

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

Mr. Sayeed Ahmed Baba, Officiating Chairperson and Hon'ble Member (A).

Case No. – OA 44 of 2023.

MOUMITA MARJIT & ORS – VS- THE STATE OF WEST BENGAL & ORS.

Serial No. and
Date of order

4
22.2.2023

For the Applicants : Mr J. Khan,
Advocate.
For the State respondents : Mr. D. Koley,
Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt. – II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

The primary prayer in this application is for setting aside the impugned order passed by the respondent on 18th October, 2022 in terms of the Tribunal's direction in OA 630 of 2022 (Moumita Marjit and Others – versus- The State of West Bengal & Others). The reasoned order rejected the applications for Trainee Reserve (TR). The applicants, who are Health Assistants (Female) working in different parts of the State had applied for TR to undergo the course of General Nursing Midwifery (GNM).

The relevant part of the reasoned order is as follows:- “...that ANM(R) course is a sufficient and required qualification for the post of Health Assistant (Female)...

It may be further mentioned that GNM post is planned for Clinical and Community field work whereas HA(F) post is created for only community field work. Ordinarily, TR facility is sanctioned to the regular employees for pursuing higher studies while being in a service and after completion of the course they come back

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and rejoin the same post for the purpose of getting easy promotion. In the present contest HA (F) are ANM(R) qualified candidates which is sufficient enough and does not require any higher studies. It may be presumed that after getting GNM/BSC Nursing training by availing TR facility, the said applicant may shift from her present post, which will obviously create a dearth of service provider in the field of Nursing.

Under such circumstances, when the petitioners are showing their urge to go for higher studies, while remaining in service, they may be accommodated for pursuing their coveted higher studies by availing study leave facility which is provided in Appendix-V of the WBSR(P-I). It may also be mentioned that “study leave for the proposed course may be granted only if it renders a definite advantage from the view of the public interest.

Now, in compliance to the Order of the Hon’ble WBAT, passed on 21.09.2022 OA no. 630 of 2022 (Moumita Marji & Ors – Vs- The State of West Bengal & Ors) as referred to above and after carefully considering the entire facts and circumstances of the case, that the prayer for Trainee Reserve(TR) is hereby not recommended for acceptance by the Department of Health & Family Welfare, W.B....”.

The counsel for the applicants Mr. J. Khan, submits that every Government employee has the aspiration and right to pursue higher studies and seek better career opportunities. The applicants’ desire for a higher skilled nursing career through the GNM course should not be obstructed by the respondent authorities. The matter was also heard by the Hon’ble High Court in WPA 26199 of 2022 and by an order on 4th January, 2023 the matter was remanded back to the Tribunal to decide the issue of TR along with a direction to the respondent colleges to keep seats vacant for the applicants for three months , if these are not already filled up.

Mr. D. Koley, learned counsel for the State respondent submits that the granting of trainee reserve is the sole discretion of the employer as per the Trainee

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Reserve Rules. This discretion is exercised judiciously keeping in mind the larger interest of public, particularly in the field of health sector. Upon direction of the Tribunal, the respondent had considered the matter and after considering the issue in a holistic manner, it regretted granting Trainee Reserve to these applicants. The respondent has also indicated that given the aspiration for higher studies and better career opportunities, the applicants have the alternative of applying for study leave, which is however, subject to certain conditions.

Mr. Koley also points out that some of them have applied before the respondent for the GNM Course only and no mention has been made for trainee reserve. He submits that these applications will not be maintainable on the face of the fact that these applicants, although applied for GNM, have not mentioned any word about granting them trainee reserve status. Mr. Koley submits that a total of seven such applicants have not applied for TR in their applications. They are applicant no. 1, 8, 10,11,21,25 and 26. Upon checking the individual applications for TR submitted by the applicants before the respondent, it is evident that applicant nos. 1. Moumita Marjit, 8. Anindita Das, 10. Gouri Debnath, 11. Tumpa Banerjee, 21. Sutapa Biswas, 25. Madhumita Majumdar and 26. Saswatirani Das have not applied for TR in their respective applications.

