

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

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(THIS THE 23rd DAY OF October 2009)

*Hon'ble Mr. A.K. Gaur, Member (J)*  
*Hon'ble Mr. D.C. Lakha Member (A)*

**Original Application No.92 of 2007**  
(U/S 19, Administrative Tribunal Act, 1985)

Shri Akhil Gairola Son of Late Shri H.P. Gairola, Resident of 63, E.N.S. MDDA Colony, Dalanwala, Chander Road, Dehra Dun (Uttarakhand), at present working as Observatory Assistant Grade-II, Geodetic & Research Branch, Survey of India 17, E.C., Road, Dehra Dun.

..... Applicant

**Versus**

1. The Union of India represented through the Secretary to the Government of India, Ministry of Science & Technology, Technology Bhawan, New Mehrauli Road, New Delhi.
2. The Surveyor General of India, Survey of India, Hathibarkala, Dehra Dun 24001.
3. The Director, Geodetic & Research Branch, Survey of India, 17, E.C. Road, Dehra Dun 248001.

..... Respondents

Present for Applicant : Shri A. Srivastava

Present for Respondents : Shri D.N. Mishra

**ORDER**

**(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)**

We have heard Shri A. Srivastava, learned counsel for the applicant and Shri D.N. Mishra, learned counsel for the respondents.

2. Learned counsel for the applicant invited our attention to the order dated 13/16.06.2003 (Annexure A-3 of the O.A.) and submitted that the order passed by the competent authority on the applications of the



applicant dated 28.04.2003 and 27.08.2002 is wholly arbitrary and without jurisdiction. The following observations of the Competent Authority is being reproduced hereunder:-

“आपकी नियुक्ति दिनांक 27.12.1991 को ऑब्जरवेटरी असिस्टेंट ग्रेड-III (ट्रेनी) में हुई है जिसके अनुसार 2 वर्ष पश्चात आपको ग्रेड-II के लिए ट्रेड टेस्ट होना था और सफल होने पर आपको दिनांक 01.01.1994 से ऑब्जरवेटरी असिस्टेंट ग्रेड-II में पदोन्नत किया जाना था, परन्तु आपने ट्रेड टेस्ट के सम्बन्ध में इस कार्यालय को कोई प्रार्थना पत्र इत्यादि नहीं किया जिससे कि आपका ट्रेड टेस्ट नहीं हो पाया”


From a perusal of the order dated 13/16.06.2003 (Annexure A-3) it is quite evident that the applicant has already preferred two applications dated 27.08.2002 and 28.04.2003 with regard to the disparity in his pay scale and against his non promotion to Grade-II. It is seen from the record that the applicant was appointed as Observatory Assistant Grade-III (Trainee) on 27.12.1991, under the provisions of Rule after completion of two years of service he should have been trade tested for promotion to Grade-II. According to the applicant in any case he should have been promoted as Observatory Assistant Grade II w.e.f. 01.01.1994 but since he was not called to appear in the trade test he could not be promoted from due date.

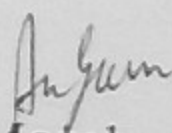
3. We have given our thoughtful consideration to the pleas advanced by the parties counsel and we are of the considered opinion that the plea taken by the respondents that as the applicant has not given any application for holding the trade test, he could not be promoted as Observatory Assistant Grade-II. We are fully in agreement with the applicant that it was the duty of the Competent Authority to hold the trade test of the applicant immediately after expiry of the period of two years, the applicant should have been called for trade test of Grade-II without his asking or demand. The applicant has already preferred representations for redressal of his grievance but none of the representations have been considered in accordance with the provisions of Rule.



4. Learned counsel for the applicant submitted that a direction be issued to the respondents to hold the trade test of the applicant even at this stage.
5. Learned counsel for the respondents could not indicate any reason as to why the applicant was not called for trade test within specified period of time.
6. It is true that the applicant has not been trade tested for promotion to the post of Observatory Assistant Grade-II as yet. ]
7. Having given our thoughtful consideration to the pleas advanced by the parties counsel, we hereby quash and set aside the order dated 13/16.06.2003 and direct the respondents to consider the case of the applicant for promotion to the post of Observatory Assistant Grade-II after holding the requisite trade test within a period of three months from the date of receipt of copy of this order.

If the applicant is otherwise found suitable in the trade test, the respondent shall consider his case for promotion to Grade-II without consequential benefits according to rules. No order as to costs.

  
Member-A

  
Member-J

Sushil/