

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO.509 OF 2004

ALLAHABAD THIS THE 6th DAY OF DECEMBER, 2006

**HON'BLE MR. JUSTICE KHEM KARAN, VICE CHAIRMAN
HON'BLE MR. P.K. CHATTERJI, MEMBER-A**

Pankaj Dhar Dubey, S/o Sri S.D. Dubey, R/o 99-E,
Azad Nagar, Jangal Tulsi Ram, Bichchia, Gorakhpur.

.....Applicant

(By Advocate Shri B. Tiwari.)

V E R S U S

1. Union of India, through the General Manager,
N.E.R., Gorakhpur.
2. Chief Personnel Officer, N.E.R., Gorakhpur.
3. Principal, N.E.R. Boys High School Inter
College, Gorakhpur.

.....Respondents

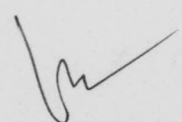
(By Advocate: Sri A.V. Srivastava.)

O R D E R

BY JUSTICE KHEM KARAN, V.C.

The applicant has prayed for following
relief(s):-

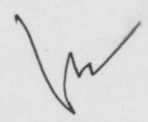
- "(i) To issue an order or direction setting
aside the order dated 22.12.2003 passed by
C.P. Office, N.E. Railway, Gorakhpur.
- (ii) To issue an order or direction commanding
the respondents to give promotion to the
applicant as Lab. Assistant in the scale
of Rs. 530-610/- in pursuance of Railway
Board's letter dated 21.1.1984 after



regularizing the applicant in scale of Rs. 2550-3200/- in Boys Inter College, N.E. Railway, Gorakhpur.

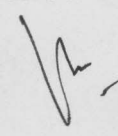
(iii) To issue an order or direction commanding the respondents to give seniority, arrears of salary for difference of pay for the post of Science Bearer and Lab Assistant after completion of one year service from the date of his appointment excluding 4 months' period."

2. It transpires from the pleadings on record that the applicant was inducted on 25.1.2000 (according to the applicant on 21.12.1999) on the post of Science Bearer in the scale of Rs. 2550-3200/- in the Boys Inter College, Gorakhpur, run by the N.E.R., purely on casual basis. On surrendering of the post on 20.1.2000, he became surplus, so was adjusted on the post of casual Chowkidar in the same pay scale under the Deputy Chief Signal Telecommunication Engineer, Microwave, Gorakhpur on casual basis vide order dated 27.3.2003 (Annexure-2). It appears that earlier to his having been declared surplus, he gave various applications to the authorities for his regularisation in Group 'D' post on the ground that he acquired temporary status after having served for more than 4 years or so and also represented to the authorities for his promotion to the post of Lab. Assistant. He said that he possessed the qualification as prescribed in the Railway Board's letter dated 21.1.1984 (Annexure-5) for getting promotion to the post of Lab Assistant. He complained that his juniors namely S/Sri P.K. Vishwakarma and Yogesh Pathak had been regularised vide order dated 26.5.2002 and 4.4.2003



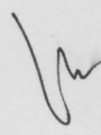
(Annexure 7 & 8 respectively), nothing was done. So, he filed one O.A. no. 1136 of 2003 before this Bench for regularisation in Group 'D' and for promotion to the post of Lab. Assistant vide order dated 23.9.2003 (Annexure-10). This Bench disposed of the said O.A. without calling for any reply from the respondents. The order dated 23.9.2003 directed the applicant to file a fresh detailed representation with regard to his grievance and asked the authorities concerned to decide the same by a reasoned and speaking orders in the light of the various orders including one dated 21.1.1984 of the Railway Board. The applicant filed Contempt petition no. 26 of 2004 and it was during the course of these proceedings that there came a reply from the respondents that those orders dated 23.9.2003 have been complied with by passing the order dated 22.12.2003 (Annexure-1), which is being impugned in this O.A. One of the points discussed in the order dated 22.12.2003 was that since there were no posts of Lab. Assistant in N.E.R., so it was not possible to accede^{to} the request of the applicant to promote him to the post of Lab. Assistant.

