

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 782 of 2017 (SB)

Mrs. Esther Sudhir Joseph,
Aged about 57 years,
Occ. Nursing Superintendent Grade-I,
(Govt. Medical College & Hospital), R/o 647,
Canal Road, Giripeth, Nagpur-10.

Applicant.

Versus

- 1) The Secretary,
Medical Education Department,
Mantralaya, Mumbai-32.
- 2) The Maharashtra Public Service
Commission, Mumbai.
- 3) The Director,
Medical Education & Research,
State of Maharashtra, Mumbai.

Respondents

Shri S.M. Khan, Advocate for the applicant.

Shri S.A. Sainis, learned P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 4th day of July,2018)

Heard Shri S.M. Khan, learned counsel for the
applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. The applicant was working on the post of Matron, Class-II (Grade-I) at the time of filing of this O.A. and during pendency of the O.A., she got retired on superannuation on the said post.

3. The applicant was selected by the MPSC and was appointed as Matron Class-II (Grade-III) on 17/02/1990 and she had worked in the department for 26 years and w.e.f. 09/02/2010. Lastly she was holding the post of Matron, Class-II, Grade-I. The post of Superintendent of Nursing Services (SNS), DMER, Mumbai got vacated w.e.f. 01/07/2017 as one Mrs. Ranjana Parashar got retired on 30/06/2017. The applicant being the senior most made representations on 03/01/2017, 08/05/2017 and 09/08/2017 requesting that she may be promoted and posted on the post of Superintendent of Nursing Services. The concerned HODs/ Directors have also recommended her claim for the said post vide communications dated 03/01/2017, 09/05/2017 and 29/06/2017. However, her claim was not considered.

4. The applicant has therefore prayed for a direction to regularise her posting as Superintendent of Nursing Services w.e.f. 01/07/2017 and to pay difference in salary and related benefits w.e.f. 01/07/2017.

5. The respondent nos. 1 and 3 has filed the reply-affidavit and it is stated that employee has no vested right for promotion nor has any right to be considered for promotion out of way. There are no rules or principle or obligation binding upon the respondents to give additional charge of the post to the senior most in the Feeder Cadre.

6. It is stated by the respondents that the post of Superintendent of Nursing Services is to be filled by way of nomination and the applicant may apply for such post as the post claimed by the applicant is a single post in the State.

7. The learned counsel for the applicant has invited my attention to the seniority list of 2014 in respect of Matron. It seems that one Mrs. Ranjana Parashar stands at sr.no.1, whereas, the applicant stands at sr.no.2. Mrs. Ranjana Parashar, however, got retired on 30/06/2017 and before her retirement she was promoted to the post claimed by the applicant. In such circumstances, naturally after retirement of Mrs. Ranjana Parashar, the applicant stood at sr.no.1.

8. The learned counsel for the applicant also invited my attention to the Judgment in O.A. Nos. 549&649 of 2015 by the Maharashtra Administrative Tribunal, Bench at Mumbai dated

24/02/2016. I have perused the said Judgment (Annex-A-6) at P.B. page nos. 16 to 30 (both inclusive). In the said O.A. Smt. Ranjana Parashar claimed promotion to the post of Superintendent of Nursing Services, Class-I on regular basis. It seems that Smt. Ranjana Parashar was earlier promoted on Ad-hoc basis to the said post, but consequently she was reverted and the respondents were directed to restore the promotional post of Smt. Ranjana Parashar. In that case also Smt. Ranjana Parashar stood at sr.no.1 in the seniority list and it was the case of the respondents that they want to fill up that post by nomination. In para nos. 10 to 12 it has been observed by this Tribunal as under:-

“(10) The contents of the office note that the promotion to be given was temporary and the regular appointment should have been given to the direct appointee was not there in the order of the Hon’ble Chairman. The same fact has been repeated in para 5 of the office note. Later on a copy of the minutes of the DPC dated 30/04/2013 came to be tendered which ultimately mentioned in the last para of page 2 (unnumbered) as follows:-

“I nj in gs, dkdh in vl Y; keGso vf/kl fodk oxZ1] Jskh 1 ; k i nkp; k tSBrd phud kj i Fke dkdhkoj Jherh i kjk'kj ½Hk-t-c-½ o nd & k dkdhkoj Jherh tkl Q] vf/kl fodk oxZ2] Jskh 1 g; k i k= menokj vkgr- r l p fnukad 15@10@2009 jksth >kyv; k foHkxh; inkburtp; k cBdhut kj Jherh i kjk'kj ; kpk vf/kf{kdh} 'kplqkk l ok oxZ 1 ; k inkoj inkburhclcr fopkj u dV; keGsR; kuh egkj'V' izkkI dh; U; k; kf/kdj .k] epbz [kMi hB vlgxkcln ; fkselG vtZdz3@2010 nk[ky dsk- l nj vtldj fnukad 30@09@2011 jksth

