

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATIONS NO.549 & 649 OF 2015**

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**ORIGINAL APPLICATION NO.549 OF 2015**

**DISTRICT : MUMBAI**

Smt. Ranjana Sanjay Parashar, )  
Age 57 years, Superintendent Nursing Services, )  
Office of the Directorate of Medical Education )  
and Research, St. George Hospital Campus, )  
Mumbai-1 R/o Matrons' Residence, )  
Cama Hospital Campus, Mumbai-1 )  
Address for service of notice: )  
Shri A.V. Bandiwadekar, Advocate, )  
9, Ram Kripa, Lt. Dilip Gupte Marg, Mahim, )  
Mumbai 400016 )..Applicant

Versus

1. The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Medical Education & Drugs Department )  
G.R. Hospital, New Building, L.T. Marg, )  
Mumbai-1 )



2. The Director of Medical Education and )  
 Research, Government Dental College )  
 and Hospital Building, 4<sup>th</sup> floor, )  
 St. George Hospital Campus, Mumbai-1 )
3. Smt. Kardak (Chatase), )  
 Matron, Class II, Grade III, )  
 By way of Additional Charge )  
 Now posted as Superintendent Nursing )  
 Services in place of the applicant in the )  
 office of the Respondent No.2 )..Respondents

**WITH**

**ORIGINAL APPLICATION NO.649 OF 2015**

**DISTRICT : MUMBAI**

Smt. Ranjana Sanjay Parashar, )  
 Age 57 years, Superintendent Nursing Services, )  
 Office of the Directorate of Medical Education )  
 and Research, St. George Hospital Campus, )  
 Mumbai-1 R/o Matrons' Residence, )  
 Cama Hospital Campus, Mumbai-1 )..Applicant

Versus



1. The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Medical Education & Drugs Department )  
G.R. Hospital, New Building, L.T. Marg, )  
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2. The Director of Medical Education and )  
Research, Government Dental College )  
and Hospital Building, 4<sup>th</sup> floor, )  
St. George Hospital Campus, Mumbai-1 )
3. Smt. Shobha Jagdish Kardak (Chatase), )  
Matron, Class II, Grade III, )  
Now posted as Superintendent Nursing )  
Services by way of Additional Charge )  
in the office of the Director of Medical )  
Education & Research, )  
St. George Hospital Campus, Mumbai-1 )  
R/o Matrons' Quarters, B.J.J. Hospital )  
Campus, Mumbai-8 )
4. The State of Maharashtra, )  
Through Principal Secretary, )  
General Administration Department, )  
Mantralaya, Mumbai 400032 )..Respondents



Shri A.V. Bandiwadekar – Advocate for the Applicant  
Shri D.B. Khaire – Special Counsel with  
Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Rajiv Agarwal, Vice-Chairman  
R.B. Malik, Member (J)  
DATE : 24<sup>th</sup> February, 2016  
PER : R.B. Malik, Member (J)

### **J U D G M E N T**

1. The applicant even having initially not been promoted in full compliance with an earlier order of the Bench of the then Hon'ble Chairman in OA No.3 of 2010 (Mrs. Ranjana Sanjay Parashar Versus The State of Maharashtra, 30.9.2011) to the post of Superintendent Nursing services came to be reverted by the impugned order. She brought these two OAs basically aimed at seeking relief which is obvious and, therefore, these two OAs can be and are being disposed off by this common judgment.

2. The applicant came to be appointed as Staff Nurse on 1.6.1981. She then made progress and came to be appointed as Sister Tutor, Matron Class-II Grade-III, Matron, Class-II



Grade-II, Class-II Grade-I. She was actually promoted to the post of Superintendent Nursing Services to be hereinafter described as the said promotional post. But the whole thing was not so simple as it were. The applicant brought OA No.3/10 above referred to and the Bench of the then Hon'ble Chairman vide the order dated 30.9.2011 made an order which is of central importance and, therefore, needs to be fully reproduced herein below:

“Heard Shri A.V. Bandiwadekar with Shri B.A. Bandiwadekar, the learned Advocates for the Applicant and Shri N.K. Rajpurohit, the learned Presenting Officer for the Respondents.

