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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1545/2001

New Delhi, this the 2nd day of August, 2001

Hon'ble Shri Govindan S. Tamai, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Shri B.D.Prasad
S/o Shri Lall Prasad
Assistant Business Manager
Publications Division,
Ministry of Information & Broadcasting
Govt. of India
Patiala House
New Delhi.

...Applicant
(By Advocate B.S.Mainee)

V E R S U S

UNION OF INDIA : THROUGH

1. The Secretary
Ministry of Information & Broadcasting
Govt. of India
Shastri Bhavan
New Delhi.

2. The Director
Publications Division,
Ministry of Information & Broadcasting
Govt. of India
Patiala House
New Delhi.

3. The Secretary
Union Public Service Commission
Dholpur House
New Delhi.

...Respondents
(By Advocate Shri A.K.Bhardwaj)

O R D E R

By Hon'ble Shri Govindan S. Tamai.

OA No. 1545/2001 has been filed by Shri B.D.Prasad, challenging the order of the respondents postponing his date of regularisation as Business Executive and declaring the post of Assistant Business Manager which he has been holding as a vacancy.

2. Heard Shri B.S.Mainee and Shri Ashok Bhardwaj, learned counsel for the applicant and the respondents respectively.

3. To state in brief the facts, the applicant belonging to a Scheduled Tribe, who was appointed as Sales Representative in the grade of Rs. 550-750/-/Rs. 1600-2660/- through Staff Selection Commission in 1984 became (BE) Business Executive in the grade of Rs. 1640-2900/- / Rs. 1500-9000/- on 1-8-1982 on ad hoc basis but was regularised w.e.f. 1-4-1998, by respondents' letter dated 2-11-1994. This promotion was ordered on the basis of recommendation by DPC. On 16-11-1994, he was promoted as Assistant Business Manager (ABM) on ad hoc basis in the grade of Rs. 3000-3500/- / Rs. 6500-10,500- and regularised w.e.f. 16-11-1994 by respondents' letter dated 17-1-1995. The applicant states that though the post of BE & ABM were to be filled up by promotion & direct recruitment in the ratio of 1 : 1, no direct recruitment had been held since 1983 for BE and since 1986 for ABM and all the posts have been filled up only by promotion. The applicant had been promoted as BE & ABM from 1988 & 1994 respectively after being cleared by the DPC, a fact admitted by the respondents also. Following adoption of the recommendations of the Vth Central Pay Commission, respondents have also decided to fill up the post of ABM only by promotion, for which amendments to recruitment rules were expected. Though the applicant's promotion as BE w.e.f. 1-4-1998 and as ABM from 16-11-1994 were on regular basis, the respondents arbitrarily issued show cause notice on 9-12-1999, proposing the change of date of his regular promotion as BE to 1993 and withdrawal of his promotion as ABM w.e.f. 16-11-1994. The above proposal was meant to create vacant slots

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for direct recruit for which the selection has not yet taken place. The respondents did not take any action on the applicant's representation but on 19-3-2001 decided to change the date of his promotion as BE to 14-10-1993 and declared the post of ABM which he had been holding as a vacancy. The applicant filed a representation on 9-4-2001 against the said action but without considering the same the respondents are reportedly proceeding for filling up the vacancy through direct recruitment. Hence this application.

4. Applicant argues that the respondents' not having made any direct recruitment for the post of BE & ABM since 1983 & 86, having filled the same only by promotion, the quota rule had collapsed and in view of the decision in Narendra Chadda's case (AIR 1986 (1) 49), the respondents cannot go back on the same. The decision of the Supreme Court in the case of A.N.Pathak & Ors. Vs. Secretary, Ministry of Defence & Anr. (ATLT 1987 (1) 385) directing that "delay in making the appointments by direct recruitment should not visit the promotees with adverse consequences denying them the benefits of their service", would also come to the applicant's help. Since his promotion both as BE & ABM were made in a regular manner, and ordered against regular vacancies & with the approval of the competent authority and the DPC, the applicant had a right to hold the post from 1988 and the attempts to get the same shifted to 1993 (for BE) and for declaring it as vacant (for ABM) are incorrect steps/ attempts to benefit direct recruits who could at the relevant time would have only been

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studying in Schools or Colleges. Hon'ble Supreme Court's decision in the case of Rudrakumar Sain would also come to his help, pleads the applicant.

