

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 204/87

T.A. No. ---

198

DATE OF DECISION 2-4-1992

General Secretary, Railway Laboratory Staff Association
PetitionerMr. H. J. Acharya

Advocate for the Petitioner(s)

Versus

Union of India and another

Respondent

Mr. A. L. Kasturey.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member(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 ?

MD

(U.C. SRIVASTAVA)

(B)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.204/87

General Secretary,
Railway Laboratory Staff
Association,
28/A, J.R.Hospital Quarters,
Maratha Mandir Marg,
Bombay - 400 008. .. Applicant
2. H. J. Acharya
vs.

1. The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
2. Union of India
through
Secretary to the Govt.
of India,
Ministry of Labour,
Shram Shakti Bhavan,
Rafi Marg,
New Delhi - 110 001. .. Respondents.

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.H.J.Acharya
Advocate for the
Applicant.
2. Mr.A.L.Kasturey
Advocate for the
Respondents.

ORAL JUDGMENT:
(Per U.C.Srivastava, Vice-Chairman)

Date: 2-4-1992

This application is filed through the General Secretary of Railway Laboratory Staff Association Bombay praying that the Respondent No.1 should be directed to create one Selection Grade ~~in~~ post in the grade of Rs.650-1000 with effect from 1st August, 1976 for the laboratory staff of the Medical department of Western Railway and further the respondent No.1 may be directed to promote the eligible employee to the selection grade with effect from 1.8.76 and to pay him the wages and allowances as in force from time to time from 1.8.76. The grounds for the same are that the Third Pay Commission had recommended creation of

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the selection grades which were not functionally different from the main grades and there was no change of duties and that the aforesaid recommendations were discussed by the National Council and were adapted by the National Council. The creation of the selection grades for Group 'C' & 'D' cadres received sanction of the President and were effective from 1.8.76. The instructions were issued by the Railway Board dtd. 12.4.77 which were circulated by General Manager, Western Railway ~~by~~ vide letter dtd. 6.8.77 for immediate action. During the conciliation proceedings the management admitted that the posts of laboratory supdt. are controlled by the Headquarter Office and the concerned authorities did not take any action in the matter which is unfair, unjust and illegal, but has agreed during the conciliation proceedings that to the extent of rules in force at that time it was necessary to create a selection grade post which according to the management should carry ~~the~~ the grade of Rs.650-1000(R) and which they have not done, and this is how the management deprived the laboratory staff of the various benefits arising out of various agreements and sanctioned by the competent authorities, and the Management once after agreeing to it for which instructions were also issued has now deprived the same. That is why necessity ~~has arisen~~ ^{of approaching} ~~to approach~~ the Tribunal ~~has~~ has arisen for the applicants.

2. The Third Pay Commission in its recommendations provided that the number of Selection Grade posts will be determined on the following basis:

(a) Where promotional prospects are more than 50% } No Selection Grade.

(b) Where promotional prospects are 50% or less but more than 35% } 10 per cent }

(c) where the promotional prospects are 35% or less but more than 25%) } 15 per cent

(d) where the promotional prospects are 25% or less. } 20 per cent

For the purpose of calculating Selection Grades posts, the posts which have been in existence for three years should be taken into account irrespective of whether they were permanent or temporary.

For becoming eligible to be considered for appointment to the Selection Grade, an employee should have rendered such length of service which would have brought him to the stage represented by $\frac{3}{4}$ th of the span of the revised scale of the Ordinary Grade inclusive of the service rendered in the pre-revised scale of that grade subject to a minimum of 14 yrs. of service. Instructions were also issued in this behalf.

3. The respondents in their written reply have stated that the matter has been taken for reference by Railway Board vide its letter dated 27-4-87 replied vide letter dtd. 19-5-87 by General Manager for which decision is awaited and therefore the application is premature. Although at one place they have stated that the application is premature but in the other place in the reply they have tried to nullify the claim of the applicant by stating that the letter dtd. 12.4.77 did not apply for the post of Selection Grade and even if the said letter is applicable the number of posts which could be created is only 20% and since 20% of 3 posts is less than one, the question of creation of any selection grade in the category of laboratory Supdt. scale 550-900(R) did not arise. Further it is not feasible to create a selection post in the category of Laboratory Supdt. in scale of Rs.650-1000 with effect from 1.8.76.

4. When the matter has already been referred to the higher authorities such a plea should not have been taken, which has been taken. There is no reference to the agreement which was entered into between the employer and employees representative in this behalf. Such agreement pertains to the nature of law to some extent. When the matter has been referred, the matter should have been decided in the light of recommendation made by the IIIrd Pay Commission as well as JCM and the agreement which has been entered into by the management and employees. The matter is lingering for the last so many years. Accordingly we direct to the respondents to decide the matter a reference to which has been made taking into consideration the recommendations made by the IIIrd Pay Commission and the agreement which has been entered into by the employees and the management in this behalf and decision taken by the JCM and taking into consideration the amendment which was made subsequently within three months from the date of communication of this order. The application stands disposed of accordingly with no order as to costs.



(M.Y.PRIOLKAR)
Member(A)



(U.C.SRIVASTAVA)
Vice-Chairman

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