2. By the above Original Application the Applicant is seeking promotion to the post of Superintendent of Nursing Services as the Applicant was already found fit and eligible for being promoted by the D.P.C. twice in the year 2009.

3. Mr. Bandiwadekar, the learned Counsel appearing on behalf of the Applicant pointed out that the D.P.C. found the applicant to be fit and eligible to be promoted to the post of Superintendent (Nursing) Services at its meeting held on 16.10.2009 and 27.10.2009. Mr. Bandiwadekar, the learned Counsel for the Applicant pointed out that the



Respondent No.2, who was already holding the post of Superintendent, Nursing Services was reverted back on the ground that the Respondent No.2 had failed to produce Caste Validity Certificate within the time prescribed. However, subsequently, as the Respondent No.2 produced the Caste Validity Certificate, she was again brought back to the post of Superintendent, Nursing Services. Mr. Bandiwadekar, the learned Counsel pointed out that Respondent No.2 had recently retired from government service on 30.06.2011 and the said post of Superintendent, Nursing Services is lying vacant. Hence he prayed that the Applicant should be promoted to the said post of Superintendent, Nursing Services as per the recommendation of the D.P.C.

4. Shri N.K. Rajpurohit, the learned Presenting Officer appearing on behalf of the Respondents sought to contend that the Applicant though was found eligible by D.P.C. on 16.10.2009 and 27.10.2009 the Respondents are not bound to accept the same. Mr. Rajpurohit, however, stated that the Respondent No.2 had retired from the post of Superintendent, Nursing Services on 30.06.2011.

5. After hearing Shri A.V. Bandiwadekar, the learned Counsel for the Applicant and Shri N.K. Rajpurohit, the learned Presenting Officer for the Respondents, we find

A handwritten signature in black ink, consisting of a stylized 'B' followed by a horizontal line.

that the Applicant was already found fit and eligible by the D.P.C. at its meeting held on 16.10.2009 and 27.10.2009.

6. Having regard to the aforesaid facts and circumstances, the said post of Superintendent, Nursing Services is still lying vacant, we direct the Respondents to consider the case of the Applicant for promotion to the post of Superintendent, Nursing Services within a period of two months from today and pass an appropriate order. Original Application stands disposed of accordingly, however, with no order as to costs.

Sd/-  
(A.P. Sinha)  
Member (A)

Sd/-  
(Dr. S. Radhakrishnan, J.)  
Chairman"

3. The order entirely reproduced is quite clearly capable of being comprehended. It was not challenged. It has become final and binding on all including us in this Bench of equivalent jurisdiction. We shall be presently pointing out that for the reasons which are really incomprehensible, in the first place the respondents have with impunity defied the said order by not complying therewith within the time prescribed without showing the courtesy to at least try and seek extension of time from this Tribunal by way of a Miscellaneous Application. Further the respondents apparently saw something in that order of this Tribunal which was not there and in the process



the respondents practically rewrote the order. It must be very clearly understood that as far as this particular OA is concerned the earlier order was made after hearing both the sides and unless it was challenged, which it was not, and got overturned all concerned were bound thereby. No reasons have been mentioned by the respondents as to why they could not implement the order phrased in a simple language.

4. Now in the above background even we do not have to do anything more than noting the salient features of that particular order. It would appear from that order that the earlier incumbent retired on 30.6.2011 and the said promotional post was rendered vacant. The applicant had already been found fit and eligible by the DPC at its meetings dated 16.10.2009 and 27.10.2009 and then directions were given to the respondents to consider the case of the applicant for promotion to the said promotional post within a period of 2 months from 30.9.2011 and to pass appropriate order. In our view the whole thing was so simple as that and at least in this particular matter the order made by this Tribunal would have to be understood in the backdrop of the DPC having found the applicant fit for promotion which is what was mentioned in the order of the Tribunal itself.

5. Now in the above background we find from Exhibit C page 33 of the paper book that the applicant came to be given





additional charge in addition to her own charge on 12.7.2011 which of course was before the above order of the Tribunal. This order was apparently recalled by the order dated 29.6.2015 which is at Exhibit A page 14 of the paper book and thereby the respondent no.3 to OA No.549 of 2015 was given that additional charge and in that OA No.549 of 2015 the applicant sought the relief of quashing and setting aside of that impugned order.

