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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O. A. No. 2899/2001

New Delhi, this the 4th day of September, 2002

Hon'ble Shri M. P. Singh, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

M. D. Sharma
J-4/128-B, Janta Flats
Kalkaji, New Delhi

.. Applicant

(Shri S. K. Sawhney, Advocate)

Versus

Commissioner (Admn.)
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shahid Jee Singh Marg
New Delhi-110016

.. Respondent

(Shri S. Rajappa, Advocate)

ORDER

Shri M. P. Singh, Member (A)

By filing this OA ~~in a third round of litigation~~,
the applicant has prayed for directions to the respondents to:

- (i) grant notional promotion to him in the post of Accounts-cum-Inspecting Officer (AIO) from 26.10.84 without any break for the period from 6.4.1988 to 2.7.1992;
- (ii) Pay arrears of wages for his promotions to the post of Audit Assistant (AA) w.e.f. 19.12.72, Supdt. w.e.f. 19.12.1978 and AIO w.e.f. 26.10.84 with interest @ 12% per annum; and
- (iii) Order his promotion to the post of Sr. Accounts Officer (SAO) w.e.f. 16.2.1994 when his junior was so promoted.

2. The applicant has earlier filed TA 39/1999 seeking almost similar reliefs and that TA was disposed of by this Tribunal vide its order dated 27.11.2000 with the directions to the respondents to 'reconstitute the DPC to reconsider the applicant's promotion w.e.f. the date Mr. Singhal's promotion if he is otherwise found fit and he should be promoted with all consequential benefits on notional basis'.



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Pursuant to the above directions, respondents have issued Memorandum dated 9.04.2001 by which the applicant has been promoted notionally to the post of AA (Rs.210-380) w.e.f. 19.12.1972, to the post of Supdt. (Accounts) notionally in the scale of Rs.500-900 w.e.f. 19.12.1978 and further to the post of AIO (Rs.840-1200) notionally w.e.f. 26.10.84. It is also mentioned in the said Memo that 'the review DPC has, however, not found Shri M.D. Sharma fit for promotion to the post of Sr. Accounts Officer/Sr. Audit Officer which is selection post from Group B to Group A, on the basis of his service record'.

3. Not satisfied with the aforesaid Memo dated 9.4.2001, applicant filed CP No.280/2001 in TA 39/1999, which was dismissed by the Tribunal vide its order dated 17.8.2001 with the following observations:

"2. We find that there is no willful disobedience of the Tribunal's directions by the respondents in complying with the same because a Review DPC has been constituted for promotion to the post of Group B to Group A and applicant was not found fit for promotion to Group A, as such, he has been promoted only on notional basis.

3. If the applicant has still any grievance regarding promotion to the post from Group B to Group A and any other grievance, he is at liberty to file a fresh OA for the same".

4. Heard the learned counsel for the parties and perused the records.

5. The contention of the learned counsel for the applicant during the course of the arguments is that denial of ~~respondents in allowing~~² arrears to the applicant on his promotions to the posts of AA, Supdt. and AIO was illegal and that the applicant should have been promoted to the post of SAO w.e.f. 16.2.94. He has also contended that the applicant has been illegally denied the benefits of notional promotion to the post of AIO for the period from 6.4.88 to 2.7.92.

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6. On the other hand, respondents have submitted that the applicant was promoted to the aforesaid 3 posts only on notional basis in pursuance of the directions of the Tribunal dated 27.11.2000 in TA 39/1999 and on the basis of the recommendations of the Review DPC and therefore there is no question of payments of arrears etc. to the applicant. As regards applicant's contention for promoting him to the post of SAO from 16.2.1994, respondents have submitted that ACRs for the five years 1989 to 1993 were considered by DPC in its meeting held on 16.2.1994 and again ACRs for the years 1990 to 1994 were considered by the DPC held on 22.2.1995 and 18.7.1995 and graded the applicant 'average' and therefore found him unfit for promotion to the post of SAO. The post of SAO is a 'selection' post. It is a settled legal position that the Tribunal cannot substitute itself as a selection committee and sit over the assessment made by a duly constituted DPC. In so far as applicant's contention that he has been illegally denied the benefit of notional promotion to the post of AIO for the period from 6.4.88 to 1.7.92, respondents have contended that the applicant was offered the post of AIO vide order dated 23.2.1988 but he had refused the promotion and consequently the same was withdrawn and he was debarred for future promotion vide order dated 12.9.1988. This fact is not denied by the applicant in his rejoinder. Therefore, having refused the promotion and having been debarred for future promotion, the applicant is estopped from raising that issue after a lapse of more than 13 years. In view of this position, the contentions of the applicant that he should be promoted as SAO w.e.f. 16.2.1994 and that he should be given the benefit of notional promotion to the post of AIO from 6.4.88 to 1.7.92 are not tenable and are accordingly rejected.

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7. In the result, for the reasons discussed above, the present OA is devoid of merit and is accordingly dismissed.

No costs.

S. Raju

(Shanker Raju)
Member (J)

M. P. Singh

(M. P. Singh)
Member (A)

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