

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 1186 OF 1996

Present : Hon'ble Mr. Justice S.N.Mallick, Vice-Chairman
Hon'ble Mr. S. Dasgupta, Member (A)

1. Balaram Kapri
2. Jayanta patra

VS

1. Union of India through the General Manager, Chittaranjan Locomotive Works, Chittaranjan, Dist. Burdwan, PIN : 713331
2. Chief Personnel Officer, C.L.W., Chittaranjan, Burdwan
3. Sr. Div. Personnel Officer, C.L.W., Chittaranjan, Burdwan
4. Principal, Deshbandhu Vidyalaya, Hindi Medium, CLW, Burdwan

.... Respondents

For the applicants : Mrs. K. Banerjee, Counsel
Mr. R.Kundu, Counsel

For the respondents : Mrs. Uma Sanyal, Counsel

Heard on : 28.4.98 : Order on : 14.5.98

O R D E R

S.Dasgupta, A.M.:

There is no dispute with regard to the facts in this case filed jointly by two applicants u/s 19 of the Administrative Tribunals Act, 1985. Both the applicants, though highly qualified, applicant No. 1 having a Master's Degree and also a Degree in B.Ed. and applicant No. 2 being a Graduate in Science and also having a degree in B.Ed., were initially appointed as Khalasi in the Chittaranjan Locomotive Works (CLW). The applicants have stated that being unemployed they had to accept such appointment for economic compulsion. They were later promoted to the post of Khalasi Helper. In a School run by the CLW, the post of Laboratory Assistants were sanctioned. The regular selection not having been made, Group "D" employees including the two applicants having requisite

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educational qualifications, were deputed to work in the school and to look after the duties of the Laboratory Assistants. Although such deputation was initially for a period of two months, the period of deputation was extended from time to time and in this manner the applicants worked as Laboratory Assistant for a period of more than two years and seven months. Thereafter, they were directed to revert back to their parent cadre. This led the applicants to file the present application seeking a direction to the respondents to regularise them in the post of Laboratory Assistant. There is an alternative prayer for a direction to the respondents to pay to the applicants salary appropriate to the pay scale of Laboratory Assistant from the date of their initial deputation till date.

2. The respondents have contested the case by filing a reply in which it has been submitted that the post of Laboratory Assistant in the school is a selection post to be filled from amongst the serving Group D employees in the first instance failing which by direct recruitment from the open market. It is further stated that in order to draw up a panel of 3 candidates, a notice was issued vide order dt. 30.3.95 inviting applications from Group D staff of CLW. The two applicants had also applied and a written test was held on 11.8.96 in which both the applicants along with other candidates had also appeared. The applicants, however, were not selected and the panel was drawn up by 3 other group D employees who succeeded in the examination. Accordingly, the two applicants were directed to return to their parent cadre and the applicant No. 1 was actually relieved on 12.12.96 and applicant No. 2 was released on 15.11.96. The respondents have further stated that the very appointment order of the applicants by which they were initially deputed to work as Laboratory Assistant had stipulated that they would have no

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right to claim any higher pay for looking after the duties of Laboratory Assistant.

3. We heard the learned counsel for both the parties and perused the pleadings on record. The applicants have not indicated any rule in support of their contention that they should be regularised on the post merely on the basis of their functioning in the post of Laboratory Assistant for several years. On the other hand, the respondents have specifically indicated the departmental rules classifying the post of Laboratory Assistant as a selection post to be filled from amongst serving Group D employees. It has also been specifically stated that the applicants had appeared in the selection test but did not succeed. These averments have not been rebutted by the applicants by filing any rejoinder. It is, therefore, quite clear that the applicants do not have any right to be appointed on a regular basis on the post of Laboratory Assistant.

4. We have next considered the alternative prayer for payment of salary or pay scale appropriate to the post of Laboratory Assistant. The principle of equal pay for equal work is now a settled principle of law which can be invoked in appropriate cases. This right to receive equal pay for equal work has been recognised through various decisions of the Hon'ble Supreme Court. Reference in this regard may be made to the decisions of the apex court in the case The Dharwad Distt. PWD Literate Daily Wages Employees Association & ors -vs- State of Karnataka & Ors, AIR 1990 SC 883, or Sandeep Kumar etc. etc. -vs- UOI, AIR 1992 SC 713, or Bhagawan Dass -vs- State of Haryana, AIR 1987 SC 2049 etc.

5. Admittedly, the applicants had worked on the post of Laboratory Assistant and it is not the case of the respondents that their performance on the post was unsatisfactory. The posts were vacant. Regular selected candidates were not

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available. The interest of the students of the school was to be taken care of. In these circumstances, the applicants, who were in possession of the requisite educational qualification were asked to look after the duties of the Laboratory Assistant of the school. We, therefore, see no reason why for the period they worked on the post of Laboratory Assistant, they should not be paid salary in the pay scale appropriate to the post. The respondents have stated that the initial order dt. 28.1.94 by which the applicants were deputed to the school to perform the duties of Laboratory Assistant specifically stipulated that the applicants will have no claim for higher pay. A copy of the aforesaid order has been annexed by the applicants to the OA. We have seen therefrom that there is a specific stipulation that the deputation being by way of a temporary local arrangement, would not confer on them any claim for appointment on the post of Laboratory Assistant. But there is no stipulation with regard to denial of higher pay.

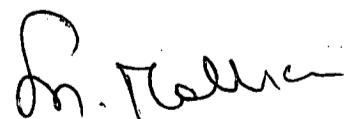
6. In view of the foregoing, we direct the respondents to pay to the applicants difference in salary of the pay scales applicable to their substantive post and the post of Laboratory Assistant for the period they had worked on the latter post within a period of two months from the date of communication of this order.

7. The application stands disposed of on the above term. The parties shall bear their own costs.



(S.DASGUPTA)

MEMBER(A)



(S.N.MALLICK)

VICE CHAIRMAN