



16/2/15

010887

IN THE KERALA ADMINISTRATIVE TRIBUNAL AT
THIRUVANANTHAPURAM

Present:

The Hon'ble Mr. Justice K. Balakrishnan Nair, Chairman

&

The Hon'ble Mr. Mathew C Kunnumkal, Member

Dated this the 23rd of January 2015

OA-2092/2014

Applicant(s):

- 1) S.Jalaja., W/o V.N.Anathakuttan, Aged 50 years, Junior Public Health Nurse Grade I, Primary Health Centre, Nanniode, Palakkad District. PIN.678534, residing at Moolakattu House, P.O.Kudavechoor, Vaikkam, Kottayam, Kerala- 686144
mobile-9946958162

By Advs. MUHAMMED V A & SHARMILA K S

Respondent(s):

- 1) State of Kerala, Represented by the Secretary,, Health and Family Welfare Department, Government Secretariat, Thiruvananthapuram, Kerala - 695001
- 2) The Director of Health Services, Government Hospital Junction, Thiruvananthapuram. PIN.695035, Kerala

GP[SIJU RAJAN]

This Original Application having been finally heard along with OA - 2087 / 2014, OA - 2089 / 2014, OA - 2091 / 2014, OA - 2093 / 2014, OA - 2094 / 2014, OA - 2096 / 2014, and OA - 2097 / 2014 on 23rd of January 2015, the Tribunal on the same day passed the following:

K. BALAKRISHNAN NAIR, CHAIRMAN

AND

MATHEW C KUNNUMKAL, MEMBER

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OA. NOS. 2087, 2089, 2091, 2092, 2093, 2094

2096 AND 2097 OF 2014

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DATED THIS THE 23RD DAY OF JANUARY 2015

ORDER

K. BALAKRISHNAN NAIR, CHAIRMAN:

Since the very same point arises for decision in all these cases, they are heard and disposed of together.

2. Q.A. No. 2087 of 2014: The applicant joined service as Junior Public Health Nurse Grade II on the advice of the Public Service Commission in Malappuram District on 23.7.1999. She was promoted as Junior Public Health Nurse Grade I by Annexure A1 common promotion order dated 18.4.2012 with effect from 1.2.2011. The applicant is a native of Kottayam District. The post of Junior Public Health Nurse Grade I being a State cadre, she applied for a transfer to the said District. When the Directorate of Health Services published Annexure A2 provisional transfer list, she was included in it as Sl.No. 105, which indicated that she would be transferred to Kottayam District. Later, the said list was finalised by Annexure A3 order of the Director of Health Services dated 28.6.2014. In

that list she was included as Sl No 46. While so, the said list was modified by Annexure A4 order dated 9.7.2014. In that list her name was excluded. But the said order would indicate that others from various Districts were granted transfer to Kottayam District. Feeling aggrieved by the said order, the applicant preferred Annexure A5 representation before the Government. This Tribunal by Annexure A6 order dated 25.7.2014 directed the Government to consider the said representation. The Government considered the same and rejected it by Annexure A7 order dated 1.10.2014. In the said order, the Government proceeded on the footing that Junior Public Health Nurse Grade I is a District cadre and therefore persons in that post cannot be transferred to other Districts. If they are transferred, the same will be subject to loss of seniority. Challenging Annexures A4 and A7, this O.A. is filed.

3. The applicant submits that the stand of the Government in Annexure A7 is unsupportable in law, in view of the order of this Tribunal in O.A.No. 480 of 2014, which was affirmed by the Hon'ble High Court in O.P.(KAT) No. 396 of 2014. Though the said decision of this Tribunal related to Staff Nurse Grade II and Staff Nurse Grade I, the same principle will apply to Junior Public Health Nurse Grade II and Junior Public Health Nurse Grade I, in the light of the Government order, G.O.(Rt) No. 3844/2010/H &FWD dated 27.9.2010, which is quoted in that order.

Therefore the applicant prays for quashing Annexure A7 and for a direction to the Government to reconsider her claim for transfer to



Kottayam District in the light of the directions issued by this Tribunal in O.A.No. 480 of 2014.

4. The first respondent has filed a reply statement in which it is submitted that the Government order, G.O.(Rt.) No. 3844/2010/H & FWD dated 27.9.2010 is a wrong order and it has been decided by the Government to cancel it. Further, it is asserted that Junior Public Health Nurse Grade I is a District cadre and if an incumbent is transferred out from her/his home District, the same will entail loss of seniority. It is further pointed out that if the same is treated as a State cadre, the same will affect the persons waiting in the PSC list for appointment to the post of Junior Public Health Nurse Grade II. Persons holding the post of Junior Public Health Nurse Grade I are indiscriminately transferred to other Districts to create vacancies in a particular District to the detriment of PSC hands in other Districts. Therefore the Government is going to cancel the aforementioned Government order dated 27.9.2010.

