

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 4342/ 2014

Reserved on: 17.10.2019
Pronounced on: 31.10.2019

Hon'ble Mr. S.N.Terdal, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)

1. Elsy Jacob, Aged 41,
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2. Sini Hari Kumar, Aged 40,
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3. Mary Kutty Sajai, Aged 42,
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4. Jess Y.P. Joseph, Aged 38,
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12. Saraswathi Amma N.K.
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W/o Lalu. K. Joseph
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Indirapuram, Ghaziabd.
14. Sojimol Reji, Aged 40,
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17. Ani Antappan, Aged 40,
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18. Jissi Terry, Aged 40,
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31/1, Mehrauli, New Delhi-110030
19. Vijayamma Baiju, Aged 37,
W/o K.G.Baiju,
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20. Lalita Rani, Aged 33,
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21. H. Vungza Moi, Aged 33,
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22. Rani Thampy, Aged 41,
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23. Renni John, Aged 41,
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25. Mary Kutty Shaju, Aged 45,
W/o Shaju Paul
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26. Josia Sharma, Aged 40,
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28. Sheeba Bijomon, Aged 40,
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29. Sonia Roy, Aged 40
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New Delhi-30.
30. Gimi Robin, Aged 38
W/o Robin Cyriac,
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Ansari Nagar, New Delhi-110029
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31. Z.N. Esther, Aged 35
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32. Manju Mathachen, Aged 39,
W/o Mathachen V.J.
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33. Shiji Benny, Aged 40,
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35. Shani Vinod, Aged 42,
W/o Vinod,
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Ward No. 4, Mehrauli, New Delhi-30
36. Jiju Sanal, Aged 38,
W/o T.N. Sanal Kumar,
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R/o 1065/7, C6 Nakhshatra Apartment,
Mehrauli, New Delhi-30
37. Manju Shibu, Aged 40,
W/o Shibu Mon Joseph,
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Phase-III, Delhi-110096
38. Manisha Ranjan, Aged 38,
D/o Raj Kishore Prasad,
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Moonlight Apartment, Mehrauli,
New Delhi-110030.
39. Christy Manoj, Aged 38,
W/o Manoj,
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R/o 1081, Ward No.7, Flat No. 5,
Mehrauli, New Delhi-110030

40. Annamma Varghese, Aged 42
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42. Bency Sebastian, Aged 39,
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43. Mary Biju, Aged 39,
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Ansari Nagar, New Delhi-110029
44. Saily Thomas, Aged 39,
W/o Mr. P.K. Thomas,
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R/o H.No. 417, Flat No. 8,
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45. Ligimol Liju, Aged 42,
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46. Sindhu Soji, Aged 39,
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47. Beena Dinesh, Aged 38,
W/o Dinesh K,
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48. Nisha Saji, Aged 40,
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49. Leena A Dinesh, Aged 38,
W/o Anil Dinesh,
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50. Aruna Kshetri, Aged 35,
W/o Rajiv Kshetri
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51. Thresiamma Mathew, Aged 40,
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Hari Nagar, New Delhi.

52. Jolly Cibichen
W/o Cibichen M.L.
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Phase-II, Delhi-91.

... Applicants

(By Advocate: Mr.E.J.Verghese)

VERSUS

1. Director, Medical Services
All India Institute of Medical Sciences
Ansari Nagar, New Delhi-110029
2. Josy John, Sister Grade-II, Neuro
3. Gini Jibi, Sister Grade-II, Neuro
4. Archana Singh, Sister Grade-II, Neuro
5. Mary Reji, Sister Grade-II, Neuro
6. Bindu Verghese, Sister Grade-II, Neuro
7. Sharan Jeet Kaur, Sister Grade-II, Neuro
8. Bilsy Simon, Sister Grade-II, Cardio
9. Mini Balakrishnan, Sister Grade-II, Cardio
10. Daisy Wilson, Sister Grade-II, Cardio
11. Daisy Jomon, Sister Grade-II, Cardio

(Respondent No. 2-11 through the Nursing
Superintendent, All India Institute of Medical
Sciences, Ansari Nagar, New Delhi-110029.