Mr. Khan submitted that as per the duty chart, each Health Assistant (Female) are required to cater to a population of five thousand, but, in the reasoned order, the figure has been shown 10000 to 14000 approximately. Therefore, it conveys the message that the respondents have not yet inducted enough number of HA(F)s to meet the needs of the growing population.

Mr. Khan referred to the reasoned order in which HA(F) has been linked with only *Community Field Work*, whereas at page 298 and 299 – Duties and Responsibilities of Health Assistant (Female) at point –III, HA(F)s are required to perform duties also in Mother and Child Clinics (MCH) once a week. It proves that the Health Assistant(Females) not only perform their duties for the community, but

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also in clinics. Besides MCAs Clinics, HAF(s) are also required to perform duties in other types of clinics as mentioned in part III of Duties and Responsibilities of HA(F).

He further submitted that the presumption of the respondent that after completing the GNM course, “the applicants may want to shift from their present post” – is without any foundation, because each applicant has to sign a bond to serve the Government to any post as may be decided by the employer.

It was also highlighted that the reasoned order is contradictory in nature; on one hand the respondent rejects the application on the ground of shortage of HA(F)s, but on the other hand, suggests that instead of TR, the applicants may like to undergo the GNM course on study leave. Submission is that whether the applicants undertake the course under TR or Study Leave, the dearth of staff will be there for some time. Moreover, the respondent has not made it clear if any applicant applies for study leave, will such application be allowed or not?

The learned counsel for the applicants also believes that promotion above the post of HA (F) is restricted to only Senior Public Health Nurse and there is no further scope for promotion.

Further submission is that the all the applicants fulfil the various eligibility criteria under the notification, “West Bengal Nursing Personnel (Placement on Trainee Reserve) Rules, 2009” namely (1) minimum three years of qualifying service (ii) having Auxiliary Nursing Midwifery and (iii) not above 53 years of age.

Responding on behalf of the State, Mr. Koley submits that the primary responsibility of a HA(F) is community work for which they have been appointed, trained and posted. To perform these responsibilities as a HA(F), the qualification of Auxiliary Nurse Midwifery (ANM) is more than sufficient and the applicants need not go for higher course like GNM. However, if any applicant wishes to join the GNM course on study leave, they may submit fresh application before the respondent and these will be considered and decided on the basis of merit and existing rules.

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After hearing the submissions of the learned counsels and perusing the records the following issues have surfaced:-

I) The primary reason cited by the respondent while rejecting the TR applications is that the applicants as HA(F)s, having the qualification of ANM are competent to perform their duties and do not require any higher qualification like GNM/B.Sc. Similarly, the respondent also apprehends that once the applicants complete the GNM course, they may not want to continue in the present post of HA(F).

II) It is evident from the applications submitted before the respondent that the applicants 1,8,10,11,21,25 and 26 have applied for GNM course only and not trainee reserve.

III) Although the learned counsel for the State submitted that the responsibility of a HA(F) is somewhat limited to the field of community work, however, from the document – Duties and Responsibilities of Health Assistant (Female), besides mentioning various responsibilities in the field also has a separate chapter - Chapter-III “Care at Clinic”. This separate part mentions duties of HA(F) in various Clinics, like MCH Clinic.

IV) In the reasoned order, the respondent suggests taking study leave to undergo the GNM Course instead of Trainee Reserve. However, in the same breath, the respondent puts a rider that such study leave, if applied, can be granted only if it has a “definite advantage from the view of the public interest”. Thus, the alternative to trainee reserve by availing study leave, though suggested has been restricted at the very outset with a rider.

