
(2008) 01 P&H CK 0132
In the Punjab And Haryana At Chandigarh

Chandigarh Administration and Another	APPELLANT
Vs	
Anita Kumari and Others	RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226, 227

Citation : (2008) 01 P&H CK 0132

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mohinder Pal, J.—In this writ petition filed under Articles 226/227 of the Constitution of India, the prayer made is to issue a writ in the nature of certiorari quashing the order dated July 01, 2002 (Annexure P-15) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'the Tribunal') whereby Original Application filed u/s 19 of the Administrative Tribunals Act, 1985, by Anita Kumari wife of Jasbir Singh Kherra, Navjot Kaur wife of Bhupinder Singh, Anita Kumari wife of Jitinder Kumar and Satnam Kaur daughter of Atma Singh (respondents Nos. 1 to 4), who were working as Staff Nurses in the Government Medical College & Hospital, Sector 32, Chandigarh - respondent No. 2 (hereinafter referred to as the petitioner-College), was allowed and the petitioners were directed to reconsider their case for promotion to the posts of Nursing Sisters.

2. The facts of this case, as can be gathered from the writ petition, are that respondent No. 1 Anita Kumari, whose date of birth is September 05, 1971, is having B.Sc Nursing Degree and has an experience of three months in Punjab Medical Institute of Nursing & Hospital, Chandigarh, and from December 05, 1994 to January 11, 1996 at Post Graduate Institute of Medical Education and Research, Chandigarh (hereinafter referred to as the 'P.G.I'). Respondent No. 2 Navjot Kaur, whose date of birth is September 13, 1971, has passed B.Sc Nursing

Degree from P.G.I, Chandigarh and has experience as Clinical Instructor from June 15, 1994 to September 24, 1996 in Punjab Medical Institute of Nursing, Jalandhar. Respondent No. 3 Anita Kumari, whose date of birth is January 09, 1968, had done Diploma in General Nursing in 1988 and Diploma in Mid Wifery in the year 1993. She has an experience from July 16, 1989 to August 06, 1991 in Shri Sanatam Dharam Mandir Dal (Regd.), Eye & Maternity, Children & Family Welfare Hospital, Karnal, and from August 10, 1991 to March 28, 1996 at Post Graduate Institute of Medical Sciences, Rohtak. Respondent No. 4 Satnam Kaur, whose date of birth is April 14, 1969, did her B.Sc Nursing from P.G.I, Chandigarh, and was awarded the aforesaid degree by the Panjab University, Chandigarh, in the year 1994. Thereafter, she competed for selection as Staff Nurse in the petitioner- College in an open competition and having been selected as such, joined the petitioner-College.

3. Respondent No. 1 was appointed as Staff Nurse in petitioner-College on January 11, 1996 against a temporary post on a probation period of two years. She joined as such on January 11, 1996. Similarly, respondents Nos. 2, 3 and 4 were appointed as Staff Nurses against temporary posts on probation for a period of two years. They all joined on their respective posts with effect from September 26, 1996, March 29, 1996 and January 16, 1996, respectively. Respondents Nos. 1 to completed their probation period successfully and a formal order dated December 23, 1998 in this regard was issued by the petitioner-College. It is averred in the writ petition that as per rules known as Punjab Medical & Health Department Nursing Superintendents, Matrons, Sisters, Tutors, Public Health Nurses (Teaching), Nursing Sisters, Public Health Nurses, Staff Nurses and Male Nurses (State Service Class III) Rules, 1964 (hereinafter referred to as 'the 1964 Rules'), which are applicable in this case, a Staff Nurse having qualification of Diploma and registered with Nursing Council with five years experience as such is eligible for promotion to the Post of Nursing Sister whereas in the case of those Staff Nurses having qualification of B.Sc.

