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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 2663/2000
T.A No.

Date of Decision 23/5/2001

Profulla Chandra Mishra ..Petitioner

Applicant in person
~~.. Advocate for the petitioner(s)~~

Versus

Union of India ..Respondent

Spl. P.H. Ramchandani ..Advocate for the Respondents
+ *Depl. Representative Sh K.S. Prasad Rao, Secy*

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No

(GOVINDAN S. TAMPA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO.2663/2000

New Delhi, this 23rd May 2001.

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Prafulla Chandra Mishra
S/o Shri Bhagirathi Mishra
Working as Under Secretary,
Staff Selection Commission,
Ministry of Personnel and Public Grievances & Pensions,
Block No-12, CGO Complex,
Lodhi Road, New Delhi-110003.

Resident of 103, Vidya Vihar,
West Enclave, Pitam Pura,
Delhi-110034.

.....Applicant

(Applicant in person)

Versus

Union of India through
The Secretary,
Ministry of Statistics & Programme Implementation
Sardar Patel Bhawan, Sansad Marg,
New Delhi-110001.

.....Respondents

(By Shri P.H. Ramchandani, Advocate with Deptt. Reptt.,
Shri K.S. Prasad Rao, Director)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member (A):

Shri Prafulla Chandra Mishra, the applicant challenges in this OA, order No.12016/8/98-ISS dated 26.10.1998, promoting Officers Grade-IV of Indian Statistical Service (ISS), to Grade-III, issued by the Deptt. of Statistics as well as O.M. no.11024/7/2000-ISS dated 8.11.2000, issued by the Ministry of Statistics and Programme Implementation (MOS&PI), following CAT's order dated 17.8.2000, in OA no.437/2000, filed by the applicant.

2. Heard the applicant in person and Shri P.H. Ramchandani, learned Senior counsel appearing for the respondents and perused the relevant documents.

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3. Brief relevant facts, as brought out on records are that the applicant, who joined ISS in Grade-IV on 23.4.1993, was placed at Sl. No.193 in the seniority list as on 1.7.1996, but in the impugned ad hoc promotion order to Grade-III (Senior Time Scale), twelve officers, belonging to SC/ST category, all juniors to him - six from his own batch and six from the next batch - have been promoted, while he was not so promoted. This was inspite of the specific direction in rule 8 (1) (b) (i) of the Indian Statistical Service Rules, 1961, that promotion to Grade-III, was to be from Grade-IV officer, having four years regular service and that whenever a junior officer was considered for promotion his seniors also would have to be considered, even if they had not completed the requisite four years. This mistake arose on account of irregular grant of reservation, which was not applicable in the case of ad hoc promotions. Further, as against total posts of 31 in the Grade meant for SC candidates 32 persons of that category have been promoted, which was incorrect. As the new post based roster alone was to be applied, reservation should have been resorted to only on replacement principle, which has not been done. Promoting 12 SC candidates in 91 promotions was improper, as out of 73 promotions from STS to JAG 10 were from SC category, which was one excess. As the reservation could be ordered only on replacement principle, 9 should have been promoted, instead of 12 wrongly promoted. But for this mistake the applicant also would have made the higher grade. Further, when regular promotions are being made ad hoc appointees should be reverted in the strict order of seniority, the junior most being reverted first. Therefore, 3 of the 10 SC ad hoc JAG officers should have been reverted to Grade-III, with 3 (three) officers also being reverted and 2 (three) general candidates promoted, including the applicant.

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This was not done. In the meanwhile earlier OA No.2386/98, filed by the applicant was dismissed as he had not made any representation earlier. His RA was also disposed of similarly. Disciplinary proceedings initiated against the applicant for approaching the Tribunal were dropped, but not before order no.12016/2/98-ISS dated 22.7.1999, promoting on regular basis, 7 of his juniors was issued. This is under challenge before CAT, Calcutta. Representation dated 30.9.1999 filed by the applicant has been finally disposed of by OM dated 8.11.2000, wherein it was indicated, one officer from SC category has been promoted in excess. This would support the applicant's claim for promotion. Respondents should have filled up all 96 vacant posts instead of only 93 posts, which also has cost the applicant. This has been done only to deny promotion to the applicant. According to him, this is a case where ad hoc promotions have been ordered to deny the applicant his legitimate ^{promotion} and, therefore, Tribunal's intervention was called for, argues Shri Mishra, the applicant.

