CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 1031 of 1997

Present : Hon'ble Mr.N.D.Dayal, Administrative Member
Hon'ble Mr.K.B.S.Rajan, Judicial Member

KUMAR THAPA
S/O Late B.Thapa,
R/O St.Mary's Hill,
P.O.St.Mary's Hill,
Dist.- Darjeeling, employed at
Eastern Forest Rangers' College,
P.O. St.Mary's Hill, Dist.- Darjeeling,
West Bengal.

...APPLICANT.

VERSUS

1. Union of India, through the
Secretary, Ministry of Environment,
And Forests, having his office at
Paryavaran Bhawan, C.G.O.Complex,
Lodhi Road, New Delhi – 110002.

2. The Director of Forest Education,
Ministry of Environment and Forests,
P.O. – New Forest, Dehradun – 248006.

3. The Principal,
Eastern Forest Rangers' College,
P.O. St.Mary's Hill, Dist.- Darjeeling,
West Bengal, Pin – 734220.

...RESPONDENTS.

For the applicant : Mr.A.Bhandari, counsel

For the respondents : Mr.M.S.Banerjee, counsel

Heard on : 15.6.05 Order on : 21/6/05

O R D E R

BY. MR. K.B.S. RAJAN, J.M.:

The applicant, appointed as a peon in the scale of pay of Rs. 196-232 (Pre revised) under respondent No. 3 (the Eastern Forest

Rangers College) in 175 was promoted as Laboratory Assistant w.e.f. 14-09-1998 in the scale of Rs 210 – 290 which was later on revised as Rs 800 – 1150/-. The next promotional post is Laboratory Assistant in the scale of Rs 975 – 1540/- and the qualification for promotion to this post is "Laboratory Attendant with 5 years regular service in the grade. For this purpose, the DPC shall be constituted by the Head of the Office concerned as chairman and with three members, as contained in the Recruitment Rules. The applicant submits that as per the provisions of order dated 06-12-1991, the following are the provisions governing the promotion of Group D employees to higher rank:-

> "(a) The Group 'D' employees will have an office wise cadre/seniority as is the practice in all other Central Government Departments. Their promotion to the next higher grade will also be made on a decentralized basis i.e. office-wise.
>
> (b) The Principals of the SFSCs and Head of Office concerned in these colleges be made the appointing authority in respect of Group C and D posts in his college."

2. The applicant submits he having put in as many as 17 years, was in accordance with the terms/provisions contained as above and by duly observing the provisions of DPC, promoted as Laboratory Assistant by order No. 574/95-EFRC/14 dated 18-09-1995 and was functioning in that capacity since then. However, without any prior notice, the respondents had passed another order dated 11-07-1996, which states,

> "As per DFE's letter No. 2-37/91-DFT, dated 24.10.95 & 2-37/91-DFT, dt. 16.1.96, appointment order No. 574/95-EFRC/14 dt. 18.9.95 is hereby treated as cancelled with retrospective effect."

3. Representations made by the applicant against the above order of cancellation of promotion of the applicant having not yielded any fruitful result, this OA has been filed.

4. The respondents have contested the O.A. According to them, the cancellation order (impugned in the OA) was issued as per the directives received from the office of the Director of Forest Education. The post being Group C one, the same shall be filled up by considering the case of all the laboratory attendants of various colleges and the Principal is not the competent authority to promote the applicant. Thus, the appointment being not in conformity of the Recruitment Rules, the impugned order is fully valid and justified.

5. Arguments were heard and the documents perused. The recruitment Rules are clear and unambiguous. It provides for the eligibility of the Lab. Attendants with five years of regular service in the grade which the applicant did possess at the time of his promotion. Again, the DPC was to be constituted by the Principal of the College as the Chairman and the same also supports the case of the applicant. Further, Order dated 6th December, 1971 is specific as to the authority vested with the Principal for the purpose of promotion of Group D employees to the higher grade. There has been no other order superseding the said order of 6-12-1971 that had been brought to the notice of the Tribunal. The learned counsel for the respondent had taken us through the entire order dated 24th October, 1995 which had a reference to order dated 6-12-1971. But the same is of least assistance to the respondents inasmuch as there is no basis to come to a conclusion that the action of the Principal to promote the applicant to the post of Lab. Assistant confining to a single employee of your college alone is irregular. For, when the order dated 6th

December, 1971 is analysed, it clearly empowers the Principal to be the appointing authority and in the said order, the promotions are to be confined to the employees of the same office.

6. In view of the unambiguous legal position, the impugned order has been passed without any justification and a wrong interpretation of the provisions of the Recruitment Rules and the attendant executive Instructions. As such, the same is liable to be quashed and set aside. We order accordingly. The O.A. succeeds. The respondents are directed to restore the position of Laboratory Assistant as if no such order of cancellation of his promotion has been passed. The applicant is entitled to the salary and allowances as of Laboratory Assistant and needless to mention that he is also entitled to the annual increment applicable to the post of Laboratory Assistant for the period during which he was under reversion. His seniority in the post of Lab. Assistant would also be kept in tact. The difference in pay and allowances due to the applicant shall be worked out and paid to the applicant within a period of four months from the date of communication of this order.

7. **As held by the Apex Court in the case of *K.I. Shephard v. Union of India, (1987) 4 SCC 431,*** Ordinarily the successful party should have been entitled to costs but in view of the fact that the applicant is going back to his original post, we do not propose to make orders of costs against the respondents.

(K.B.S. RAJAN)
MEMBER(J)

(N.D. DAYAL)
MEMBER(A)