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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.

22nd
.....DAY OF December, two thousand three.

O.A. No. 104/2002 and M.A. No. 51/2002

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. G.R. Patwardhan, Administrative Member.

S.K. Shukla,
S/o Pandit Shri Bani Ramji,
R/o M-100 Railwlay Colony,
Rana Pratap Nagar
Madari Road,
Udaipur(Rajasthan) : Applicant.

Mr. S.K. Malik : Counsel for the applicant.

Versus

1. Union of India,
through the General Manager,
Western Railway,
Church Gate, Mumbai.
2. The Divisional Railway Manager,
Western Railway,
Ajmer(Rajasthan)
3. Shri Omprakash Lohra,
Chief Lab. Superintendent Gr. II
C/o CMS, Railway Hospital,
Western Railwlay.
Ajmer (Rajasthan)
4. Shri V.H. Thomas,
Chief Lab. Superintendent Gr.II
C/o CMS, Railway Hospital,
Ajmer (Rajasthan) ; Respondents

Mr. S.S. Vyas: Counsel for respondents 1 & 2

Mr. P.K. Lohra: Counsel for the respondents 3 & 4



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15**ORDER:****Per Mr. J.K. Kaushik, Judicial member.**

Shri S.K. Shukla, has claimed the following reliefs in this O.A.:

a) That by an appropriate writ, order or directions impugned order No. EMD/839/Pt. III dated 26.05.2000(Annex. A.1) be declared illegal and be quashed and set aside by the Hon'ble Tribunal

b) that the respondents may be further directed to convene review DPC and promote the applicant to the post of Lab superintendent Gr. I (Rs. 6500-10500) per month with effect from the date when respondent 3 has been promoted and further his case may be considered for promotion to the post of Chief Lab. Superintendent with all consequential benefits.

2. With the consent of the parties the case was taken up for final disposal at the stage of admission. We have heard, Mr. S.K. Malik, learned counsel, for the applicant, Mr. S.S. Vyas, learned counsel for the official respondents and Mr. P.K. Lohra, learned counsel for the respondents 3 & 4 at a considerable length and have anxiously considered the pleadings and records of this case and also the legal position relevant to this case.

3. The admitted facts which are relevant in resolving the controversy involved are that the applicant possess the qualification of Higher Secondary, and diploma in lab technology. After his due selection through the Railway Service Commission, he was appointed as Assistant Chemist in the pay scale of Rs. 150-300/- with effect from 18.12.1964. He enjoyed his further promotions to the post of Chemist with effect from 01.01.84 and thereafter to the post of Lab.Superintendent with



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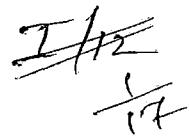
effect from 01.01.1987 in the pay scale of Rs. 1640-2900(R.P.S.Rs.5500-9000) and he continues to work on this post.

3. The further facts are that the Railway Board vide circular dated 17.08.98, issued revised instructions and introduced additional scales for the medical department in pursuance to the recommendations of the 5th Pay Commission. As per the revised instructions, there were changes in the minimum educational qualification in respect of direct recruits for the post of Lab. Superintendent Gr. III (pay scale of Rs. 5000-8000) with certain relaxations for the persons in the lower grade such as Lab. Technicians and Assistant Chemists in the pay scale of Rs. 4500-7000/- on the existing lines. For Lab. Superintendent Gr.II, it was provided that no direct recruitment shall be made to this post and persons having minimum qualification on the lower grade of Rs. 5000-8000 with five years shall be promoted by selection. Two more scales have been provided to the post of Lab. Superintendent Gr.I Rs. 6500-10500/- and Chief Lab. Superintendent in the pay scale of Rs. 7450-11500/- and both the posts are classified as non-selection posts.

4. In the instant case, the applicant's prayer is for consideration of his case for promotion to the post of Lab. Superintendent Rs. 6500-10500/-, which is a non-selection post. His claim is based on the factual aspect that one Shri Om Prakash Lohra and one V.H. Thomas, who are at Sl. No. 7 & 13 of the Seniority list of feeder category and are junior to the



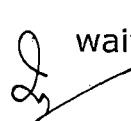
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applicant who name figures at Sl. No. 3 (annex. A.4) have been promoted to the next higher post vide letter dated 26.05.2000, Annex. A.1 and the case of the applicant has not been considered at all. Violation of Articles 14 and 16 of the Constitution of India has been complained of.

5. The learned counsel for the applicant has submitted that similar controversy came up for adjudication before a coordinate Bench of this Tribunal in Mumbai in the case of Mrs. N.G. Shaikh vs. Union of India [O.A. No. 346/2000-decided on 28.02.2001] (Annex. A.5). His contention is that identical questions were involved in that case and the issue has already been settled and does not remain res-integra. In this way of the matter, he has submitted that the O.A may be decided on the similar lines.

