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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI.

R.A. No. 103 of 1988  
in  
O.A. No. 242 of 1987

Theodore Ekka ... . . . Applicant

Versus

Union of India & Others ... . . . Respondents

CORAM: Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.  
Hon'ble Mr. Kaushal Kumar, Member(A).

PRESENT: Shri Inderjit Sharma, Advocate for the Review-Petitioner.

Shri J.P. Verghese, Advocate for the Applicant (in the Original Application).

...

ORDER:

This is an Application by Respondent No. 4 for review of our order dated 8.7.1988 in OA No. 242 of 1988 to the extent that a direction is made therein that "and point 17 has to be treated as de-reserved to be filled up by a general category candidate and this reservation for S.T. will be carried forward to a vacancy arising in a subsequent year. Thus point 15 has to be filled up by a S.C. candidate whereas points 16 and 17 will go to general category candidate."

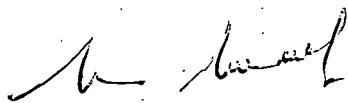
The objection raised by the Review-Petitioner is that the Applicant Sh. Theodore Ekka was not even eligible for the said post and as such he was not available to be considered at the relevant time by the D.P.C. Hence, according to the instructions contained in Department of Personnel & Administrative Reforms, O.M. No. 10/41/73-Estt (SCT) dated 20.7.1974, there will be no carry forward of reservations

from year to year in the event of an adequate number of Scheduled Castes/Scheduled Tribes candidates not being available in any particular year. The contention raised by the Review-Petitioner is that the Applicant not being eligible at all, the point at which vacancy for a Scheduled Castes candidate occurred, had to be declared as de-reserved and it cannot be earmarked for reservation by a Scheduled Tribe candidate. He further contends that the question of carry-forward arises only when there is only one vacancy in a particular year.

We have considered the matter afresh. The only issue on which the aforesaid decision hinged was about the carry-forward of point 15 which could not be filled earlier because of there being only one vacancy in that year and, therefore, we held that the vacancy at point 15 had to be filled up by a Scheduled Caste candidate. As for the Applicant, we held that there could not be more than 50% appointments against reserved vacancies in a year and as such vacancy at point 17 could not go to him. It was in this background/further held that " failing which" clause did not stand in his way for being considered.

The Counsel for Respondent No. 4 i.e. Review-Petitioner is only trying to make out the deficiency which existed in the pleadings at the relevant time. In para 6(e) of the Original Application, the Applicant had specifically contended that he had put in the prescribed years of service and as such he was eligible under the 'failing which' clause. Respondent No. 1 did not controvert this averment of the Applicant. Respondent No. 4 i.e. the present Review Petitioner did not file any written statement at all. So, no issue was raised in the O.A. with regard to the eligibility of the Applicant under the 'failing which' clause.

Certainly, such an issue cannot be now raised by way of review. The contention of the learned Counsel for the Review-Petitioner that it is a case of <sup>any</sup> patent error of record is totally misconceived inasmuch as the Court has to decide issues which are raised in a particular case. Under the circumstances, we decline to interfere in this Review Application and the same is dismissed.



(Kaushal Kumar)  
Member(A)



(J.D. Jain)  
Vice-Chairman

Nov. 8, 1988.