

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA 68/1997

Mumbai, this the 20th day of May, 2001

Hon'ble Shri S.L.Jain, Member (Judicial)
Hon'ble Shri Govindan S. Tampi, Member (Admnv)

Smt. Smita Shripad Deodhar
presently working as Female Hospital
Attendant and formerly working
as Substitute Laboratory Asstt./
Asstt. Chemist in the Central Railway Hospital
Kalyan and residing at :
Friendship Co-operative Housing Society
1, Bakul Vishnu Nagar
Dombivali West -221 202 ...Applicant

(By Advocate Shri D.V.Gangal with Shri Sandeep
Marne)

V/s.

1. Union of India through the
General Manager, Central Railway
Mumbai, CST.
2. The Chief Personnel Officer
Central Railway, Mumbai, CST.
3. The Chief Medical Director
Central Railway, Mumbai, CST.
4. The Additional Railway Manager,
Central Railway, Mumbai, CST. ...Respondents

(By Advocate Shri V.S.Masurkar)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member (Admnv)

Following are the reliefs claimed by the applicant
Smt.S.S.Deodhar in this OA (Page 19-20 of OA):-

a) This Hon'ble Tribunal may be graciously pleased to
call for the records of the case from the respondents and after
examining the same issue a Writ of Mandamus direction the
respondents to regularise the applicant as Laboratory
Asstt./Laboratory Technician/Asstt. Chemist, from a date when
others were regularised in 1993 by constituting a Review

Screening Committee.

(b) hold and declare that the action of reverting the Applicant and thus terminating her services as Laboratory Asstt./Laboratory Technician/Asstt. Chemist is void and without any consequences.

(c) hold and declare that the applicant continues to be Laboratory Asstt./Laboratory Technician/Asstt. Chemist and she is entitled to be full back wages and continuity of service as such.

(d) hold and declare that the declaration of unsuitableness of the applicant on the suspicion that the General Science subject at the SCC Examination does not include Physics and Chemistry is illegal.

(e) hold and declare that the Applicant deserves to be granted the upgraded post of Asstt. Chemist from 1992-93 on the ground the said post has been so upgraded and the applicant has been already discharged the duties of the said post.

(f) grant cost and grant any other and further relief in the nature and circumstances of the case and for which act of kindness the applicant as a duty bound shall every pray.

2. Heard S/Shri D.V.Gangal, with Sandeep Marne, learned counsel for the applicant and Shri V.S.Masurkar, for the respondents.

3. The applicant, who was appointed as a Substitute Laboratory Asstt. on 2-4-1986 in the scale of Rs. 975-1540/- in Central Railway Hospital, Byculla was granted temporary status on 4-11-1988/21-8-1990. She appeared for written test for regularisation of service as Lab. Asstt/Lab.

technition/Asstt.Chemist in 1993 and on passing the same she was called for viva-voce on 28-6-1993. But she was not empannelled on the ground that she had not passed matriculation with Physics and Chemistry. Subsequently, she was screened for the post of Female Health Asstt. in the scale of Rs. 775-1025/-. The applicant protested against the move to revert her in an arbitrary manner. Inspite of her excellent service of ten years with the Railways, she had been denied her legitimate position, according to the learned counsel. It is further pointed out that the interests of two other applicants - Smt. D. Umbrajkar in OA 558/95 and Smt. Elizabeth Kamble in OA 708/96 who were treated in a similar manner by the respondents, were protected by the Tribunal by its direction to the respondents to consider their cases once again. The same should be extended in her case as well, pleads the learned counsel. As she was possessing the requisite qualification, should have been regularised in the post, where she has been working for long, instead of declaring her as 'unsuitable'. Though Railway Board's instructions provided for grant of temporary status in a post on completion of six months. It is only in pursuance thereof and on the request of Central Railway to have the para medical staff regularised locally, it was proposed to take up the screening, as was done in 1993. Still the applicant, who was eligible, experienced was declared not suitable in the screening. By this act respondents have acted against the all canons of propriety and denied the applicant her regular and legitimate position. As she has been holding the group 'C' post, it was the responsibility of the respondents to have regularised her. Instead, on imaginary grounds she has been forced to accept a group D post, much against her wishes. Further, as the applicant has worked more than ten years, she should not have been reverted to a level below. The learned counsel for the applicant also relied upon the decisions of the Full Bench of the Tribunal in