5. In their counter, the respondents state that the posts of BE & ABM are to be filled up by direct recruitment & promotion in the ratio of 1 : 1, with Sales Representative being the feeder grade for BE's & BE's for the post of ABMs. Following the filing of OA No. 962/1999 by one Shri V.S.Rawat, an ad hoc ABM challenging the seniority list of the Sales Representatives and its withdrawal with permission by the Tribunal, the records were reviewed which showed that regular promotions that too with retrospective effect had been ordered without DPC with retrospective effect and vacancies for direct recruitment had been diverted for promotees. The impugned notice dated 19-3-2001 has been issued, among others to the applicant intimating him of the proposed course of action to rectify the above mistakes. The applicant filed a representation against the same which did not amount to any valid objection but only contained statements, casting aspersions on the respondents.

6. The respondents state that the act of promoting the applicant on regular basis with retrospective effect from 1-4-1998 by order dated 2-11-1994 was not correct as he did not hold the post even on ad hoc basis prior to 20-8-1989. Even thereafter he did not continue to be so but was on deputation between 12-6-1990 & 31-5-1991 and had worked on repatriation as Sales Representative (SR) till 30-4-1992, when he was promoted again as BE (ad

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hoc). This will show that he has got undue benefit and the review exercise undertaken subsequently was legal & proper. According to the respondents Mumbai Bench of the Tribunal had held in Manoj Mahajan & Ors. Vs. UOI & Ors. in OA No.1133/1994 that those promoted in excess of the quota are not entitled to seniority and their seniority is to be considered from the date the quota is available. Besides in State of Bihar & Ors. Vs. Kameshwar Prasad Singh & Ors., it has been held that counting of the period of officiation for the purpose of seniority where such officiation was ad hoc, is not permissible. It is further pointed out that of 7 posts of ABM were being earmarked for promotion or direct recruitment by rotation till 1-7-1997 and thereafter following instructions 3 fell in direct recruitment quota and 4 in promotion quota. Three promotees ABMs including the applicant are holding the post and for filling the 4th post, DPC is to meet. UPSC has been approached for taking up the recruitment for filling the posts in the DR quota. UPSC has also completed their selection. The applicant has been the beneficiary of the irregular appointment made earlier and he cannot claim that the same should continue for ever. The respondents have every right to rectify their mistakes when the same is noticed and such a corrective action cannot create any cause of action for the applicant.

7. In the rejoinder the applicant contests the averments by the respondents and states that the promotions already granted to him by the competent authority and enjoyed by him cannot be taken away as has been sought to be done by the applicant. He also

states that the OA filed by Rawat cannot go against him as the respondents themselves have admitted in their counter in that OA that the claim of the applicant (Rawat) that he was senior to B.D.Prasad (applicant in this OA) was not correct.

8. During the oral submissions, Shri B.S.Mainee, 1d. counsel very strongly reiterated the pleas on behalf of the applicant and claimed that respondents' action in postponing his date of regularisation as BE by as many as 5 years and declaring the post of ABM as a vacancy after many years, as has been done, was totally improper and deserved to be set aside. On the other hand, arguing for the respondents, Shri A.K.Bhardwaj, learned counsel for the respondents, urged that promotions made de hors the Recruitment Rules cannot be sanctified by mere lapse of time and the correct position can be retrieved and that exactly is what they had done. Shri Bhardwaj also pointed out that the impugned action of the respondents was not to extend any special concessions to any particular direct recruit but was only meant to rectify the mistakes which had been committed earlier, as the detailed order would clearly show. The application, therefore, deserved to be dismissed, requests Shri Bhardwaj.

