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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.1786/89

New Delhi, this the 24th day of April, 1996

Hon'ble Shri S.R. Adige, Member(A)

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

1. Pusa S/C & S/T Welfare Association(Regd)
IARI, New Delhi
through its President
Shri Jamna Das

2. Jai Prakash
s/o Doodh Nath
IARI, New Delhi.

... Applicants

By Advocate: Shri B.B. Raval

vs.

1. Union of India
through Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
Department of Personnel & Training,
New Delhi.

2. Director General,
Indian Council of Agricultural Research,
Krishi Bhawan, New Delhi.

3. Chairman
Agricultural Scientists Recruitment Board,
Pusa, New Delhi.

4. Director,
Indian Agricultural Research Institute,
Pusa, New Delhi.

... Respondents

By Advocate: Shri H.C. Kapoor

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The applicant No.1, which is a registered Association,
is aggrieved by the non receipt of any reply to their letter
dated 25.1.88 from respondents 2 to 4, including Director-

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General, Indian Council of Agricultural Research (ICAR), (Respondent No.2) and the non action on their part to follow the instructions of the Govt. of India issued from time to time in regard to reservation for S/C and S/T employees in the matter of promotion, in particular promotion of some SC/ST Technical Assistants.

2. At the earlier hearing on 13.7.95 when Shri B.B. Raval, learned counsel for the applicants, and Shri H.C. Kapoor, learned counsel for the respondents, were present, the Tribunal had given an opportunity to the applicants to state their case by filing an MA with notice to the respondents. Accordingly MA 2776/95 has been filed by the applicants together with certain documents they are relying upon, including the extracts from Memorandum of Association of the Rules and Bye-laws of the ICAR (Annexure MA-1) and extracts of Rules of the Agricultural Research Service (Annexure MA-2). According to the applicants, paragraph 30(a) of the Rules and Bye-laws and rule 17 of the Agricultural Research Service Rules support their case that all policy matters/directions/orders/instructions etc. issued by the Govt. of India from time to time in respect of the reservation policy in favour of SC and ST are also applicable to all the employees of the ICAR mutatis mutandis.

3. When the case was fixed for final hearing, Shri B.B. Raval, learned counsel for the applicants submitted that he does not wish to submit any further oral arguments in the matter. He submitted that he rests his case on the pleadings and the documents referred to above. So we heard Shri H.C. Kapoor, learned counsel for respondents 2 to 4.

4. The applicants have in their pleadings admitted that the respondents are following the reservation policy laid down by the Govt. of India in the case of direct recruitment but had made no specific provision in regard to promotional posts in

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respect of the Technical Services. Their grievance is that under the ICAR, the rules provide only a system of merit promotion from one grade to the next higher grade, irrespective of occurrence of vacancies in the higher grade which is based on the assessment of performance at the end of five years service in that grade. The applicants rely on the judgement of the Supreme Court in the case of P&T Scheduled Castes/ Scheduled Tribes Employees Welfare Association (Regd) and others Vs. Union of India and others, (1988 (4) SCC 147). According to them, ten Technical Assistants belonging to SC/ST communities whose names are given in the application, have been treated in a discriminatory manner. They allege that certain general candidates who failed to secure increments earlier like some of the SC and ST candidates were assessed by the Review Committee and most of them got promoted, whereas their cases were not considered objectively.

5. Shri H.C. Kapoor, learned counsel for the respondents has submitted that the application is not maintainable, as the applicants have failed to disclose any cause of action or the particular instructions issued by the Govt. of India which are not being followed by the respondents. He submits that the respondents are following the instructions issued by the Govt. of India from time to time with regard to the reservation of SC/ST employees in respect of recruitment and promotions. He has clarified that the respondents have formulated a system of merit promotion for Technical Services in ICAR (Annexure R-6). Under the heading "Career Advancement" (para 6.1 onwards) the scheme provides the manner in which the promotions are to be done, which namely is a system of merit promotion from one grade to the next higher grade. The persons concerned are eligible for consideration for such promotion or for the grant of advance increments after assessment of their work on expiry of five

