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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1885/2000

M.A.NO. 473/2001

Wednesday, this the 11th day of April, 2001.

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

1. Shri P.P. Singh,
Son of Shri Ganesh Prashad Singh,
Working as Technical Officer,
Aviation Research Centre,
C/o Director General of Security,
Cabinet Secretariat,
East Block-V, R.K. Puram,
New Delhi Applicant
(By Advocates: Shri Anis Suharavardy with
Shri Satish Kumar Jha)

VERSUS

1. Union of India,
(through its Cabinet Secretary),
Secretariat, South Block,
New Delhi.
2. Director,
Aviation Research Centre,
D.G.(S), Cabinet Secretariat,
East Block-V,
R.K. Puram, New Delhi:66
3. Joint Director (T)
Aviation Research Centre,
D.G.(S), Cabinet Secretariat,
East Block-V, R.K. Puram,
New Delhi - 110 066
4. Assistant Director (C)
Aviation Research Centre,
D.G. (S), Cabinet Secretariat,
East Block-V, R.K. Puram,
New Delhi-110 066
5. Shri S.C. Mahajan,
Assistant Director (T)
ARC, DG(S), Cabinet Secretariat,
East Block-V, R.K. Puram,
New Delhi : 66
6. Shri J.B.K. Moorthy,
Assistant Director,
ARC, P.O. Charbaha
Distt Cuttack, Orissa
7. Shri V.S. Srivastava,
Assistant Director

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8. Shri S.K. Mishra,
Assistant Director

Both working with Aviation
Research Centre,
R.K. Puram, New Delhi
9. Shri R.S. Khatri,
Assistant Director,
S.R.V. Motitiba,
Dalhousie, H.P
10. Shri H.H. Trivedi,
Assistant Director,
Aviation Research Centre,
R.K. Puram,
New Delhi Respondents
(By Advocate: Shri A.K. Bhardwaj)

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, Member (A):

Aggrieved by the respondents' Memorandum dated 25th May, 1999, by which the representation filed by him has been rejected, the applicant has filed the present OA praying for setting aside of the aforesaid Office Memorandum and for a direction to the respondents to promote him to the post of Assistant Director(T) from February, 1997, when, according to him, he first became eligible for promotion to the rank of Assistant Director (T). The respondents have sought to contest the OA and have filed a reply. A rejoinder has been filed by the applicant. The private respondents have not filed any reply.

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. The applicant is a directly recruited Technical Officer (T.O.), who was appointed as such in

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1992. After completing five years of service, he became eligible for promotion to the rank of Assistant Director in accordance with the relevant Recruitment Rules (RRs) under the 30% quota earmarked for directly recruited Technical Officers. A DPC was held on 29th April, 1997, but the applicant was not considered.

4. The learned counsel appearing for the respondents has advanced the plea that though the applicant was eligible for promotion, he could not be considered in the light of the provisions contained in the RRs. The RRs provide for filling up of the posts of Assistant Director entirely by promotion with the stipulation that 30% of the strength of the grade of Assistant Directors shall be filled by promoting directly recruited TOs, failing which the said 30% quota would be filled, to the extent of shortfall by transfer on deputation. The remaining 70% of the strength is required, according to the same RRs, to be filled by promoting Technical Officers who have earlier been promoted from the grade of Assistant Technical Officer and Officers in the grade of Assistant Technical Officer. The applicant, who is a directly recruited Technical Officer, is therefore, entitled to the aforesaid 30% quota worked out on the basis of the total strength of Assistant Directors' cadre. The learned counsel appearing for the respondents has averred that at the time the applicant became eligible for promotion in 1997, there was no vacancy available against the aforesaid 30% quota and for this reason alone he could not be considered for

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promotion by the DPC held on 29.4.1997. According to the learned counsel, the aforesaid position has not altered till date. Thus, even as of now there is no vacancy available in the grade of Assistant Director against the aforesaid 30% quota meant for directly recruited TOs. According to him, vacancies against the aforesaid quota are likely to arise in the near future and at that point of time the claim of the applicant will be considered in accordance with the Rules and his seniority. After careful consideration, we are inclined to agree with the learned counsel for the respondents in this regard.

