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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A.No.165 of 1987

New Delhi, this the 25th day of March, 1994.

Hon'ble Mr Justice S.K.Dhaon, Vice Chairman
Hon'ble Mr B.N.Dhoundiyal, Member(A)

Kanwar Rajinder Singh
S/O Kanwar Sita Ram,
Under Secretary, Ministry
of Labour, Room No.317, Shram
Shakti Bhawan, Rafi Marg,
New Delhi.
(in person)

... .. Applicant.

versus

Union of India; through
Secretary to the Government of India
in the Ministry of Personnel, Public
Grievances & Pensions (Department of
Personnel & Training) North Block,
New Delhi-110001.

.....Respondent.

(Mr A.K.Behara, proxy counsel for Mr P.H.Ramchandani,
Advocate).

ORDER

(by Hon'ble Mr B.N.Dhoundiyal, Member(A).)

This O.A. has been filed by Kanwar Rajinder Singh challenging the order dated 28.1.1987, bringing out 1986 select list for promotion to the Selection Grade of the Central Secretariat Service.

2. The main averments made in the application are these. The applicant was recruited as Section Officer through the Combined Service Examination in May, 1973 and at the time of filing the application was working as Under Secretary in the Ministry of Labour. His name appears at Serial Number 6 in the Civil List as on 1.1.1986. Thus, he was in the zone of consideration for promotion to the next higher grade viz., Selection Grade of the Central Secretariat Service. The selection to this post is made on the basis of merit-cum-seniority and there is no

reservation for S.C./S.T. officers, however, in terms of Ministry of Home Affairs O.M. dated 26.3.1970, it has been provided that "SC/ST officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the Select List has to be drawn up would be included in that list provided they are not considered unfit for promotion". The Select List for 1986, published under the impugned memorandum dated 28.1.1987 contains 37 names, out of which as many as 24, i.e., nearly 65% posts have been reserved for SC/ST even though the maximum permissible limit is 22½%. Even if back log vacancies of SC/ST are taken into account, the reservation in a particular year should not exceed 50%. In respect of vacancies, which had to go to SC/ST officer under "concession", the question of considering any one beyond the number of vacancies does not arise. Fitness is the main criterion and re-arrangement of the names according to merit within the range is only secondary.

3. Out of the 37 names, only 23 officers belonging to SC/ST were found fit and the remaining 14 vacancies should have gone to officers of the general category. 12 of the vacancies have gone to the officers with grading "outstanding" and the remaining two vacancies have gone to the officers at Sr.No.38 and 39 belonging to ST category graded as "Good". This has been done by applying the prescribed formula of three times the number of vacancies $3 \times 37 = 111$. Thus, the concessional provisions have been applied in case of SC/ST candidates outside the number of vacancies. According to normal principles of selection, if two officers are given the same grading and if there is only

one vacancy , the officer who is senior has a right of promotion to that vacancy unless it is reserved. The action of the respondents in not including the name of the applicant in 1986 select list, while including in the said list, his junior, is not legally sustainable. The following reliefs have been claimed:

- a) to quash the Ministry of Home Affairs O.M. No.1/9/69-Estt(SCT) dated 26th March, 1970 as it is violative of the provisions contained in Articles 14 and 16 of the constitution of India;
- b) to quash the select list from the year 1986 for appointment to the Selection Grade of the Central Secretariat Service issued under the impugned order dated the 28th January, 1987;
- c) To draw up a fresh Select List for the year 1986 for appointment to the Selection Grade of C. S. S. observing the principle of non-supersession of a Senior Officer by a junior with the same grading or of a less or grading inasmuch as there is no reservation in favour of such junior officers."

4. In the counter filed by the respondents, the main averments are these. The Select List of Selection Grade of CSS is prepared in accordance with the Central Servretariat Service Rules, 1962 and the Central Secretariat Service (Promotion to Grade I and Selection Grade), Regulations, 1964. Regulation 10 provides that the Selection Committee shall classify such of the officers including in the field of selection as are considered fit for appointment to the Selection Grade as 'outstanding', 'Very Good' and 'Good', on the basis of merit. Regulation 12 provides that the Select list shall be prepared by including the

required number of names first from amongst the officers finally classified as 'outstanding', then from amongst those classified as 'very good' and thereafter from amongst those similarly classified as 'good'. The order of names inter se within each category shall be according to the seniority in Grade-I. The select List so prepared shall be issued by the Department of Personnel & A.R. in the Ministry of Home Affairs. The O.M. dated 26.3.1970 does not provide for any reservation to the SC/ST officers, who are senior enough for consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that List provided they are not considered unfit for promotion. The concession given to the SC/ST candidates has no limitation as it is not a reservation and only those SC/ST officers were considered who were senior enough to be in the zone of consideration for promotion. The averment by the applicant that the respondents have gone beyond their own orders by extending concession to two officers, it has been clarified that they are well within the zone of consideration for being included in the Select List.

5. We have gone through the records of the case and heard the applicant in person and the learned counsel for the respondent. The issue raised in this application has already been considered by this Tribunal in O.As No.139,249 and 250 of 1987. In O.A.No.139 of 1987, decided on 3.8.1992 it was held that it is not right to draw an inference that there is more than 50% reservation in favour of the Scheduled/Scheduled Tribe candidates merely because we find more than 50% of the persons belonging to the Scheduled Caste/Scheduled

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Tribe in the list. It was also held: "as the case of the petitioner has been considered and he was not included in the select list having regard to the grade he obtained, he cannot make a grievance about his non-consideration for promotion". In O.A.No.250 of 1987, decided on 2.8.1992, the following observations were made by this Tribunal:

" It is necessary to bear in mind that the benefit that has been given to the members of the SC/ST in the matter of promotion to the cadre in question is not by reserving any percentage of the vacancies in favour of the SC/ST, but the benefit is sought to be conferred on the members of the SC/ST falling within the zone of consideration provided they are not unfit for promotion. If they are not unfit for promotion they automatically get an entry in the select list to the extent of the number of persons to be included in the select list. Once that is done, the remaining number of positions that would be available for the general category for being included in the Select List. In this case, it was ascertained that 25 candidates belonging to SC/ST within the zone of consideration of 98 candidates were found entitled to be included in the select list. There being 25 persons from among the SC/ST qualified to be included in the Select List it follows that there were 12 positions which could be filled up by general merit. We, therefore, have no hesitation in holding that the procedure followed in preparing the select list was right. It is not right to say that so far as the members of the SC/ST are concerned they were entitled to inclusion in the select list only to the extent they are within the number of 37 vacancies. We, therefore, do not see any good ground to accept the first contention of the petitioner."

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6. Re-iterating the views expressed by
by the Tribunal in the afore-mentioned cases,
we hold that the applicant is not entitled to
succeed. The application is hereby dismissed.

7. There will be no order as to costs.

B.N. Dhondiyal
(B.N.Dhondiyal)
Member(A)

S.K. Dhaon
(S.K.Dhaon)
Vice Chairman

/sds/