

IN THE KERALA ADMINISTRATIVE TRIBUNAL AT
THIRUVANANTHAPURAM

Present:

The Hon'ble Mr. Justice K. Balakrishnan Nair, Chairman
&
The Hon'ble Mr. Srungaram Pradeep Kumar Naidu, Member

Dated this the 29th of October 2014

OA-480/2014

Applicant(s):

- 1) Theresa Betty Ivan., aged 39 years, W/o. Pauly P K, Staff Nurse Grade I, General Hospital, Thalassery PIN 670101,,residing at Puthussery House, Nalukettu P.O.,Kannur,Kerala- 680308
mobile-9961810237
- 2) Mary V M,W/o. K V Stephen., aged 43 years,Staff Nurse Grade I, General Hospital, Thalassery PIN 670101,,Residing at Koorattukudy House,Azhakam P O., Mookkannoor, FISAT,,Ernakulam,Kerala - 683577
- 3) Bismy Joseph M, Aged 38 years, W/o. Binu Chacko.,,Staff Nurse Grade I, District Hospital, Thrikkandiyoor Post, Tirur PIN 676104,,Residing at Venattu House, Kuttichira.P.O., Kuttikad, ,Thrissur,Kerala - 680724
- 4) Ciji Varghese, W/o. Denny M A., aged 37 years,Staff Nurse Grade I, Community Health Centre, Kuttippuram, Malappuram PIN-679571,,Residing at Meledathu House, Annanadu P O., Chalakkudy,,Thrissur,Kerala - 680324
- 5) Bindu K R, W/o. Sunil Kumar K S.,, aged 38 years,Staff Nurse Grade I, Women & Children Hospital, Kozhikode PIN 673001,,Residing at Kunnathothu House Pampakuda P O.,Memuri,,Ernakulam,Kerala - 686667
- 6) Leena John, W/o. Davis K P., aged 42 years,Staff Nurse Grade I, Government General Hopital, Kozhikode PIN 673032,,Residing at Kalliathu Parambil House, Perambra P.O., Chalakkudy,,Thrissur,Kerala - 680689
- 7) Reji P Kuriakose, W/o. Libu Thomas., aged 38 years,Staff Nurse Grade I, Women & Children Health Hospital, Kozhikode PIN 673001,,Residing at Puthusseri Kudiyl House, Nellimattom P.O.,Kavalangad,,Ernakulam,Kerala - 686693

K. BALAKRISHNAN NAIR, CHAIRMAN

AND

S. PRADEEP KUMAR NAIDU, MEMBER

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OA. NO. 480 OF 2014

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DATED THIS THE 29TH DAY OF OCTOBER 2014

ORDER

K. BALAKRISHNAN NAIR, CHAIRMAN:

The applicants are Staff Nurses Grade I working in Kannur, Kozhikode, Palakkad and Malappuram Districts. They were recruited to the post of Staff Nurse Grade II in those Districts. When the Government revised the ratio between Staff Nurse Grade I and Grade II as 1:1, they were promoted as Staff Nurse Grade I by Annexure A1 order dated 21.8.2013. The Unit of Appointment for Staff Nurse Grade I is the State.

Promotions were ordered based on the State level seniority list of Staff Nurse Grade II. As per Annexure A1, Sl. Nos. 1 to 1327 in the latest seniority list were promoted. Going by the final rank list, they are persons having rank numbers between 1 and 2000. Among the persons between rank numbers 1 and 2000 in the final rank list, a few were not promoted either due to their absence from service or for other reasons. When rank Nos. 1 to 2000 were considered for promotion, only 1327 persons were available/eligible for promotion. The party-respondents herein were also

promoted by the very same order. They were recruited to the post of Staff Nurse Grade II in Trichur and Ernakulam Districts.

