

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



O.A. No. 350/771/2012

Date of order : 11.06.2019

Coram : Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. N. Neihis, Administrative Member

.....

Badan Chandra Nandi
Son of Late Bhushan Chandra Nandi
Aged about 67 years, retired Lab. Supdt. Gr. III
Divisional Railway Hospital, Eastern Railway
Asansol, residing at Eastern Railway Divisional
Hospital Colony, Qr. No. 523/B, Asansol
Dist – Burdwan West Bengal, Pin – 713301.

... Applicant

For the Applicant : Mr. T.K. Biswas

- Versus -

1. Union of India, through the General Manager
Eastern Railway, Fairlie Place, 17
N.S. Road, Kolkata – 700001.
2. Chief Personnel Officer, E. Rly. 17
N.S. Road, Fairlie Place
Eastern Railway, Kolkata – 700001.
3. The Chief Medical Superintendent
Eastern Railway, Asansol Division
P.O. – Asansol, Dist – Burdwan.
4. Sr. Divisional Personnel Officer
Eastern Railway, Asansol Division
Asansol, District – Burdwan.

..... Respondents

For the Respondents : Mr. K. Sarkar

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman:

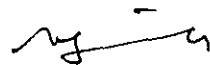
The applicant was posted as Laboratory Assistant (LS) in the Divisional Railway, Asansol, in the year 1971. He was promoted to the post of Assistant Chemist (Laboratory Superintendent Grade-III in the year 1983. Thereafter, restructuring took place in the Laboratory Cadre of Medical Department, where the applicant was working as Assistant Chemist, and he was promoted to the post of Laboratory Superintendent (L.S) Grade-II vide order dated 24.05.1988. The respondents initiated steps for appointment to the post of L.S Grade-III. For that purpose, a Selection Committee was to be constituted and the names of eligible candidates were listed. The name of the applicant figured at Sl. No. 1.

2. Challenging the said proceedings, the applicant filed O.A. No. 1170 of 2003. The respondents pleaded that the promotion of the applicant as L.S Grade-II in 1988 was erroneous. The relevant facts were taken note of by the Tribunal and, vide order dated 06.01.2004, it took the view that even if the promotion of the applicant to the post of L.S Grade II was done erroneously, he cannot be straightway reverted, without following the prescribed procedure. The order dated 02.07.2003 was set aside and the applicant was



allowed to continue as L.S Gr. II. It was, however, left open to the respondents to take appropriate action if the promotion was not done as per the prescribed Rules. The applicant retired from service on 30.04.2005 on attaining the age of superannuation.

3. Acting upon the observations made by this Tribunal in O.A. No. 1170 of 2003, the respondents passed an order dated 04.03.2005 reverting the applicant to the post of Laboratory Technician/Assistant Chemist. Consequential orders dated 07.04.2005, 04.06.2008 and 24.07.2008 were also passed. The applicant filed O.A. No. 1096/2008 challenging the order dated 07.04.2005, with a prayer to promote him to the post of L.S Grade-I in the scale of Rs. 6500-10500/- on notional basis. The O.A. was disposed of on 24.02.2012 by remanding the matter back to the respondents for passing fresh order, in the context of recovery of payment made in excess. Accordingly, the respondents, passed order dated 18.04.2012, taking the view that the applicant does not hold the prescribed qualification for promotion to the post of L.S Grade-II in 1988 and he was liable to be reverted. The said order and those passed in the year 2005 thereafter, are challenged in this O.A.



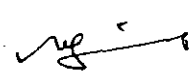
4. The applicant contends that the respondents promoted him to the post of L.S Grade-II in the year 2008, on being satisfied that he holds the requisite qualifications and that there is no justification for them to revert him. Various other grounds are pleaded.

5. The respondents filed counter affidavit opposing the O.A. It is stated that the promotion of the applicant to the post of L.S Grade-II was done by mistake and accordingly, in compliance with the order passed in O.A. No. 1170/2013, an order was passed reverting the applicant to the post of L.S Grade-III on 04.03.2005. It is also stated that subsequent orders are passed in accordance with law. Reference is also made to the O.A. No. 969 of 2004 and subsequent O.As.

