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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO. 606/2002

Friday, this the 4th day of April, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri Kirat Ram,
Son of Shri Bhonda Singh,
Working as a Laboratory Assistant
in Raj Kumari Amrit Kaur College of Nursing,
Ministry of Health & Family Welfare,
Residing at Quarter No. 2/2, RAK College Campus,
Lajpat Nagar, New Delhi

..Applicant

(By Advocate: Shri B. Krishan)

Versus

Union of India, through

1. The Director General of Health Services,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi -110 011
2. The Principal
Raj Kumari Amrit Kaur College of Nursing,
Lajpat Nagar-III, (J.B. Tito Marg),
New Delhi
3. Shri Jai Bhagwan,
Son of Shri Anti Ram,
Working as a Laboratory Attendant
in Raj Kumari Amrit Kaur College of Nursing,
Lajpat Nagar-III, (J.B. Tito Marg)
and Residing at 142, Patel Park,
Bahadur Garh, Distt. Jhazzar (Haryana)
(Service to be affected through the
Principal, RAK College - Respondent No.2)

..Respondents

(By Advocate: Shri N.S. Mehta, Senior counsel)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, VC (J):-

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Applicant is aggrieved by the order issued by the respondents dated 26.11.2001 rejecting his request for grant of second financial upgradation under the Assured Career Progression (ACP) Scheme dated 9th August, 1999.

2. We have heard Shri B. Krishan, learned counsel for applicant and Shri N.S. Mehta, ^{learned} senior counsel for respondents and perused the relevant documents on record.

3. The relevant portion of the impugned letter dated 26.11.2001 reads as follows:

"I am to refer your letter No.A.11011/19/2000-N dated 4.10.2001 on the subject mentioned above and to say that Shri Kirat Ram, Peon was promoted as Lab Assistant in the Pay Scale of Rs.260-350 w.e.f. 24.11.76 on the basis of his practical experience in the College Laboratory. As per clarification conveyed by Department of Personnel and Training vide Directorate's letter under reference, the appointment of Shri Kirat Ram against the post of Lab. Assistant has been considered as promotion as he did not have requisite qualification for the post of Lab. Assistant in November, 1976."

4. Learned counsel for the applicant has relied on the Office Order issued by the respondents in February 1977, appointing him in the temporary post of Laboratory Assistant in the pay scale of Rs. 260-350/- from the post of Peon. It is relevant to note that in this Office order the first paragraph refers to "following promotions and appointments are made in the new posts which have been sanctioned by the Ministry of Health and Family Planning (Deptt. of Health) with effect from 24th November, 1976". The first person, i.e., Shri L.C. Gupta, LDC is stated to be "promoted" to the post of UDC, whereas all the other four persons are stated to be "appointed" to other posts, including the applicant whose name appears at serial No.(iii). Shri N.S. Mehta, learned senior counsel has submitted that this order has been issued following a decision taken by the competent authority i.e. the Principal of the RAK College of Nursing on 7.1.1977

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(Annexure R-1). Annexure R-1 appears to be a photo copy of the notings ^{is in} of the file regarding filling up the posts mentioned therein (including four posts of Laboratory Assistants), as a result of the recommendation of the work study unit. Relevant portion of paragraph 3 of the note reads as under:

"3. Laboratory Assistants - There are four posts of Laboratory Assistants. Out of the present College Staff of Peons and Laboratory Attendants only one peon Shri Kirat Ram fulfils the required qualifications to hold the post of Lab. Assistant. As there was no post of Laboratory Assistants Shri Kirat Ram in addition to his duties as peon has been working in the Biology and Microbiology Lab. for a long time. He may be promoted to the post of Lab. Assistant."

5. The contention of the learned senior counsel for respondents is that ~~as~~ the decision of the Principal was that the post of Laboratory Assistant should be filled by the applicant on promotion and that is the only way in which the subsequent order passed in February 1977 should be read. He has also referred to a letter dated 4.10.2001 written to the Principal, RAK College of Nursing, which gives somewhat a vague suggestion and cannot be considered as a specific direction that the applicant cannot be appointed to the post of Laboratory Assistant in 1977. It is also relevant to note that the clarification given in the letter dated 4.10.2001 is about 24 years after the Office Order was issued to the applicant in February 1977.

6. From para-3 of the aforesaid note dated 7.1.1977 annexed by the respondents themselves, it is noted that they have stated, inter alia, that the applicant fulfils

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the qualifications to hold the post of Laboratory Assistant and in addition to his duties as Peon, he was also working in the Biology and Microbiology Lab. for a long time and hence he may be promoted to the post of Lab. Assistant. However, it is noticed from the impugned letter that certain clarifications have been mentioned regarding whether the applicant fulfils the requisite qualifications or not, which has been done again after about 24 years since he was appointed to the post by Office Order issued in February 1977. It is not disputed that the applicant has received one financial upgradation under the ACP Scheme. The issue in the present OA is whether he is entitled to the second financial upgradation or not.

7. In the totality of the facts and circumstances of the case, since the Office Order issued to the applicant in February 1977, merely refers to the fact that he has been appointed in the temporary post of Laboratory Assistant in the pay scale of Rs. 260-350/-, we find merit in the submissions made by Shri B. Krishan, learned counsel for the applicant that this is only an 'appointment' and not a 'promotion'. That being the case, the applicant is entitled to the second financial upgradation under the ACP Scheme, subject to fulfilment of other conditions mentioned therein.

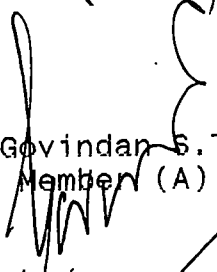
8. For the reasons mentioned above, the OA is allowed and the impugned order dated 26.11.2001 is quashed and set aside. Accordingly the respondents are directed to accord the applicant the second financial upgradation

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in terms of the ACP Scheme dated 9th August, 1999. This shall be done within a period of two months from the date of receipt of a copy of this order and payment/arrears due to the applicant will be made within a period of three months from the date of receipt of a copy of this order. In the circumstances of the case, the claim for interest is rejected.

no costs.


(Govindan S. Tampi)
Member (A)

/pkf/


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)