... Respondents

(By Advocate: Mr. VSR Krishna)

ORDER

Hon'ble Mr. S.N.Terdal, Member (J):

We have heard Mr. E.J.Verghese, counsel for applicants and Mr. VSR Krishna, counsel for respondents, perused the pleadings and all documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- “(a). Allow the Application of the Applicants under Section 19 of the Administrative Tribunals Act, 1985.
- (b) Quash and set aside the decision dated 18/01/2014 (decision No. 23) to the extent “not counted as qualifying service, the period of service for the purpose of voluntary retirement, and for the purpose of seniority and promotion” the services rendered by the applicants on adhoc basis with all consequential benefits.
- (c) Direct the respondent to implement the decision (decision No.1) of the impugned order dated 18/01/2014, fixing the pay of the applicant correctly in consonance with the notification of Revised Pay Rules of 2008 with all consequential benefits in every month with in a time frame.
- (d) Direct the respondent to fix the seniority of the applicants counting the services rendered by the applicants on adhoc basis for all purposes.
- (e) Direct the respondent to consider the applicants for promotion in Sister Grade-1 as per the RR.
- (f) Direct the respondent to consider the applicant for Ist MACP if vacancies are not available in Sister Gde-1
- (g) Direct the respondents to provide the copies of pay fixation, APAR/ACR, service book for annual verification as mandated.
- (h) Grant the cost of the petition And
- (i) Any other relief, if any, this Honourable Tribunal deems fit and proper in the facts and circumstances of the case.”

3. The relevant facts of the case are that the applicants were appointed on various dates from 1996 onwards on adhoc basis to the temporary posts of Sister Grade-II after interview by the competent authority initially for a period of 3 months against leave vacancies etc. but, however, their services were continued without interruption. The initial appointment letter issued with respect to one of the applicants is extracted below:-

“Subject: Appointment to the post of Sister Gr II (Rs.1400-2600) on adhoc at NSC at the AIIMS.

With reference to her interview for the post Sister Gr.II Miss Elsy Abraham is informed that she has been selected for an adhoc appointment to the temporary post of Sister Gr.II on a monthly pay of Rs.1400/- with usual allowances in the pay scale of Rs.1400-40-1600-50-2300-EB-60-2600/-

1 Other terms and conditions are as mentioned below:

i] The appointment is purely adhoc for a period of 3 months w.e.f. the date she joins in the leave vacancy and posts reserved for SC/ST and higher posts and may be terminated at any time during the aforesaid period without any notice. Further as soon as the incumbent Sister Gr.II return from leave the services of Miss Elsy Abraham will be terminated without any notice.

ii] The appointment will be further subject to production of the following original certificates along with attested copy of each in proof her academic qualification and age.

- a.] Degree / Diploma /Certificate of Education Qualification
- b.] Certificate of age
- c.] Submission of attestation form
- d.] Submission of a marital declaration on the form enclosed (Annexure-II) and in the event of the candidates having were that one wife living, the appointment will be subject to exemption in this behalf.

iii)] If any declaration given or information furnished by the candidates proven to be false or if the candidates is found to have willfully suppressed any material information, she will liable to removal from services and such other action as the appointing authority may deem necessary.

iv)] She should also note that she should have to confirm to the rules discipline and conduct prevailing in this Institute and those imposed by the Institute on all their employees.

v.] The Head of the office has full discretion to forward or with hold any of her application for appointment to other post elsewhere.

vi.] No hostel or any other accommodation is available at present. She will be paid HRA as admissible viz other categories of staff.

vii.] Appointment is whole time and private practice of any kind is prohibited.

viii)] She is directed to undergo medical examination and produce certificate of fitness for employment from the EHS of the Hospital (Central Registration Office between 8.00am to 8.30 am on any work days).

ix.) She will be required to work at any place at the discretion of the AIIMS.

x.) This adhoc appointment will not confer any title/claim for regular appointment, seniority, promotion either in this grade and her services are liable to be terminated during the extended adhoc period or till regular appointment is made whichever is earlier, without any notice if the above terms and conditions are acceptable to her she may report for duty immediately and not later than....."

Subsequently, appointments were made from time to time for regular vacancies. Though the applicants were not selected against the regular vacancies in 1999 etc. yet they were continued uninterrupted on ad hoc basis. Subsequently, the applicants were appointed in 2004 on regular basis. The appointment letter of one of the applicants on regular basis is extracted below:-

"Subject: Protection of pay of Ms.Elsy Jacob (Nee Abraham), Sister Grade-II, N.S.Centre, AIIMS.

Consequent on the appointment of Ms.Elsy Jacob to the post of Sister Grade-II on regular basis w.e.f. 15.12.2004 in the pay scale of Rs.5000-150-8000 vide OM No.F.1-14/2003. Estt.1 dated 10.12.2004 and with the approval of the Director, the pay of Ms. Elsy Jacob, Sister Grade-II has been protected as under:-

Pay as on 20.1.1997	=	Rs.5000/-
Pay as on 01.1.1998	=	Rs.5150/-
Pay as on 01.1.1999	=	Rs.5300/-
Pay as on 01.1.2000	=	Rs.5450/-
Pay as on 01.1.2001	=	Rs.5600/-
Pay as on 01.1.2002	=	Rs.5750/-
Pay as on 01.1.2003	=	Rs.5900/-
Pay as on 01.1.2004	=	Rs.6050/-
Pay as on 15.12.2004	=	Rs.6050/- Regular
Pay as on 01.1.2005	=	Rs.6200/-

She will draw her next increment on the anniversary date, if otherwise admissible/permissible under the rules."

