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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 1483/2000

New Delhi, this the 2<sup>nd</sup> day of May, 2002

Hon'ble Shri Govindan S.Tampi, Member (A)  
Hon'ble Shri Shanker Raju, Member (J)

Smt. Anita Bhardwaj  
Laboratory Superintendent Grade III  
Central Hospital  
Northern Railway  
Vasant Lane, New Delhi.

Applicant  
(By Advocate Shri S.M.Garg)

W E R S U S

UNION OF INDIA : THROUGH

1. Secretary  
Ministry of Railways  
Rail Bhawan, New Delhi.
2. The Chairman  
Railway Board  
Rail Bhawan  
New Delhi.
3. The General Manager  
Northern Railway  
Baroda House, New Delhi.
4. Chief Medical Director  
Northern Railway  
Baroda House  
New Delhi.

(By Advocate Shri R.P.Agarwal)

Respondents

O R D E R

By Hon'ble Shri Govindan S.Tampi,

Reliefs claimed by the applicant, Smt. Anita Bhardwaj, Laboratory Superintendent Grade III, Central Hospital, Northern Railway, New Delhi are as below :-

"(a) call for the records of the case ;

(b) pass an appropriate order directing the respondents to count the period of service of the Applicant rendered by her as Substitute Assistant Chemist under Central Railway from 13-8-1991 to 19-8-1997 for the purposes of Pensionary benefits and grant all annual increments and consequently pay the arrears there of ;

(c) declare that the action of the Respondents in cancelling the written-test scheduled to be held on 15-5-1998 and again of 22-7-2000 for making promotion to the post of Laboratory Superintendent Gr.I (pre-revised) and Laboratory Superintendent Gr.II respectively as arbitrary, unreasonable, unjust and violative of Article 14 and 16 of the Constitution;

(d) declare that the action of the Respondents in relaxing the qualifications to the extent that a Matriculation in Science has been made eligible for promotion to the post of Laboratory Superintendent Gr.II is arbitrary, unjust, unreasonable and violative of Articles 14 and 16 of the Constitution;

(e) declare that the action of the respondents in changing the post of Laboratory Superintendent Grade II from a selection post to a non-selection post, is arbitrary, unjust, unreasonable and violative of Article 14 and 16 of the Constitution.

(f) pass an order directing the respondents to hold a written test for making promotion to the post of Laboratory Superintendent Grade II which was earlier scheduled for 22-7-2000 now on a new date fixed by the respondents by calling all the four eligible persons to appear in the said test as per letter dated 4-7-2000 of the respondents; and

(g) pass such further or other orders which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.

2. Heard Shri S.M.Garg, 1d. counsel for the applicant and Shri R.P.Agarwal, 1d. sr. counsel for the respondents.

3. The applicant who joined as Substitute Laboratory Technician in the NKJ Hospital of Central Railways, Jabalpur came over as Chemist in JEP Railway Hospital from 1-10-1983 to 30-11-1987 as Asstt. Chemist. She was selected on a regular basis as Asstt. Chemist w.e.f. 23-7-1987, joining her duties

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on 10-9-1987. On 20-9-1989, she represented that service rendered by her from 13-8-1981 to 31-12-1982 and from 1-1-1983 to 18-8-1987 under Central Railway, Jabalpur, be counted for her pensionary benefits as well as grant of annual increments, in terms of Railway Board's letter dated 25-8-1966 read with the letter dated 6-1-1983. She made a further few representations in the above regard, but, as her service book for the period of her employment as Substitute Asstt. Chemist at Jabalpur had not been forwarded to Northern Railway, the said benefit has not been granted. In 1993, following the restructuring of the Laboratory Staff those who were earlier in the grade of Asstt. Chemist, like the applicant were promoted to the post of Lab. Supdt. Gr.II in the pay scale of Rs. 1400-2300/-, on 27.05.1994. Following the re-structuring there were only the of Laboratory Supdt. Grade-II and Grade-I, the latter being in the scale of Rs. 1640-2900/-. In 1989, qualification were fixed for direct recruitment of Lab. Supdts. in the grade of Rs. 550-900/- (pre-revised) with M.Sc. (Chemistry) with two years experience or B.Sc. (Chemistry) with five years experience. The qualification fixed for Chemist in the scale of 425-700/-, for promotion to the grade of Laboratory Supdt. was graduation in Science with five years' experience as Scientist. In the JCM's meeting also, it was decided that the vacancies of the Laboratory Asstt. should be filled by promotion from eligible and suitable persons on selection basis. Railway Board instructions of 23.08.1989, provided for the above. Accordingly, Northern Railway decided to hold a promotion test for the post of Laboratory

