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Central Administrative Tribunal
Principal Bench

O.A.957/2001,
MA 2467/2001

New Delhi this the 9th day of November, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

Sukesh Kumar,
FO (CC),
112, Sector-I, R.K. Puram,
New Delhi.

... Applicant.

(Applicant in person)

Versus

1. Director General, SSB,
East Block V,
R.K. Puram,
New Delhi-110 066.
2. Addl. Director General, SSB
East Block V,
R.K. Puram,
New Delhi-110 011.
3. Shri Ram Jatan,
Field Officer (CC),
East Block V, R.K. Puram,
New Delhi-110 066.

... Respondents.

(By Advocate Shri B.S. Jain)

ORDER (ORAL)

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

This case has been listed at Serial No. 4 in today's cause list under Regular Matters for final hearing. We note that the O.A. was originally filed in the Tribunal (Guwahati Bench) in March, 1999 and transferred to the Principal Bench in April, 2001. The applicant has stated that this was done on his request after he was transferred from Guwahati to New Delhi on promotion vide order issued by the respondents dated 5.2.2001 to the post of Field Officer (CC) (FO (CC)).

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Thereafter, the application was admitted, subject to legal pleas and has been listed today for final hearing.

2. MA 2467/2001 filed by the applicant on 2.11.2001 has been listed. In this MA, the applicant prays that he may be allowed to file supplementary rejoinder to the Original Application which he has submitted is almost ready with him and thereafter he has also pleaded that the respondents may be allowed to file counter affidavit to supplementary rejoinder, if they so choose.

3. Before taking up the detail arguments in the Original Application, we have considered the prayer of the applicant in MA 2700/2001. According to the applicant's own submission, his main prayer in the Original Application is with regard to the promotion of Respondent No. 3, a Scheduled Caste (SC) candidate against a vacancy which admittedly had arisen on 29.1.1993 but was actually filled by his promotion w.e.f. 16.8.1994. According to the applicant's repeated submissions in the Miscellaneous Application, his averments in the O.A. need correction to the extent what he now calls is that the vacancy is not of 1993 but pertains to the year 1991 which, according to him, is evident from the averments made by the respondents themselves in the counter affidavit dated 9.9.1999. It is relevant to note that the applicant has filed rejoinder to the counter affidavit filed by the respondents on 7.1.2000, wherein he has dealt with various issues raised in the O.A. with regard to the vacancy

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which has occurred in 1993 and there is no averment whatsoever regarding the vacancy which has occurred in 1991. Even at this stage, nothing has been brought on record by the applicant to substantiate his averment that the vacancy actually relates back to 1991 and not 1993. According to the applicant, he was quite happy to be transferred to Delhi in February, 2001 and he has prayed that he may be given an opportunity to bring the other relevant facts regarding the vacancy arising in 1991 on record, by way of an additional rejoinder. This has been opposed by the learned counsel for the respondents that the applicant has been making several representations from 22.3.1996 onwards which have been dealt with by the respondents from time to time.

4. We have given our anxious consideration to the submissions made by the applicant. From the averments in the O.A. as well as the documents on record, we note that the applicant has been repeatedly agitating his grievance with regard to the promotion of Respondent No.3 against the post which, according to the respondents, had fallen vacant we.f. 29.1.1993 on which he was finally promoted in 1994 when he was found eligible by the Departmental Promotion Committee (DPC). In the facts and circumstances of the case, we find no good grounds as to why the applicant could not have brought the relevant facts which he now seeks to agitate by way of an additional rejoinder, if he had thought that they were relevant to the issues raised in the O.A. much earlier. In the O.A., the applicant has submitted, inter alia, that the vacancy in