IV) The notification issued by the Government of West Bengal titled, “West Bengal Nursing Personnel (Placement on Trainee Reserve)

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Rules, 2009” clearly covers trainee reserve for the Health Assistant (Female), the relevant portion of which is as under :-

“Application of the rules – These rules shall be applicable for all categories of nursing personnel employed in the Department of Health and Family Welfare, Government of West Bengal, and borne in the cadres of the West Bengal Nursing Service, the West Bengal General Service and shall also include such other nursing personnel posted as Health Assistant (Female) and Health Supervisor (Female).....”

As is evident from the above relevant part of the Notification, a Health Assistant (Female) is also entitled for trainee reserve.

V) Further, the same notification is specific to undertaking higher course by HA(F); the relevant portion of which is quoted as under :-

“2(ii) nursing Personnel who had acquired or passed Auxiliary Nurse Midwifery (Revised) Course or General Nursing Midwifery Course or B.Sc. Nursing or M.Sc Nursing or M. Phil Nursing, irrespective of the fact whether the same was acquired with or without Government sponsorship prior to entry in Government Service, shall only be entitled to undergo corresponding higher course i.e. General Nursing Midwifery Course, B.Sc Nursing Course, M.Sc Nursing Course, M. Phil in Nursing, as the case may be;”.

From the above relevant part of the Notification, it is also clear that a Health Assistant Female HA(F) is allowed to undergo higher course in their career that is General Nursing Midwifery Course.

VII) During the submission, the learned State counsel had mentioned the discretionary powers of the respondent to consider or not to consider the application of HA(F)s for Trainee Reserve. However, in the above Notification, no such discretionary power is noticed. Therefore, it does not seem correct that the TR applications have been rejected by the respondent exercising his discretionary power under the said notification.

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I am of the view that the law laid down for Trainee Reserve clearly provides for Trainee Reserve to pursue higher courses to the HA(F)s after fulfilling certain criteria. The said Notification is unambiguous and leaves no room for any doubt. The existence of such Notification is not denied by the State respondent.

So far the issue of shortage of HA(F)s is concerned in the event of their joining the GNM course, this reason appears to be very weak and unfounded because at the same time, the respondent has suggested the applicants to apply for study leave. Such shortage, if at all occurs, will have to be filled up from time to time. For this reason, the applicants cannot sacrifice their ambition for higher studies and better opportunities in life. It is the responsibility of the respondent to fill up these vacant posts. Therefore, the apprehended question of shortage does not have any merit and is not a substantive reason.

Similarly, the respondent's fear of these applicants shifting to other posts after completing GNM course is also not a valid reason. Presuming that these applicants after completing the GNM Course may want to be placed in a higher post, the fact remains that their services will always be available to the Department. In fact, the respondents should be proud that some of their lower ranked employees like HA(F) have the aspiration to pursue higher course and thus directly benefit not only the society, but also the Department itself. It is sad that instead of encouraging such employees to go for higher studies and further specialisation, the respondents are discouraging them. It is also to be appreciated that these HA(F)s with their experience in the field and community work will prove to be assets to the Department for providing medical service to the general public. The very fact that these applicants want to pursue higher course is a sign that these employees are dedicated and well meaning.

Therefore, based on the above observations, the Tribunal comes to the conclusion that the impugned order passed by the respondent rejecting the applications is in contravention to the Notification on Trainee Reserve and rejection

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on the ground of (i) shortage and (ii) likelihood of shifting – are not valid reasons supported by prevailing law. Thus, the impugned order is quashed and set aside with a direction to the Director of Health Services, - the respondent no. 2 to approve their TR applications for undertaking the GNM Course in the light of the said Notification HF/O/GA(NG)/303/1N-26/09 dated 8th December, 2009, if all other conditions are met by each applicant within a period of four weeks from the communication of this order .

Since the applicant Nos. 1. Moumita Marjit, 8. Anindita Das, 10. Gouri Debnath, 11. Tumpa Banerjee, 21. Sutapa Biswas, 25. Madhumita Majumdar and 26. Saswatirani Das have not applied for Trainee Reserve, they are not covered under this order. Their applications for GNM course be disposed of as per Rule.

The application is disposed of.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A).

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