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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA-898/2000
MA-1178/2000
MA-1768/2000

New Delhi this the 26th day of September, 2000.

Hon'ble Sh. S.R. Adige, Vice-Chairman(A)
Hon'ble Dr. A. Vedavalli, Member(J)

1. Sh. I.K. Jha,
S/o late Sh. Rameshwar Jha,
Asstt. Naval Store Officer,
Directorate of Logistics Support,
C-Wing, Sena Bhawan,
Naval Headquarter,
New Delhi-11.
2. Sh. A.S. Nirwal,
S/o late Sardar Ajit Singh,
Asstt. Naval Store Officer,
Directorate of Logistics Support,
C-Wing, Sena Bhawan,
Naval Headquarter,
New Delhi-11.
3. Sh. Vijay Shankar,
S/o Sh. Shiv Das,
Asstt. Naval Store Officer,
Directorate of Logistics Support,
C-Wing, Sena Bhawan,
Naval Headquarters,
New Delhi-11.

..... Applicants

(through Sh. Mahesh Srivastava, Advocate)

Versus

1. Union of India through
its Secretary,
Ministry of Defence,
New Delhi.
2. Chief of Naval Staff,
Naval Headquarters,
New Delhi.
3. Directorate of Civilian Personnel,
Naval Headquarters,
New Delhi-11.
4. UPSC through
its Chairman,
Shahjahan Road,
New Delhi.
5. Sh. V.R. Sukumaran,
Asstt. Naval Store Officer
through Controller of Material
Naval Base, Kochi-684004
119, M.K. Road, Mumbai-400020.

..... Respondents

(through Sh. J.B. Mudgil, Advocate)

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ORDER(ORAL)

Hon'ble Sh. S.R. Adige, Vice-Chairman(A)

Applicants impugn respondents' order dated 10.05.2000 (Annexure P-1) and order dated 12.05.2000 (Annexure P-2) and seeks a direction to respondents to promote them to the posts of Naval Store Officer with all consequential benefits from the date Respondent No. 5 was so promoted.

2. It is not denied that as per the seniority list of Asstt. Naval Store Officers as on 06.08.99 (Annexure P-3) applicants stood senior to Respondent No.5. However, respondent No. 5 was promoted to the post of Naval Store Officer vide order dated 12.05.2000 (Annexure P-2). It is not denied that applicants were not considered for promotion, because according to respondents, as averred in Para-4(d) of their reply, they have ^{not} completed the requisite length of qualifying service for consideration for promotion as per SRO 54/89 (Annexure P-7).

3. In this connection, applicants' counsel Shri Srivastava has invited our attention to Ministry of Personnel Public Grievance and Pensions (Department of Personnel and Training) Office Memorandum dated 18.03.88, on the subject of Revision of Guidelines for framing/amendment/relaxation of recruitment rules, whereby all Ministries/Departments of the Government of India have been directed to insert a suitable note in the Recruitment

Rules such that seniors who have completed the probation period would also be considered where juniors who had completed the requisite service were being considered for promotion.

4. In this connection, Shri Srivastava, has invited our attention to the Tribunal's order (Ernakulam Bench) dated 12.07.99 in OA-1181/96 (Kailasam Raja Vs. U.O.I. & Ors), wherein it has been held that failure of respondents to amend the recruitment rules, pursuant to the directions contained in the aforesaid O.M., could not be made use of by respondents.

5. In the present case also, it is not denied that the aforesaid note has not been inserted by respondents in SRO 54/89, and following the ruling in Raja's case (supra), which ^{to our knowledge} ~~no note~~ has not been stayed/modified/set aside, the failure of respondents to amend SRO 54/89 by insertion of ^{aforesaid} ~~note~~, cannot be advanced as an argument to deny applicant's prayer for consideration for promotion.

6. In this case, respondents' counsel Shri Mudgil has relied upon the Hon'ble Supreme Court ruling in the case of State of Rajasthan Vs. R. Davai & Ors. (1997 SCC (L&S) 1631), wherein it has been held that the posts which fall vacant prior to the amendment of the rules would be governed by the original rules and not by the amended rules, ^{that ruling} but ~~it~~ does not help the respondents in this case, because in the present case it is not a question of posts

falling vacant prior^{to} or after the^{rules were} amended, ~~rules~~ but it is the administrative lapse of respondents in not amending the recruitment rules despite the clear contents of DoP&T O.M. dated 18.03.88, which is the nodal Ministry regarding service matters in respect of Ministries/Departments of Government of India.

7. A suggestion was made by respondents' counsel that Respondent No.5 was promoted against a reserved post but this averment was denied by applicants counsel, and in any case there is not such ^{assertion} ~~challenge~~ in respondents reply.

8. Under the circumstances, the O.A. succeeds and is allowed to the extent that the respondents are directed to hold a review D.P.C. to consider the cases of applicants for promotion as Naval Store Officers against such vacancies in general category (applicants of being members of general category) which were available on the date their junior Sh. V.R. Sukumaran was promoted as Naval Store Officer. These directions should be implemented within three months from the date of receipt of a copy of this order. If consequent to such consideration, applicants are recommended for promotion, they shall be entitled to all consequential benefits as are admissible in accordance with rules/instructions/judicial pronouncements on the subject.

No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member(J)

S.R. Adige
(S.R. Adige)
Vice-Chairman(A)