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question is a reserved vacancy of the SC on the 40-point roster and has also prayed for a direction to respondents to promote him w.e.f. 29.1.1993 or at least from the date his "just senior" was promoted. It is settled law that even if a review DPC is ordered as prayed for by the applicant, he would only be entitled for consideration for promotion ~~by that date~~¹⁸ from the date when his next junior was promoted and not just senior. From a perusal of the averments in the O.A. and the submissions made by the applicant in the O.A. during the hearing, it is, therefore, clear that what the applicant has been agitating throughout is regarding a vacancy which has arisen in 1993 and not 1991. What the applicant is agitating by way of MA 2467/2001 is a much belated averment and an after-thought, which cannot be entertained at this stage. As mentioned above, there is no evidence or any document produced by the applicant to substantiate his belated claim that the vacancy in question, is actually one that has arisen in 1991 and not in 1993, which has been the thrust of his arguments in the O.A. It is also relevant to note that this application was admitted, subject to legal pleas on 31.8.2001 and even till that date the applicant had not cared to bring in, what he calls are additional points, by way of another rejoinder. In the facts and circumstances of the case, we see force in the submissions made by the learned counsel for respondents that MA 2467/2001 is not maintainable and the same is rejected.

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5. We have also considered the submissions made by the applicant and the learned counsel for respondents on merits. According to the applicant, in terms of the DOP&AR O.M. dated 29.4.1975, since there was only one vacancy in January, 1993 which falls on a reserved point in the roster, it had to be treated as unreserved. He has, therefore, contended that Respondent No.3 who belongs to the SC community should not have been considered for promotion as FO (CC) against the reserved post which was a single vacancy at that relevant point. This has been opposed by the learned counsel for respondents and we have also seen the reply filed by them. Learned counsel for respondents has contended that the promotion given to Respondent No. 3 has been done in accordance with the Rules. The respondents have submitted that the vacancy of direct recruitment reserved for SC candidate could not be filled despite best efforts on their part and was diverted to the promotion quota. They had also carried forward the reserved vacancy meant for SC candidate and had also filled the post by a general category candidate and there was still one vacancy unfilled for reserved candidate, that is SC candidate. It is also relevant to note from the reply filed by the respondents that out of the total of 7 Deputy Field Officers (DFOs (CC) who ~~had~~ were promoted from 1986 to 1993, no SC/ST candidate was promoted. The respondents have submitted that on the recommendations of the DPC and approval of the competent authority, Respondent No.3. a SC candidate, has been promoted to the grade of FO (CC) w.e.f. 16.8.1994, the date on which he became eligible.

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We find no infirmity or illegality in this order of promotion granted to Respondent No.3 which is based on the recommendations of the DPC. The contention of the applicant that this could not be done is baseless and is accordingly rejected.

6. With regard to the contention of the applicant based on the DOP& AR O.M. dated 29.4.1975, we would like to refer to the relevant judgements of the Hon'ble Supreme Court on this issue, namely, Dr. Chakradhar Paswan Vs. State of Bihar (JT 1998(1) SC 496); Union of India & Anr. Vs. Madhav s/o Gajanan Chaubal & Anr. (JT 1996 (9) SC 320); State of Bihar & Ors. Vs. Bageshwari Prasad & Anr. (1995 Supp.(1) SC 432); and Union of India Vs. R. Ayyappan (JT 1998 (5) SC 346). In Ayyappan's case (supra), the Hon'ble Supreme Court has held as follows:

"The appellants have pointed out that in the case of State of Bihar v. Bageshwari Prasad (1995 Supp 1 SCC 432) this court held that even a single post can be reserved by rotation on the basis of a roster, distinguishing the case of Dr. Chakradhar Paswan v. State of Bihar JT 1998 (1) SC 496). This view has been reaffirmed by a Bench of three judges of this Court in Union of India v. Madhav JT 1996 (9) SC 320)".

In that case, the Apex Court had found that the appellants/Union of India were unable to point out to them any such reservation of the post which is a single post by rotation, as contemplated in Bageshwari Prasad's case (supra). In the circumstances, it was held that the Tribunal was, therefore, entitled to rely upon the case of Dr. Chakradhar Paswan (supra) and the appeal was accordingly dismissed. The judgement of the Hon'ble

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Supreme Court in R. Ayyappan's case (supra) quoted above is fully applicable to the facts in the present case. Therefore, we do not find any illegality in the action taken by the respondents in filling the post reserved for SC category in the roster by a candidate belonging to that category. The DOP&AR O.M. dated 23.4.1975 would, therefore, not assist the applicant in the facts of this case. We have also considered the other contentions of the applicant but do not find any merit in the same.

7. In the result, for the reasons given above, we find no merit in this application. The O.A. accordingly fails and is dismissed. No order as to costs.

(Govindan S. Tampi)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'