4. Strongly, repudiating the above, the respondents in their pleadings as well as in the oral submissions advanced by Shri P.H. Ramchandani, learned Senior counsel point out that the OA is not maintainable on account of non-jointer of the twelve persons who are promoted by the impugned order as respondents. The applicant does not have a case as none junior to him in his own category - general - has been promoted. As far as reserved category is concerned, as the respondents have not exceeded the quota, challenge to the promotion order was imaginary and baseless. Though regular promotions have been ordered on 22.7.1999, the applicant has not challenged the same in this OA but has filed another OA in

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Calcutta. Order dated 11.2.1999, directing further ad hoc promotions have also not been challenged. Respondents further state that following the decision of the Hon'ble Apex Court in Narendra Chadha & Ors. Vs. UOI & Ors., (AIR 1986 SC 638) and OM No.11024/4/86-ISS dated 8.5.1986, reservation was introduced in promotion from Grade-IV to Grade-III but Rule 13 of the ISS Rules, 1961 was amended only on 20.2.1989. The same was also upheld by the Tribunal. Seniority list as on 1.7.1996 has been issued in pursuance of the amended rule. The respondents had also recalculated the number of vacancies in Grade-III, yearwise and revised the seniority list including the list as on 1.7.1996. Promotion orders, issued in between, were also suitably revised. Keeping the above in mind, regular promotion were ordered to general candidates upto Sl. No.65, SC candidates upto Sl. No.176 and ST candidates upto Sl No.227. In the seniority list, Impugned order promoting 91 persons, on ad hoc basis was followed by order dated 11.2.1999, when three more persons were elevated, again ~~on~~ ad hoc. ^{basis} 62 out of the above individuals have also been regularised since then. Though there was no formal reservations in ad hoc promotions, those within the vacancy zone would have to be considered and the same was accordingly done. On 31.8.1998, 73 vacancies in Grade-III, arose, following as many promotions from Grade-III to J.A. Grade. Besides, 23 plan posts were laying vacant. Against these, 93 posts were sought to be filled. All the officers in Grade-IV, with four years regular service in the Grade, who obtained the benchmark "Good" ^{in the SPE} came to be promoted by the order dated 26.10.1998. These included 12 eligible SC candidates. As no ST candidate was available, their places six in number were filled by officers of general category. Such promotion was purely ad hoc in nature. While working out reservations,

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respondents had, according to them, strictly adhered to the instructions on the subject and, therefore, the applicant's allegation that 12 candidates from SC category had illegally superseded him was incorrect and baseless. They have only operated post based reservation and that too against appropriate points and the same cannot be questioned, argues the learned Senior counsel. That being the case, the impugned orders have been correctly and legally issued. While it is true that there were 96 vacant posts respondents took a policy decision to keep three posts vacant to take care of some officers, who were on deputation and were likely to return ^{soon} ~~very~~. This was their prerogative and the applicant cannot direct the respondents that all vacant posts should per force be filled. Shri Ramchandani, learned Senior counsel reiterated that as reservation policy has been correctly followed and implemented and none junior to the applicant in his own category has been promoted, the applicant has no case and his application deserved to be dismissed outright.

5. Applicant's rejoinder is only reiteration of his pleas in the OA and that the respondents' objection as non-jointer of parties was belated. During his oral submissions, he stressed that there has been incorrect calculation of vacancies, in Grade-III, which had gone against his promotion.

6. As directed by the Tribunal, respondents filed an additional affidavit, indicating the number of vacancies. Promotion from Grade-III to J.A. Grade gave rise to 73 vacancies, in addition to 23 posts in the same grade which had fallen vacant. Against this, strictly adhering to the post based roster itself, on the principle of replacement, 12 posts

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were to be filled by SC candidates, which the respondents have done. The applicant's averment that it should have been only 9 was wrong and incorrect. In terms of DOP&T's OM no.36012/2/96-Estt (RES) dated 2.7.1997, post based reservation for SC/ST/OBC, had to be post based w.e.f. 1.7.1997. This was in consonance with the Supreme Court's decision in R.K. Sabharwal & State of Punjab & Ors., (JT 1995 (3) SC 351). Cadre strength of ISS in Grade-IV being 213 posts, 31 (31.95) were for SC and 16 (15.98) were for ST. The relevant OM had also directed that the roster be operated on the principle of replacement. Points at which reservation applies are fixed for categories, and vacancies arising therein can be filled up only by candidates belonging to the respective categories. Following the above criterion, points meant for SC, but occupied by general category candidates, would on vacation have to be filled by a SC candidate. In the relevant roster, between 2 to 91 points, 13 were meant for SC but as one was not promoted to JAG, 12 have been released for SC on replacement basis. The same has been done correctly and cannot be assailed by the applicant.

7. We have anxiously deliberated upon the rival contentions. Preliminary objection raised by the respondents that the applicant has not made 12 officers promoted by the impugned order dated 28.10.1998, respondents is valid, no doubt but what the applicant seeks to assail is the Ministry's implementation of the Govt. policy, in which the junior officers did not have any say or role, though it gave them some benefit. We are, therefore, proceeding to dispose of the matter on merits.

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8. Coming to the merits of the case, the applicant avers that he has been denied the promotion for Grade-IV to Grade-III by wrong calculation of vacancies and incorrect application of reservation policy. He also alleges that the respondents have kept a few of the vacancies in Grade-III unfilled to deny him promotion. We find that his arguments have no basis in respect of any of the pleas.

9. The applicant who is a general category candidate is placed at Sl. No.193 in the seniority list of Grade-IV officers, of ISS as on 1.7.1996, but his name is not included in the list of persons promoted on ad hoc basis to Grade-III on 26.10.1998. The fact, however, is that no general category candidate below him in the seniority list has been promoted by that order. The applicant could have had a genuine case, only if some one from his own category and junior has been granted promotion before he has been promoted. It has not occurred. In the circumstances, he cannot have any justifiable grievance.