6. On the contrary, the learned counsel for the official respondents has submitted that there is no dispute regarding the factual aspect of the matter and only the legal issue is involved. As far as the judgement, which is quoted and relied upon by the learned counsel for the applicant is concerned, a Writ Petition No.1826/2001 has been filed by the Union of India before the High Court of Judicature at Bombay and vide order dated 27.11.2001, the judgement of the Bomaby Bench of this Tribunal quoted supra has been stayed till the disposal of the above Writ Petition. It was submitted that this Bench of the Tribunal should wait for the final decision on the above Writ Petition. He has

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also tried to distinguish the judgement passed by the Bombay Bench of this Tribunal.

7. Mr. Lohra, learned counsel for the private respondents has submitted that it is prerogative of the employer to provide any specific qualification for a particular post and the same cannot be subject to judicial scrutiny in as much as the presumption of legality is in favour of the legislatures in favour of policy decisions and it is for the applicant to show that there is any perversity or arbitrariness in the policy i.e. in the instant case, recruitment rules were issued by the Railway Board. The applicant does not possess the minimum requisite qualifications and therefore he cannot be promoted.

8. M.A. No. 51/2002 has been filed by the applicant, praying for condonation of delay in filing the O.A. The applicant stated that on coming to know about the judgement of the Bombay Bench of this Tribunal dated 28.02.2001 in **Mrs. N.G. Shaikh's case** (supra), regarding promotion of similarly situated persons, submitted a representation on 15.03.2001, followed by a reminder on 22.01.2002. Finding no response from the respondents he filed the present O.A. on 17.04.2002, and has prayed that if there is any delay the same may be condoned. A reply has been filed on behalf of the respondents wherein it is averred that there is no sufficient reason given by the applicant for condoning the delay and the O.A is hopelessly barred by limitation. We have heard the learned counsel for the parties



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and there is no dispute regarding the factual aspects of the matter. The impugned order is definitely of dated 26.04.2000. As per strict application of Sec. 21 of the Administrative Tribunals Act, 1985, the O.A ought to have been filed by 25.04.2001. There is a delay of 10 months in filing the O.A. We have considered the facts of this case and the matter relates to consideration of promotion. It is also seen that on coming to know about the judgement in a similar case rendered by the Bombay Bench of this Tribunal, the applicant immediately moved the representation which has not been considered by the respondents. Keeping in view the principle laid down by the Apex Court in the case of **Collector, Land Acquisition Anantnag and another vs. Mst. Katiji and others** [AIR 1987 SC 1353] Courts should adopt liberal approach in deciding the case on merits. We are satisfied that sufficient reasons have been shown for condoning the delay and the delay is condoned. M.A. No. 51/2002 is allowed. We proceed to decide the O.A on merits.

9 We have considered the rival contentions submitted on behalf of the parties. When a specific query was put to Mr. Lohra whether when once the applicant has got the promotion to the post of Lab. Superintendent Gr.II in the scale of pay of Rs. 5500-9000/- which is the feeder post for the promotional post, which is admittedly, a non-selection post, can the applicant be denied consideration of promotion to such higher post in the garb of subsequent provision providing higher qualification for



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feeder post. The learned counsel was not in a position to give any direct answer and he submitted that as regards the correct rule position it is only the official respondents who could throw some light on it.

10. The learned counsel for the official respondents was not able to make any distinction between the case in hand and the case decided by the Bombay Bench of this Tribunal at Annex.

A.5. We are of the view that the filing of Writ Petition before the High Court of Judicature at Bombay by the Union of India in the case cited above, should not come in our way in deciding this case on merits so long as the decision of the Bombay Bench has not been over-ruled or changed.

11. We have, therefore, absolutely no hesitation in following the aforesaid decision and applying the same to the similar controversy involved in the instant case. We, therefore, proceed to decide this O.A on similar lines and we are abstaining from

repeating the discussions again. Since exhaustive discussion have been made by the Bombay Bench in its order quoted at Annex A.5, the same is made as a part of record of this case.

The applicant should have been considered for promotion to the Lab. Superintendent Gr. I and further promotion to Chief Lab. Superintendent which is even now a non-selection post.

12. In the result, the Original Application stand allowed and the respondents are directed to convene a review DPC and



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consider the case of applicant for promotion to the post of Lab. Superintendent Gr. I and if found fit, to promote him from the date his juniors R.3 and R.4 were promoted to the aforesaid post. He will also be entitled to all the consequential benefits. This exercise will be carried out within two months from the date of communication of this order. No costs.

GR
(G.R. Patwardhan)
Administrative Member

J.K. Kaushik
(J.K. Kaushik)
Judicial Member.

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Received copy
Wadsworth
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for P.K. Lohren (Adv.)