5. We heard the learned counsel on both sides and went through the pleadings and materials on record. We notice that regarding the unit of appointment to the posts of Staff Nurse Grade I, Junior Public Health Nurse Grade I, etc., the Government is taking confusing and conflicting stands, according to the exigency of the situation. The persons included in the rank list published by the Public Service Commission for appointment to the post of Junior Public Health Nurse Grade II in Palakkad District approached this Tribunal stating that the vacancies of Junior Public Health

Nurse Grade II were being filled up by transferring Junior Public Health Nurse Grade I from other Districts, thereby denying their chances of appointment. In the said O.A. this Tribunal passed an interim order dated 7.2.2013 which reads as follows:

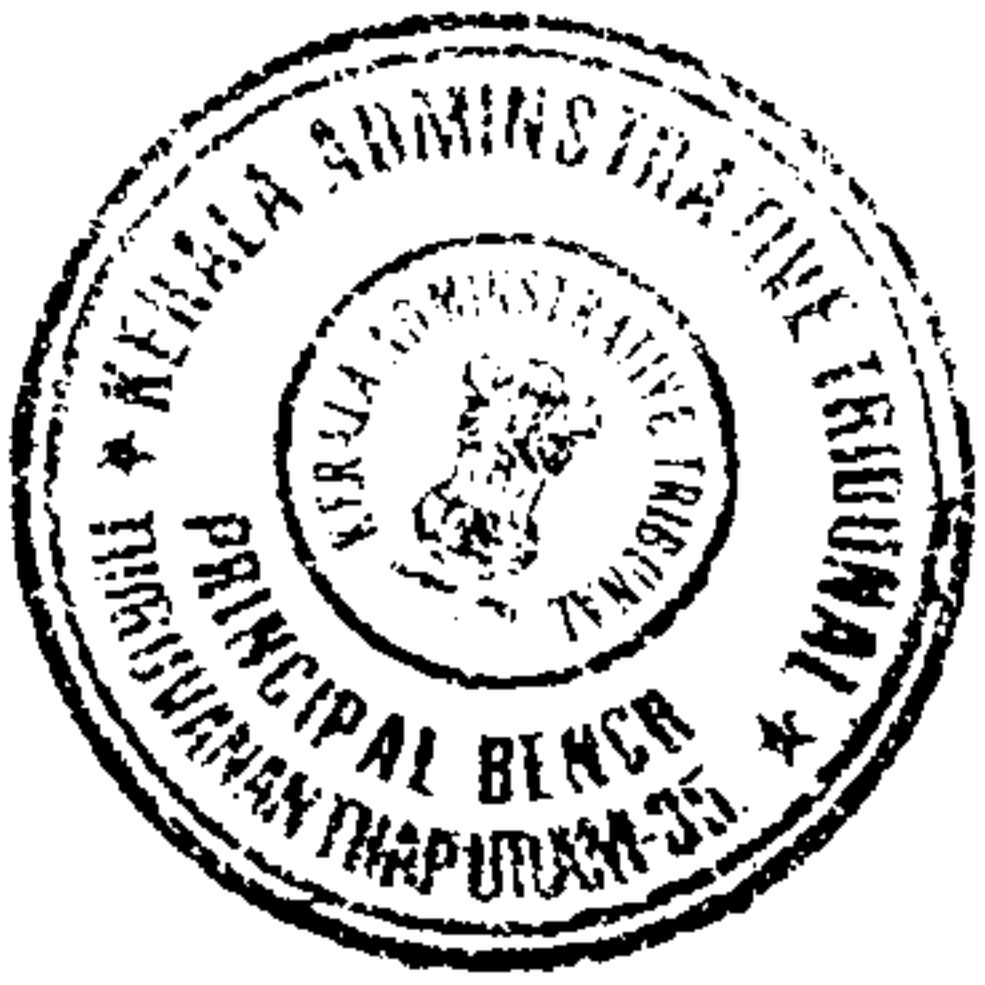
"The applicants are persons included in Annexure A1 ranked list published by the Public Service Commission for appointment to the post of Junior Public Health Nurse Grade II in Palakkad District. The said list came into force on 26.8.2009 and therefore its life of three years has already expired on 25.8.2012. Because of the order, extending the life of the ranked list, issued by the Public Service Commission, it will remain in force upto 31.3.2013. The applicants have approached this Tribunal alleging that there are several vacancies in the cadre of Junior Public Health Nurse Grade II and they are being filled up by posting the Junior Public Health Nurses Grade-I from outside the District in excess of the cadre strength of Junior Public Health Nurse Grade I.

