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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH

OA.No.2190 of 1992

Dated New Delhi, this 19th day of September, 1997.

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HON'BLE DR JOSE P. VERGHESE, VICE CHAIRMAN(J)
HON'BLE MR K. MUTHUKUMAR, MEMBER(A)

1. Indian Railways X-Ray & Laboratory Staff Association (Regd)
Office 14/7 Railway Colony
Kishanganj
DELHI.
2. Anil Kumar Pareek
S/o Shri Ganga Sahai Pareek
working as Lab. Supdt. Gr.II
Northern Railway Central Hospital
NEW DELHI-110055.APPLICANTS

By Advocate: Shri S. K. Sawhney

versus

1. Union of India, through
Secretary
Railway Board
Rail Bhawan
NEW DELHI.
2. General Manager
Northern Railway
Baroda House
NEW DELHI.
3. Shri K. L. Joshi
Lab. Supdt. Gr.II
Divisional Railway Hospital
KANPUR.
4. Shri M. A. A. Faridi
Lab. Supdt. Gr.II
Central Hospital
Northern Railway
NEW DELHI. RESPONDENTS
5. Shri V. K. Gupta
Lab. Supdt. Gr.II
Central Hospital
Northern Railway
NEW DELHI.

By Advocate: Shri O. P. Kshatriya

ORDER (ORAL)

Dr Jose P. Verghese, VC(J)

The applicants in this OA is an Association and most of them is stated to belong to a cadre of Laboratory Superintendent Grade-III

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and Laboratory Superintendent Grade-II and are seeking promotion to the post of Laboratory Superintendent Grade-I. According to the respondents, the prescribed qualification for the post of Laboratory Superintendent Grade-I is, M.Sc. degree with two years' experience and B.Sc. with five years' experience; and age relaxation up to 45 years were also given under the Recruitment Rules. The said post is to be filled up 100% by promotion.

The case of the applicants is that most of them who are working either as Laboratory Superintendent Grade-III or Laboratory Superintendent Grade-II, do not have this educational qualification now prescribed on the basis of the Railway Board's letter dated 1.8.92. It was stated that out of the total in the cadre of 22 Laboratory Superintendent Grade-I, there are only three incumbents who have got graduation as the basic qualification. It was also stated that the respondents had relaxed this qualification of graduation while they proceeded to recruit or promote persons to these posts in the year 1985. Paragraph 4.5 of the reply of the respondents state that they had in fact, vide their letter dated 29.11.85, relaxed the requirement of graduation for the candidates to be considered for the post of Laboratory Superintendent Grade-I as a one-time measure. It was also stated that in the year 1993 similar

relaxation was also given, but again as a one-time relaxation. Subsequently in the year 1996 non-graduates as well, were called for consideration for these posts, selection held but subsequently abandoned and we do not know what was the reason why the selection thus held was subsequently abandoned. The applicants had made a representation to the respondents stating that even during the present selection if the requirement of graduation is not relaxed, many of the members of the Association are likely to stagnate and the said representation dated 22.4.96 had been rejected stating that it is not possible to anticipate that no sufficient graduates will be available for filling up the post and in case the said grievance subsists, they may reconsider the issue afresh subsequently.

(A)

We have considered the rival contentions of both the parties and it was stated on behalf of the respondents that the Recruitment Rules mandatorily to be followed when the selection take place, and whenever difficulties arose in getting sufficient number of qualified persons, the respondents had always resorted to one-time relaxation, and such relaxation shall not be considered for a permanent relaxation, nor can it be a ground to set aside the Recruitment Rules on the ground of being arbitrary or discriminatory.

(X)

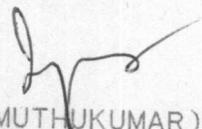
There is considerable force in the contention of the respondents, but at the same time we find the post of Laboratory Superintendent Grade-I is to be filled up 100% by promotion and the feeder cadre post of Laboratory Superintendent Grade-II again is to be filled up from among Laboratory Superintendent Grade-III. That being so, the requirement of graduation as an essential qualification for Laboratory Superintendent Grade-I in the absence of prescribed provision of retrospective application of the Rules beyond 1982, we are of the opinion that the said educational qualification now prescribed cannot be insisted upon those persons who were already Laboratory Superintendent Grade-II or Grade-III by 1982. Therefore, we consider that the prescribed qualification under the Recruitment Rules, will have only prospective application and the educational qualification prescribed shall not be insisted upon for those persons who are already Laboratory Superintendent Grade-II or Laboratory Superintendent Grade-III; their case shall be considered as if they were eligible in accordance with the rules, for the promotion.

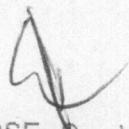
In the circumstances, this OA is allowed only to the extent stated above and we direct the respondents that they shall scrutinize all the candidates eligible for the post of Laboratory Grade-I without insisting the educational qualifications now prescribed by 1982 Rules, from

those candidates who were holding Laboratory Superintendent Grade-II or Grade-III, prior to 1982. It goes without saying that, as stated in the letter of the respondents dated 3.12.96, by which the representation of the applicants had been disposed of, stating that in case sufficient number of graduates are not available to fill up the post, subsequently respondents would consider again, and resort to one-time relaxation to the applicants. In the circumstances, respondents are at liberty to go ahead with the promotion, in the light of what is stated above and in the absence of sufficient graduate candidates for the post of Laboratory Superintendent Grade-I forthcoming, respondents may consider, on their own, the suitability of relaxation as they had been doing in the past, in the present case as well.

(16)

With this, the OA is disposed of. No order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(Dr. JOSE P. VERGHESE)
VICE CHAIRMAN(J)

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