6. We heard Mr. T.K. Biswas, learned counsel for applicant and Mr. K. Sarkar, learned counsel for respondents.

7. A perusal of the record of this case, discloses that the applicant was wrongly promoted to the post of L.S Grade-II and when the mistake was rectified by the respondents, by issuing the order dated 07.04.2005, the applicant took various step by filling the O.As, one after the other.

8. Undisputedly, the applicant was holding the post of Assistant Chemist in the year 1983. Upon restructuring, at that time, he was straightway appointed and promoted to the post



of L.S Gr. II, through an order dated 24.05.1988. No mention was made about the selection process. It was only in the year 2003, that the process for selection of a candidate for the post of L.S Grade-III was initiated. The order dated 02.07.2003, reads as under:

No.E.9/5/2/MD/Lab/Pt.I Kolkata, Date: 02.7.2003
 DRME.Railway/SDAH, HWH, ASN, MLDT
 CWM/E.Railway/LLH, KPA, JMP
 Sub: Selection for formation of a panel for the post of Lab.
 Supdt. Gr. III/Chemist in scale Rs. 5000-8000/- (RSRP) in
 Medical Department. (UR: 7 & SC ..1)

.....
 Further to this office letter of even number dated 28.05.2003 it is intimated that a selection for formation of a panel of 8 posts (UR-7, SC-1) of Lab. Supdt. G-III/Chemist in Scale Rs. 5000-8000/- (RSRP) in the Medical Dept. against Promotional quota will be held shortly.

Since as per prescribed procedure, eligible candidate three times the number of vacancy, if available, are to be considered in the written test, following Lab. Technicians/Assist Chemist in Scale Rs. 4500-7000/- (RSRP) may, therefore, be advised to keep themselves in readiness for consideration in the written test of the above selection, the date of which will be intimated on a short notice.

Name of the eligible candidates:

1. Sri B.C. Nandy under CMS/ASN
2. " N.R. Dey under MD/SDAH
3. Smt. C. Goswami under CMS/HWH
4. Sri B. Paul under CMS/HWH
5. " A.K. Nandy under MD/SDAH
6. " T.K. Maitra under MD/SDAH
7. " B. Koomar (SC) under CMS/JMP
8. " N.S. Talukder under CMS/ASN (Now working as Lab. Supdt. Gr. III (NM) in scale Rs. 5000-8000 (RSRP) under MD/BRSH/SDAH.)

(IN RIGHT SIDE: They are having prescribed qualification in terms of CPO/E. Railway's Serial Circular No. 11(1)/2002.

The selection will be comprising of written test followed by Viva-voce test amongst the successful candidates in the written test.



The above action is subject to the result of the pending CAT Case Bearing O.A. No. 5/2000.

(Sd/- B. N. Saha
For Chief Personnel Officer)

9. The applicant challenged this by stating that when he held the post of L.S Grade-II, there was no question of his being considered for promotion from the post of L.S Grade-III and he filed O.A. No. 1170/2003. The Tribunal found that even if the promotion of the applicant to the post of L.S Grade-II was erroneous, further steps cannot be taken, unless he was reverted. Accordingly, following direction was issued:

"In that view of the matter we hereby quash the impugned order dated 2-7-2003 (Annexure-E/1) and allow the applicant to continue in the post of Lab. Supdt. Gr.II. It is, however, open to the authority to take appropriate action if the applicant was not given due promotion as per rules after giving him proper opportunity of hearing and after due observance of principle of natural justice. No costs."

10. The steps taken by the respondents, in compliance with the direction issued in O.A. No. 1170/2003, as mentioned in the counter affidavit, reads as under:-

"To comply the judgment dated 06.01.2004 in OA no. 1170/2003 following actions were taken.

(i) Letters dated 11.03.2004, 16.04.2004 were sent to Chief personnel Officer, Eastern Railway for guidelines and order. Guidelines were received vide CPO/Kolkata's letter dated 03.06.2004.

(ii) Thereafter according to the judgment in OA No. 1170/2003 passed by the Hon'ble Central Administrative Tribunal, Kolkata and guidelines of head Quarter, a letter having no. E/Med/Court Case/BCN/04 dated 11.08.2004 for personal hearing was issued, applicant under clear signature on 16.08.2004 along with signature of two witnesses and countersigned by Sr. DMO/House Surgeon/ASN received it.

