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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO. 2684/2003

New Delhi, this the 14th day of January, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)

1. Ms. Bimla Devi
Working as Staff Nurse
Seniority No. 1024
Lok Nayak Hospital
New Delhi-110 002.
2. Ms. Updesh Kaur
Working as Staff Nurse
Seniority No. 1026
Lok Nayak Hospital
New Delhi-110 002.
3. Ms. Indira P. Awala
Working as Staff Nurse
Seniority No. 1030
Lok Nayak Hospital
New Delhi-110 002.
4. Ms. M. Vasantha
Working as Staff Nurse
Seniority No. 1033
Lok Nayak Hospital
New Delhi-110 002.
5. Ms. Sunanda V. Gawai
Working as Staff Nurse
Seniority No. 1034
Lok Nayak Hospital
New Delhi-110 002.
6. Ms. Prem Lata Trivedi
Working as Staff Nurse
Seniority No. 1039
Lok Nayak Hospital
New Delhi-110 002.
7. Ms. Geeta Paul
Working as Staff Nurse
Seniority No. 1041
Lok Nayak Hospital
New Delhi-110 002.
8. Ms. N. Shanti
Working as Staff Nurse
Seniority No. 1056
Lok Nayak Hospital
New Delhi-110 002.
9. Ms. B. Manga Devi
Working as Staff Nurse
Seniority No. 1057
Lok Nayak Hospital
New Delhi-110 002.

10. Ms. Amarjeet Kaur
Working as Staff Nurse
Seniority No. 1069
Lok Nayak Hospital
New Delhi-110 002.
11. Ms. K. Bhoo Laxmi
Working as Staff Nurse
Seniority No. 1075
Guru Teg Bahadur Hospital
Delhi-110 095.
12. Ms. Sunita N. Kumar
Working as Staff Nurse
Seniority No. 1076
Guru Teg Bahadur Hospital
Delhi-110 095.
13. Ms. Sona Kumari
Working as Staff Nurse
Seniority No. 1444
Guru Teg Bahadur Hospital
Delhi-110 095.
14. Ms. Surekha Dutta
Working as Staff Nurse
Seniority No. 1234
Lok Nayak Hospital
New Delhi-110 002.
15. Ms. Nalini D. Gourkhede
Working as Staff Nurse
Seniority No. 1025
Deen Dayal Upadhyaya Hospital
New Delhi.
16. Ms. Asha Ambastha
Working as Staff Nurse
Seniority No. 1034
Lok Nayak Hospital
New Delhi-110 002.
17. Ms. Maya R. Mool
Working as Staff Nurse
Seniority No. 1037
Babu Jagjivan Ram Hospital
Jahangir Puri
Delhi.
18. Ms. Joginder Kaur
Working as Staff Nurse
Guru Teg Bahadur Hospital
Delhi.-110 095.
19. Ms. Meera Bharti
Working as Staff Nurse
Guru Teg Bahadur Hospital
Delhi-110 095.

20. Ms. Nirmala
Working as Staff Nurse
Guru Teg Bahadur Hospital
Delhi-110 095.

21. Ms. Sunita Sidharath Thul
Working as Staff Nurse
G.B. Pant Hospital
Delhi-110 095.

....Applicants

(Dr. K.S. Chauhan Advocate with
Shri Chand Kiran and Shri V.K. Burman,
Advocates)

vs.

1. Govt. of N.C.T. of Delhi
Through its Chief Secretary
Indraparastha Sachivalaya
I.P. Estate
New Delhi-110 002.

2. Government of NCT of Delhi
Through its Secretary
Department of Health & Family Welfare
Indraparastha Sachivalaya
I.P. Estate,
New Delhi-110 002.

