

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

DATED: THIS 28th DAY OF September 2007.

ORIGINAL APPLICATION NO. 786 OF 2000.

Hon'ble Mr. Justice Khem Karan, V.C.

Hon'ble Mr. P.K. Chatterji, A.M

1. Dina Nath, S/o Sri Swami Nath, R/o Village Bhuswal, Post – Bargaon, Distt: Gorakhpur.
2. Noor Mohammed, S/o Sri Peer Mohammad R/o Mohala – Padleganj, Post – Sadar Distt: Gorakhpur.

.....Applicants

By Adv: Sri B. Tiwari

V E R S U S

1. Union of India, through its Secretary, Ministry of Railways, Govt. of India, Rail Bhawan, New Delhi.
2. Divisional Medical Officer (Health), Lalit Narain Mishra Railway Hospital, N.E. Railway, Gorakhpur.

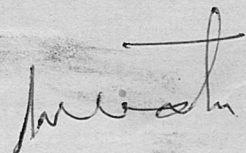
.....Respondents

By Adv: Sri P. Mathur

ORDER

By Hon'ble Mr. P.K. Chatterji, Member (A)

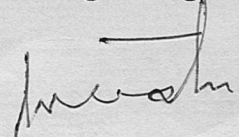
Both the applicants in this OA have stated that they ^{are} ~~have~~ been aggrieved by the decision of the respondents in not giving them promotion as Health Inspector Grade IV according to the rules of 25% promotion from the scale of Rs. 750-940. They say that they fulfilled the requisite qualification for promotion in 25% quota as Health Inspector Grade IV having passed High school Examination and also having obtained the necessary Sanitary Inspector Diploma. It is stated in para 4.5 of the OA



that while application No. 1 obtained the Sanitary Inspector Diploma in the years 1995, applicant No. 2 obtained the same in 1991. Therefore they were entitled to be promoted as Inspector in the scale of Rs 1200-2040 revised to Rs. 5500-9000). But the respondents instead of giving them promotion promoted their juniors.

2. The applicants have further stated that the applicant No. 2 made a representation for promotion on 08.11.1993 and further on 10.06.1998 and 05.01.1996 to the Divisional Medical Officer and Chief Personnel Manager, NE Railway Gorakhpur. Applicant No. 1 also made representations on 15.05.1996 and 07.07.1998 for promotion. But the Divisional Medical Officer passed an order dated 09.06.2000 rejecting the claim of the applicants. It has also been stated by the applicants that in pursuance of the V Pay Commission Report the Railway merged the post of Health Inspector Grade IV and Grade III and fixed the minimum qualification for promotion from the lower grade as B.Sc in Chemistry. This was circulated by the Railway Board's letter dated 09.09.1999. By giving this information the applicants have expressed their grievance that in this way their prospect of promotion to the higher grade was permanently closed. Although they both had secured the requisite qualification much before it was modified in 1999. They were not given promotions all these years from 1992 to 1998.

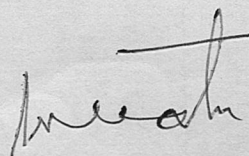
3. The applicants have also assailed the orders of the Railway Board dated 09.09.1999 prescribing higher



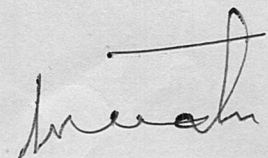
qualification as violative of Article 14 of the Constitution of India. It was stated in the OA as well as in the argument of the learned counsel in the hearing that Article 14 laid down that reasonable classification should be made where it was justified and necessary to protect the interest of Groups who were differently circumstanced. According to the circular of 09.09.1999 the qualification which have been prescribed for 25% promotion from the lower grade in the same as that of direct recruitment. By giving some examples the learned counsel for the applicants argued that it was a practice and convention in Govt. departments that a more relaxed standard were prescribed for promotion from the lower grade than what is prescribed for direct selection. In this case the respondents have not done so and therefore, violated the provision of Article 14 of the Constitution. By giving this factual position the applicants have requested for the following reliefs:

