

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(8)

O.A. NO: 205/87

199

T.A. NO:

DATE OF DECISION 30-10-1992

Railway Laboratory Staff Association Petitioner
Western Railway, Bombay

SHRI H.J.ACHARYA

Advocate for the Petitioners

Versus

MANAGEMENT OF WESTERN RAILWAY Respondent
BOMBAY

Shri A.L.Kasture

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. JUSTICE S.K.DHAON, Vice-Chairman

The Hon'ble Mr. M.Y.PRIOLKAR, M/A

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(M.Y.PRIOLKAR)
M/A

mbm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

(9)

BOMBAY BENCH

ORIGINAL APPLICATION NO.205/87

Railway Laboratory Staff Association
Bombay.

.... Applicant

v/s

Management of Western Railway
and others

.... Respondents

CORAM : HON'BLE JUSTICE MR.S.K.DHAON, Vice-Chairman
HON'BLE SHRI M.Y.PRIOLKAR, MEMBER (A)

Appearance :

Shri H.J.Acharya, Adv.
for the applicant

Mr.A.L.Kasture, Adv.
for the respondents

JUDGEMENT

DATED: 30-6-1992

(PER : M.Y.PRIOLKAR, M/A)

The applicant here is the Railway Laboratory Staff Association, Bombay, whose members have the grievance that certain orders of the Railway Board for restructuring of their cadre have not been implemented properly by the Western Railway thus denying them monetary and other benefits.

2. According to the applicant Association, and this is not denied by the respondents, the Class C cadre of the ^{Western} Railway Medical Laboratories consists of the following categories as on 26.5.1976:-

Category	Grade Rs.	No.of posts
Laboratory Assistant	280-430	5
Asst.Chemists	380-560	21
Chemists	425-700	8
Laboratory Supdt.	550-900	4

It is not in dispute that the Railway Board with the sanction of the President, issued orders on 26.5.1976 (Annexure II) for the re-structuring this cadre, under which Western Railway was required to abolish 5 posts of Laboratory Assistants and create in lieu thereof one additional post of Assistant Chemist and 4 additional posts of Chemist. The cadre strength, excluding Laboratory Assistant, would accordingly from that date be as follows:-

Category	No. of Posts
Assistant Chemist	22
Chemist	12
Laboratory Supdt.	4

The Railway Board further directed by its orders dated 1.1.1979, 19.2.1980 and 16.11.1984 respectively, that the distribution of posts in the above three grades should be in the ratio of 50 : 40 : 10 effective from 1.1.1979, 45 : 40 : 15 from 1.10.1979 and 30 : 30 : 40 from 1.1.1984 which would make the cadre strength as under :-

Category	As on 1.1.1979	As on 1.10.79	As on 1.1.84
Asstt. Chemist	19	17	12
Chemist	15	15	11
Lab. Supdt.	4	6	15

3. The applicant contends that the Western Railway management was deliberately and malafidely delaying the above upgradations sanctioned by the Railway Board by showing lower figures of cadre strength thus resulting in lesser number of higher grade posts. The prayer in this

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application which was filed on 20.3.1987 is for re-structuring the cadre of Laboratory staff in accordance with Railway Board's letters dated 26.5.1976, 1.1.1979 and 19.2.1980 and, specifically, to operate 15 posts in the scale of Rs. 550-900, 11 posts in Rs.425-700 and 12 posts in Rs.380-560 with effect from 1.1.1984.

4. The respondents in their written reply dated 25.8.87 have, ~~intercalia~~, stated that the correct cadre strength of Laboratory staff (excluding the category of Laboratory assistants which the Board have not counted for upgradation purpose) has been revised on the basis of the Railway Board's letter dated 16.11.1984 and is as under after revision :-

Category	No. of posts
Assistant Chemists	10
Chemists	10
Laboratory Superintendent	13

According to the respondents, they have created the required number of higher grade posts on this basis which have been regularly filled in after holding necessary selections. However, employees could not be automatically promoted to the higher posts so created and the eligible employees had to appear for selection and practical test, whenever prescribed, before they could be considered for promotion, and some of the upgraded posts have remained vacant for want of eligible qualified candidates. 4.

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5. The dispute here is thus confined to two issues only, namely, whether the cadre strength of Laboratory staff should be taken as 38 as claimed by the applicant or 33 as stated by the respondents, and secondly, whether the seniormost employees should have been promoted to the upgraded posts irrespective of the eligibility conditions prescribed. The learned counsel for the respondents raised a preliminary objection that the relief claimed is for proper implementation of the restructuring orders of the Railway Board issued from 1976 to 1984 and therefore this application filed in 1987 is beyond limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985. The learned counsel for the applicant stated that the application is within the period of limitation since the redressal of the grievance had been sought earlier under the Industrial Disputes Act, 1947 but as the respondent No.2 did not refer the dispute for adjudication, the present application was filed after six months of ending conciliation proceedings and within one year therefrom. We find that while the relief prayed for in para 7 (a) of the application is for implementation of the re-structuring order dated 16.11.1984, the relief prayed in paragraph 7 (b) is for a direction to the respondents to rectify the earlier lapses/inaction on their part and to re-structure the cadre in accordance with Railway Board's orders dated 26.5.1976, 1.1.1979, and 19.2.1980. Since the Board's order dated 16.11.1984 only prescribes the percentages of the various categories of posts in the total strength of the cadre which in turn has to be worked out on the basis of the earlier orders

of the Board, and since this Original application has been filed within one year of the failure report of the conciliation proceedings, we do not find any merit in the plea of limitation as far as calculation of cadre strength is concerned, and proceed to consider the prayer in paragraph 7(a) of this application on merits. ~~on merit sita Bt~~ ~~the basis of limitation would in our~~ view apply to the prayer for retrospective upgradation of posts and appointment thereto from the due dates, as prayed for in paragraph 7(b), consequent on re-structuring orders of 1976, 1979 and 1980. It is to be noted that the first representation in this regard was made by the applicant on 28.4.1985 (Ex. 6).