Supdt. in the scale of Rs.1640-2900/- on 15.05.1998, and three eligible candidates, including the applicant were called to appear, but on the last day, the test was cancelled without assigning any reason. Following the recommendations of the Vth Central Pay Commission, Lab. Supdt. in the pay scale of 1400-2300/- was re-designated as Lab. Supdt. Gr.III/Chemist in the scale of Rs. 5000-8000/- with qualification for direct recruitment being fixed as B.Sc. with Bio-Chemistry/Micro-Biology with Life Science or Diploma in Medical Laboratory Technology Course. The same requirement was made applicable to promotees as well. Lab. Supdt. in the scale of Rs.1400-2900/- was re-designated as Lab. Supdt. Gr.II in the pay scale of Rs. 5500-9000/- to be filled in exclusively by promotion from those in the lower grade of Rs. 5000-8000/-, with qualification of B.Sc. with five years experience. Two new grades of Lab. Supdt. Gr.I as well as Chief Lab. Supdt. in the scale of Rs. 6500-10,500/- and Rs. 7,450-11,500/- were also introduced in terms of Railway Board's letter dated 17-8-98. However, on 18.07.1999, Railway Board agreed to the request made by the JCM directed that those in the grade of Rs. 1400-2300/- (Rs.5000-8000/-) with existing qualification of B.Sc. (Chemistry) with one years experience were continued to be for promotion by selection to the next grade of Rs. 5500-9000/-, where they were shown as eligible for promotion to for promotion to further higher grade on seniority-cum-suitability basis. It is also indicated that those who had entered the grade of Rs. 1400-2300/- with qualification of matriculation would not be eligible for further promotion. On 22-7-2000,

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Northern Railway thereafter on 18.07.1999 decided to fill up the post of Lab. Supdt., Grade-II inn the scale of Rs.5500-9000/- and called in four persons, including the applicant for the test. Thereafter, eligibility conditions were further relaxed, permitting those Lab. Supdts. in the grade of Rs. 5000-8000/- with Matriculation qualification plus DMLT with seven years of experience also for consideration for promotion to the grade, with additional directions that they will be eligible for further promotions as Lab Supdt. Gr.II in the scale of Rs.6500-10,500/-, making the said post, a non-selection post. This relaxation was arbitrary, unjust and against the recommendations of the Vth CPC and had been introduced without any cogent reasons, was meant only to favour certain individuals who did not have the requisite educational qualification. On account of this, the written test which was scheduled on 22-7-2000 was cancelled again to benefit those who were not graduates. Hence the OA.

4. The grounds raised in the application are that :-

(i) denial of the applicant's request for reckoning her period of service as Substitute Asstt. Chemist at JBP provisionally from August, 1981 to August, 1987 was unjust and unreasonable.

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(ii) cancellation of the test for the post of Lab. Supdt. Grade I fixed for 15-5-88 was improper as there were clear vacancies in the said grade and the cancellation was only to favour certain individuals.

(iii) the adoption of the recommendations of the Vth CPC on the restructuring of the Laboratory Staff, had with which prescribed qualification for graduation and the same could not have been relaxed and the said relaxation was malafide.

iv) converting the post of Lab. Supdt. Gr. II from a selection post to a non-selection post was also an improper step, adopted for favouring certain individuals.

All the above points were very strongly reiterated by the ld. counsel for the applicant Shri S.M.Garg, during the oral submissions.

