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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2247/97

New Delhi this the 9th day of November, 1998.

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri Nari Ram,
S/o Sh. Fat Ram
R/o H-33, DMS Colony,
Patel Nagar, New Delhi-8. Applicant

(through Sh. V.P. Sharma, advocate)

versus

1. Union of India through
the Secretary,
Ministry of Agriculture,
Dept. of Dairy, Govt. of
India, Krishi Bhawan,
New Delhi.

2. The General Manager,
Delhi Milk Scheme,
Govt. of India,
West Patel Nagar,
New Delhi-8. Respondents

(through Sh. R.V. Sinha, advocate)

ORDER (ORAL)

Hon'ble Shri T.N. Bhat, Member (J)

The learned counsel for both the parties have
been heard for final disposal of the O.A. at the
admission stage itself.

2. The question in controversy in this O.A. is as to whether the applicant who had been given in situ promotion to the post of Head Watchman w.e.f. 1.4.91 is eligible for consideration for promotion to the next higher post. The respondents have refused to consider the applicant on the ground that in situ promotion given to him would not entitle him to claim promotion to the next higher post of Security Supervisor. The applicant claims promotion on the

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ground that he already holds the post of Head Watchman and has put in more than 5 years of service in that grade which would make him eligible for promotion to the post of Security Supervisor.

3. The contention of the respondents on the other hand is that it was on the basis of stagnating in the lower pay scale that the applicant was given in situ promotion w.e.f. 1.4.91 in the higher grade of Head Watchman in the pay scale of Rs.800-1150. According to the respondents the applicant could not be held to be holding the post of Head Watchman on substantive basis so as to make him eligible for consideration to the next higher post.

4. The matter at issue is no longer res integra in view of the judgement of the Apex Court in State of Rajasthan Vs. Fateh Chand Soni (JT 1995(9) SC 523). The matter before the Hon'ble Supreme Court related to a person who had been given the selection scale and was claiming promotion to the next higher scale. The Apex Court held that seniority in the selection scale has to be fixed in accordance with the relevant rules and is also to be treated as promotion. Rejecting the view of the High Court expressed in that case that on being given selection scale the incumbent neither leaves the post which was already held by him nor occupies a new post, the Apex Court held that the word promotion means "To advance to a higher position, grade or honour" and therefore covers not only

Subrata

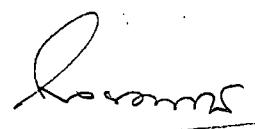
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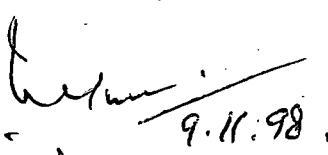
advancements to higher position or rank but also implies advancement to a higher grade. In conclusion it was held that appointment to the selection scale of an officer has to be fixed in accordance with Rule 33 of the relevant rules.

5. Likewise, in the instant case, the applicant was granted the higher scale of Head Watchman w.e.f. 1.4.91 which must be held to be promotion to the higher grade. In pursuance of that the applicant would be eligible for consideration for the next higher post after he had put in the requisite number of 5 years in the grade of Head Watchman.

6. For the foregoing reasons, this O.A. has to be allowed. In the event, the O.A. is allowed, the action of the respondents in not considering the applicant while calling applications from the open market is quashed and the respondents are directed to consider the applicant for promotion proceeding on the basis that he was eligible after putting in 5 years of service in the grade of Rs. 800-1150. The necessary action in the matter for considering the case of the applicant shall as far as practicable be taken within a period of 3 months from the date of receipt of a copy of this order.

No costs.


(S.P. Biswas)
Member (A)


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(T.N. Bhat)
Member (J)