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years in the grade, irrespective of occurrence of vacancies in the higher grade. The learned counsel submits that the rules i.e. the Technical Services Rules came into force with effect from 1.10.75. He submits further that under Rule 30(a) of the Memorandum of Association/Rules and Bye-laws of the ICAR relied upon by the applicants, since these rules dealing with promotions already hold the field, the application of any other rules and orders issued by Govt. of India concerning service conditions will not be applicable in this case. The respondents have denied the allegations ^{of} ~~of~~ discrimination against the applicants ^{who are} Technical Assistants. He has also submitted that as a matter of fact all the applicants on behalf of whom applicant No.1 had made representation have been considered and promoted in accordance with the promotion rules of 1975, after due assessment and so the applicants cannot have any grievance. Apart from this, he also mentions that since the rules are of 1975, this challenge to the rules is belated.

6. We have carefully considered the pleas taken in the application, reliefs sought by the applicants, defence taken by the respondents and the record.

7. The judgement in P&T SC/ST Employees Welfare Association (Regd.) and others Vs. Union of India and others, (1988 (4) SCC 147) will not apply to the facts in this case as this was a case where certain advantages conferred on SC/ST candidates in promotion were withdrawn. Here what the applicants are seeking Govt. of India is for extending certain ^{instructions} regarding reservation in promotion to them, under Rule 30(a) of the ICAR Memorandum of Association and Rule 17 of the Agricultural Service Rules.

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8. Both the parties have relied upon Rule 30(a) of the Memorandum of Association, Rules and Bye-laws of the ICAR which reads as follows -

"Except in regard to matters for which specific provisions have been made in the Rules, Bye-laws, Regulations or Orders made or issued by the Society, the service and financial Rules framed by the Govt. of India and such other Rules and Orders issued by the Govt. of India from time to time, shall apply mutatis mutandis to the employees of the Society in regard to matters concerning their service conditions."

In this case the respondents have made specific rules dealing with the Technical Services in ICAR which deal with their promotions also. It is well settled law that a special law supersedes the general rules (see UOI & Ors.

Vs. Virpal Singh Chauhan & Ors. (1996(1)SLJ 67 SC).

9. The applicants have submitted that it is obligatory on the part of respondents 2 to 4 to follow the DOP&T instructions contained in O.M. No.27/2/71-Estt. (SCT) dated 27.11.72 and O.M. 8/11/73-Est. (SCT) dated 12.9.74 (Annexure R-7). The DOP&T O.Ms. dated 27.11.72 and 12.9.74 deal with reservation of posts for SC/ST for promotion to posts in higher grades which are made on the basis of seniority subject to fitness. These O.Ms. are not applicable in this case, as the respondents have framed their own rules for promotions, namely, the Technical Services Rules 1975, which are based on a system of merit promotions irrespective of seniority-cum-fitness basis or occurrence of vacancies in

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the higher grades. The applicants have failed to refer to any other Govt. of India instructions which are applicable to the facts in this case. Another relevant factor in this case is that the applicants have already been promoted from the posts of Technical Assistants to the next higher grade and that is why, perhaps, Mr. B.B. Raval, learned counsel did not want to argue the matter at the time of final hearing, as the applicants have already got substantial reliefs.

10. The Supreme Court has recently in a catena of judgements (see Indira Sawhney v. Union of India, (1992 Suppl. (III) SCC 217); R.K. Sabharwal v. State of Punjab, (1995 (2) SCC 745); National Federation of State Bank of India v. Union of India & Ors., (JT 1995 (3) SC 532) and Union of India & ors. v. Virpal Singh Chauhan etc., (JT 1995 (7) SC 231) held that Article 16(4) of the Constitution does not permit or warrant reservation in the matter of promotions as such a rule "results in several untoward and inequitous results." Further, in the facts of the case the reliefs claimed have become infructuous and we, therefore, do not think it is necessary to go into the larger issue of reservation for SC/ST employees in all cases of promotion as has been contended by the applicants. The amendment to Article 16, by insertion clause (4A) in the constitution will also not be relevant to the facts in this case.