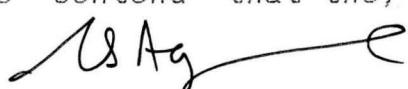
3. Delhi Subordinate Services Selection Board
Through its Secretary
Govt. of NCT of Delhi
Karkardooma Complex
Delhi-110 092. Respondents

(Shri Ajesh Luthra, Advocate for respondents 1 & 2
None for respondent No. 3)

O R D E R

Justice V.S. Aggarwal:

Applicants are Staff Nurses working in various hospitals of the Government of National Capital Territory of Delhi. The next promotion from the post of Staff Nurse is to the post of Nursing Sister in the pay scale of Rs.5500-9000/-. Applicants contend that they are eligible to be



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promoted as per the recruitment rules.

2. The recruitment rules for the post of Nursing Sister have since been notified. As per the recruitment rules, the post of Nursing Sister has to be filled firstly by promotion failing which by direct recruitment. The contention of the applicants is that they are eligible, but instead of promoting them, the respondents have resorted to direct recruitment. The said action of the respondents is being challenged to be illegal.

3. In the reply filed, the respondents have contested the application. It has been pleaded that there are only 24 posts of Nursing Sister which are reserved for the Scheduled Caste category. They had been notified to the Delhi Subordinate Services Selection Board for direct recruitment because during the promotion process the Departmental Promotion Committee did not find any Staff Nurse of Scheduled Caste category in the seniority list even going through the extended zone of consideration. The Committee in their minutes recommended that these posts which could not be filled by promotion from the feeder posts are to be notified to the Delhi Subordinate Services Selection Board for direct recruitment as according to the recruitment rules for the post of Nursing Sister, the method of recruitment is from promotion

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failing which by direct recruitment. Accordingly, in this back-drop, the posts had been so notified. The action of the respondents, therefore, is justified.

4. We have heard the parties' learned counsel.

5. The short question that comes up for consideration is as to whether when there are eligible Scheduled Caste candidates for promotion, in that event, can the respondents resort to the method of direct recruitment to fill up the promotional posts because the Staff Nurses, namely the applicants did not fall within the zone of consideration. The learned counsel for the applicants had urged that the applicants had the necessary work experience and qualifications and, therefore, necessarily when the posts in the promotion quota of Nursing Sister for the Scheduled Castes are lying vacant, the respondents necessarily have to promote the applicants. He further contended that even if there are any instructions to the contrary, they cannot run counter to the recruitment rules. As against this, as already pointed above, the respondents asserted that since the applicants were not in the zone of consideration, therefore, they could not be

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considered for promotion and they are resorting to fill up the posts by direct recruitment from the Scheduled Caste candidates.

6. On appraisal of the facts, at the outset, so far as the first contention as to whether when there are executive instructions issued whether they can supplement the recruitment rules or not is concerned, the Supreme Court had considered this question in the case of **Comptroller & Auditor General of India and others v. Mohan Lal Mehrotra and others**, AIR 1991 SC 2288. One of the questions that came up for consideration was as to whether there has to be amendment in the statutory recruitment rules or the administrative orders could be issued. While setting aside the order passed by the High Court, the Supreme Court held that the executive administrative orders could be passed. The Supreme Court concluded in para 12 as under:-

"12. The High Court is not right in stating that there cannot be an administrative order directing reservation for Scheduled Castes and Scheduled Tribes as it would alter the statutory rules in force. The rules do not provide for any reservation. In fact, it is silent on the subject of reservation. The Government could direct the reservation by executive orders. The administrative orders cannot be issued in contravention of the statutory rules but it could be issued to supplement the statutory rules. (See: the

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observations in **Santram Sharma v. State of Rajasthan**, (1968) 1 SCR 111: (AIR 1967 SC 1910). In fact similar circulars were issued by the Railway Board introducing reservations for Scheduled Castes and Scheduled Tribes in the Railway services both for selection and non-selection categories of posts. They were issued to implement the policy of the Central Government and they have been upheld by this Court in **Akhil Bhartiya Soshit Karamchari Sang (Railways) v. Union of India**, (1981) 1 SCC 246: (AIR 1981 SC 298)."

