along with that of the applicant found place in a six member panel prepared for the DPC's consideration. The DPC in its meeting recorded the following minutes,

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(provided by learned counsel for the official respondents during the course of arguments and taken on record as Annexure C/1):-

"NIA Service Rules provide for promotion on the basis of Merit-cum-Seniority to Group-B posts. Among the above 6 incumbent Pharmacists and Staff Nurses, the ACR Grade in respect of Shri Murari Lal Sharma is Outstanding for 3 years and Very Good for 2 years and therefore, the DPC finds that he is having the top merit among the six incumbents under consideration. Therefore, the DPC recommends Shri Murari Lal Sharma for promotion to the post of Assistant Matron."

3. The official respondents also point out that while the applicant is now objecting to the redesignation of the posts of Dispenser, Sr. Dispenser as Pharmacist as effected vide NIA office order No.1(53)/89/NIA/CC/4372-82 dated 21.07.1995 issued in furtherance of order No. V.28011/20/1992 Ay.Desk-II of the Ministry of Health and Family Welfare, (Annexure R2/3 and Annexure R2/2 respectively) she had not raised any objection to such redesignation and upgradation of these posts at the time. They also point out that the applicant was also

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redesignated and upgraded from Nursing Sister to Staff Nurse through the very same set of orders. Thus, the official respondents aver that the promotion of respondent No.3 has been made correctly and entirely as per rules governing the subject and therefore that this OA be dismissed.

4. Learned counsels for the applicant and the official respondents were heard and the material available on record was perused.

5. Learned counsel for the applicant, apart from stating the pleadings in the OA, reiterated during arguments that the **"1997 Rules"**, were promulgated unauthorisedly and were therefore illegal.

6. In his arguments, learned counsel for the official respondents, at the very outset, pointed out that the relief sought by the applicant in this OA nowhere sets up a challenge to the 'vires' of the **"1997 Rules"** of the respondent institution in specific terms and therefore, in the absence of this, the relief sought by the applicant

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under the erstwhile, (unamended), **"1982 Rules"** cannot be considered by this court. Further, he argued that the **"1997 Rules"** have been in force now for many years since their initial promulgation and that the applicant has never challenged these at any time earlier. Thus, doing so now is merely an afterthought. He pointed out that it is not disputed that as per the **"1997 Rules"** respondent No. 3 as a Pharmacist was eligible for promotion to the post of Assistant Matron and further, since this was clearly a Group B post, as evidenced by Annexure R/2/1 dated 27.01.1998, promotion to this post was required to be made on the basis of merit-cum- seniority and not seniority-cum-merit as claimed by the applicant. Official respondents' counsel also pointed out that the DPC minutes on record, (Annexure C/1), noted this requirement of promotion on merit-cum-seniority basis and unanimously and unequivocally found respondent No.3 as **"having the top merit among the six incumbents under consideration"**. He argued that the recommendations of the DPC in accordance with this finding and the promotion of the applicant thereafter, (Annexure A/2), is therefore perfectly in order under the

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relevant "**1997 Rules**". Consequently, the rejection of the applicant's representation, (impugned order at Annexure A/1), was also correct in fact and law.

7. While the applicant has raised a question regarding the authority and therefore authenticity, (i.e. effectively the *vires*), of the "**1997 Rules**" of the respondent institution in this case, she has not been able to refute the contention of the respondents that she has not challenged the "**1997 Rules**" specifically at any earlier time after their promulgation or indeed in the present OA in terms of their *vires*. Consequently, there appears to be no legal basis whatsoever in her contention that the "**1982 Rules**", (unamended), should be applied to her case rather than the aforementioned "**1997 Rules**". This being the position, the averments of the respondents that the "**1997 Rules**" were correctly followed and that the resultant promotion of respondent No.3 as Assistant Matron is therefore as per law and rules is borne out by the documents placed on record and relied upon by the respondents.

8. In the result, this OA is found to be devoid of force and merit and is accordingly dismissed.

9. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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