6. Proceeding further we find that vide Exhibit C page 36 dated 18.1.2014 which was much after the date on which as per the order of the Hon'ble Chairman the promotion should have been given, the applicant was actually promoted. The said order in its opening paragraph refers to OA No.3/10 and then the unnumbered second para reads as follows:

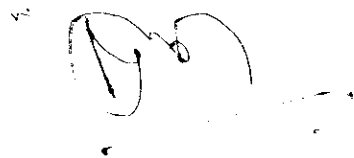
“ विभागीय पदोन्नती समितीने अधिक्षिका, सुश्रुषा सेवा, वर्ग-१ या पदावरील पदोन्नतीसाठी श्रीमती रंजना संजय पाराशर यांना पात्र ठरविलेले आहे. श्रीमती रंजना संजय पाराशर, अधिसेविका (वर्ग-२, श्रेणी-१), यांना महाराष्ट्र लोकसेवा आयोगाच्या मान्यतेच्या अधीन राहून तात्पुरत्या स्वरूपात अधिक्षिका, (शुश्रुषा सेवा) वर्ग-१ या पदावर पदोन्नती देण्यास शासन या आदेशाद्वारे मंजूरी देत आहे.”



7. By the order Exhibit E dated 21.1.2014 it was noted that in view of that promotion the additional charge given to her on 12.7.2011 came to an end ipso facto. Then there is an order from Dean, Sassoon Hospital, Pune which also indicates that the promotion to the applicant was subject to MPSC approval but it was temporary (तात्पुरत्या स्वरूपात पदोन्नती देण्यात आली आहे ) and it was thereafter that in a series of orders thereafter the burden of the song of the respondents was that the promotion given to the applicant was temporary and all this was despite the clear orders made by the Hon'ble Chairman of this Tribunal in OA No.3/2010.

8. A perusal of the affidavit in reply filed by one Shri Shankar Dattatraya Dhage, Under Secretary in the office of Medical Education and Drugs Department with repetitions galore would show that there was an assertion of right of the respondents to give the promotion implying probably that they may not to give it also. Further according to the respondents the said promotional post is to be filled up either by promotion or by nomination. This time they decided to fill it up with a direct nominee rather than a promotee. In that behalf they sought to rely upon a GR from Medical Education and Drugs Department of 9.3.1997.

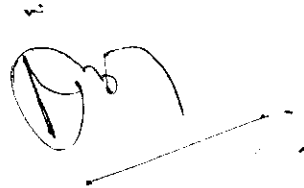
9. To complete the discussion however it needs to be noted that there is an office note Exhibit R-1 page 64-65 of the



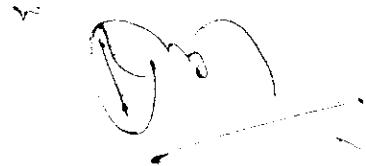
paper book. Reading 'j' and 'n' thereof it would appear that the case of the applicant for promotion in view of the order in OA No.3/2010 was placed before the DPC. 'n' needs to be reproduced:

“ सदर प्रकरणी मा. प्राधिकरणाने पारित केलेल्या आदेशाचे पालन न केल्यास अवमान याचिका दाखल करण्यास श्रीमती पाराशर यांनी शासनास केलेल्या विनंतीच्या अनुषंगाने श्रीमती पाराशर यांना तात्पुरत्या स्वरूपात आयोगाकडून नामनिर्देशनाद्वारे पात्र उमेदवार प्राप्त होईपावेतो तसेच आयोगाच्या मान्यतेच्या अधिन राहून शासन निर्णय, दि.१८/०१/२०१४ च्या अन्वये अधिका, सुश्रुषा सेवा वर्ग-१ या पदावर पदोन्नती देण्यात आलेली आहे.”

