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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI:

O.A. 616/94

New Delhi, this the 1st September, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri P.T. Thiruvengadam, Member (A)

Shri R.A. Shukla,  
Horticultural Assistant Grade I,  
Office of the Dy. Superintending  
Horticulturist,  
Archeological Survey of India,  
Horticultural Division II,  
Safdarjung Tomb (Madarsa),  
New Delhi.

... Applicant

(Shri V. Ethirajula, Advocate)

Vs.

Union of India,  
through Secretary (Culture),  
Ministry of Human Resources  
Development, Shastri Bhawan,  
New Delhi.

... Respondent

(Shri M.L. Verma, Advocate)

O R D E R (ORAL)

Hon'ble Shri J.P. Sharma, Member (J)

The applicant is a Horticultural Assistant Grade I in the office of Deputy Superintending Horticulturist, Archeological Survey of India. The grievance of the applicant has arisen from the office order dated 28.1.94 whereby juniors to the applicant have been promoted as senior Horticultural Assistant superceding the claim of the applicant and as alleged violating 14 of the Article/Constitution of India. The applicant has been in service since November 1961 when initially joined as Foreman. He was promoted on the last occasion to the post of Horticultural Assistant, Grade I in July, 1977. The next promotion is to the post of Senior Horticultural Assistant.

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2. The applicant filed this application in March, 1994 and prayed for the grant of the relief that a direction be issued to the respondents to issue the orders of promotion of the applicant to the post of Senior Horticultural Assistant.

3. A notice was issued to the respondents and Shri M.L. Sharma appeared.

4. The learned counsel for the respondents orally opposed the grant of relief prayed for by the applicant making submissions to the effect that the applicant is said to have misappropriated certain amount by fraudulently claiming payment of muster roll to the tune of Rs. 74,339.55 and odd. A departmental enquiry is also contemplated against him. When the point was submitted by the learned counsel for the respondents we have <sup>formed</sup> the opinion that the matter may be referred back to the respondents to consider the case of the applicant even though he may be under a cloud of any departmental enquiry. However, subsequently the learned counsel for the respondent Shri M.L. Verman, in consultation with the Departmental Representative placed before the Bench a letter dated 25.8.94 that the applicant was duly considered according to the rules by the D.P.C. and that he was not found fit.

5. The applicant has only right to be considered for promotion and he cannot claim promotion by itself nor the Tribunal can grant the relief in the manner prayed for. The applicant has been superceded by the impugned order not because of any penalty under the relevant rules but he has

not been recommended by the duly constituted D.P.C. under the extant rules. The learned counsel for the applicant however insisted that in this case the proceedings of the D.P.C. be summoned. By the letter placed before the Bench dated 25.8.94 it is not evident whether the applicant has been considered by the D.P.C. or not. We do not want to make <sup>reviving</sup> enquiry to find out whether the applicant has been considered by the D.P.C. or not. But at the same time it is a fact falling from this memo. dated 25.8.94 that the vigilance/disciplinary case regarding the misappropriating of Rs.74,339.55 is under investigation. In view of this we dispose of this application at the admission stage with the following directions.

The claim of the applicant for promotion cannot be allowed but the respondents may consider the applicant for promotion if he has not been considered by the regular<sup>ly</sup> constituted D.P.C. according to the rules.

If he had already been considered then no steps in furtherance of this need be taken. In case he is considered then recommendation of the D.P.C. may be kept in a sealed cover till the applicant is finally exonerated or the respondents themselves want to open the same.

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6. The application is therefore disposed of with directions to respondents to comply the directions as expeditiously as possible. The Memo. dated 25.8.94 is taken on record.

P. T. Thiruvengadam

(P.T. THIRUVENGADAM)  
Member (A)

J. P. Sharma

(J.P. SHARMA)  
Member (J)