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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 881/88.

DATE OF DECISION: January 3, 1992

K.K. Dutta & Others

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APPLICANTS.

V/s.

Union of India & Ors.

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RESPONDENTS.

CORAM:

Hon'ble Mr. Justice Ram Pal Singh, V.C. (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri G.D. Bhandari, counsel for the applicants.

Shri Inderjit Sharma, counsel for the respondents.

P.C. JAIN, MEMBER (A):

JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicants, who have been working as Laboratory Assistants on ad-hoc basis in the Northern Railway Diesel Shed, Tughlakabad, have prayed for a direction to the respondents to regularise them from the date of their ad-hoc promotion with ancillary pay fixation and payment of arrears and allowances, if any.

2. Briefly stated, the relevant facts of the case are that the applicants were appointed as Lab. Khalasi in the Northern Railway and were later promoted as Laboratory Assistant on ad-hoc basis, in the grade of Rs.260-430, as under: -

Name of the Applicant	Date of Appointment on ad-hoc basis as Laboratory Assistant.
K.K. Dutta	2.8.1985.
Raghubir Singh	7.2.1980.
Jagdish Parshad	22.7.87.
Baldev Singh	19.4.85.

They have been working continuously as Laboratory Assistant without any break and their performance is said to be satisfactory. Their grievance is that they have not been regularised as Laboratory Assistant so far and, as such,

have not been considered for further promotion to the post of Jr. C&M Assistant Gr. Rs.280-560.

3. The case of the applicants is that since they have been working as Lab. Assistant for years, they cannot be retained as ad-hoc indefinitely and that they, having been allowed to work as Lab. Assistant for over two years, have to be treated as regular Lab. Assistant and that they cannot be held to be officiating merely in stop-gap and temporary local arrangements. In support of their claim, they have annexed a copy of the Railway Board letter dated 22.5.66 (Annexure A-6) which directed that after a person has put in 18 months of officiating service, he should either be declared suitable for retention in the grade or should be reverted on the ground of unsuitability. They have also filed copy of another letter of the Railway Board dated 7/16.4.66 (Annexure A-7) which emphasised that promotions on local arrangements should in no circumstances be extended for periods exceeding three months and in cases where it is found absolutely necessary to continue the local arrangement beyond three months, the matter should be brought specifically to the notice of the Divisional Superintendent/General Manager. Copy of the letter dated 8.8.83 from the General Manager, Northern Railway, filed as Annexure A-8, further reiterated that selection should be conducted regularly and ad-hoc promotions should be resorted to only sparingly with the approval of C.P.O.

4. The respondents have contested the application by filing a counter reply, to which a rejoinder has also been filed by the applicants.

5. We have gone through the case and heard the learned counsel for the parties.

6. In the counter reply filed on behalf of the respondents, it is stated that the sanctioned cadre strength of Laboratory Assistants is 50 and in terms of the orders of the Railway Board dated 2.11.1977 (Annexure R-1), 25 posts were to be

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filled in by promotion and the remaining 25 by direct recruitment. They have filed a copy of the Order dated 25.2.1981 (Annexure R-2) which included a panel of 25 persons against the 25 posts of promotional quota. It is further stated therein that out of the 25 posts of the direct recruitment quota, 8 posts were filled in and for the remaining 17 posts, a requisition had been made to the Chairman, Railway Recruitment Board, vide letter dated 4.4.1987 (Annexure R-3). In Annexure R-4 to their counter-reply, the respondents have given a seniority list of Laboratory Khalasis issued by the Chemist and Metallurgist vide his letter dated 26.3.1979 to impress upon the fact that some persons even senior to the applicants are still working as Khalasis and that the applicants cannot be regularised over their seniors unless they compete them in the selection for the posts of Laboratory Assistants as and when vacancies in that cadre occur for promotees. It is further stated that as a result of the instructions issued by the Northern Railway Headquarters Office vide their letter dated 6.8.1987 (Annexure R-5), fresh seniority list will have to be prepared for purposes of promotion to the posts of Laboratory Assistant and such a seniority list will also include cleaners in the concerned Locoshed. They have denied that the action of the respondents in not regularising the applicants is arbitrary, malafide, illegal, void ab-initio or vitiated on any of the grounds given in the application. According to the respondents, the applicants have been working purely on ad-hoc basis against the posts meant for direct recruits and no posts are vacant in the quota meant for promotees.