5. Rebutting the above, the respondents point out that the applicant was selected by the Railway Recruitment Board for the post of Asstt. Chemist on regular basis in 1987 and joined the said post on 10-9-1987 in the Northern Railway. She had earlier resigned from the post of Substitute ASstt. Chemist, which she had held in Central Railway. Her service rendered as Substitute Asstt. Chemist in the Central Railway, was not added to her service in Northern Railway, as her earlier selection was not in accordance with the Recruitment Rules and she had worked only in broken spells. The written test fixed

for 15-5-98 was cancelled due to administrative reasons and the relaxations had been ordered in terms of Rules and Instructions on the subject. Applicant has sought multiple reliefs which was not permissible. Even otherwise the reliefs claimed in paras 8(b) & (c) are hit by limitation. Though normally the services rendered as Substitute are counted for the purpose of pensionary benefits, subject to four months. However, the applicant was not granted the benefit as more than one month had intervened between his resignation on 18.08.1987 and his joining Northern Railway on 10.09.1987. Cadre of Laboratory Staff, included Lab. Asstt. (975-1540/-) Lab. Supdt. Gr.II/asstt. chemist (1320-2040/-), Lab. Supdt. Gr.II (1400-2300/-) and Lab. Supdt Gr. I (1640-2900/-). The applicant having been appointed as Asstt. Chemist on 10-9-87, she would have become eligible for next promotion, on completing five years of service, in September 1992. Eligibility per se does not give any right for promotion, but only right for the consideration. The written test fixed for 15-5-98 was withheld as reference for one time relaxation of educational qualification was under consideration. Following the acceptance of the Vth CPC's recommendations, Lab. Supdt. Gr.I in the scale of 1640-2900/- was re-designated as Lab. Supdt. Gr.II in the scale of 5500-9000/-. However, on specific request of the existing staff, relaxations were ordered by the Railway Board for promotion to the grade beyond Rs. 5000-8000/-, for those with matriculation qualification and with seven years experience. This along with the re-classification of the post as non-selection was taken in the larger

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interest of the staff and the same cannot be questioned. It is also stated that the test fixed for 22-7-2000 also had been cancelled on account of the relaxation and the re-classification of the post.

6. In the rejoinder filed on behalf of the applicant, it is pointed out that the applicant's service as Substitute Asstt. Chemist from 1-1-83 to 18-8-87 was without any break on account of which, she was entitled for the benefit of counting of that period for seniority in the grade of Asstt. Chemist on regularisation w.e.f. 19-8-87. Further, one of the reasons given by the respondents for cancellation of the test fixed for 15-5-98, was improper. Similarly, the relaxation in the Recruitment Rules were altered also without any jurisdiction. Relaxation of the conditions and conversion, being the posts from selection to non-selection was incorrect. As the copy of the employment notice No.2/2000 dated 16-12-2000 makes it evident. It is clear therefore that these amendment have been ordered only to favour certain individuals. The applicant further points out that relief sought by him in paras 8 (b) and 8 (c) are continuous cause of action and are, therefore, not hit by limitation. She had infact been appointed as a Substitute Lab Asstt. on 13-8-81 against a newly created post and when the service rendered as a Substituted is counted for the purpose of pensionary benefits, the same cannot be denied for the fixation of seniority. Further, her resignation was only a technical resignation and she should get the benefit of service in Central Railways, in Northern Railways also. The cancellation of the test fixed for

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22-7-2000, was account of further relaxation in educational qualifications and reclassification of the post. As the relaxation was only given 6-7-2000, the process of selection already initiated on 4-7-2000 could not be effected. The respondents cannot be permitted to take arbitrary and unilateral steps to suit individuals of their choice.

7. During the oral submissions, while Shri Garg reiterated his pleas forcefully and stated that the applicant has been discriminated by denial of counting her service as Substitute ASstt. Chemist in Central Railway and by relaxation of the education qualifications, to suit private respondents as well as the cancellation of the test, scheduled to be held on 15-5-98 and 22-7-2000, Shri Aggarwal, 1d. counsel, points out that the relaxations were ordered on account of the policy decision of the railways and the applicant cannot have any case against the same. The OA, therefore, merits dismissal, according to him.

