

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16933 of 2019

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1. Sarita Kumari W/o Sri Manoj Kumar Resident of Quarter No.654/E,O.T. Para,Northeast Frontier Railway,Katihar,PIn Code-854105(Bihar)
 2. Renuka Sinha W/o Sri Arbind Kumar Resident of Quarter No.S and C-19H,O.T. Para,Northeast Frontier Railway,Katihar,PIn Code-854105(Bihar)
- Petitioner/s

Versus

1. The Union of India through the General Manager,Noth Frontier Railway,Maligaon (Guahati),Pin Code -7841001.
 2. The General Manager(Personnel), North Frontier Railway,Maligaon (Guahati) Pin Code-781001
 3. The Divisional Railway Manager, North Frontier Railway,Katihar (Bihar),Pin Code-854105
 4. The Seionr Divisional Personnel Officer, North Frontier Railway,Katihar (Bihar),Pin Code-854105
 5. The Chief Medical Superintendent, North Fronther Railway,Katihar (Bihar),Pin Code-854105
 6. Smt. Sheela Shibu,Nursing Sister Under Chief Medical Superintendent, North Fronther Railway,Katihar (Bihar),Pin Code-854105
 7. Shashi Kumari Sinha W/o Sri Rabindra Prasad Sinha Resident of Quarter No.654/A, O.T. Para,North Frontier Railway,Katihar (Bihar),Pin Code-854105
 8. Smt. Gloria Xalxo, Are Nursing Sisters Under Chief Medical Superintendent,North Fronther Railway,Katihar (Bihar),Pin Code-854105
 9. Smt. Savitri Pandey, Are Nursing Sisters Under Chief Medical Superintendent,North Fronther Railway,Katihar (Bihar),Pin Code-854105
 10. Neelam Kumari, Are Nursing Sisters Under Chief Medical Superintendent,North Fronther Railway,Katihar (Bihar),Pin Code-854105
 11. Sarojini Kisko, Are Nursing Sisters Under Chief Medical Superintendent,North Fronther Railway,Katihar (Bihar),Pin Code-854105
- Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Munna Pd Dixit (M.P. Dixit), Advocate Mr. S.K. Dixit, Advocate Mr. S.K. Chaubey, Advocate Mrs. Swastika, Advocate
For the Respondent/s	:	Mrs. Kanak Verma, CGC

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)



Date : 05-09-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioners have assailed the order dated 16.01.2019 passed in O.A. No. 050/00770/14, by the Central Administrative Tribunal, Patna Bench, Patna.

In O.A. No. 050/00770 of 2014, petitioners have sought for following reliefs:-

“That the instant application is being filed against the order dated 06/07.08.2014 passed by the respondent No. 2 which is not only illegal, arbitrary, unjust, unconstitutional, against rules, against the principle of promissory estoppel but also contemptuous to the order passed by this Hon’ble Tribunal on 04.03.2014 passed in OA No. 677 of 2009 (Para-16, 17 and 18). This OA is therefore against the seniority list dated 29.06.2009 issued by Respondent No. 4 together with Order dated 01.09.2009 whereby and whereunder the Applicants have been shown junior to the Private Respondents Nos. 6 to 10 against which the Applicants have been filed representation but the same has been rejected vide said Order dated 01.09.2009 which are totally illegal, arbitrary, unjust, based on wrong facts and also against the Principle of Promissory Estoppel. In this regard it is relevant to state here that the Applicants are all along senior to the Private Respondents Nos. 6 to 10 in their respective seniority list and further in the seniority list published on 08.06.2005 and 13.06.2007 as on 01.04.2005 and 01.06.2007 respectively the name of the Private Respondents are below the Applicants against which no protest has been filed by them, therefore under Rule 321 (b) of the Indian Railway Establishment Manual, Vol-I, 1989, the seniority position stands final and as such also the Applicants are senior to them. It is stated that inspite of aforesaid position the Official Respondents have published another



Seniority list of Nursing Sister on 29.06.2009 in which the Private Respondents have been placed above the Applicants which is totally against the Principle of Natural Justice under which it is mandatory that if any adverse order is being passed the same must follow with the prior notice with proper show cause to the affected parties but in the instant case nothing has been adopted before the passing of impugned seniority list. Apart from the above from perusal of the Order dated 01.09.2009 it appears that the same has been passed on the basis of so called Railway Recruitment Board Panel in the Recruitment Grade, which is also unjust and unsustainable in the eye of law. In this regard it is stated that the Applicants belongs to Other Backward Classes Category and they were selected under O.B.C. Category whereas the Private Respondents belongs to Unreserved and Scheduled Tribe Category, therefore, the question of merit position cannot be adhered too because each category has own merit and they can be compared within their own category, thus the reasoning of the Respondents while placing the Applicants below the Private Respondents are totally illegal, unconstitutional and inhuman. In this regard it is further stated that the impugned orders are otherwise itself bad in law and fit to be set aside on the single reason that the Respondent No. 4 has repeatedly sent letters to the Chairman, Railway Board and other concerned Authorities regarding availability of Railway Recruitment Board Panel but the same was not provided which can also be seen from Letter dated 11.03.2008 but even though the aforesaid impugned orders have been passed arbitrarily. Hence this Original Application.”

3. Perusal of the records, it is evident that there is no final Seniority List of Staff Nurse. In other words, Petitioners' grievance is with reference to provisional seniority list issued by the official respondent from time to time and further such



provisional seniority list is being operated for the purpose of promotion.

4. The object of publication of provisional seniority list of a particular cadre is to see that such of those persons whose rights are affected or any clerical error, in such matter affected person was required to file objections/suggestions. Thereafter, competent authority was required to publish final seniority list after due consideration of objections and suggestions received by the competent authority. In the present case competent authority has not finalized the provisional seniority list. Therefore, Original Application filed by the petitioners before the Central Administrative Tribunal is not maintainable in the light of section 20 of the Administrative Tribunals Act 1985.

Section 20 of the Administrative Tribunals Act, 1985 reads as under:-

“20. Applications not to be admitted unless other remedies exhausted. - (1)

A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by



such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of subsections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.”

5. Further it is to be noticed that application to Tribunal could be entertained with reference to the order. Therefore, any challenge with reference to provisional seniority list, O.A is not maintainable before the Administrative Tribunal, unless and until such a provisional seniority list is issued by the incompetent authority. In such cases matter would go to the root of the matter. In the present case, it is not the petitioners’ contention that provisional seniority list has been notified by incompetent authority so as to interfere with the provisional seniority list read with further rejection of petitioners’ representation.

6. Apex Court in the case of Government of *A.P. Vs. P. Chandra Mouli* reported in (2009) 13 SCC 272 taken note of Section 14, 19 and 20 of the Act, 1985.

7. In view of these facts and circumstances.



petitioners have not made out a case. Accordingly, Original Application No. 050/00770/2014 filed by the petitioners and so also order of the Tribunal dated 16.01.2019 are set aside reserving liberty to the petitioners to approach competent authority with a request to finalize the seniority list. Similarly the competent authority is hereby directed to finalize the seniority list if it is not finalized and notified, with a reasonable period of time of three months from the date of petitioners’ representation.

8. With the above observations, present writ application stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

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CAV DATE	
Uploading Date	12.09.2022
Transmission Date	