7. In their rejoinder, the applicants have stated that the Railway Board have agreed to enhance the promotee quota of Lab. Assistants to 67-2/3% in place of the existing 50% hitherto as per minutes of the meeting held by the Ministry

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of Railway with the All India Railway Men Federation (ARF) dated 25.6.1988 (Annexure A-10) and as a result thereof, the Lab. Khalasis have to get 17-2/3% more posts for their advancement. They have reiterated the grounds taken in the application in the rejoinder also, in particular that they cannot be reverted after they have put in more than 18 months service in the higher grade of Lab. Assistant and that they could now be reverted only after following the statutory rules and not otherwise. They have also stated that with the increase in the promotee quota from 50% to 67-2/3%, the promotee quota gets 9 more posts. They have also pointed out that some of their juniors were called to compete in the selection for the post of Lab. Assistants whereas they have been ignored. They have also taken the plea that since the direct recruitment quota has not been filled and ad-hoc promotions have been made against most of them, the quota system fails and that when the quota system fails, rota system cannot be sustained and there is catena of Supreme Court and various High Court rulings on this subject.

8. In Shri JETHA NAND AND OTHERS Vs. UNION OF INDIA AND OTHERS (T. 844/86 - FULL BENCH JUDGMENTS OF CENTRAL ADMINISTRATIVE TRIBUNALS (1986-1989) p. 353) decided on 5.5.1989, a Full Bench of this Tribunal held:

- "(i) The right to hold the selection/promotional post accrues only to those employees who have undergone a Selection Test and empanelled for the promotion/selection post and continue as such for 18 months or more. An adhoc employee will also get the right if he has passed the Selection Test.
- (ii) We hold that a test is mandatory before a Class IV employee can be promoted permanently to Class III post.
- (iii) The mere recording of satisfaction or even good entries in CR of the employee is not enough to entitle the employee holding a promotional post in an ad-hoc capacity to claim that his services be regularised in the Class III post.
- (iv) If the employee has appeared in the selection test and has failed, his services cannot be

regularised in the promotional post. But he will be entitled to be given further opportunity to appear in the selection test.

- (v) A Railway employee holding a promotional post in adhoc capacity can be reverted to his original post at any time before the expiry of 18 months. Secondly, if he has not qualified in the selection test, he is liable to be reverted even after 18 months."

9. Analysing the facts and arguments advanced in this case, we find that the admitted facts are that the applicants have been working as Laboratory Assistant continuously for a pretty long time satisfactorily on ad-hoc basis and they have not been regularised as yet. The minutes of the meeting with the ARF dated 25.6.1988 ibid mention that necessary orders in regard to the increase in the promotee quota to the extent of 17-2/3% "are likely to be issued very soon". It may be mentioned here that neither the applicants nor the respondents have filed any such orders having been issued by the Railway Board. On the basis of the instructions contained in letter dated 6.8.1987, fresh seniority list is to be prepared, which means that the existing seniority list, in which the applicants have pointed out certain discrepancies, is not to be adopted.

10. In the conspectus of the facts and circumstances of the case, and in the light of the judgment delivered in the case of Shri Jetha Nand and Others (supra), ^{we hold that} although the applicants have been working in a promotional post for more than 18 months, they cannot be regularised in the post of Lab. Assistant unless they pass the selection test for that post, as such a test is mandatory before a Class IV employee can be promoted permanently to Class III post. The mere recording of satisfaction or even good entries in the CR of the applicants is not enough to entitle them to claim that their services be regularised in the post of Lab. Assistant. The plea of the applicants that the promotion quota having been increased by 17-1/2%, their quota gets 9 more posts, also does not help the applicants in seeking relief for regularisation from the date of their ad-hoc promotion, as

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if and when such orders are issued, they may not be effective from any retrospective date. In any case, the increase in the number of vacancies in the promotee quota at any stage will not give any prescriptive right to the applicants to be regularised in the post of Lab. Assistant until they pass the selection test. The plea of the applicants in regard to the quota-rotate system is also not tenable in the context of the relief prayed for by them.

11. In the light of the foregoing discussion, we see no merit in the O.A., which is hereby rejected. There shall be no order as to costs.

3/1/92
(P.C. JAIN)
MEMBER(A)

3/1/92
(RAM PAL SINGH)
VICE CHAIRMAN(J)