9. We have given anxious deliberations to the issue under dispute. While the applicant holds that he is being penalised for no fault of his, after holding the posts of B.E. and ABM that too for a long time, while the respondents hold that they had only

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directed the correction of irregularities, which could not have been avoided. Undisputed facts brought on record are the appointment of the applicant, a Scheduled Tribe candidate as Sales Representative with the respondents in 1984, his promotion as Business Executive (BE) on 1-8-1989 on ad-hoc basis, his regularisation as BE w.e.f. 1-4-1988 ; his subsequent promotion as Asstt. Business Manager (ABM) on ad hoc basis on 16-11-1994 and his regularisation on 17-1-1995 but w.e.f. 16-11-1994. "Relevant portion of the letter No. PF/113/Admn.I dated 24-7-1997 addressed to the applicant by Dy. Director (Admn) reads as follows : -

"He was promoted to the post of Business Executive against the next regular vacancy that occurred w.e.f. 1-4-1988. He is also informed that he was promoted to the post of Asstt. Business Manager on regular basis against an unreserved point in the reservation roster"

It is, therefore, evident that he had more than six years of regular service as B.E. and nearly that much time as ABM, when the Deptt. has sought to "rectify" the mistake and modify his status. That he was promoted as BE and ABM against regular posts and on the recommendations by the concerned DPC is evident. Respondents have, inspite of the directions in the Recruitment Rules, for reasons not known to them chosen not to effect any direct recruitment to the posts of BE for over 16 years and of ABM for nearly 13 years, and had resorted to filling up of the vacancies by promotions and also regularise the promotees, after they have been cleared by DPC. In the circumstances,

the respondents cannot take a view after more than a decade that irregularities have been committed and that the applicant should suffer, while giving effect to corrective measures. In the scenario that no direct recruitment has been undertaken for more than a decade, and vacancies had been filled by promotion exclusively, the view taken by the applicant that the quota system had collapsed during the period cannot be overlooked. Promotions ordered during the period, have to be protected and the decision of the Hon'ble Supreme Court in Narender Chadda's case (supra) comes to the help of the applicant. Besides the argument that OA No. 962/99 filed by one Shri V.S.Rawat, which was withdrawn, subsequently, necessitated re-examination of the issue also would not help the respondents, as they had themselves sworn in their counter to the said OA that Rawat was not senior to the present applicant. The applicant's case for retention of the benefits already acquired by him - regularisation as BE from 1-4-1998 and promotion as ABM on the regular basis - cannot be denied. The judgements cited by the learned counsel for the respondents can be differentiated as the applicant was not officiating on ad hoc basis but was holding both the posts BE and ABM one after the other, and that too on regular basis, based on the selection by DPC. Decisions of the Hon'ble Supreme Court from Direct Recruities Class II Engineering Officers Association & Ors. Vs. State of Maharashtra & Ors. (JT 1990 (2) SC 264) to the case of Rudra Kumar Sain & Ors. Vs. UOI (2000 SC (L&S) 1055), endorse the applicant's case.

9. In the above view of the matter, the application succeeds and is accordingly allowed. Impugned orders No. A.32014/2/99-Admn I dated 19-3-2001 and 31-5-2001 are quashed and set aside as far as they relate to the applicant. Respondents are directed to treat the applicant as having been promoted as Business Executive on regular basis w.e.f. 1-4-1988 and as Asstt. Business Manager w.e.f. 16-11-1994 with consequential benefits. Respondents are directed to issue necessary orders to give effect to our directions above within two months from the date of receipt of a copy of this order. Interim relief granted on 19-6-2001 is made absolute. No costs.

S. Raju

(Shanker Raju)
Member (J)

(Govindan S. Tamai)
Member (A)

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