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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 1237/2002

New Delhi this the 12th day of December, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

Shri Sridhar Prakash
DPA-B
National Crime Records Bureau (MHA)
East Block-7, R.K.Puram,
New Delhi-110066. Applicant

(By Shri V.S.R.Krishna, Advocate)

-versus-

Union of India

Through

1. The Secretary
Ministry of Home Affairs
North Block, New Delhi

(2) The Director
National Crime Records Bureau (MHA)
East Block-7, R.K.Puram
New Delhi-110066. Respondents

(By Shri Mohar Singh, Advocate)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Shri Sridhar Prakash), by virtue of the present application, seeks quashing of the order of 22.2.2002 and for a direction to consider him for promotion to the post of Junior Staff Officer (JSO) against the existing vacancy with effect from the date, the two other officials were promoted on regular basis.

2. The relevant facts which give rise to the present application are that the applicant was

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working as an Inspector which post was re-designated as Data Processing Assistant Grade 'B' in the National Crime Records Bureau on restructuring of the organisation. The applicant had filed an Original Application No. 2832/97 which was disposed of by this Tribunal on 20.7.2000 and a direction was issued that the case of the applicant had to be considered as per the relevant rules which had not been amended. The findings of this Tribunal read:-

"It is true that as contended by the learned counsel for the Respondents that the rules are being amended by replacing the word 'inspector' by DPA-B. But until the rules are amended, the existing rules will be in force and will have to be relied upon. Hence the promotions made, are not in accordance with the rules. Hence the insistence upon the qualifications under the rules does not arise."

Respondents thereafter implemented the order and promoted the applicant on ad hoc basis to the post of JSO. Earlier before the applicant was promoted, he even filed a contempt petition. In reply to the said contempt petition, the respondents had annexed a letter addressed to the Union Public Service Commission which indicated that out of 10 vacant posts, three were meant for promotion. Only two had been filled on regular basis and the 3rd post is said to be still vacant.

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3. Applicant contends that he was the seniormost Data Processing Assistant Grade 'B' in the organisation and, therefore, was entitled to be considered for promotion against the vacant post. The respondents did not consider him for promotion against the 3rd vacancy referred to above. The applicant preferred Original Application No. 3008/2001. The respondents were directed to treat the application as a representation and decide the same. The representation has since been rejected stating:-

"With reference to the orders dt. 6.11.2001 of the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 3008/2001, filed by Shri Sridhar Prakash, DPA 'B' in this Bureau, Shri Sridhar Prakash is hereby informed that at present there is no post lying vacant in the Grade of JSO. Therefore the case of his promotion cannot be considered. In case any vacancy occurs in the grade of JSO in future, his case will be considered along with other eligible officers as per the eligibility conditions prescribed in the Recruitment Rules.

He is further informed that he is not holding the dual designations of Inspector/DPA 'B' in NCRB as claimed before the Hon'ble Central Administrative Tribunal in the said OA. In fact, after the re-organisation of EDP cadre, on the recommendations of Seshagiri Committee, he is holding the post of DPA 'B' only."

In other words, it has been rejected only on the ground that there is no post lying vacant in the grade of JSO and, therefore, the case of the applicant cannot be considered.

4. In the reply filed, the application as such is contested. It has been pointed that the

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National Crime Records Bureau had been created on the recommendation of National Police Commission. The four units of various Central Police Organisations had been merged. The National Crime Records Bureau was declared as an attached office of the Ministry of Home Affairs. There was only 15 sanctioned strength of JSO with effect from 1.3.2001. The Ministry of Finance had not agreed to continue the temporary post as is clear from the Office Memorandum dated 20.5.2001 and, therefore, the case of the applicant cannot be considered. There is no post that is lying vacant.

5. On reading of the totality of the facts and circumstances, we are pained to observe that in a society of a country governed by the rule of law, the rights of the applicant are being defeated in an unfamiliar manner. When this is so and had come to the notice of this Tribunal, long arm of law will come to the rescue of the applicant whatever may be tactics that may be adopted.

6. If any delay that had been caused by the inaction of the respondents which puts the rights of the applicant into jeopardy then the blame has to be placed on the respondents and the applicant could not be allowed to suffer.

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7. On behalf of the respondents, it was pointed that there was no post which was available and, therefore, the applicant could not be promoted. However, what precipitates in the form of truth is otherwise. On 12.4.2001, the Assistant Director (Administration) of the Ministry of Home Affairs, National Crime Records Bureau had addressed a letter to the Secretary, Union Public Service Commission indicating therein that one post of JSO was still lying vacant. The relevant extract of the letter reads:-

"Earlier, four posts of JSO were filled up on ad hoc basis w.e.f. 12.8.1997 after obtaining the approval of Home Minister. Two of the incumbents were senior to Shri Sridhar Prakash and two others were junior to him. Shri Sridhar Prakash was not considered for the said ad hoc promotion because he was not possessing the required educational qualification. Later on the two senior incumbents had been promoted on regular basis and the two juniors were reverted to their substantive post of DPA 'B' w.e.f. 31.8.99 (AN), since no further extension was granted by the Ministry.

When the above mentioned ad-hoc promotion was held, there were 30 sanctioned posts of JSO out of which 10 posts were filled up and 20 posts were vacant. Out of the 10 vacant posts, 3 posts were meant for promotion."

Therefore, to contend that on 1.3.2001, there was no post which was lying vacant is palpably incorrect. To say otherwise, in our view, would be unfair and travesty of justice.

8. Our attention was being further drawn to

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the fact that the said post which was not filled had been abolished from 20.5.2002 vide the Office Memorandum that had been issued. The relevant extract is:-

"Thereafter, the following 42 posts, lying vacant for more than one year shall stand abolished.

<u>Name of the post</u>	<u>Number of vacant posts</u>
Deputy Director (Computer & Systems Division)	2
Junior Staff Officer (Computer & Systems Division)	20
Data Processing Assistant Grade-B (Computer & Systems Division)	20

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In view of the above fact, the sanction is also conveyed for the continuance of the remaining 277 posts up till March, 2003."

9. As noted above, this has resulted in inaction of the respondents. Otherwise also, the post was unfilled and only had to be abolished on 20.5.2002. In different paragraphs of the counter, it is being pointed that the posts had been reduced from 1.3.2001 and the sanction was not available. That is not correct. The post stood abolished from 20.5.2002 and the impugned order is dated 22.2.2002. In other words, this is before the post was abolished. Even at that time, the department in a determined bid to prevent the promotion of the applicant had stated that no post was lying vacant.

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This was contrary to what the respondents had told the Union Public Service Commission. Therefore, we have no option but to believe the applicant when he urges that this was done to scuttle his promotion. Indeed, the law will not permit this to be done.

10. When such is the situation, the obvious question that comes up for consideration is as to what would be the legal rights of the applicant because of the abovesaid facts and the delay caused, the post has been abolished as already referred to above. Can this Tribunal be a silent spectator to such acts? In our opinion, the answer would be in the negative. We are conscious of the fact that this Tribunal will not direct creation of a post in normal circumstances but in the peculiar facts when the interest of justice so require, we believe that to protect the rights of an individual against the powerful organ like the State, it must be done.

11. In this view of the matter, keeping the scales even, we direct that steps should be taken immediately to revive one of the posts which had been abolished in the peculiar facts and thereafter the applicant in accordance with law may be considered to fill up the said post. The abovesaid exercise should be completed preferably within six

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months from the date of receipt of a copy of this order.

11. The application is disposed of in the above terms. No costs.

V. Majotra

(V. K. Majotra)
Member (A)

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(V. S. Aggarwal)
Chairman

/sns/