Therefore, they pray such excess vacancies presently occupied by Junior Public Health Nurses Grade I may also be reported the Public Service Commission. After hearing counsel on both sides, we passed an interim order on 31.7.2012, which reads as follows:

There are 515 posts of Junior Public Health Nurses (JPHN) in Palakkad District sanctioned by the Government. Earlier the ratio between JPHN Grade I and Grade II was 1:2. That is, the above sanctioned strength was apportioned as 173:342.

Now the ratio has been modified to 1:1. Going by Annexure A5 order of the Additional Director of Health Services dated 18.4.2012, the cadre strength of JPHN Grade II is 258 and grade I is 257.

It is admitted in the reply statement filed on behalf of the third respondent that 95 JPHN Grade I are working in excess of the sanctioned strength. If that be so, the second respondent is directed to explain how the excess strength of JPHN Grade I happened to be accommodated in Palakkad District. The said respondent shall also state why we shall not pass an order directing him to report 95 vacancies of JPHN Grade II to the Public Service Commission so that the Public Service Commission can advise candidates to those vacancies from Annexure A1 list. A statement explaining the above facts shall be filed by the second respondent within two weeks.'



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Pursuant to the above interim order, the second respondent has filed a statement. In the said statement, it was indicated that out of the total cadre strength of 515 Junior Public Health Nurses in Palakkad District, 501 persons are working. Nine vacancies have already been reported to the Public Service Commission and 4 more vacancies will also be reported. One vacancy is set apart for inter District Transfer, it is submitted. It is further pointed out that unit of appointment of Junior Public Health Nurse Grade-II is the District and that of Junior Public Health Nurse Grade-I is the State. Junior Public Health Nurse Grade-II cannot be transferred out, and therefore, no vacancies are available at present, which could be reported to the Public Service Commission. Again, another statement has been filed on 19.12.2012, in which also, an attempt was made to justify the retention of the excess Junior Public Health Nurse Grade-I in Palakkad District. It was also stated therein that 20 posts of Junior Public Health Nurse Grade-II will be filled up soon.

2. We heard the learned counsel on both sides. As evident from Annexure A5 produced along with M.A.No 1255 of 2012, it is clear that the cadre strength

of Junior Public Health Nurse Grade-II in the State is 2792 and that of Junior Public Health Nurse Grade-I is 2791. The cadre strength of Junior Public Health Nurse in Palakkad District is 515, out of which 258 are Junior Public Health Nurse Grade-II and 257 are Junior Public Health Nurse Grade-I. Going by Annexure A6 reply received under the Right to Information Act, as on 4.7.2012, the PSC hands in position are 163 and Junior Public Health Nurse Grade-I are 349. The third respondent has also admitted that 95 Junior Public Health Nurse Grade-I are working in excess of their cadre strength. The said admission is made in paragraph 4 of the statement dated 22.6.2012 filed by the said respondent on 27.6.2012.

3. The respondents tried to justify the presence of excess Junior Public Health Nurse Grade-I stating that it is State cadre. It only means that a Junior Public Health Nurse Grade-I can be posted anywhere in the State, but it does not mean that such a person can be appointed in a particular District in excess of the cadre strength sanctioned as per Annexure A5. If the Junior Public Health Nurse Grade-I in the State exceeds 2791, then they will not get salary, as the sanctioned strength of the

said post in the State is only 2791. So, it is clear that 95 Junior Public Health Nurse Grade-I who should have been accommodated in other Districts have been transferred to Palakkad to the detriment of the PSC hands. The same cannot be permitted. It is also evident from the pleadings that Junior Public Health Nurse Grade-II working in Palakkad District on promotion as Junior Public Health Nurse Grade-I were allowed to continue there.

4. In view of the above facts, we notice that there is a dearth of 95 PSC hands having regard to the cadre strength. As per the latest statement, it is submitted that steps are being taken to appoint 20 Junior Public Health Nurse Grade-II. That means, even thereafter, there will be a dearth of 75 hands. It is also stated by the third respondent that one vacancy is set apart for inter District transfer. Even then, there is a further dearth of 74 hands. So, the second respondent is liable to report 74 vacancies of Junior Public Health Nurse Grade-II to the 5th respondent. If, there are other applications pending for inter District transfer or any applications are pending under dying-in-harness Scheme, the vacancies necessary for the same subject to a maximum of 5% for



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each category can also be reduced from the above mentioned vacancies. Before reporting the vacancies, the second respondent may ascertain whether there are any claimants from the aforementioned categories. The remaining vacancies, out of the aforementioned 74 shall be reported to the Public Service Commission by the second respondent within one month from the date of production of a copy of this order. Respondents 2 and 3 shall ensure that the cadre strength of Junior Public Health Nurse Grade-II and Grade-I is maintained strictly in accordance with the ratio 1:1 having regard to the sanctioned strength mentioned in Annexure A5, from time to time. Any dearth in the PSC stream shall be reported to the PSC including the promotion vacancies that may arise as a consequence of retirements. Needless to say, for accommodating the persons so advised, the excess Junior Public Health Nurse Grade-I working in Palakkad District shall be transferred out as and when required."