4. Nursing i.e. Degree Holders, the requirement of experience is two years.

5. It is the case of the petitioners that the petitioner- College has 62 sanctioned posts of Nursing Sisters and out of these only 35 posts were lying vacant at the relevant time. Since suitable candidates were not available for promotion to the posts of Nursing Sisters, it was decided to fill up these posts on deputation/transfer basis. Accordingly, the petitioner-College addressed Circular dated April 19, 1999 (Annexure P-5) to the Director, P.G.I, Director Health Services, Union Territory, Chandigarh, as also to the Directors of Health Services, Punjab, Haryana and Himachal Pradesh etc. whereby 23 vacant posts of Nursing Sisters were sought to be filled on deputation/transfer basis. Respondents Nos. 1 to 4 represented against the Circular dated April 19, 1999 (Annexure P-5) by way of filing representations. Request of respondents Nos. 1 to 4 was rejected by the competent authority. The petitioner-College issued another Circular dated August 06, 1999 (Annexure P-8) pointing out that some vacancies of Nursing Sisters

were to be filled up from amongst the eligible Staff Nurses working in the petitioner- College. Respondents Nos. 1 to 4, along with other Staff Nurses, applied in the prescribed proforma and they were directed to appear for Interview which was to be held on October 06, 1999.

6. On the date of interview, respondents Nos. 1 to 4, along with 52 candidates, appeared before the Selection Committee and out of them 19 candidates were found suitable and were offered appointment on deputation/transfer basis by the petitioner- College as a stop gap arrangement. Three candidates were selected by way of direct recruitment from the Staff Nurses already working with the petitioner-College. Respondents Nos. 1 to 4 having failed in the selection, approached the Tribunal by way of filing Original Application No. 1026/CH/1999, which was allowed vide impugned order dated July 01, 2002 (Annexure P-15) and the action of the petitioners in not promoting them to the post of Nursing Sister was declared as illegal and the petitioners were directed to re-consider their case for promotion to the posts of Nursing Sisters and in case they were found fit, grant them promotion with all the consequential benefits including arrears of pay, seniority etc.

7. In the written statement filed on behalf of respondents Nos. 1 to 3, it has been stated that the main ground of challenge to impugned order made by the petitioners that the learned Tribunal has embarked a journey beyond its competency by examining the suitability of the respondents despite the fact that the Selection Committee had declared them unsuitable, is not tenable. It has been averred that the Selection Committee had declared the respondents unsuitable on purely alien and non-existent material. It has been further stated that as per Rule 9 of the 1964 Rules, which are applicable in this case, promotion was to be resorted to first and only then resort could be had to the direct recruitment. In any case, there is no provision under the 1964 Rules to fill up the posts of Nursing Sisters by way of deputation or transfer basis. It is the further case of the respondents that if they were found not suitable, then the only recourse left to the petitioners was to resort to direct recruitment for filling up the posts of Nursing Sisters, which would also have afforded an opportunity to them to compete for direct recruitment too. It has been further averred that as and when a promotion in terms of seniority-cum-merit is to take place, a person shall have a right to be promoted so long as he is not held to be unfit. The element of 'selection' or 'merit' are not the foundation of such promotions, rather mere suitability based upon seniority-cum-merit is required to be adopted for the same. In the instant case, vacancies were more than the eligible departmental candidates, therefore, there was absolutely no question or occasion either to hold interviews or to adopt the 'selection process' while making promotions.

8. We have heard Mr. Deepak Sharma, Advocate, appearing on behalf of the petitioners and Mr. Balram Gupta, Senior Advocate, assisted by Mr. Pankaj Sharma, Advocate, appearing for the respondents, and have gone through the

records of the case.

9. It is not in dispute now that respondents Nos. 1 to 4 were interviewed by the petitioner-College for the posts of Nursing Sisters on October 06, 1999, along with other Staff Nurses, after considering their qualifications and experience as Staff Nurses in the petitioner-College and before joining it. However, they were not found suitable by the Selection Committee in its meeting held on October 06, 1999.

10. On September 30, 2002, the following order was passed by this Court:

Present: Shri Rajiv Atma Ram, Senior Advocate, with Mr. Deepak Sharma, Advocate, for the petitioners.