From the perusal of the orders of appointment on temporary basis and on regular basis, it is crystal clear that the applicants were appointed in a pay scale and they were given increments every year and on regular appointment pay protection was given to them; and pay was fixed at a higher level than the entry level after their regular appointment and in a meeting of Nursing Union with the Director of respondent-AIIMS held on 18.01.2014 it was informed that the period of service rendered by the applicants on ad hoc basis followed by regular appointment would be counted for pensionary benefits, allotment of accommodation etc. but the same is not counted as qualifying service for voluntary retirement and for purposes of seniority and promotion. In view of the above facts, counsel for the applicants confined his prayers only with respect to prayer D and E regarding counting of the services rendered by the applicants on ad-hoc basis for fixation of seniority and also to consider them to promotion in Sister Grade-1 as per the RRs.

4. In support of his contention, counsel for the applicants relied upon the following judgments:-

- (1) **Direct Recruitment Class II Engineering Officers' Association Vs. State of Maharashtra and Ors** (1990) 2 SCC 715)
- (2) **S.Sumnyan and Others Vs. Limi Niri and Others** (2010) 6 SCC 791).
- (3) **Rudra Kumar Sain and Others Vs. Union of India and Others** (2000)8 SCC 25)
- (4) **Kuldeep Chand Sharma and another Vs. Delhi Administration and another** (C.W.No.778 of 1997) Delhi High Court
- (5) CAT (Mumbai) order in **Dr. Pravinkumar Ramji Anjani Vs. Union of India and Ors.** (OA 458/2011)."

5. The counsel for the respondents vehemently and strenuously contended that the applicants were appointed only on ad hoc basis and from time to time regular appointments were made by calling for advertisement, yet the applicants did not qualify for regular appointment in 1999 etc. and they qualified only in 2004 as such their services on adhoc appointment cannot be counted for purposes of seniority and for further promotion in view of the Government of India instructions. In the counter reply also the respondents have stated accordingly. The relevant portion of the counter is extracted below:-

“(x). It is submitted that Mrs. Elsy Jacob has been appointed to Sister Grade-II on Adhoc basis in the year 1977. In the year 1999 a selection process for the post of Sister Grade-II had been initiated to fill up the same on regular basis. The interview for the post of Sister Grade-II had been held on 19.04.1999 and the selection Committee recommended total 500 candidates. Out of 500 candidates, the offer of appointment was made for Sr. No.1 to 252. The offer of appointment has not been issued to her due to the fact that she was at Sr.No. 267. Further, in the year 2004 the application were invited amongst the eligible departmental employee for the post of Sister Grade-II. The interview for the post of Sister Grade-II was held on 23.08.2004 and the selection committee find her suitable for appointment to the post of Sister Grade-II. Accordingly, with the approval of the Competent Authority Ms Elsy was offered the post of Sister Grade-II on regular basis vide office Memorandum No. 1-14/2003-Estt.dated 10.12.2004 and she joined the post of Sister Grade-II on regular basis on 15.12.2004. As per Govt. of India instruction the seniority of Adhoc service is not counted for the purpose of seniority and promotion.”

6. Though usually the seniority of an employee will be counted only from the date of his appointment as per Recruitment Rules, but, however, in view of the peculiar facts of this case, namely, that the applicants were appointed after an interview by a competent authority and from the

perusal of initial appointment letter, it is clear that they were appointed in a pay scale and they were given increments every year though their initial appointment was only for 3 months against the leave vacancies etc. They were continued uninterruptedly and though they were not selected in regular appointment process earlier to 2004, yet they were continued on ad hoc basis and on their appointment on regular basis their pay was fixed not at entry level but after taking into account all the increments they have earned right from their initial appointment on adhoc basis. From the proceedings of the meeting held on 18.01.2014, it is seen that the period of their adhoc service was counted for pensionary benefits and for allotment of accommodation and in this case the private respondents, who would be effected by granting them seniority by counting their adhoc service towards the seniority, were impleaded as private respondents and they were served and yet they have not entered appearance in this case. In view of the law laid down by the Hon'ble Supreme Court referred to above by the counsel for the applicants, we are of the view that the applicants are entitled for a direction to the respondents to count the services rendered by the applicants on ad hoc basis before their regular appointment in 2004 in fixing their seniority and promotion to higher grade etc.

7. Accordingly, the OA is allowed with respect to prayer D and E and all consequential benefits. No order as to costs.

(A.K.Bishnoi)
Member (A)

(S.N.Terdal)
Member (J)

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