In paragraph 3 of the above quoted order, we notice that the respondents therein tried to justify the presence of excess Junior Public Health Nurse Grade I stating that it is a State cadre. The said O.A. was finally disposed of, as the respondents therein transferred excess JPHN I beyond the

cadre strength from the Palakkad District to accommodate the candidates from the PSC list in the available vacancies of JPHN Grade II.

6. Further, we notice that the promotion to the cadre of JPHN Grade I is not based on District-wise seniority list. The same is evident from Annexure A1 promotion order to the post of JPHN Grade I, the relevant portion of which reads as follows:

"As per the order that read above the existing ratio of 2:1 between Junior Public Health Nurse Grade II and Grade I was modified as 1:1 w.e.f. 1.2.2011.

The total sanctioned strength of Junior Public Health Nurse Grade II is 3725 and Grade I is 1858 while reassigning the strength keeping the ratio, the new strength of Junior Public Health Nurse Grade II and Grade I are 2792 and 2791.

In this circumstances 814 number of Junior Public Health Nurse Grade II is upgraded to that of Grade I cadre in the scale of Rs. 13900-24040. Being the administrative convenience, the following persons of Grade II cadre having rank up to 1500 are promoted to the cadre of Grade I w.e.f. 1.2.2011 (employees list noted in Annexure I)".

A combined State-level seniority list of JPHN Grade II was prepared and persons having rank Nos. 1500 have been promoted as JPHN Grade I as

per Annexure A1 order dated 18.4.2012 with retrospective effect from 1.2.2011. If the stand of the respondents that it is a District level cadre is accepted, and a fresh G.O. is issued recalling G.O.(Rt.) No. 3844/2010/H & FWD dated 27.9.2010, then the entire promotions ordered to the cadre of JPHN Grade I and Staff Nurse Grade I will have to be rearranged and fresh District-wise promotion lists will have to be issued. The same is going to create more problems than solving any. The above said G.O. dated 27.9.2010 is holding the field for more than four years. Even if a fresh G.O. is issued making JPHN Grade I, Staff Nurse Grade I, etc. as a District-wise cadre, the same probably can have only prospective operation. So, if a particular post is a State-level cadre at a particular point of time, and thereafter it is a District-level cadre, it is going to create unnecessary problems.

7. The Government order G.O.(Rt.) No. 3844/2010/H & FWD dated 27.9.2010 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 and II posts will be interchangeable as in other similar categories."

(emphasis supplied)

In the light of that G.O., O.A.No. 480 of 2014 was allowed by this Tribunal, which, as mentioned earlier, has been affirmed by the Hon'ble High Court in O.P.(KAT) No. 396 of 2014. In the operative portion of the said order in the O.A. this Tribunal held as follows:

"8. in the result, Annexure A9 is quashed. The second respondent is directed to reconsider the claim 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 disadvantage 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 pass orders, as directed above."

8. In view of the above facts, we think the stand of the respondents taken in Annexure A7 cannot be supported. Accordingly, it is quashed. The first respondent is directed to reconsider the claim of the applicant for transfer in the light of the principles laid down in paragraph 8 of O.A.No. 480 of 2014 quoted above, within two months from the date of receipt of a copy of this order, after affording an opportunity of being heard to the applicant. The directions issued therein will apply mutatis mutandis to

Junior Public Health Nurse Grade I also. The O.A. is allowed as above with costs.

9. O.A.Nos. 2089, 2091, 2092, 2093, 2094, 2096, and 2097/2014: In all these cases, except, O.A.No. 2091 of 2014, the applicants claim transfer to Kottayam District. The applicant in O.A.No. 2091 of 2014 claims transfer to Ernakulam District. Since we have already quashed Government order G.O.(Rt.) No. 3245/2014/H & FWD dated 1.10.2014 (Annexure A7 in O.A.No. 2087 of 2014), the said order produced as Annexure A7 in all these cases no longer survives. Therefore the appeals filed by the applicants shall be reconsidered by the Government, in the light of the directions issued by us in O.A.No. 2087 of 2014. This the Government shall do within two months from the date of receipt of a copy of this order, after affording an opportunity of being heard to the applicants. The O.As. are allowed as above with costs.

[Signature]
K. Balakrishnan Nair, Chairman

[Signature]
Member - Governmental Member

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