5. The learned counsel appearing on behalf of the applicant has persistently argued in terms of vacancies arising from year to year and has sought to make out a case for the applicant on that basis. He has gone on to place reliance on the judgement of the Supreme Court in All India Federation of Central Excise Vs. U.O.I. and Others decided on 22nd February, 1999 and reported as (1999) 3 SCC 384. We have had occasion to go through the aforesaid judgement relied upon by the learned counsel and find that the same would apply only to situations where specific provisions may not have been made in the relevant RRs in the manner these have been made in the present case in the relevant RRs. In the aforesaid judgement the Supreme Court has referred to vacancy related promotions. That is not the case in the present OA, in which the material facts and circumstances are different from the facts and

circumstances which obtained in the aforementioned case decided by the Supreme Court.

6. The learned counsel appearing for the respondents has also ^{placed} reliance on the same judgement, though for a different reason. He has gone on to refer to para 22 of the judgement which provides as follows.

"22. It may be noted that as long as a particular quota is fixed by a rule, it will have to be followed till the quota fixed therein is altered by appropriate amendment of the relevant rules. As held in V.B. Badami v. State of Mysore (SCC at p.910) quotas which are fixed can only be altered by a fresh determination of the quota. It will be for the applicants to take such steps as they deem fit, if they feel aggrieved about the existing quota but the filing of this IA is not the proper remedy. We are also not prepared to accept that the proposals of the Government of India dated 8.6.1989 themselves visualised a constant change in the quota from time to time. Such a change, in our view, has to be done by a fresh determination and it is for the applicants to make out a case therefor and take the necessary steps for such modification."

In the present case, as we have seen, a definite rule has been framed by the Government and the same, to this extent, we find lends support to the respondents' case in line with the aforesaid judgement rendered by the Supreme Court.

7. The learned counsel appearing on behalf of the applicant has also drawn our attention to the cases of officers, namely, S/Shri N. Vishanathan, C.R. Ramdas, J.L. Agarwal and T.R. Badran. According to him, these officers had wrongly been promoted against the 70% quota. In support of his

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claim, he has relied on the contents of the seniority list of Technical Officers placed at Annexure A-6. In the aforesaid seniority list, we find that the aforesaid officers have been shown in the remarks column as directly recruited officers. The learned counsel for the applicant claims on this basis that these officers should rather have been promoted against the 30% quota meant for directly recruited officers and not against the 70% quota intended to be filled by the Assistant Technical Officers promoted to the grade of Technical Officer. The respondents have effectively rebutted the aforesaid argument advanced by the learned counsel for the applicant by contenting that the aforesaid officers were, no doubt, Assistant Technical Officers promoted to the grade of Technical Officer in accordance with the rules but they had exercised the option available to them in terms of the foot note No.(i) of the RRs. Having exercised the option in terms of the aforesaid foot note, they were to be treated as directly recruited TOs, but have, in the event, been treated not as directly recruited TOs but as promoted TOs and have subsequently been promoted against the 70% quota earmarked for promotee TOs. This has happened, according to him, in view of the fact that none really objected to the aforesaid officers being promoted, though incorrectly, against the 70% quota. However, this arrangement, which has already materialised in the past, need not have adversely affected the right of the applicant who, in any case, could not have claimed promotion against the aforesaid 70% quota. He is entitled, no doubt, to

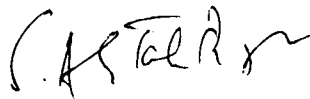
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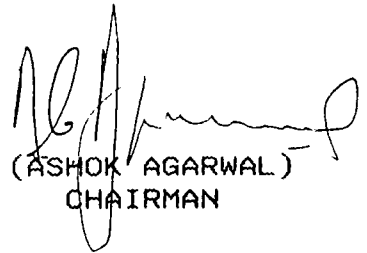
promotion against the 30% quota, where at present no vacancy exists. If we are to go by what the learned counsel for the respondents has to say, no such vacancies arose after 1997 and that is why the claim of the applicant for promotion against the 30% quota could not be considered. The learned counsel appearing for the respondents states that as and when a vacancy arises against the aforesaid 30% quota, the claim of the applicant will be considered according to the Rules and he will be promoted subject to his being found fit.

8. In the facts and circumstances of the case, we find the OA as devoid of merit. The same is accordingly dismissed with no order as to costs.

9. MA No. 473/2001 filed by the applicant also stands disposed of.



(S.A.T. RIZVI)
MEMBER (A)



(ASHOK AGARWAL)
CHAIRMAN

(pkr)