

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 230 of 2001.

this the 30th day of July'2001.

HON'BLE MR. S. DAYAL, MEMBER (A)

HON'BLE MR. S.K.I. NAQVI, MEMBER(J)

Jagdish Prasad Singh, aged about 59 years, S/o Sri Baldev Prasad Singh, R/o Railway Quarter No. 580-A Asuran Chowk, near Railway Hospital, Gorakhpur.

Applicant.

By Advocate : Sri Rakesh Verma.

Versus.

1. Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager (P), North Eastern Railway, Gorakhpur.
3. The Chief Medical Director, North Eastern Railway, Gorakhpur.

Respondents.

By Advocate : Sri D. Awasthi.

ORDER (ORAL)

S. DAYAL, MEMBER (A)

This application has been filed for setting-aside the letter dated 1.2.2001 by which two posts of Lab. Supdt. in the newly introduced pay-scale of Rs. 6500-10500/- are to be filled-up by selection through written examination as it is claimed to be contrary to the Railway Board's letter dated 17.8.98. A direction is also sought to the respondent no. 2 to place the applicant at appropriate place in the new pay-scale of Rs. 6500-10500/- of the post of Lab. Supdt. Gr.I w.e.f.

1.8.1998 by adopting non-selection method as claimed to have been done by the Southern Railway vide its letter dated 3.5.1999.

2. The applicant has claimed that the post of Lab. Supdt. Gr.I is a non-selection post, which is sought to be filled-up by the method of selection. He has sought the authority of the Railway Board's letter dated 17.8.98. He has also mentioned that the pay-scale of Rs. 5500-9000/- for the post of Lab. Supdt. Gr.I has been replaced by the new pay-scale of Rs. 6500-10500/-. It is claimed that the Southern Railway had implemented the new pay-scale by its order dated 3.5.99. It is claimed that the applicant is ^{the} senior most Lab. Supdt. Gr.I and, therefore, he is entitled to be placed in the new pay-scale of Rs. 6500-10500/-. The applicant claims that he was selected as Asstt. Chemist/Lab. Supdt. Gr.III through Railway Recruitment Board and was posted under the control of the respondent no.3 w.e.f. 12.11.1965. He claims that he was promoted to the post of Chemist/Lab. Supdt. Gr.II and was posted at N.E.R. Hospital under the control of the respondent no.3. He claims further promotion to the post of Lab. Supdt. Gr.I in the pay-scale of Rs. 550-900/-(Third Pay Commission) w.e.f. 1.10.79. It is claimed that the pay-scale of Rs. 550-900/- was revised as 1640-2900/- w.e.f. 1.1.1986 and to Rs. 5500-9000/- w.e.f. 1.1.1996 on the recommendations of the respective Pay Commissions. It is claimed that the applicant after revision of the pay-scale of Lab. Supdt. Gr.I from 1.1.1996 has been drawing his salary in the pay-scale of Rs. 5500-9000/- He claims that he has been drawing the basic salary of Rs. 9000/- since that date. The Railway Board by their letter dated 17.8.98 upgraded certain pay-scales and the staffs working ^{those} in ~~the~~ ^{those} certain pay-scales were entitled to draw their pay in the upgraded pay-scale w.e.f. 1.1.1998. It is claimed that the post

of Lab. Supdt. Gr.I in the pay-scale of Rs. 5500-9000/- had been upgraded by 15% and had been replaced by the new pay-scale of Rs. 6500-10500/-. This order of the Railway Board is stated to have been implemented by the Southern Railway by its office order dated 3.5.1999. The applicant claims that he is entitled to be placed in the upgraded pay-scale on the ground of bringing ~~out~~¹ 15% of the posts within the ambit of this pay-scale. He claims that two posts of Lab. Supdt. Gr.I have¹ therefore, to be filled by applying the non-selection method as per the Railway Board's letter dated 17.8.98. It is claimed that written examination for these two posts was held on 22.2.2001, but the result has not been declared.

3. We have heard Sri Rakesh Verma, learned counsel for the applicant and Sri D. Awasthi, learned counsel for the respondents.

4. We find that the averments of the applicant made in paras 4 (v) and (vii) have not been denied by the respondents. In these two paragraphs, it has been stated that the applicant was promoted to the post of Lab. Supdt. Gr.I in the pay-scale of Rs. 550-900/- (revised) w.e.f. 1.10.79 in regular and substantive capacity and remained posted under the control of the respondent no.3 and he has been drawing his salary in the pay-scale of Rs. 5500-9000/- as basic pay at Rs. 9000/-, after revision of the pay-scale, w.e.f. 1.1.1996. It is, however, noticed that the applicant is claiming the pay-scale of Rs. 6500-10500/- by staking his claim against one of the two posts which have been advertised for being filled-up by selection method vide letter dated 1.2.2001 (Annexure A-1 to the O.A.).

