

In the Court of Commissioner for Persons with Disabilities
25-D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi-2
Phone-23216002-04, Telefax: 23216005
[Vested with power of Civil Court under the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995]

Case No. 4/628/2014-Wel./CD/ **2963-64**

Dated: **23.3.15**

In the matter of :

Sh.Ranveer Singh Chauhan

S/o Sh.Satyanarayan Singh Chauhan

Vill. Chandwali, P.O Bansur

Distt. Alwar Rajasthan-301402

..... **Petitioner**

Versus

Sh.S.C.L.Das

Secretary

Department of Health & Family Welfare

9th Level, Delhi Secretariat,

I.P.Estate, New Delhi-2

..... **Respondent**

ORDER

1. A petition was filed by Sh.Ranvir Singh Chauhan a disabled person pointing out that the instructions of Government of India for providing reservation in promotion of staff nurses are not being followed in letter and spirit in the Health and Family Welfare Department of Government of National Capital Territory of Delhi. The Secretary Health and Family Welfare was requested to file his comments.
2. The Secretary Health and Family Welfare Department Government of National Capital Territory of Delhi stated that **Quote** "Sh.Ranvir Singh Chauhan working as a Nurse in Deen Dayal Upadhyay Hospital has alleged that the policy of reservation is not being followed by Health and Family Welfare Department Government of National Capital Territory of Delhi (TRC) while making promotion in the Nursing Cadre. Sh.Chouhan vide his representation dated 23.4.14 has also stated that Smt.Sujata Staff Nurse belonging to persons with disability category was appointed as Staff Nurse in the year 1999 and she has not been promoted so far. Smt.Kusum Staff Nurse belonging to person with disability category was appointed as Staff Nurse in the year 1999 and has not been promoted so far. In the list drawn for consideration zone for promotion to the post of Nursing Sister for the

year 2013 Health and Family Welfare Department has not called for the ACRs of any Staff Nurse belonging to persons with disabilities. Since 1999 four DPCs have been held but 3% quota on promotion has not been given to any Staff Nurse belonging to persons with disabilities. Sh. Ranveer Singh Chouhan has requested that Staff Nurses belonging to persons with disabilities may be given 3% quota on promotion. The matter has been examined in the light of OM dated 29.12.2005 and Para 2 of the said OM dealing with quantum of reservation is reproduced which states that three percent of the vacancies in case of direct recruitment to Group A, B, C and D posts shall be reserved for persons with disabilities of which one per cent each shall be reserved for persons suffering from (i) blindness or low vision (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the posts identified for each disability. Three percent of the vacancies in case of promotion to Group D and Group C posts in which the element of direct recruitment if any does not exceed 75% shall be reserved for persons with disabilities of which one per cent each shall be reserved for persons suffering from (i) blindness or low vision (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the posts identified for each disability. In this regard it is informed that as per Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) Government of India order dated 9.4.2009 a central civil post carrying the following Grade pays Rs.5400/-, Rs.4800/- Rs.4600/- and Rs.4200/- in the scale of pay of Rs.9300-34800/- having Grade Pay of Rs.4600/- in pay band -2 has been classified as Group B post. Further the Services Department GNCTD has also clarified that with implementation of 6th Pay Commission the classification will be as per the new Pay Scale and Grade Pay. Post of Staff Nurse carried the pay scale Rs.9300-34800/- having grade pay Rs.4600/- and in accordance with the Order dated 9.4.2009 the post stands classified as Group B post. Further post of Nursing Sister which is promotional post of Staff Nurse also carries the pay scale of Rs.9300-34800/- having grade pay Rs.4800/- and in accordance with the order dated 9.4.2009 the post stands classified as Group B post. On the advice of the Services Department promotions are being made taking the classification as per the new pay scale and grade pay. As per Para 2(ii) of DoPT OM dated 29.12.2005 there is no reservation in promotion to Group B posts. As per recruitment rules for the post of Nursing Sister the method of recruitment is promotion failing which by direct recruitment. Staff Nurse with three years standing in the grade is eligible for promotion. The petitioner has alleged that Smt. Sujata and Smt. Kusum who have been appointed as Staff Nurse in the year 1999 and belonging to persons with disabilities category have not been promoted so far. As per RRs

these two officials will be eligible for promotion after completion of three years of service that is in the year 2002. As per records available a DPC was held on 27.3.2001 for promotion to 104 vacant post of Nursing Sister since these two officials had not completed three years of service and as such they were not eligible for promotion. Thereafter a DPC was held on 23.12.2002 for promotion to 64 vacant posts of Nursing Sister. As per records available Ms.Nora Victoria Staff Nurse is at serial no. 1 who has been considered for promotion stands at seniority no.146. In accordance with Para No.18(a) the extended zone of consideration i.e 5 times the number of vacancies for the persons with disabilities the last candidate to be considered would be Ms.Meena Massy at seniority no.466 with dates of appointment as 14.8.1988. As such Smt.Sujata and Smt.Kusum who have been appointed as Staff Nurse in the year of 1999 were not in the consideration zone. Last DPC prior to issue of OM dated 9.4.2009 was held on 12.9.2006 for promotion to 172 vacant posts of Nursing Sister. As per records available Ms.Rajwant Kaur Staff Nurse is at serial no.1 who has been considered for promotion stands at seniority no.383. In accordance with Para No.18 (a) the extended zone of consideration i.e 5 times the number of vacancies for persons with disabilities the last candidate to be considered would be Ms.Ancy George at seniority no.1243 with date of appointment as 25.3.1994. As such Smt.Sujata and Smt.Kusum who have been appointed as Staff Nurse in the year of 1999 were not in the consideration zone. As explained above these two officials were not in the extended zone of consideration for promotion to the post of Nursing Sister prior to issue of OM dated 9.4.2009. Further reservation for promotion to the post of Nursing Sister is not applicable after 9.4.2009 in respect of persons with disabilities being a Group B post. Hence no reservation can be extended to persons with disabilities for promotion to the post of Nursing Sister.” **Unquote.** Further it was submitted by the representative of Health and Family Welfare Department that **Quote** “having adopted the 6th CPC in toto it is not up to the Department to take the pay scale but leave out the job description and job classification. Hence, in the considered view of the Department the classification as mentioned in OM dated 9.4.2009 prevails and as such Recruitment Rules classification was to be corrected to Group B. This position was also conveyed to DSSSB while undertaking the Recruitment of the Staff Nurse in 2013. Further the disciplinary proceedings as well as the departmental promotion processes are also being undertaken by according Group B status to Staff Nurse/Nursing Sister and not as Group C. The amendments in the Recruitment Rules for the post in question are under process which needs to be formally concurred by various departments e.g Services Department, Finance

