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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. 528/2001

New Delhi this the 29<sup>th</sup> day of August, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).  
Hon'ble Shri M.P. Singh, Member(A).

Shri U.D. Dwivedi,  
S/o Shri B.L. Dwivedi,  
R/o BD-839, Sarojini Nagar,  
New Delhi-110 023.

... Applicant.

(By Advocate Shri K.K. Sharma with Shri S.P. Chadha)

Versus

1. Union of India,  
through Secretary,  
Ministry of Defence,  
South Block,  
New Delhi.
2. Secretary,  
Defence Research Development Organisation,  
Ministry of Defence,  
South Block, New Delhi.
3. Director,  
Solid State Physics Laboratory,  
Timarpur, Delhi-110054.
4. Mrs. Rajesh Kumari Chandra,  
Scientist-C (1989)
5. Dr. D.K. Bhattacharya,  
Scientist-C (1989)
6. Sh. V.R. Balkrishnan,  
Scientist-C (1989)
7. Shri B.S. Matheru,  
Scientist-C (1989)

... Respondents.

(By Advocate Shri N.S. Mehta)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

This is the second round of litigation by the applicant  
in which he has impugned the selection/assessment done by the

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Special Assessment Board (SAB) in their letter dated 21.8.1997. According to the applicant, the assessment has been done without implementing the order of the Tribunal in OA 2738/90 and of the Hon'ble Supreme Court in Civil Appeal No. 15344-45/96. He has submitted that the issue of his non-promotion from the post of Scientist-B to Scientist-C from 1988 still remains unresolved. In OA 2738/90, the Tribunal had come to the conclusion that the impugned selection held in the year 1988 under the Chairmanship of one Professor <sup>Dr. P.</sup> S. Sampath was vitiated as he could not have held an office under the Govt. of India after having been a Member of the Union Public Service Commission (UPSC). ~~and~~ Hence, the same was set aside vide order dated 17.9.1991 which had been declared vide Gazette No. 1148 dated 31.7.1989. The Union of India had filed an appeal against this order before the Hon'ble Supreme Court, Union of India and Anr. Vs. U.D. Dwivedi (1997(3) SCC 182) which had confirmed that the Tribunal had come to the right decision in the matter in holding that the entire process of assessment was bad in law and dismissed the appeal.

2. The main contention of Shri K.K. Sharma, learned counsel is that the respondents had not brought the position as if no selection had been held in 1988-89 when the SAB had considered the matter. He has also submitted written submissions which we have perused. He has very vehemently contended that as a result of cancellation of Gazette No. 1148 dated 31.7.1989, the respondents had to revert all the officers to next below posts which has not been done. He has also contended that the respondents have not done the assessment as per the rules as the concerned Scientists were holding the higher posts of Scientist 'D' and Scientist 'E', etc. when they were being considered for promotion to the posts of Scientist 'C'. He

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has, therefore, submitted that the assessment made by the SAB in pursuance of the aforesaid judgements for promotion to the posts of Scientist 'C' for the year 1988, should be quashed and set aside, with a further direction to the respondents to consider the case of the applicant for promotion to subsequent levels at par with others, with consequential benefits.

3. We have seen the reply filed by the respondents and heard Shri N.S. Mehta, learned counsel. The respondents have submitted that against the order dated 17.9.1991 in OA 2738/90 and the order dated 23.3.1992 in another similar case (OA 706/89) filed by Shri E.P. Sastry before the Tribunal (Hyderabad Bench), the Union of India had filed appeals before the Supreme Court which were dismissed by the Apex Court upholding the judgements of the Tribunal. Consequently, a SAB for the years 1987 and 1988 was constituted to hold fresh assessments in respect of the Scientists whose earlier assessments had been quashed. According to the respondents, the SAB had conducted the fresh assessments in accordance with the rules and policies as applicable at the time of the original Boards. The applicant had been informed by letter dated 17.2.1988 to appear before the SAB on 26.3.1988 but he failed to do so. He had, however, submitted a representation expressing his apprehensions about the fairness of the proposed assessment which, according to the respondents, are baseless. Shri N.S. Mehta, learned counsel has submitted that the applicant was accordingly assessed by the SAB 'in absentia' based on his Bio-data and other relevant papers earlier submitted by him to the original SAB in 1987-88. However, he was not found fit for promotion to the grade of Scientist 'C' with reference to the assessment year 1988. Learned counsel has submitted that the respondents have complied with the directions of the Tribunal in the aforesaid cases by holding fresh assessments in respect of