5. The applicant has claimed the benefit of Annexure A-3 in which it has been mentioned that the

pay-scale of Lab. Supdt. Gr. III of Rs. 5000-8000/- was an ~~existent~~^{existing &} scale and percentage of posts in the said scale would be 35. The scale of Lab. Supdt. Gr. II Rs. 5500-9000/- is also an ~~existent~~^{existing &} scale and percentage of posts in the said scale is said to be 45. The scale of Lab. Supdt. Gr. I Rs. 6500-10500/- is stated to be a new scale and percentage of posts coming in this category is said to be 15. It is also mentioned that these posts were to be filled-up by non-selection method. We have also seen the order dated 3.5.99 of the Southern Railway in which it has been mentioned that the pay-scale of Lab. Supdt. Gr. I of Rs. 5500-9000/- has been replaced by the pay-scale of Rs. 6500-10500/-, the pay-scale of Lab. Supdt. Gr. II of Rs. 5000-8000/- has been replaced by the scale of Rs. 5500-9000/- and the Lab. Supdt. III of Rs. 4500-7000/- has been replaced by the scale of Rs. 5000-8000/- The authority for passing this order is stated to be Railway Board's letter, which we have considered earlier. This letter of the Southern Railway is clearly not consistent with the letter of the Railway Board dated 17.8.98 (Annexure A-3 to the O.A.). We find from the seniority list as on 1.4.1999 that the applicant has been shown in the pay-scale of Rs. 5500-9000/- as Lab. Supdt. There is no mention of Lab. Supdt. Gr. I in this seniority list, nor is any cadre of Lab. Supdt. Gr. I mentioned in para medical cadre at the ^{beginning} of the seniority list.

6. In ~~stable~~ conclusion, therefore, is that the pay-scale of Rs. 6500-10500/- came into existence as a result of Railway Board's letter dated 17.8.98 for the first time and 15% of the posts came to be converted into those of Lab. Supdt. Gr. I out of the total strength of that cadre

7. We have seen the circular dated 6.7.2000 (Annexure A-1 to the Counter Reply) in which the cadre

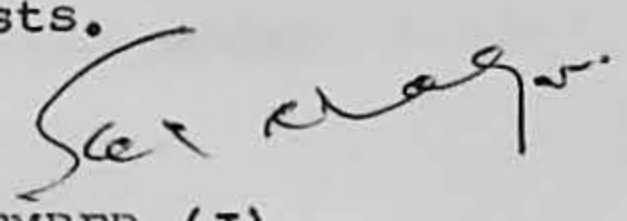
of Lab. Supdt. Gr. III is mentioned as Selection, Lab. Supdt. Gr. II is a non-selection while the Lab. Supdt. Gr. I is a selection post. It is also stated that the Lab. Supdt. in the pay-scale of Rs. 5500-9000/-, who have entered the grade on non-selection basis or on the basis of modified selection irrespective of their seniority position, will be required to face selection for promotion to the grade of Rs. 6500-10500/-. We have also perused the letter dated 19.10.2000 of the Railway Board by which it has been decided that Lab. Supdt. Gr. II who were working in the grade of Rs. 5500-9000/- on regular basis and had entered the grade either in the pre-revised scale of Rs. 1640-2900/- or in the revised scale of Rs. 5500-9000/- on the basis of the positive act of selection as distinct from modified selection under the scheme of restructuring, shall be exempted from appearing in the selection for promotion to the next higher grade of Rs. 6500-10500/-.

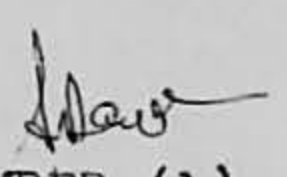
8. The learned counsel for the applicant during his arguments before us has claimed that the applicant had been promoted to the scale of Rs. 425-700/- (pre-revised scale of Third Pay Commission) and that his selection to Lab. Supdt. Gr. II was by positive act of selection. He has also claimed that the post of Lab. Supdt. Gr. I were in existence as is clear from the letter of General Manager(P), N.E.R. of 11.10.1985.

9. Since the facts as brought-out on record by the learned counsel for the applicant and the learned counsel for the respondents are not clear, we, in the circumstances, direct the respondents to ascertain whether the post of Lab. Supdt. Gr. I was in existence in 1979 when the applicant claims promotion to that post, and if so, the applicant shall be entitled ^{to} ~~the~~ pay-scale of Rs. 6500-10500/- ^{been} Incase he had not ~~/~~ promoted as Lab. Supdt. Gr. I in the year

1979 or before 17.8.98 and because the subsequent change in the method of selection had taken place, the pay-scale would not apply to him. If such be not the case, the respondents may ascertain whether the applicant had been promoted to Lab Supdt. Gr.II by the method of selection, and, if so, he shall be considered for promotion to Lab. Supdt. Gr.I by the method of non-selection. The respondents shall ascertain these facts and pass appropriate orders within a period of two months from the date of receipt of copy of this order.

10. The O.A. stands disposed of as above with no order as to costs.


MEMBER (J)


MEMBER (A)

GIRISH/-