- a. *"i. to issue an order or direction commanding the respondent to give promotional benefit to the applicants for the post of Health Inspector Grade IV in scale of Rs. 1200-2040 (old scale), which is revised in scale of Rs. 5500-9000, w.e.f. 01.01.1996 with all consequential benefits including difference of salary and seniority.*
- b. *to issue an order or direction setting aside the order dated 09.09.1999 (Annexure A-1) issued by Railway Board enhancing educational qualification from High School to B.Sc for 25% promotional quota for the post of Health Inspector Grade III.*
- c. *to issue any other order or direction which may deem fit and proper in the circumstances of the case."*

4. The grounds on which the orders have been assailed and relief sought are as follows:



- a. Applicant No. 2 possessed requisite qualification when it was notified on 29.10.1991 to fill up two posts of Inspector by promotion. It was stated in the OA that applicant No. 2 had already furnished alongwith his application dated 13.11.1991 a certificate dated 03.06.1991 regarding his training in Sanitary Inspector. Inspite of that he was not given promotion and his junior Noor Mohd and another were promoted.
 - b. Even applicant No. 2 had obtained the certificate of Sanitary Inspector ship in the year 1995. This was much before the circular dated 09.09.1999 when the Board prescribed enhanced education qualification. The respondents could have taken action to promote the applicants during this long time. But they took no action and now the prospect of their promotion was lost for ever.
 - c. The new education qualification as prescribed in 1999 was violative of Article 14 of the Constitution and therefore, deserves to be quashed.
 - d. Although new qualification were prescribed in 1999 according to judgments pronounced by the Hon'ble Supreme Courts vacancies which occurred between 1991 and the issue to new circular in 1999, should be filled up according to the old rules as regards the qualification. The learned counsel for the applicant mentioned the Apex Court judgment in **YB Rangaiah Vs. J Srinivas Rao 1983 SCC (L&S) 382 para 9, P Ganeshwar Vs. State of Andhara Pradesh 1988 (8) ATC 957 and P Mahjebndra Vs. State of Karnakata AIR 1990 SC 405 para 5.**
5. The respondents have categorically denied all these allegations. They have refuted the above arguments in para 12 of the reply which is as follows:



"That the contents of para 4 (10) of the claim petition are not admitted. It is relevant to point out that Sri Mohd. Aslam Khan and Sri Dalaip Kumar Mall had already passed the Training of Sanitary Inspector before the issuance of the notification dated 29.10.1991 and as such they were allowed to appear in the examination of Health Inspectors:

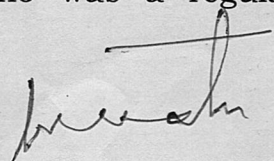
a. It is further stated that the notification for selection for post of Health Inspector (Grade Rs. 1200-2040) was issued by General Manager (P) vide letter No. E/254/10 Part - II Medical SI/dated 29.10.1991 wherein it was laid down that the Educational qualification for the post of Health Inspector will be High School passed or equivalent plus a certificate in Sanitary Inspector or Diploma and the last date for submission of the application was 16.11.1991.

b. It is further pertinent to point out that Noor Mohd. Petitioner No. 2 got the requisite Certificate (which is a condition precedent for qualifying the post of Health Inspector) only on 17.01.1992 i.e. after the issuance of the notification dated 29.10.1991. Similarly Dina Nath, petitioner No. 2 obtained the requisite certificate only in 1995. It is, therefore, abundantly clear that both the petitioners were not eligible for the post of Health Inspectors on the relevant date i.e. 29.10.1991 when the notification was issued.

c. Under these circumstances the petitioners can not plead parity with Sri Moh. Aslam Khan and Sri Dalip Kuma Mall as both of them were fully eligible for the post in question Mohd. Aslam Khan and Sri Dalip Kumar Mall were both senior to the petitioners and as such the petitioners' contention that juniors were called for selection is wholly untenable, especially when the petitioners did not possess the requisite qualification at the relevant time.

e. Rest of the averments made in the para under reply are argumentative being related to proposition of law and as such suitable and detailed reply will be given at the time of the arguments of the case. It is however, submitted that the cases referred to this para have no application in reference to matter in issue in the present case."

