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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1393/90

New Delhi: February 15th, 1995.

HON'BLE MR. S.R.ADIGE, MEMBER (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Bipul Krishna Maitra
S/o Shri Bijoy Krishna Maitra,
78-A/GG-I, Vikaspuri,
New Delhi.

.....Applicant.

By Advocate Shri P.T.S.Murthy.

Versus

1. Union of India,
through the Secretary,
Ministry of Defence,
South Block,
New Delhi.

2. Engineer-In-Chief,
Army Head Quarters,
Kashmir House,
New Delhi.

3. Director of Personnel,
(Engineer-in-Chief's Branch)

Army Head Quarters,
Kashmir House,
New Delhi.

.....Respondents.

By Advocate Shri V.S.R.Krishna.

JUDGMENT

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

In this application filed on 11.7.90 Shri B.K.Maitra, Superintendent Grade I E/M, MES had prayed that the respondents be directed to consider his case for promotion to the grade of Asstt. Engineer E/M through the DPC meeting or a review DPC meeting, if necessary by enlarging the zone of consideration to 650 members to enable the applicant to fall within that zone.

2. The applicant who belongs to the S.C. community joined service as Superintendent E/M Grade II on 10.3.73 and was promoted as Superintendent Grade I

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in 1980 and was placed in position on 21.4.81. The applicant contends, and it is not denied by the respondents that having put in more than seven years regular service, he had become eligible for promotion as Asstt. Engineer E/M. His case is that consequent to the cadre review performed by the respondents in October, 1988, 230 additional posts of Asstt. Engineers (B/R as well as A/M) were created of which 123 posts fell to the share of A.Es E/M. His position in the seniority list dated 3.2.87 (attached with rejoinder) was No.527, and as the post of Asstt. Engineer's was a selection post for which the zone of consideration was to be 5 times the number of vacancies, he was entitled to be considered by DPC.

3. The respondents' stand is that indeed as a result of the October, 1988 Cadre review 230 additional posts of Asstt. Engineers (B/R as well as E/M) were created, but only 162 posts were released by the Cadre Controlling Authority for holding DPC out of which the share to E/M was only 54, the rest (108) going to B/R. Those 54 vacancies which were taken into account, were new creations arising after October, 1988 and hence could not be anticipated or taken into account by the DPC which had met earlier on 27th and 28th September, 1988 to consider filling up 31 earlier vacancies. As against the 54 newly created vacancies, 8 vacancies were reserved for SC candidates and 4 vacancies for S.T. candidates as per 40 Point Roster. The zone of consideration was 3 times the number of vacancies in other words 162 officers were considered for the 54 vacancies of 1988 by the DPC which met

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in February, 1990 but inspite of extending the zone of consideration to 5 times the number of vacancies as per Govt. instructions only 2 SC candidates were available for 1988 vacancies. Similarly for the year 1989, 52 vacancies arose of which 8 vacancies were reserved for S.C. and 3 for S.T. These vacancies were, also considered for filling up by the DPC which met in February, 1990 but even after extending the zone of consideration to 5 times no SC/ST candidate was available. As the applicant did not come within the extended zone of consideration either for the 1988 or for the 1989 vacancies, the question of considering him did not arise.

4. We have heard Shri Murthy for the applicant and Shri Krishna for the respondents and have carefully perused the materials on record. Shri Krishna invited our attention to the judgment dated 12.8.94 delivered by us in O.A. No. 244/90 Kewal Kishore & others Vs. UOI & others wherein these very selections had been impugned, inter alia on the ground that the DPC which met on 27th and 28th September, 1988 should have taken into account the vacancies which were subsequently created. That O.A. had been dismissed by our judgment dated 12.8.94 (Supra), which is fully applicable in the present case also. Although in their rejoinder, the applicants have taken the stand that the September, 1988 DPC for filling up the 31 vacancies should be quashed, and these vacancies should be added to the 77 vacancies falling to the share of E/M arising out of the October, 1988 Cadre review which created 230 new posts of A.Es, making a total of $31 + 77 = 108$ vacancies, we are unable to accept this contention. When the DPC met in September, 1988, only 31 vacancies were before it,

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as the 230 additional posts of A.Es had still to be created. These 230 posts were created in October, 1988, but the respondents having regard to their administrative requirements decided to fill up only 162 posts for the present, a decision they were perfectly entitled to take. Of these 162 posts, 54 fell to the share of E/M but the applicant did not come even within the extended zone of consideration for these 54 vacancies, nor the 52 vacancies of 1989.

5. In the facts and conspectus of this case, therefore, we find ourselves unable to grant the relief prayed for by the applicant. Before parting with this case, however, we may mention that during the hearing of this O.A., applicant's counsel invited our attention to M.A. 3736/94 filed on 21.10.94 praying for permission to include an additional relief viz. to direct the respondents in the first instance to up-date the seniority first dated 3.2.87 as the same had become obsolete, owing to promotion, retirements etc. and if done the applicant stood to gain over 92 places or positions. Shri Krishna for the respondents did not oppose adjudication on this relief also. We note that in the M.A. the applicant has not mentioned specially by name any officer senior to him in that list, who had retired or been promoted prior to the DPC meeting of February, 1990 which would have improved the applicant's chance of coming within the zone of consideration either for the 1988 or for the 1989 vacancies, and thus might have altered the DPC's recommendations. Furthermore, the applicant has failed to furnish any material or evidence which would lead us *prima facie* to believe that the

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seniority list before the DPC in its meetings of February 1990 did continue to include those persons senior to the applicant who had retired or been promoted by that time.

6. In the result, this matter warrants no interference and the application is dismissed. No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

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(S.R. ADIGE)
MEMBER (A)

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