10. There is also no basis for holding that the calculation of the vacancies has been wrongly done. At the relevant time, 73 vacancies has arisen in Grade-III, due to promotion from that grade to JAG, in addition to 23 posts lying vacant. Thus 96 (73 + 23) vacancies had to be filled up. However, as brought out in respondents letter dated 8.11.2000 (Annexure - A-2), they had chosen to keep three (3) posts vacant to adjust officers, who were likely to return from deputation shortly and decided to promote only 93 persons. This was a decision, which was in the prerogative of the respondents to adopt as a matter of policy. It was for the administration to decide whether all or few or none of the existing vacancies to

be filled up keeping in mind, its requirements at the relevant time. It definitely was not open for the applicant to take umbrage at the decision of the respondents in this regard, on the alleged ground that had all the vacancies been filled up, he also would have been promoted. Hon'ble Supreme Court, has held in the case of Shankarsan Dass Vs. Union of India ((1993) 3 SCC 4), that being placed on a select panel per se does not give any indefeasible right to an individual for a posting or promotion. In this case, the applicant has only become eligible for consideration for promotion and this does not ipso facto give him a right for promotion. It is also interesting to note that though 93 vacancies were sought to be filled, only 91 persons could be promoted, as upto date records were not available in the case of two persons. Subsequently, on 11.2.1999, three more persons were also promoted on ad hoc basis. These three were also senior to the applicant. Then on this ground also no prejudice has been caused to the applicant. With total cadre strength of ISS in Grade-IV being 213, SC points were 31.95 (rounded off to correctly as 32) and ST points were 15.98 (rounded to correctly as 16). It is also seen that reservation points have been worked out on the basis of replacement principle in terms of DOP&T's OM No.36012/2/96-Estt (Res) dated 2.7.1997. Relevant para 10 of the OM reads as below:-

"The roster is to be operated on the principle of replacement and not as "running account" hitherto. In other words, the points at which reservation for different categories applies are fixed as per the roster and vacancies caused by retirement etc. of persons occupying those points shall be filled by appointment of respective categories."

It is worth mentioning that the SC points, occupied by unreserved candidates also, when released by those candidates,

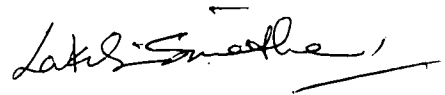
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would have to revert to SC candidates only, as per the replacement principle. Seen in the above perspective, 12 points out of the 73 vacancies which have arisen had to be set apart for SC category candidates on replacement principle. That exactly is what the respondents have done in the impugned orders. Nothing has been brought on record to prove the allegation of the applicant that reservation points have been allowed in excess. In view of the above, it only remains an unsubstantiated allegation and merits no endorsement. Respondents having acted correctly and legally by ordering promotions, in accordance with the rules and instructions, ^{their action} ~~order~~ cannot be assailed on the basis of such allegations.

11. In the result, we are convinced that the applicant has not made out any case for our intervention. The application being devoid of any merit is dismissed. No costs.


(Govindan S. Tampi)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

RA 283/2001
IN OA 2663/2000

New Delhi, this the 29th day of August, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Prafulla Chandra Mishra
s/o Shri Bhagirathi Mishra
Working as Under Secretary
Staff Selection Commission
Ministry of Personnel, Public
Grievances & Pensions,
12, CGO Complex, Lodhi Road
New Delhi - 110 003.

R/o 103, Vidya Vihar
West Enclave, Pitampura
Delhi - 110 034.

Applicant

V E R S U S

Union of India through

The Secretary,
Ministry of Statistics &
Programme Implementation,
Sardar Patel Bhawan, Sansad Marg
New Delhi - 110 001.

Respondents

O R D E R (IN CIRCULATION)

By Hon'ble Shri Govindan S. Tampi.

RA 283/2001 has been filed by the applicant
Shri Prafulla Chandra Mishra seeking the recall and
review of our order dated 23-5-2001 disposing of OA
2663/2000.

2. We have considered the matter. We observe
that the OA 2663/2000 filed by the applicant
challenging the promotion of officers of Gr. IV in the
Indian Statistical Service to Gr. III has been rejected
on finding that the application was devoid of any
merit and the promotion orders have been correctly
issued, in accordance with the rules, regulations and
instructions issued in this regard. It is also seen
that the allegation of the applicant that SC

candidates have been promoted in excess of the quota was also not borne out on facts. In this RA, the applicant states that a mistake or grave error or a glaring omission has crept in the orders and that the order been issued without appreciating the facts brought on record. The applicant has not brought out any error or mistake on record in the order or any other aspect which would justify the recall and review of the order, which has been issued after due appreciation of the facts brought on record in the context of the law on the subject. R.A. is only attempting to reagitate the matter containing the interpretation of law adopted by us while deciding the case. Review is not appropriate remedy for the purpose.

3. The application being totally devoid of any merit is rejected in circulation.

(Govindan S. Tampi)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

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