6. During the course of arguments it was pointed out by the learned counsel for the respondents that the certificate which is stated to have been furnished by applicant No. 2 (attached as RA-1) is not acknowledged by them. According to him such certificate is acceptable only from recognized institutes. In drawing our attention to RA-1 it is stated by the learned counsel that how could the applicant who was a regular

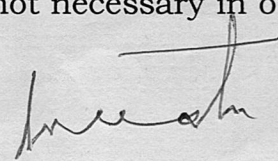


employee could obtain training at an institute at Jaipur which was far away from his work place from July 1990 to May 1991 as a regular trainee. According to him the certificate was not acceptable. The first certificate received from the applicant was dated 17.01.1992 which was after issue of the notification dated 29.10.1991.

7. We have carefully gone through the pleadings and arguments. In our view what is relevant to adjudication of this OA are:

- a. Whether any rights of the applicants were violated by not giving them promotions after notification dated 29.10.1991.
- b. Whether there was any scope for the respondents to offer promotions to the applicants from 1992 to till issue of the Board's circular 1999 which prescribed revised qualification.
- c. Whether the circular prescribing higher qualification was violative of Article 14 of the Constitution.

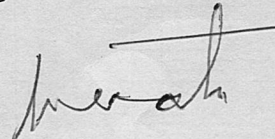
8. We have seen the relevant pleadings on the question of the eligibility of two applications for promotion against the notification dated 29.10.1991. We allowed them to clarify the matter from their respective angles during the hearing. During the arguments the learned counsel for the applicant could not rebut the point made by the learned counsel for the respondents regarding the validity of the apprentice certificate of the applicant No. 2 dated 03.06.1991 (RA-1). In our view this aspect need not be dilated upon. It is also not necessary in our



view to probe into the question as to how the applicant No. 2 could avail of a regular training Course for one year so far away from his work place and that also without obtaining any approval from the employer. We are convinced that the first valid certification from the applicant No. 2 was dated 17.01.1992 and that of applicant No. 1 some times in 1995. Therefore, none of them was qualified for consideration for promotion as per notification dated 29.10.1991.

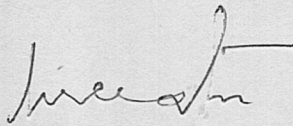
9. Whether there was any scope for respondents to promote the applicants between 1992 and 1999 i.e. the time of the issue of new circular was also gone into by us. It would appear from the rejoinder (para 7) that a post of Sanitary Inspector has fall vacant on 10.11.2000 on the promotion of Ifthar Hussain to the next higher grade. The applicants have not furnished any other data to show that any post or posts had fallen vacant from the date of the selection in 1991 till the new circular dated 1999. In our view that would take care of question whether there was any scope for the respondents to promote the applicants before the issue of the circular prescribing revised qualification.

10. This would leave us with the only other question i.e. whether the circular prescribing requisite qualification was violative of Article 14 of the Constitution. Looking at the Article we find that it is an enabling provision to make reasonable classification to serve a particular purpose. Such classification should have a bearing on the purpose sought to be achieved. It

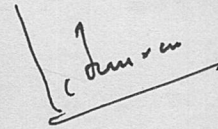


is not a mandatory provision which says that in all places classification has to be made where the interest of different groups of people are involved. In our view the respondents have a right to revise the conditions of service including the eligibility and qualification for promotion as long as it does not whittle down any right which has already accrued to certain individuals.

11. On above consideration we do not find any merit in this OA which is dismissed. No cost.



Member (A)



Vice-Chairman

/pc/