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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 772/1999

New Delhi this the 30th day of October, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri V.K. Majotra, Member (A)

Sh. Khem Chand s/o Sh. Doongar Singh
working as Senior Technical Asstt.
under DIPAS Lucknow Road Delhi and
resident of 421 E, Gali No. 5 (Near
Yad Ram Mandir) East Babarpur,
Shahdara, Delhi-110032

..Applicant

(None for the applicant)

Versus

1. Union of India through Secretary,
Ministry of Defence, South Block,
New Delhi-110001

2. Director General R & D
Ministry of Defence, South Block,
New Delhi-1

3. Director,
Research & Development Organisation
Defence Institute of Physiology and
Allied Science, Lucknow Road,
Timarpur, Delhi-110054

..Respondents

(By Advocate Shri K.C.D. Gangwani)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant has challenged the validity of the letter passed by the respondents dated 12.11.1998 rejecting his representation regarding selection held for promotion to the cadre of Technical Officer 'A' from Senior Technical Assistant (STA).

2. None has appeared for the applicant even on the second call. It is also noted that the applicant has not been represented by his counsel on a number of dates when the case was listed after 16.9.1999. In the circumstances, we have proceeded to dispose of the matter after carefully perusing the documents on record and hearing Shri K.C.D. Gangwani, learned senior counsel.

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3. The applicant has contended that he has rendered five years satisfactory regular service in the grade of STA as on 1.9.1995 but the respondents have deliberately not conducted the assessment for the year 1995-96 for promotion to the grade of Technical Officer 'A', as per the provisions of Rule 8 of Defence Research and Development Organisation Technical Cadre Recruitment Rules, 1995 (Hereinafter referred to as 'DRDOTCR Rules'). He has stated that he had appeared before the Assessment Board held on 9.6.1998 for the year 1995-96 for promotion to the grade of Technical Officer 'A' and according to him, he fared well. He has submitted that his name was, however, not recommended by the Assessment Board for the post of Technical Officer 'A' which is shocking to him. He has submitted ^a representation to the respondents regarding the selection and promotion held by the Assessment Board which *according to him* is in total violation of the Recruitment Rules. He has submitted that the respondents have not circulated the amended SRO 141 of 1997 to him which was made effective retrospectively from 26.8.1995. His contention is that no such amendment ^{can be} ~~was~~ made to the RRS with retrospective effect. The applicant has also submitted that the respondents have also got very much annoyed with him because he is holding post of General Secretary, Defence Research and Development Organisation Scheduled Caste/Sch. Tribes Employees Coordinator Association, Delhi Region, and in that capacity he has been writing letters to the authorities concerned for effective implementation of reservation policy

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in the office. He has submitted that he has appeared in the Assessment Board for the year 1996-97 but his name was not included in the list of successful candidates. He has alleged that the respondents have acted ^{in a} arbitrary, malafide and discriminatory ^{manner} in the matter of assessment for the year 1995-96.

4. The respondents in their reply have controverted the above averments made by the applicant. They have submitted that by Notification SRO 141 of 1997 dated 11.8.1997, in exercise of the powers conferred by the proviso to Article 309 of the Constitution, the DRDOTCR Rules were amended with retrospective effect from 26.8.1995. Shri K.C.D. Gangwani, learned senior counsel relying on the judgement of the Supreme Court in B.S. Vadera Vs. UOI & Ors (AIR 1969 SC 118) has submitted that there is no illegality in the ~~of~~ ^{the} Amendment Rules, 1997 which has been given effect retrospectively as these have been notified under the proviso to Article 309 of the Constitution. Further, he has submitted that the applicant has been duly considered by the Assessment Board for 1995-96 as well as 1996-97 but has not been found fit for promotion to the grade of Technical Officer 'A'. The respondents have further clarified that under Rule 8 of the Rules as amended by SRO 141 of 1997 promotion is not linked to the occurrence of the vacancies but is done under ^{the} Limited

Flexible Complimenting System and is entirely merit based. They have submitted that as per the amended Rules, employees in each grade who have rendered a minimum of five years regular service in the grade as on 1st September of the year of assessment, including the service rendered by them in a post included in Schedule 1 and held by them immediately before the date of commencement of these Rules ~~including the service~~ in the posts which have been clubbed together into a single grade but were not the feeder cadre to the posts getting clubbed shall become eligible for assessment for promotion to the next higher grade. Learned counsel has, therefore, submitted that as per the RRs promotions of eligible candidates have been considered and assessed by the Assessment Board in which the performance of the applicant has also been assessed. His overall merit for that year also was relatively lower than the candidates who were promoted. In the circumstances, learned counsel has submitted that the applicant has only ^a right for ^{case} consideration which has been complied with in the present. He has, therefore, prayed that the OA may be dismissed.

5. In the rejoinder filed by the applicant, he has ^{again} reiterated that the amendment by SRO 141 of 1997 could not be made with retrospective effect. We are unable to agree with this contention, having regard to the decision of the Supreme Court in B.S. Vadera's case (Supra). Accordingly, there is no illegality in the Notification SRO 141/1997 issued on 11.8.97

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which came into force with retrospective effect w.e.f. 26.8.95. By this Notification Rule 8 of the DRDOTR Rules, 1995 has been substituted.

6. From the facts mentioned above it is also clear that the applicant has been considered for promotion to the post of Technical Officer 'A' by the Assessment Board on two occasions, namely, 1995-96 and 1996-97 but has not been found suitable on merit for promotion. In the facts and circumstances of the case, the action of the respondents cannot be faulted as either against law, biased or discriminatory. The allegations to this effect made by the applicant are not based on any evidence or documents on record and they are accordingly rejected.

7. In the result, for the reasons given above, we find no merit in this application. OA is accordingly dismissed. No costs.

V.K. Majotra
(V.K. Majotra)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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