6. The dispute regarding the cadre strength, whether it should be 33 or 38, has arisen from the fact that grades from Rs.380-560 (R) i.e. Assistant Chemists and above only are taken into account for working out the cadre strength and prior to 26.5.1976, the strength on this basis was in fact 33. By Board's letter dated 26.5.1976, 5 posts of Laboratory Assistants which were not part of the cadre were abolished and in lieu thereof 4 new posts of Chemists and 1 post of Assistant Chemist were to be created. The Laboratory staff cadre had thus to be increased to 38 as these upgraded posts would be cadre posts. By letter dated 6.7.1976 of Western Railway Headquarters, these 5 posts were upgraded "from the date upgraded posts are actually filled in". These posts were also regularly filled in by office order dated 16.1.1979 after obtaining certain relaxation from the Railway Board from the prescribed qualification and holding necessary selection.

7. It is stated by the respondents that subsequently ~~and 1-10-1979~~ ~~and Lab Supdt~~ 4 posts were upgraded from 1.1.1979 as chemists in terms of Board's letter dated 19.2.1980. According to the respondents, the revised cadre strength on the basis of Board's letter dated 16.11.1984 works out to Assistant

Chemist 10, Chemist 10 and Laboratory Superintendent 13 posts, i.e. a total of 33 posts. It is not possible for us to accept these figures. After upgradation and appointments of 5 posts of Laboratory Assistants as Chemists and Asstt. Chemists on 16.1.1979, the Cadre strength should be 38 and the category-wise break up under the Board's letter dated 16.11.1984 should be Assistant Chemists 12, Chemists 11 and Laboratory Superintendent 15, the shortfall in the sanctioned strength of the categories as on 1.1.1984 thus being 2, 1 and 2 respectively. No reasons have been given by the respondents why the 5 posts (1 Asstt. Chemist and 4 Chemists) which were created in lieu of 5 posts of Laboratory Assistants should not be counted as part of the cadre like other such posts except saying that posts upgraded from Laboratory Assistants are not to be counted for this purpose. We are of the view that these 5 upgraded posts should also form part of the cadre and the cadre strength of the Laboratory staff from 1.1.1984 should be taken as 38 as claimed by the applicant with category-wise break up as given above.

8. The next question that arises is whether, even if some additional posts are upgraded with reference to this revised cadre strength, the seniormost employees from 1.1.1984 can be automatically promoted to the higher posts, without undergoing the process of selection. As we have noted earlier, certain upgraded posts have remained vacant even out of the lower cadre strength and this has been explained by the respondents as due to the fact that there were no eligible employees available with the requisite prescribe

educational qualifications and the minimum length of service laid down by the Railway Board for promotion to the higher posts. The main objective of these re-structuring orders is to improve the career prospects of the employees and it will be pointless to upgrade additional posts when there are no eligible employees qualified to fill up even the existing higher vacant posts on promotion. The applicant contends that because the Railways experienced difficulties in getting persons with requisite qualifications and experience in filling up the higher posts, the various instructions issued by the Railway Board were not followed by most of Zonal Railways. A vague statement is made that "to the knowledge of the Association, review and re-structuring of the Laboratory staff cadre on the basis of the prescribed percentages/ number in compliance with the Board's instructions issued from time to time was done in most of the Zonal Railways (excepting Western Railway) ignoring both the requisite qualifications and experience". It is not possible for us to accept this contention. Railway Board's instructions in this regard are binding on the Zonal Railways. Just because instructions were not observed or an irregular procedure was followed in some such cases by some Zonal Railways would not justify the applicant's demand that the Western Railway should also adopt an irregular procedure, ignoring the Railway Board's mandatory instructions. We therefore find no merit in this contention of the applicant that the employees of Western Railway have been discriminated against only for the reason that the Railway Board's orders from time to time have been strictly observed.

9. On the basis of the foregoing discussion, we direct that the cadre strength of the Laboratory Staff of the Western Railway ~~may~~ ^{shall} be taken as 38 instead of 33 from 1.1.1984 with categorywise break up as prescribed under the Board's orders dated 16.11.1984. For filling up the vacancies based on this revised cadre strength, selections may be conducted in accordance with the applicable instructions of the Railway Board including trade tests and successful candidates, if any, appointed to the respective posts with effect from the dates on or after 1.1.1984 when they had satisfied all the eligibility conditions prescribed. They shall also be entitled to consequential benefits. Let this be done, as far as possible, within a period of six months from the date of receipt of a copy of this order. There will be no order as to costs.

Yours
(M.Y.PRIOLKAR)
M/A

Yours
(S.K.DHAON)
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