8. We have carefully considered the rival contentions. We observe that the applicant has come up in this OA seeking multiple reliefs. In this context, Rule 10 of CAT (Procedure) Rules, 1987, is relevant. The said Rule states that "an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another". It would mean that mere thus one relief can be claimed, only if they are related and not otherwise. Reliefs sought in this OA are directions for counting the period of service rendered by the applicant in her earlier job for the

purposes of pensionary benefits and annual increments in the present job ; declaring as illegal, cancellation of test fixed for 15-5-98 and 22-7-2000, as well as altering the eligibility conditions of candidates after the tests were announced, just to favour one or two individuals. The first is not at all related to the second and third reliefs (which are connected) and therefore it is clearly hit by Rule 10 of CAT (Procedure) Rules. The same is rejected. As correctly pointed out by the respondents, the applicant's plea against the cancellation of the promotion test fixed for 15.5.98, has come too late in the day and is rejected as being hit by limitation. The third relief concerns the postponing of the promotion test for 22.7.2000, as well as the modification in the conditions of eligibility for promotion, which are related. It is seen that following the adoption of the recommendations of 5th Central Pay Commission, the post of Laboratory Supdt. in the scale of pay of Rs. 1400-2300/- was redesignated as Lab. Superintendent/Chemist, Grade-III in the scale of Rs.5000-8000/- with qualification of BSc Chemistry/Bio Chemistry with DMLT while the post of Laboratory Supdt. in the scale of Rs.1640-290/- was redesignated as Laboratory Supdt. Grade II, in the scale of Rs.5500-9000/- to be filled exclusively by promotion from those in the lower grade with five years' experience. This was done by Railway Board's letter dated 17.8.98. This was further relaxed on 18.7.99 by reducing the requirement of experience to one year in any Public Health Laboratory for those recruited in the scale of Rs.1400-2300/- (Rs.5000-8000/-). The promotion test for filing up

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the posts in the grade of Rs. 5500-9000/- was fixed for 22.7.2000, in this context, and intimation for this purpose was issued on 4.7.2000 to four persons including the applicant. It was only thereafter, on 6.7.2000, fresh orders were issued by letter No. E(WG)I-98/PM10/2, further relaxing the conditions and converting the nature of promotion for the post from selection to non-selection. It is obvious that only four persons, including the applicant were eligible for being considered for the promotion at that time and that modifications and relaxations were ordered in a hurry to accommodate others as well. This was clearly impermissible. While the competence of the administration to effect changes in the pattern of recruitment / promotion of the employees in the organisation cannot be assailed, it cannot be permitted to be exercised in a capricious and arbitrary manner to help a handful, as the respondents have apparently done in this case; [State of Andhra Pradesh Vs J. Sreenivasan Rao & Others [ (1983) 3 SCC 286]. Respondents were bound to consider the four persons including the applicant as being of a separate class, who had become eligible for consideration for promotion, before the requirements were relaxed, have thus tested separately and if found fit to promote them. Vacancies remaining unfilled in 2000 and those which have arisen thereafter can be considered for being filled by promotion as per the relaxed requirements. The applicant if found fit, would be entitled for promotion, as if the test was conducted on 20.7.2000, on notional basis, though the monetary benefits would flow only from the actual date of promotion, following the test to be re-conducted.

9. In the result the OA succeeds to some extent and is accordingly disposed of. The respondents are directed to consider the case of the applicant for promotion to the grade of Lab. Supdt II in the scale of Rs. 5500-9000/-, as if the promotion test had taken place on 20.7.2000, as apparently she was fully eligible for consideration and if found fit to promote her from the said date on notional basis with actual benefits only from the date of promotion following the test to be now held. All other reliefs prayed for are rejected as being devoid of any merit.

No costs.

S. Raju  
(Shanker Raju)  
Member (J)

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Govindan S. Tampli  
Member (A)