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 30.4.2013 came to be tendered which ultimately mentioned in the last para of page 2 (unnumbered) as follows:

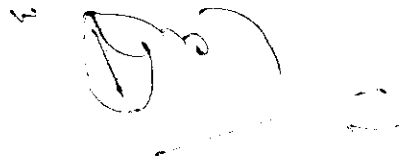


“सदर पद हे एकाकी पद असल्यामुळे व अधिसेविका वर्ग १ श्रेणी १ या पदाच्या ज्येष्ठतासूचीनुसार प्राम क्रमांकावर श्रीमती पाराशर (भ.ज.ब.) व दुसऱ्या क्रमांकावर श्रीमती जोसेफ, अधिसेविका वर्ग २ श्रेणी १ हया पात्र उमेदवार आहेत तसेच दि. १५.१०.२००९ रोजी झालेल्या विभागीय पदोन्नतीच्या बैठकीनुसार श्रीमती पाराशर यांचा अधिका, शुश्रूषा सेवा वर्ग १ या पदावर पदोन्नतीबाबत विचार न केल्यामुळे त्यांनी महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई खंडपीठ औरंगाबाद येथे मूळ अर्ज क्र. ३/२०१० दाखल केला. सदर अर्जावर दि. ३०.०९.२०११ रोजी सुनावणी झाली. सदर सुनावणीमध्ये मॅट न्यायालयाने श्रीमती पाराशर यांची दि. १५.०९.२०११ रोजी झालेल्या विभागीय पदोन्नती समितीच्या बैठकीत पात्रता तपासण्यात आली असल्याने तसेच अधिका, शुश्रूषा सेवा वर्ग-१ हे पद रिक्त असल्यामुळे त्यांना आदेशाच्या दिनांकापासून म्हणजेच दि. ३०.०९.२०११ पासून दोन महिन्यात पदोन्नती देण्याबाबत जरूर ती कार्यवाही करावी, असे आदेश दिलेले आहेत. श्रीमती पाराशर हया सेवाज्येष्ठ असल्याने तसेच त्यांच्या गोंपनीय अहवालाची प्रतवारी “अ” अशी असून त्यांचा अधिसेविका वर्ग-२ श्रेणी १ या पदावरील अनुभव ५ वर्षापेक्षा अधिक असल्याने त्यांना शुश्रूषा सेवा वर्ग १ या पदावर तात्पुरती पदोन्नती देण्याची शिफारस समितीने केली आहे.”



11. Now, it was in the above background that it was found fit by the respondents by an order of 29.7.2015 Exhibit A page 22 in OA 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 OA 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 OA No.3/2010. 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 **NILANGSHU 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 other. That argument was not accepted. This judgment of the Hon'ble Supreme Court was followed by this Tribunal in **OA No.544 of 2009 (Shri Suhas Ramchandra Bagde & Anr. Versus The State of Maharashtra & Ors., 18.4.2011)**. 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 OA No.3/2010.

13. Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri D.B. Khaire, the learned Special Counsel for the Respondents advanced their submissions consistently with the brief that they held. In effect we have considered the same. We make it clear that ultimately whatever has to be done including MPSC's approval, if any, has got to be as ordained by the Hon'ble Chairman in OA No.3/2010. The respondents do not have any capacity or power to do anything that would dilute the authority of that particular order. There is no source higher than the said order of this Tribunal which has been commended before us. That being the state of affairs there is



no other go but to quash and set aside the impugned orders although as far as the OA No.549/15 is concerned once the applicant gets regular promotion for all practical purposes that OA will get concluded with OA No.649/15. The private respondent in OA No.549/15 was duly served but she did not appear before us.

14. For the foregoing the orders herein impugned are quashed and set aside. The respondents are directed to restore the promotional post to the applicant strictly in accordance with the order in OA No.3/2010 above referred to and then to treat her as Superintendent Nursing Services Class I on regular basis as hereinabove directed. The applicant would be entitled to continuity of service to the post of Superintendent Nursing Services as a consequence to the main direction and all other service benefits except the difference in emoluments. The compliance be made within six weeks from today i.e. 24.2.2016 (by 7.4.2016). OA No.649 of 2015 is allowed to this extent and OA No.549 of 2015 gets concluded therewith. No order as to costs.

Sd/-

**(R.B. Malik)**  
**Member (J)**  
**24.2.2016**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**24.2.2016**

Dictation taken by: S.G. Jawalkar.