2. The applicants are natives of Trichur and Ernakulam Districts and on reaching the State cadre, they applied for transfer to their home Districts. When options were called for transfer of Staff Nurse Grade I, the applicants submitted their options. Annexure A2 is the list of optees for transfer to Trichur District and Annexure A3 is the list of optees for transfer to Ernakulam District. When the ratio was implemented District-wise, it was found that there were 92 excess Grade I Staff Nurses in Trichur District and 13 in Ernakulam District and they were transferred out by Annexure A4 order dated 18.12.2013. Respondents 8 to 107 are the persons who were transferred out by Annexure A4 from Trichur and Ernakulam Districts. Those respondents challenged their transfer under Annexure A4 before this Tribunal by filing O.A.No. 3008 of 2013 and connected cases. Those Original Applications were disposed of by this Tribunal directing the Government to consider the appeals filed by the incumbents concerned against their transfer from their home Districts. Pending disposal of their appeals, the applicants therein prayed for stay of their transfer. The same was declined by this Tribunal. The order of this Tribunal in O.A.No. 3008 of 2013 and connected cases is produced as Annexure R90(a). In that order it was found that Staff Nurse Grade I is a State level cadre and on application of the ratio, if they are found to be in excess in a District, they can be transferred anywhere in the State. As

mentioned earlier, the claim for interim relief was also declined, pending consideration of their appeals by the Government. The said order was challenged before the Hon'ble High Court and the Hon'ble High Court by Annexure A5 judgment dismissed the OP (KAT) filed against it. In the said judgment it was specifically found that the cadre of Grade I is a State cadre. In administrative exigency, to maintain the ratio, transfer can be ordered, it was held. The order declining to grant interim relief pending consideration of the appeals by the Government was also affirmed by the Division Bench of the Hon'ble High Court. In obedience to the direction of this Tribunal, the Government passed Annexure A6 order dated 21.2.2014. The Government declined to interfere with the transfer, but ordered that their claim for transfer back to their home Districts would be considered when vacancies arise as a result of promotion of Staff Nurse Grade I as Head Nurse, which would be ordered soon.

3. While so, the Director of Health Services issued Annexure A7 order dated 28.2.2014 cancelling Annexure A4 order dated 18.12.2013. Challenging Annexure A7 this O.A. was filed. While admitting the O.A., we passed an interim order directing that the claims of the applicants herein should also be considered while filling up the vacancies of Staff Nurse Grade I, arising out of promotion to the post of Head Nurse. When that order was allegedly not obeyed, a Contempt Petition was filed before this Tribunal. In purported implementation of the interim order of this Tribunal, and to avoid Contempt proceedings, all the applicants were

transferred to Ernakulam and Trichur Districts by Annexure A8 order dated 16.9.2014 by the Director of Health Services. 15

4. Soon thereafter the Government issued Annexure A9 order dated 24.9.2014 keeping in abeyance Annexure A8 order and ordering to maintain status quo as on 15.9.2014, that is the status quo obtained before the issuance of Annexure A8. The Original Application was amended incorporating the challenge against Annexure A9. The applicants point out that the said order has been passed not based on any representation filed by any independent aggrieved employee, but based on the representations of the Kerala Government Nurses Union and the Kerala Government Nurses Association. Their representations are referred to as 2nd and 3rd papers in Annexure A9. The said order proceeds on the footing that Staff Nurse Grade I is a District level post and therefore even after promotion to that post, they should continue in that District. The applicants point out that the same is factually wrong, and legally untenable. The applicants allege that the order is vitiated by mala fides from the part of the Deputy Secretary to Government who penned the order on behalf of the Government. Since the order runs counter to the settled legal position, they pray for quashing the same.

5. The official respondents did not file any reply statement. But the learned Government Pleader handed over to us the written instructions received by him from the Government. In the said written instructions, it is submitted that the applicants are DRB recruits of Palakkad, Kozhikode and

Malappuram Districts and they are liable to work in those Districts. The home District is their opted District and they have no claim for inter-District transfer without loss of seniority. It is further submitted that the applicants are not included in the State cadre because there is no such cadre in the State service or subordinate service. The ratio promotion is not based on any Rules or Special Rules formulated for any category, but only based on the recommendation of the Pay Revision Commission from time to time.