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assessments struck down by the Tribunal, through the SAB. He has submitted that the fresh assessments have been conducted by a duly constituted SAB in accordance with the rules and policies as were applicable at the time of the original assessments. As regards the applicant's contention for bringing the position to status quo ante by reverting the Scientists promoted in the quashed selections before holding fresh assessments, the respondents have submitted that as it involved reversion of a large number of Scientists after a lapse of 10 years, it was not considered administratively feasible and as such they were allowed to retain their promotions pending completion of fresh assessments. Learned counsel has also submitted that the relevant judgements (~~supra~~) had also not ordered any such reversion of affected Scientists and neither the selection criteria, relevant rules and policy nor the selection procedure followed in the impugned selections were questioned in the judgements but <sup>it is</sup> was only the constitution of the Assessment Board whose Chairman was a former Member of the UPSC which had been struck down by the Tribunal and the Hon'ble Supreme Court. In the circumstances, learned counsel has submitted that as the applicant has now been duly considered by the SAB in accordance with the relevant rules at the relevant time, the applicant was not entitled to any reliefs and he has prayed that the O.A. may be dismissed.

4. We have carefully considered the pleadings and heard the learned counsel for the parties.

5. The Hon'ble Supreme Court in Union of India & Anr. Vs. U.D. Dwivedi (supra) vide order dated 3.12.1996, had upheld the decision of the Tribunal in the aforesaid two cases (Principal Bench and Hyderabad Bench), on the ground that having regard to the provisions of Article 319(c) of the Constitution, a Member

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of the UPSC on ceasing to be such Member was prohibited from<sup>2</sup> holding any employment either under the Govt. of India or under the Govt. of a State. As there was no dispute that Prof. Sampath was a Member of the UPSC before he was employed as the Chairman of the Assessment Board at Recruitment and Assessment Centre which had dealt with the promotion and recruitment to<sup>2</sup> scientific and technical posts, including that of the applicant, the same was struck down. In compliance with these judgements, SAB had been constituted by the respondents for the year 1987 for promotion of Scientists 'B' and 'E' and for the year 1988 in regard to Scientists 'B' and 'C'. It is seen from the reply filed by the respondents that the applicant had been duly informed to appear before the SAB on 26.3.1998 but he had failed to do so. We see force in the contentions of the learned counsel for the respondents that in the facts and circumstances of the case, fresh assessments made by the SAB which has not been done contrary to the relevant rules as applicable at the time of the original assessments, are either arbitrary or illegal to justify any interference in the matter. A further contention of Shri K.K. Sharma, learned counsel that other Scientists who had been earlier promoted by the Assessment Board headed by Prof. Sampath should have been reverted and only then a SAB could have made re-assessment will not in any case affect<sup>the</sup> assessment of the applicant for promotion to Scientist 'C'. In the fresh assessments conducted by SAB, all Scientists whose selection had been specifically challenged and set aside by the Tribunal (Principal Bench and Hyderabad Bench) have been called for assessment. As the applicant did not appear for assessment, the same has been done based on his bio-data and other relevant papers which had been earlier submitted to the Assessment Board in 1987-88. We, therefore, do not find any illegality or arbitrariness in the procedure adopted by the SAB and find that what had been struck

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down earlier by the Tribunal and the Hon'ble Apex Court was the constitution of the Selection Board which has now been reconstituted. The applicant has not raised any objection to the constitution of the SAB which has been done in pursuance of the above referred to judgements of the Tribunal and <sup>Hon'ble B.</sup> Supreme Court. In this view of the matter, we do not find any justification to interfere in the matter.

6. In the result, for the reasons given above, we find no merit in this application. The same is accordingly dismissed. No order as to costs.

  
(M.P. Singh)  
Member(A)

  
(Smt. Lakshmi Swaminathan)  
Vice Chairman (J)

'SRD'