(iii) Personal hearing to the applicant was given by CMS/ASN on 21.08.2004. In the hearing the applicant

reg

claimed that Mr. S.C. Ghosh junior to the applicant has been promoted to the post of lab. Supdt. Gr. I at B.R. Singh Hospital.

(iv) Thereafter to rectify the erroneous promotion of the applicant w.e.f. 01.09.1988, rectification order was issued to cancel the said promotion and he was put back to his former post in scale Rs. 1320-2040/- (RP) (in 4th CPC) and in scale Rs. 4500-7000/- (RSRP) (in 5th CPC) as Laboratory Technician/Asst. Chemist, w.e.f. 04.03.2005 vide office order no. E/Med/BCN/05 dated 04.03.2005 and the order was issued on proforma basis i.e. without recovering the overpayment for the sake of "natural Justice" as per judgment dated 06.01.2004 of Hon'ble CAT passed in OA no. 1170/2003. The said office order was delivered to the applicant through letter No. E/Med/BCN/05 dated 07.04.2005. He was put back to the post of Laboratory Technician/Asst. Chemist w.e.f. 04.03.2005 as it was his former post prior to the erroneous promotion.

It is also supported by para 228 of Indian Railways Establishment Manual Volume 1, 1989.

(f) Further he was called to appear in the selection (Written) for the post of Chemist/lab. Supdt. Gr. III in scale Rs. 5000-8000/- (RSRP) vide CPO/KKK's letter No. 975/2/MD/Laboratory/Selection dated 04.04.2005 and he appeared in the selection (written) held on 11.4.2005 in HWH Orthopedic Hospital/E. Rly. On being empanelled of the said post and after taking over independent charge his pay was fixed on Pay Rs. 6650/- in the scale Rs. 5000-8000/- (RSRP) w.e.f. 30.04.2005 vide office order no. E/Med/Lab/PtII dated 28.04.2005.

(g) Thereafter as per order of Hon'ble CAT, Kolkata in OA No. 5 of 2000 (Pradip Kr. Bose & Ors -vs- UOI & Ors.) the applicant being one of the applicants (Sl. No. 33), was given the benefit of higher grade replacement in scale Rs. 5000-8000/- in terms of CPO's Serial Circular No. 172/98 vide Office Order no. E/Med/Lab/Pt.III dated 24.07.2008."

11. It is clear that through an order dated 04.03.2005, the applicant was reverted to the post of L.S Grade-III, which was equivalent to the post of Assistant Chemist, before restructuring. However, the applicant did not challenge the order dated 04.03.2005 at that point of time. Instead, he filed O.A. No. 969/2004, challenging the consequential orders. The

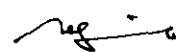
[Signature]

said O.A. was withdrawn four years thereafter, i.e., on 15.09.2008, and the O.A. No. 1096/2008 was filed once again challenging the consequential orders, but not the order of reversion. That O.A. was disposed of on 24.02.2012, leaving open to the respondents to pass a fresh detailed/speaking order. Accordingly, the order dated 18.04.2012 was passed.

12. The entire history of the career of the applicant was mentioned and the circumstances, under which erroneous promotion was granted to the applicant, were also mentioned. It is also necessary to mention that the applicant took part in the written test held on 11.04.2005 for selection to the post of Assistant Chemist/L.S Gr.III and was appointed to that post through order dated 28.04.2005. He did not choose to challenge that order, in O.A. 1096/2005

13. The applicant is not able to point out that he holds qualifications stipulated for the post of L.S Grade-II. The entire episode discloses that the applicant was promoted to the post of L.S Grade-II erroneously. However, in all fairness the respondents did not propose to recover the difference of pay, even while taking the corrective steps.

14. Though the applicant filed as many as 4 O.A.s, the order of reversion dated 04.03.2005 remained unchallenged. Even now, the applicant is not able to demonstrate that he



was eligible to be promoted to the post of L.S. Grade-II. The benefit, which was inadvertently extended to the applicant, cannot be perpetuated.

15. We do not find any merit in the O.A. and accordingly the same is dismissed. There shall be no order as to costs.


(N.Neihisal)
Administrative Member


(Justice L.Narasimha Reddy)
Chairman