Same were the findings recorded in the celebrated judgement in the case of **Indra Sawhney etc.etc. v. Union of India and others, etc. etc.**, AIR 1993 SC 477. One of the questions was about the reservation in pursuance of clause (4) to Article 16 of the Constitution and if it could be by an executive order. The answer was in the affirmative and the Supreme Court held:-

"294. The next submission that the provision for reservation of appointments or posts under Article 16(4) can be made only by a legislation and not by an executive order is unsustainable. This contention as a matter of fact has already been answered in (1) **Balaji** (AIR 1963 SC 649) (supra) and (2). **Comptroller & Auditor General v. Mohan Lal Mehrotra** 1992 (1) SCC 20: (AIR 1991 SC 2288).

295. In passing, it may be stated that this Court while reversing the judgment of the Punjab and Haryana High Court in favour of the appellant (State) in **State of Punjab v. Hiralal**, 1971 (3) SCR 267: (AIR 1971 SC 1777) upheld the reservation which was made not by a legislation but by an executive order: See also **Mangal Singh v. Punjab State Police**, AIR 1968 Punjab 306.

296. Agreeing with the reasonings of Balaji, I hold that the provision for reservation in the "Services under the State" under Article 16 (4) can be made by

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an executive order."

Therefore, the executive instructions can certainly be issued in this regard.

7. In the present case, the relevant executive instructions are issued by the Government of India, Department of Personnel and Administrative Reforms dated 12.10.1990. The relevant portion of the same reads:-

"(b) Where, however, the number of eligible officers in the feeder grade(s) is less than the number in Column (2) above, all the officers so eligible should be considered.

(c) Where adequate number of SC/ST candidates are not available within the normal field of choice as above, the field of choice may be extended to 5 times the number of vacancies and the SC/ST candidates (and not any other) coming within the extended field of choice, should also be considered against the vacancies reserved for them.

Officers belonging to SC/ST selected for promotion against vacancies reserved for them from out of the extended field of choice under sub-para (c) above, would retain their position in the panel in accordance with their gradation by the DPC."

From the aforesaid, it is clear that when sufficient number of Scheduled Caste or Scheduled Tribe candidates are not available, the field of choice can be extended to 5 times the number of vacancies. In the present case before us, the learned counsel for the respondents demonstrated

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that the applicants did not fall even within the extended zone of choice of 5 times of the number of vacancies on basis of their seniority and, therefore, they could not be considered for promotion as Nursing Sister.

8. The recruitment rules in this regard for the post of Nursing Sister in columns 7 and 10 provide as under:-

"Educational and other qualifications required for direct recruits	Method of Recruitment whether by direct recruitment or by Promotion or by deputation/Transfer & Percentage of the vacancies to be filled by various methods
7	10
1. Matriculation	Promotion failing which by Direct recruitment
2. "A" Grade certificate in Nursing from a recognised Institution	
3. Certificate in Midwifery or Six Months training in operation Theatre Or T.B.Ward or in leprosy Nursing Or Psychiatric Nursing in case of Male nurse.	
4. 3 years experience as Staff Nurse/Asstt. Home Nurse."	

In the present case before us, though the applicants fulfil the necessary educational qualifications and experience but they did not fall

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within the zone of consideration and, therefore, they could not be considered for promotion because of executive instructions in this regard. We have already referred to above that the executive instructions are supplementing the recruitment rules in this regard. When they could not be promoted because they did not fall within the zone of consideration, we find nothing illegal if Scheduled Caste candidates are being considered for direct recruitment.

9. As a consequence of the aforesaid, we find that the present application is without any merit.

10. No other argument was raised.

11. Resultantly, the application being without merit must fail and is dismissed. No costs.


(R.K. Upadhyaya)

Member (A)


(V.S. Aggarwal)

Chairman

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