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the case of (i) Jethanand and ors. Vs. Union of India T.844/86 decided on 5-5-1989. (ii) Suresh Chand Gautam & ors. Vs. Union of India, OA No.1676/1990, T.106/86 decided on 9-7-1991 and Hemraj & ors. Vs. UOI & ors. - OA 1751/88, 2553/89, 16/90 and 254/90, decided on 27-7-1996 as well as that of the Hon'ble Supreme Court in the case of R.C.Srivastava Vs. UOI and Anr. decided on 3-11-1995. In view of the above, the applicant's case deserved to succeed with full relief to her, is the prayer by Shri D.V.Gangal, learned counsel.

4. In their fervent rebuttal both in the written pleas as well as during oral submissions before us through the learned counsel, Shri V.S.Masurkar, respondents contest the pleas raised by the applicant. According to them the applicant was only working as a Substitute Lab Asstt. without having any vested right in any Group 'C' post and her appointment it was only a concession. In terms of Railway Rules, appointment to Group 'C' posts can be made only through Railway Recruitment Board, but in this case the applicant was trying to take advantage of a special dispensation and claim it as a right for regularisation in a senior post. The application was hit by limitation and is liable to be dismissed on that count itself. Implementing the policy for regularising the substitutes in the Medical Wing in-Group 'D' cadre, screening was held on 26-7-1996 and the applicant was adjusted as a Female Health Assistant keeping in mind the fact that she was working as a Lab. Asstt., though she was not qualified for the post. Respondents' action has been one of kindness and compassion. She had also willingly accepted the post and was working there. Infact earlier her case was considered for regularisation as Lab. Asstt. keeping in mind her academic qualification and experience. As she had passed the written test she was called for the viva-voce held on 1-5-1993, which she did not clear. Therefore, she could not be selected for regularisation. The

screening Committee consisted of Secretary, Railway Recruitment Board as Chairman and other officers of Jr. Administrative Grade as Members. Minutes of the Committee, placed for perusal of the Court would show that the selection has been fair and correct and the applicant was not found suitable. The allegation of the applicant that the Screening Committee had some doubt about her academic qualification was incorrect. The applicant's averment to the contrary are false and should not be accepted. Shri Masurkar, learned counsel also stated that the case referred to by the applicant - Smt. Umbajkar concerned in OA 558/95 - was different from the case of the applicant as it was covered by different recruitment rules. The other decisions cited by the applicant, also would not come to her help as they can be clearly distinguished. Her request that she should be considered for grant of benefits including fixation of pay and arrears in the grade of Asstt. Chemists in the scale of Rs. 1325-2040/- from 1993 was totally misconceived as she was not even a regular Lab Asstt. in the grade of Rs. 975-1540/-, only from which, promotion as Asstt. Chemists could have been considered. In fine, the respondents plead that the applicant has no case for being considered and the application deserved to be rejected.

5. We have carefully considered the matter and perused the records placed before us. The applicant who had worked as Substitute Lab Asstt. for a short while, in the Central Railways Hospital at Byculla is challenging her non-selection in 1993 for regularisation as Laboratory Asstt./Laboratory Technician/Asstt. Chemist etc. Her plea is that the respondents have, on the basis of some unfounded suspicion about her academic qualification, denied her the regularisation. The facts brought on record, however, says a different story. While it is true that she was for a shortwhile working in Byculla Hospital as Substitute Lab Asstt. from 28-3-1983 to 12-4-1983 and 26-4-1983 to 16-5-1983

