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CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI.

1. ORIGINAL APPLICATION NO.2255/95 AND

2. ORIGINAL APPLICATION NO.2256/95.

Wednesday, this the 1st day of September, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha,
Vice-Chairman,
Hon'ble Shri J.L.Negi, Member (A).

1. P.S.Awal, GH.10, 65 - B,
Sundar Apartments, Paschim
Vihar, New Delhi - 41.

...Applicant in
OA 2255/95

2. S.K.Chadha, C-II-45, Lajpat
Nagar, New Delhi - 24.

...Applicant in
O.A. 2256/95.

Vs.

1. Union of India, through
Secretary, Ministry of
Finance, Department of
Economic Affairs, I.E.S.
Division, North Block, New
Delhi.

2. Establishment Officer,
Department of Personnel,
North Block, New Delhi.

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

...Respondents in
O.A. 2255/95 and
O.A. 2256/95.

(By Advocate Mr.S.M.Arif)

ORDER (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are two applications filed under section 12 of the Administrative Tribunals Act, 1985. The respondents have filed their reply. Today, when the case was called out for final hearing the applicants and their counsel are absent. We have heard Mr.S.M.Arif, the learned counsel for the respondents. We have perused the entire materials on record.

(11)

(2)

2. The short point for consideration in these two cases is whether the action of the administration in not promoting the applicants is legally justifiable or not.

The applicants case is that they were due for promotion for the post of Senior Administrative Grade (SAG) and their names were recommended by the DPC, but when the promotion orders came the applicants were not promoted, but their juniors were promoted by order dt 4.8.1995. The applicants' also presumed that their promotion was not approved by the Appointments Committee of Cabinet (ACC) on the ground that they did not have three months service after promotion and before retirement. The applicants have also alleged mala fides in making delay in issuance of promotion orders in order to exclude the applicants. Therefore, the applicants pray that the respondents may be directed to promote the applicants to the SAG w.e.f. the date of actual date of vacancy or the date of recommendation of the DPC viz 12.5.1995.

3. The respondents in their reply have stated that the applicants could not be considered for promotion by the ACC, since the applicants did not have the minimum three months tenure from the date of meeting of ACC and the date of their retirement. They are relying on the O.M. dt. 25.1.1990 issued by the Ministry of Personnel

4. Though we do not have the benefit of the applicants counsel to assist us, after hearing the respondents counsel and perusing the materials on record we find that no case is made out for interference in these two cases.

No doubt, the UPSC had recommended the names of the applicants, but these appointments are to be cleared by the Appointments Committee of the Cabinet. The juniors were promoted on 4.8.1995. The applicants may have a grievance when their juniors got promoted on 4.8.1995, but unfortunately the applicants could not have been promoted on 4.8.1995 as they had to retire from service on 31.7.1995. Even if the three months rule is not applicable, the applicants could not have been promoted on 4.8.1995 since they were no longer in service. Nobody has a right to claim promotion from any particular date. There are cases and cases where posts are filled up long after the vacancy arose and there may be administrative delays in holding DPCs and issue of appointment orders. We cannot accept the contentions of the applicants that they should be promoted from the date of vacancy or from the date of DPC. The recommendation of the DPC is not binding on the Appointing Authority. therefore there is no question of promotion being given from the date of vacancy or from the date of DPC. Applicants could be really aggrieved if some juniors are promoted without considering their case. Here admittedly, juniors got promoted only on 4.8.1995, but on that date no order of promotion could have been issued to the applicant since they had attained superannuation on 31.7.1995. 5. In addition to the above reasoning, w

may also point out that as a policy the Government has decided that in such a senior post like SAG an officer on promotion must have minimum tenure of three months. The O.M. dt. 25.1.1990 (which is Ex. R-1 to the written statement). It clearly provides that such appointments which are to be covered by the ACC, no officer should be promoted unless he has minimum service of three months before retirement, this is a policy matter. The applicants have not challenged the legality or vires of this O.M. The O.M. has been followed for the last nine years. In view of the post being senior post, the government in its wisdom has fixed the minimum tenure of three months for promotion to such senior post which cannot be said as illegal or illogical since admittedly the applicants did not have three months tenure after the ACC. Therefore, even from this angle, we do not find any illegality in the action of the respondents.

For the above reasons, we find that there is no merit in both the applications.

6. In the result, both the applications are dismissed. No order as to costs.

J.L. Negi
(J.L. NEGI)
MEMBER (A)

R.G. Vaidyanathan
(R.G. VAIDYANATHAN)
VICE-CHAIRMAN