3. Since the applicant has now been found fit for regularisation in Group 'D' (on the post of Chowkidar) vide letter dated 9.2.2005 (Annexure CA-I), so Sri Tiwari, learned counsel for the applicant has confined his argument to the question of promotion to the post of Lab. Assistant. According



to him, had the applicant been regularised in Group 'D' in due course, he would have been considered for promotion to the post of Lab. Assistant in terms of the Railway Board's letter dated 21.1.1984 (Annexure-5). Sri Tiwari goes on to argue that it is totally incorrect to say that there are no post of Lab. Assistant in N.E.R. and in this connection, he has referred to the letter dated 6.9.1984 (Annexure-9) by which three posts of Lab. Assistant in the scale of Rs. 210-270/- were sanctioned by the General Manager (P) for Boys High School Inter College, N.E.R., Gorakhpur. He says that the respondents should consider the case of the applicant for promotion to that post and refusal is totally unjustified.

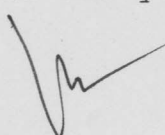
4. Shri A.V. Srivastava, learned counsel for the respondents has contended that since the applicant is in a different unit namely Signal Telecommunication Engineer Microwave, so the question of his promotion to Lab Assistant in the School run by the Railways should not arise, even ^{if} ~~after~~ the posts are there. He states that according to the Railway Board's Letter dated 21.1.1984 only regular Group 'D' employees having the requisite qualification are entitled to be considered for promotion to the post of Lab. Assistant and since the applicant was not regularised prior to 9.2.2005, so he could not have been considered for promotion to the said post. Sri Srivastava also



argued that the applicant cannot compare his case with those of S/Sri P. Vishwakarma and Yogesh Pathak who were regularly inducted as Bungalow Peon before being transferred, on their request, to other posts.

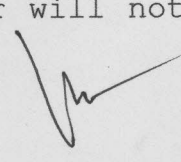
✓ 5. We have considered the respective arguments in the context of the applicant's claim for promotion to the post of Lab Assistant. He appears to be correct on the point that the posts of Lab. Assistants were created vide letter dated 6.9.1984 (Annexure-9) of General Manager (P) for Boys High School, Gorakhpur, run by N.E.R. There is no clear cut denial from the side of the respondents of the factum of creation of post of Lab. Assistant. The reply does not say that the said posts were subsequently abolished or surrendered or kept in abeyance. Though there is such plea in respect of the post of Science Bearer, which the applicant was holding before 20.1.2003. So to the extent the order dated 22.12.2003 (Annexure-1) says that there are no posts of Lab. Assistant in the School, run by N.E.R., does not appear to be correct.

6. According to the letter dated 21.1.1984 (Annexure-5) of the Railway Board, the posts of Lab. Assistant were to be filled in by direct recruitment as well as by promotion from Group 'D'. Para 2 thereof provides that in case of direct recruitment, candidate should possess the Senior Secondary/ Intermediate qualification with Science and one year



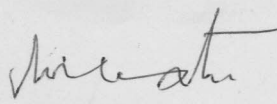
experience of working in the Laboratory and for promotion, the candidates should be Group 'D' employee and High School passed with Science. Unfortunately, the relevant Service Rules regulating the recruitment to the said post and service conditions etc., that may be, have not been placed before us so as to make picture more clear.

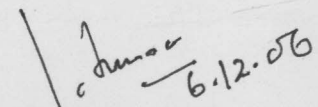
7. Sri Srivastava may be correct in saying that the casual worker or worker with temporary status before regularisation may not be eligible for promotion to the post of Lab. Assistant. As on today, the applicant stands regularised in Group 'D' as Chowkidar, but in a different unit named Signal Communication Microwave. The question is as to whether a Group 'D' employee of this unit will be eligible for promotion to the post of Lab. Assistant in the School, run by the N.E.R. The letter dated 21.1.1984 alone does not appear to be sufficient to decide the question as it can be construed both ways. No-doubt, para 2 of the letter dated 21.1.1984 does not say that such Group 'D' employee should be of Laboratory or of the School run by the N.E.R. or of a particular unit. But then the Railways is a big organization divided into different divisions/units so without knowing the detailed scheme for filling up the post of Lab. Assistant in the School of N.E.R., it is difficult to pronounce whether regular Group 'D' employee of a unit, different to the unit where such vacancies may exist, will or will not be



eligible for such promotion. We leave it to the authorities concerned to decide the same in the light of the relevant Rules on the subject.

8. In the result, the O.A. is finally disposed of with a direction to the respondents to consider the case of the applicant for promotion to the post of Lab. Assistant in the School run by the N.E.R., if there is vacancy and if the applicant is otherwise found suitable under the relevant Rules within a period of six months from the date a certified copy of this order is produced before them. The order dated 22.12.2003 (Annexure-1) is rendered ineffective and will not come in the way of such consideration for promotion. No order as to costs.


MEMBER-A


VICE CHAIRMAN

GIRISH/-