there is nothing brought on record to show that her appointment was made by any regular selection process. Still keeping in mind, her work in the organisation she was given temporary status from 4-11-1988. She was also declared eligible for appearing for viva-voce held on 28-6-1993 in the Railway Recruitment Board. Proceedings dated 28-6-93 in the Railway of the Screening Committee for the regularisation clearly shows that the applicant's case among others was considered by the Committee, who declared her to be 'NOT SUITABLE'. There is no indication whatsoever that the Committee found her academic qualification was suspect in any manner, as alleged by the applicant. Her performance in the Viva-Voce was not up to the mark and she was not, therefore, placed on the panel. As the selection process had been correctly gone through the findings cannot be questioned, especially as the Tribunal is not called upon to sit in appeal on a selection conducted properly by the competent authority. The judgements cited by the applicant do not come to her help. Decision in OA No. 558/95 filed by Smt. J.D.Umbrajkar, arose from the individual's qualification being suspect and the same was rectified and she was regularised leading to the withdrawal of the OA. In the instant case, the academic qualification had not been shown as suspect, inspite of all the averments to the contrary by the applicant. Elizabeth Kamble, who filed in OA 708/96, was also in the same selection as the applicant and was rejected keeping in mind her unauthorised absence in the intervening period. The Tribunal had after examining the circumstances of her absence, held that holding against the individual on that count alone was improper. The present applicant is not similarly placed and cannot gain any benefit from the above decision. Similar is the case of R.C.Srivastava, decided by the Hon'ble Supreme Court (supra). In that case, the Hon'ble Apex Court has found that the failing the candidate on the basis of viva-voce alone while he was

experienced and performed well in written examination was improper. Applicant's case is different as the Screening Committee had on the basis of the viva-voce found her not suitable. As stated earlier Tribunal cannot substitute its findings for that of the Screening Committee, as no malafides has been shown or proved against it. Similar is the position with regard to the applicability of the three Full Bench decisions cited. In Jethanand's case (supra), the Tribunal had held that an employee who had officiated in a promotional post more than 18 months is not liable to be reverted without following the disciplinary proceedings. As the applicant was not officiating in the Group 'C' post but was only engaged for a shortwhile and granted temporary status, she cannot seek or gain the benefit of the above decision. The decisions of the Tribunal in the case of Suresh Chand Gautam & Ors. (supra), clearly lays down that an employee officiating in a higher post for more than 18 months is liable to be reverted if he fails to qualify the selection test. An employee like the applicant who has failed to clear the selection test is in fact hit by the above decision. In the case of Hemraj and Ors Vs. UOI (supra), Tribunal had held that group 'D' officials officiating in Group 'C' posts for long could be considered for regularisation, if no regularly selected candidate is awaiting posting and the reversion of the official from Group 'C' to group 'D' will cause undue hardship. This decision also does not help the applicant, as she was not holding the higher post but was only engaged for a shortwhile. Further, I note that in Rudra Pratap Sain's case 2000 (3) ATJ 392, Hon'ble Supreme Court has held that :-

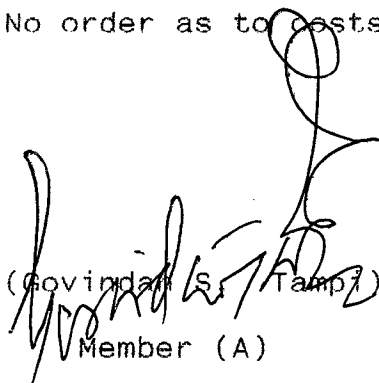
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"In the service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consideration of the appropriate authority and continues in the post for a fairly

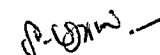
long period, then such appointment cannot be held to be "stop-gap or fortuitous or purely adhoc". In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be fortuitous/adhoc/stop-gap' are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.

6. In the above view of the matter, the applicant who was engaged for a shortwhile as Substitute Lab. Asstt. not through a regular recruitment process by Railway Recruitment Board with due consultation, cannot have the right of regularisation, that too in a higher post. Her claim, therefore, has to fail. Once this claim fails, other reliefs sought for also follow suit.

7. In the result, the applicant has not made out any convincing case at all for our interference in the matter. The application being devoid of any merit fails and is accordingly dismissed.

No order as to costs.


(Govindan S. Tamp)
Member (A)


(S.L. Jain)
Member (J)

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