This is not permanent, but will be varied from time to time. So, Staff Nurse Grade I is not a separate cadre, but Staff Nurse Grade I and Grade II are within the same cadre and the Rules applicable to Grade II as DRB recruits are also applicable to Grade I. It is further submitted that the Government have decided to formulate specific norms for the transfer and posting of DRB recruits in Health & Family Welfare Department. Until such norms are formulated, it was decided to maintain status quo.

6. Respondents 90 and 95 have filed separate reply statements. According to them, seniormost in the cadre of Staff Nurse Grade I have to be transferred out first. But in the present case, juniormost Staff Nurse Grade I were transferred out. What is ordered is not retrenchment, but transfer, and therefore seniority should be the criteria. They further point out that their service in their home District as Staff Nurse Grade II cannot be reckoned for computing the length of service in that District for the purpose of transfer. They worked in the District as Staff Nurse Grade II as they are District recruits. The party-respondents do not contend that Staff

Nurse Grade I is not a State level post, in view of the order of this Tribunal in Annexure R90(a) and also the judgment of the Division Bench of the Hon'ble High Court in Annexure A5.

7. We heard the learned counsel on both sides, and went through the pleadings and materials on record. The Unit of Appointment of Staff Nurse Grade I is the State. That is why a State level seniority list of the feeder category was prepared and taking into account the vacancies in the State, promotions were ordered, strictly on the basis of seniority. If it was a District level post, the seniority list of the feeder category should have been prepared on District basis and promotions should have been ordered only to the vacancies available in the District. So the official respondents cannot contend that the post of Staff Nurse Grade I is a District level post, and that they can claim transfer to other Districts only on loss of seniority. Further, the official respondents are bound by the order of this Tribunal in Annexure R90(a) and also Annexure A5 judgment of the Hon'ble High Court. Further, we notice that in G.O.(Rt). No. 3844/2010/H & FWD dated 27.9.2010, the Government have reiterated that Staff Nurse Grade I belongs to State cadre and incumbents are transferable to other Districts. The said order reads as follows:

"In categories like Staff Nurse, Junior Health Inspector, Junior Public Health Nurse, U.D. Clerk, etc., the posts in the cadre of Grade I belong to State cadre and the incumbents are transferable to

other districts. But in the case of Lab Technician and Pharmacist, inter-district transfer has not been made applicable for Grade I posts.

(2) Government have examined the matter in detail and are pleased to order that the posts of Lab Technician Grade I and Pharmacist Grade I will be treated as State-wise posts similar to other categories mentioned above and will be considered for inter-district transfer as per rules in force.

(3) The Director of Health Services shall identify 50% posts in the entry cadre (Grade II) in each district in both these categories and redesignate them as Grade I posts. However, the incumbents in Lab Technician Grade I & II posts will be interchangeable as in other similar categories."

Going by the above order also, the stand of the official respondents that Staff Nurse Grade I is a District level post is plainly perverse and it is a view which no man in his senses will hold. Further, the Government is bound by the declaration of law made by this Tribunal and also the Hon'ble High Court, and any action taken in deviation of the law declared by this Tribunal and the Hon'ble High Court will tantamount to commission of contempt of court. So, the stand of the official respondents that the post of

Staff Nurse Grade I is a DRB post, and they can claim transfer to other Districts only on loss of seniority is plainly untenable. 19

8. In the result, Annexure A9 is quashed. The second respondent is directed to reconsider the claims of Staff Nurses Grade I, like the applicants for transfer, and also those of the party-respondents herein for retention in their respective Districts, in accordance with law, in the light of transfer norms, within two months from the date of receipt of a copy of this order. It is clarified that the length of service for the purpose of transfer shall be reckoned only with reference to the service rendered in the post of Staff Nurse Grade I. The service rendered in the cadre of Staff Nurse Grade II in their District of advice cannot be treated as an advantage or dis-advantage while ordering transfer. In the light of the above principles, and taking into account the relevant transfer norms, the second respondent shall order transfers in a just and equitable manner. It is further ordered that status quo as on today shall be maintained till the second respondent passes orders, as directed above.

The O.A. is disposed of as above.

Sd/-

K. Balakrishnan Nair, Chairman

Sd/-

S. Pradeep Kumar Naidu, Member



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