

(7)
RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO. 73 OF 2007.

ALLAHABAD THIS THE 30th DAY OF April 2008.

**Hon'ble Mr. Justice Khem Karan, Vice-Chairman.
Hon'ble Mr. N.D. Dayal, Member (A)**

1. Alok Kaushik aged about 39 years, son of late Shri J.M Kaushik presently working as Pharmacist, N.E. Railway Divisional Hospital, Varanasi R/o C-33/208, Gha, Harinagar Colony, Varanasi.
2. Rajiv Srivastava aged about 39 years, son of Shri B.P. Srivastava, presently working as Pharmacist, N.E. Railway, Divisional Hospital, Varanasi.
3. Brijendra Nath Tripathi, aged about 40 years, son of Shri S.N. Tripathi, presently working as Pharmacist, N.E. Railway Health Unit, Allahabad City, Allahabad.

.....Applicants

(By Advocate: Shri S. Ram/Shri A. Kumar)

Versus.

1. Union of India through the General Manager, North Eastern, Headquarter Office, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Varanasi.
3. Divisional Personnel Officer, N.E. Railway, DRM's Office, Varanasi.

.....Respondents

(By Advocate: Shri P. Mathur)

ORDER

Justice Khem Karan, Vice-Chairman.

These three applicants have prayed for following relief(s):-

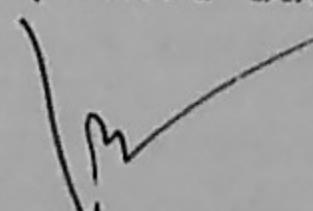
- i) The Hon'ble Tribunal may graciously be pleased to quash the impugned order dated 1.3.2006 passed by the DRM, N.E. Railway, Varanasi (Annexure A-1) and direct the respondents to grant the benefits of one financial up-gradation under ACP Scheme with effect from 3/13.9.2003 to the applicants as admissible under the rules with the benefits of fixation of pay and arrears of pay as admissible under the said ACP Scheme of Railway Board.
- ii) The Hon'ble Tribunal may further be pleased to direct the respondents to pay 12% compound interest on delayed payment on the whole amount of arrears from the date it became due under ACP Scheme.
- iii) Any other writ or order or direction which the Hon'ble Tribunal deems fit and proper in the circumstances of the case may also kindly be issued in the interest of justice.
- iv) Cost of the application may also be awarded"

✓

2. The question involved is as to whether the applicants were inducted as Casual Worker or as substitute. In case, they are found to have been inducted as substitute, the entire period from the date of conferment of temporary status i.e. from 3.5.1991 and 13.5.1991 respectively, will be counted for calculating the period of 12 years, for the purposes of first ACP and if they were inducted as Casual Workers only half of the period, spent ~~as~~ ^{as} Casual Workers with temporary status shall be counted for the said purpose, as provided in para-3 g in Circular dated 17.8.2004 (A-9).

3. The respondents have come with a case that these persons were inducted as Casual Workers on daily wages basis, so they cannot count entire period of temporary status, for calculating 12 years. The applicants say that they were inducted as Substitutes, so the entire period after the date of conferment of temporary status is to be counted for calculating the period of 12 years for the purposes of granting first ACP.

4. Pursuant to the Employment notice, the applicants applied for the post of Pharmacist in Group 'C' and after selection, were put on the panel and thereafter were given appointment vide office order No.282 (Annexure A-3). It says that the candidates mentioned therein are being appointed purely on adhoc and temporary basis on daily wages basis as Pharmacist. After completion of 120 days, the three applicants were conferred with temporary status vide office order No. 326 (Annexure A-5) from respective date in May



1991 and later-on in compliance of Board's letter dated 22.12.1999 (Annexure A-6) were regularized vide order dated 11.2.2000 (Annexure A-7) and 13.4.2000 (Annexure A-8). Annexure A-9 is the copy of Circular dated 17.8.2004, which says that on completion of 12 years of service, first Financial Upgradation will be given and in so counting the period of 12 or 24 years, a substitute shall be entitled to count entire period spent with temporary status but in case of Casual Worker with temporary status, only half shall be counted.

5. The contention of Shri S. Ram is that the applicants were inducted as Substitute, as they were appointed against clear vacancies of Pharmacists. He says that the Railway Board has also stated in its letter dated 22.10.1999 that these were substitutes. He has tried to say that casual labours are not inducted against any clear vacancy as is evident from the provision contained in Chapter 20 of Indian Railway Establishment Manual Vol-2. The learned counsel for the respondents says that as the applicants were inducted on daily wages basis, so will be treated as Casual Workers and not as substitute.

6. We have considered the respective submissions and we are of the view that induction of the applicants was as substitutes and not as a Casual Workers. The reason for taking this view is that they were inducted against clear vacancies of Pharmacist after holding a suitability test and pursuant to the advertisement. The Railway Board has also treated them substitutes in its letter dated 22.10.1999. The mere fact that they were initially panel on daily wages basis

✓m

wages basis, will not dilute their position as Substitutes as they were appointed against clear vacancies and after selection. After having gone through the provisions contained in Chapter-20 of Indian Railway Establishment Manual Vol-2 and provisions relating to the engagement of substitutes and after taking into consideration the Board's letter dated 12.10.1999 (Annexure A-6), we have no manner of doubt that these applicants were engaged as substitutes and not as casual workers.

7. So the stand of the respondents is not in consonance with the provisions mentioned above and Board's letter referred to above.

8. In the result, the impugned order dated 1.3.2006 (Annexure A-1) is hereby quashed and the respondents are directed to grant them first financial upgradation under ACP Scheme with effect from the date they completed 12 years of service, reckoned from the date of conferment of temporary status. They shall also be entitled to simple interest @ 12% per annum on the amount of arrears of such financial upgradation.

9. The O.A. stands disposed of accordingly with no order as to costs.



(N.D. Dayal)
Member (A)

(Justice Khem Karan)
Vice-Chairman.

30.11.08

Manish/-