I pko.kh >kyh- I nj I pko.khe/; s eW U; k; ky; kus Jherh ijk'kj ; kph fnuad 15@09@2011 jksth >ky; k foHkkxh; i nkturh I fertP; k cBdir ik=rk ri kl .; kr vkyh vl Y; kus rl p vf/kf{kdk] 'kp/qkk I ok ox&1 gs in fjDr vl Y; keGs R; kulk vks'kP; k fnuadki kl u Eg.ktp fnuad 30@09@2011 i kl u nku efgU; kr i nkturh ns; kckcr t#j rh dk; bkgd djkoh] vl svlksk fnysvkg- Jherh ijk'kj g; k I okts'B vl Y; kus rl p R; kP; k xki uh; vgoxykph irokjh ^v v'kh vl u R; kpk vf/kl fodk ox&2] Jskh 1 ; k i nojhy vuttko 5 o''kka \$kk vf/kd vl Y; kus R; kulk 'kp/qkk I ok ox&1 ; k i noj rkrig rh i nkturh ns; kph f'kQkj I fertusdsh vkg***

(11) Now, it was in the above background that it was found fit by the respondents by an order of 29/07/2015 Exhibit-A page-22 in O.A.No.649 of 2015 to cancel the promotion given to the applicant and to revert her to the original post which she had been promoted from. That order is impugned in O.A.No.649 of 2015.

*(12) Having discussed the facts in extenso we do not think any detailed discussion is really necessary. It is very clear that the course of action to be adopted in case of the applicant was and had to be fully governed by the unchallenged order of the Hon'ble Chairman in O.A.No.03/2010. There was awareness to this aspect of the matter in the DPC meeting and even the earlier orders that came to be issued. It is no doubt true that on principles the Government may have got powers to decide the source which the appointment should be made from viz. Promotion or nomination. There is no law or rule as such that makes it imperative to the Government to necessarily adopt some kind of a rotation as it were in the context of the priority to be given either to the promotees or to the nominees. It was in support of this principle that our attention was invited by Mr. Khaire to **NILANGSU BHUSAN BASU VERSUS DEB K. SINHA AND OTHERS (2001) 8 SCC,119**. There an argument*

was advanced that if a post had to be filled up from either of the two sources then one source (promotion) should take precedence over the order. That argument was not accepted. This judgment of the Hon'ble Supreme Court was followed by this Tribunal in O.A.No.544 of 2009 (Shri Suhas Ramchandra Bagde & Ano. Versus The State of Maharashtra & Ors., 18.04.2011). As already mentioned above the Government's power and rights etc. cannot be disputed. However, in the present facts there was an order of this tribunal which became final conclusive and binding on all including this Tribunal itself and, therefore, there was no other go but to give effect thereto, implement it as it were and that ought to have been done without any let and hindrance. It is not possible for us to comprehend as to why and from where support could be had to act to the contrary despite there being a clear mandate in O.A.No.03/2010."

9. Admittedly in this case the post was lying vacant, the applicant was senior most and no process was initiated and even if such process was initiated, for argument sake, or was intended to be initiated, it could not be completed till the applicant got retired. There is nothing on the record to show that the applicant was not meritorious to be considered for promotion and her claim was also recommended, hence the claim of the applicant should have been considered or there was absolutely no reason as to why the respondents did not give thought to the representations

filed by the applicant. In view of the aforesaid circumstances, I pass the following order :-

ORDER

The O.A. is partly allowed. The respondents are directed to take decision on the representations filed by the applicant for promotion to the post of Superintendent of Nursing Services (SNS), DMER, Mumbai w.e.f. 01/07/2017 within three months from the date of this order. If the applicant is otherwise found fit for the said post, she may be given deemed date of promotion to such post w.e.f. 01/07/2017 since the applicant has already retired on superannuation. It is, however, made clear that the applicant will not be entitled to any difference in the salary of the promotional post. However, if it is found that she is fit for promotion, she may be given benefit of such promotional post for pensionary purposes. No order as to costs.

Dated :- 04/07/2018.

**(J.D. Kulkarni)
Vice-Chairman (J).**