Department, Law Department, UPSC and Hon'ble Lt. Governor. The process of formal notification of modified Recruitment Rules being a consequential action will be completed in a time bound manner." **Unquote.**

3. In response to the reply filed by Government of NCT of Delhi on 23.9.14 and 22.10.14 the petitioner filed rejoinder stating that the Government of NCT of Delhi has appointed persons with disabilities as staff nurses in various Delhi Government hospitals in different areas and the criteria for promotion is three years as per Rules but even after 19 years of enactment of Persons with Disabilities Act 1995 no list had been prepared for persons with disabilities though for the general category the same has been prepared many times. The petitioner alleged that the Department submitted wrong promotion list to divert the attention of the Hon'ble Court and also deprived the persons with disabilities of their right to promotion as guaranteed under the Constitution of India. The petitioner requested intervention of the Court for instructing the concerned Department to prepare the promotion list of the disabled candidates who had completed three years in regular service as ordered by the SC/ST Commission for SC/ST candidates.
4. The matter has been examined. A perusal of the issues raised by the petitioner shows that Mrs.Sujata and Mrs.Kusum were appointed as Staff Nurses in 1999 under the Persons with disabilities Category but have not been promoted so far. No Staff Nurse under the Persons with Disabilities Category was included in the list for whom ACR was sought for the purpose of promotion of Staff Nurses in 2013. The minimum qualifying service for promotion of Staff Nurse to Nursing Sister is three years. Till date Staff Nurse and Nursing Sister come under Group C where there is a provision of promotion under persons with disabilities category i.e Group C to Group C. A perusal of the reply of the Department of Health and Family Welfare indicates that the posts of Staff Nurse and Nursing Sister having the Grade pay more and equal to Rs.4600/- come in Group B posts and that reservation for promotion to the post of Nursing Sister is not applicable after 9.4.2009. The Ministry of Personnel, Public Grievances and Pensions (DoPT) Government of India issued an order dated 9.4.2009 vide which a central civil post carrying the Grade pay Rs.5400/-, Rs.4800/- Rs.4200/- in the scale of pay Rs.9300-34800/- has been classified as Group B post and accordingly the classification in the Recruitment Rules was required to be corrected to place the post of Nursing Sister in Group B. The amendments in the Recruitment Rules for the post in question are under process etc.

5. I have carefully considered the replies, the counter replies and the instructions of Government of India in this behalf. As per Para 2(ii) of the OM dated 29.12.2005 issued by the Ministry of Personnel, Public Grievances and Pensions (DoPT) Government of India three percent of the vacancies in case of promotion to Group D and Group C posts in which the element of direct recruitment if any does not exceed 75% shall be reserved for persons with disabilities. The Group of a post is identified by the Recruitment Rules of that post at a particular point of time. There are a number of examples in which a particular post was/is kept in different Groups in the Government of India and in the Government of NCT of Delhi as well. Therefore the present Recruitment Rules of the post should be given precedence over any other order to avoid any confusion. The Delhi Subordinate Services Selection Board (DSSSB) still considers the post of Staff Nurse in Group C as per a reply dated 26.12.14 to an application filed under Right to Information Act 2005 and it showed the post of Staff Nurse in Group C at the time of conducting recruitment for the post of Staff Nurse in 2013. The Department of Health and Family Welfare could not produce any order/notification of Government of NCT of Delhi relating to conversion of posts of Staff Nurse and Nursing Sister to Group B. There is a provision of maintaining a one hundred point reservation roster for promotion which reportedly is not being maintained by the concerned department. Therefore the rule of three percent reservation in promotion to the persons with disabilities is also not being followed in the Department. In a similar case CAT Hyderabad bench ordered that reservation to Physically Handicapped persons cannot be denied merely on the ground of shifting of a post from Group C to Group B. In the facts and circumstances of the case the Department of Health and Family Welfare is directed to maintain one hundred point Reservation Roster Register for promotion in Group C since 1996, compute the backlog vacancies and then fill them up through special DPC in a time bound manner. An Action Taken Report shall be filed by the Secretary Health and Family Welfare Department Government of NCT of Delhi within three months and in any case by 1st July 2015.

6. Ordered accordingly.

Given under my hand and the seal of the Court this 23rd day of March, 2015.




(K.S. Mehra)
Commissioner
Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02