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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.391/88

Date of decision: 21.9.93

Rabindra Tripathy & Ors. .. Petitioners.

Versus

Union of India through
The Secretary,
Department of Economic Affairs,
Ministry of Finance,
New Delhi & Ors. .. Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR.S.R. ADIGE, MEMBER(A).

For the petitioners .. Shri B.R. Sharma,
Counsel.

For the respondents .. Shri P.P. Khurana,
Counsel.

JUDGEMENT (ORAL)
(By Hon'ble Mr. Justice V.S.Malimath, Chairman)

The petitioners in this case commenced their career as Direct Recruits to the Indian Economic Service as the first batch in the year 1967. We are concerned with their further progression from Grade-III to Grade-II. A DPC was held in the year 1984 and the vacancies were filled up. Thereafter, no DPC was held until the year 1987. In the meantime, in Narender Chadha's case, the Supreme Court gave certain directions to count the ad hoc service of 15 to 20 years of the large number of promotees in Grade-IV resulting in the seniority of Grade-II being radically affected. It is in the light of the directions of the Supreme Court in Narender Chadha's case that fresh seniority list of Grade-III officers came to be prepared. This resulted in several persons who had, in the

meantime, secured ad hoc promotion being pushed down and those who had never been promoted to Grade-II being given promotion. This was done in pursuance of the DPC held in the year 1987. The petitioners are aggrieved by the review of promotions which was undertaken by the 1987 DPC which has affected the rights and interests of the petitioners as they had to yield place to others in Grade-II. It is in this background that the petitioners have approached this Tribunal for appropriate relief.

2. The principal case as put forward by the petitioners in the Original Application is that the exercise undertaken by the DPC in the year 1987 is an impermissible exercise which was not in accordance with the law. It is contended by Shri Sharma, learned counsel for the petitioners, on the strength of the case pleaded in the O.A. that it was wrong to club all the vacancies from 1984 to 1987 and then to consider everybody who was eligible in the year 1987 and who came within the zone of consideration for filling up all the vacancies in one lump. The case pleaded, as already stated, is that the vacancies of 1984 were required to be filled up by considering the cases of persons who were eligible in the year 1984 and likewise the vacancies of 1985, 1986 and 1987 should have been filled up during those relevant years. The

assumption made by the petitioners is that the clubbing of vacancies from 1984 to 1987 was made and a combined process for promotion was made by the DPC in the year 1987. In the reply filed by the respondents this basic factual premise itself has been controverted. They have asserted that the vacancies were not clubbed from 1984 to 1987 as pleaded by the petitioners. It is asserted that though the DPC reviewed the case of everyone and scrutinised the candidature of the candidates, it was done with reference to yearwise vacancies from 1984 to 1987 limiting consideration to those who were eligible at the relevant point of time. A positive assertion to this effect in the reply merits acceptance as we see no good reasons as to why a false statement should be made in regard to the manner in which DPC considered the cases of eligible persons for promotion. Hence it follows that there is no infirmity as alleged by the petitioners in clubbing the vacancies and making a selection in the year 1987.

3. It was, however, contended by Shri Sharma, learned counsel for the petitioners, that even if separate yearwise selection was made by the DPC in the year 1987, they have committed an error in calculating the yearwise vacancies that were available in the year 1986. In the reply affidavit,

it was submitted that there were 8 vacancies in the year 1986 and 24 eligible persons were considered by the DPC which comes to three times the number of vacancies. It was submitted by Shri Sharma, learned counsel for the petitioners, that by order dated 20.8.1986(Annexure A-4) 44 posts of Grade-III were upgraded to Grade-II thus making it possible to fill up $8+44= 52$ vacancies in the year 1986. As admittedly the DPC proceeded on the basis that there were only 8 vacancies in the year 1986, it was urged that there is serious infirmity in that requisite persons who came within the zone of consideration^{not} having been considered on the basis that there were 52 vacancies in the year 1986. But then it is necessary to point out that no such case has been pleaded in the original application. The only case pleaded by the petitioners is that the DPC did not consider the cases with reference to the vacancies of each year but proceeded to club the vacancies and to consider the cases of all eligible persons in the year 1987. The respondents did not have opportunity to meet such a case as none has been pleaded by the petitioners. Though an attempt has been made to make certain averments in the rejoinder, we cannot take cognizance of the same as the rejoinder is not the occasion for the parties to take new pleas for the first time. The petitioners have not sought

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amendment of the application to raise additional grounds in this behalf. If that was done, the respondents would have an opportunity to give adequate reply to the case of the petitioners. That being the position, we would not be justified in examining this contention which has been raised for the first time, it not having been taken in the original application.

4. For the reasons stated above, this application fails and is dismissed. No costs.



S.R. Adige

Member(A)



V.S. Malimath

Chairman

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