Heard Shri Rajiv Atma Ram and perused the record.

Learned Counsel is directed to produce the record of the Selection Committee to substantiate the assertion contained in the written statement filed on behalf of the petitioners before the Tribunal that respondents Nos. 1 to 4 had been adjudged unsuitable for promotion.

11. In pursuance of the above direction, proceedings of the Selection Committee meeting for the selection of Nursing Sisters held on 26th, 27th & 6th October, 1999 under the chairmanship of the Director Principal of the petitioner-College were produced. Its perusal shows that out of nine departmental candidates who had appeared for the posts of Nursing Sisters, three, namely, Jaspal Kaur, Amanveer Kaur and Balwinder Kaur were selected. Jaspal Kaur is a Degree Holder whereas Amanveer Kaur and Balwinder Kaur are Diploma Holders. Out of respondents Nos. 1 to 4, three, namely, Anita Kumari (respondent No. 1), Navjot Kaur (respondent No. 2) and Satnam Kaur (respondent No. 4) are Degree Holders and Anita Kumari (respondent No. 3) is a Diploma Holder. However, one Annual Confidential Report each of Anita Kumari (respondent No. 1) and Anita Kumari (respondent No. 3) was 'Average'. As has been mentioned above, Staff Nurses, who were Diploma Holders and registered with Nursing Counsel, having five years' experience to their credit, were eligible for promotion to the post of Nursing Sister whereas in the case of Staff Nurses, who were Degree Holders, the requirement of experience was two years. Learned Counsel for the petitioners could not point out anything to show that respondents Nos. 1 to 4 did not have the required experience. The claim of respondents Nos. 1 to 4 for promotion to the posts of Nursing Sisters could not, thus, be rejected by taking the ground that they were not eligible. So far as one Annual Confidential Report each of Anita Kumari (respondent No. 1) and Anita Kumari (respondent No. 3) being graded as 'Average' is concerned, it is well settled that the Selection Committee considers Annual Confidential Reports of a number of years of the concerned candidate and after taking an overall view of the remarks given for all those years, an opinion is formed as to whether the candidate is fit or unfit for promotion. The candidate cannot be declared unfit for promotion merely on the basis of report of one year being graded as 'Average'. In the case of

Departmental Candidates for promotion to the posts of Nursing Sisters, the Selection Committee, in the interview, graded those who were to be selected as 'B' and those who were not to be selected as 'C'. All the three selected candidates, namely, Jaspal Kaur, Amanveer Kaur and Balwinder Kaur were graded as 'B' and respondents Nos. 1 to 4 along with two other candidates, namely, Anupama Khokhar and Poonam (Degree Holders), who were also not selected, were graded as 'C'. The Selection Committee did not deem it necessary to render any reasoning as to what were the basis for such like grading. Every candidate competing for some promotional post on the basis of qualifications and experiences gained by him/her, has a right to know where he/she lacked and the others who succeeded excelled. The Selection Committee which has been empowered by some rules to decide the fates of candidates appearing before it, is expected to treat all the candidates in a manner not only fair but appearing to be fair as well, which was not done in this case, as mentioned above. The grading has been done by the Selection Committee both at random and in tandem. No reason, whatsoever, was given as to how respondents Nos. 1 to 4 were not suitable for promotion to the posts of Nursing Sisters. It is significant to note here that Asha Rani Gupta, Pushpa Bains, Sarita Khanna and Veena Kumari Saini (mentioned at serial Nos. 05, 35, 41 and 67, respectively, of the list of candidates for the posts of Nursing Sisters through proper channel), who have been selected as Nursing Sisters by the Selection Committee, were each having one 'Average' Annual Confidential Report.

12. In view of the above, we do not find any illegality in the impugned order dated July 01, 2002 (Annexure P-15) passed by the Tribunal which may warrant interference by this Court in exercise of its writ jurisdiction. Hence, this writ petition is dismissed.

13. The Registry is directed to return the record of the Selection committee to Mr. Deepak Sharma, Advocate, representing the petitioners.