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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 244/90

New Delhi, 12.8., 1994

CORAM :

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)
THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

S/Shri

1. Kewal Krishan,
MES - 307528,
Supdt. E/M Grade-I,
G.E. (P) No.3, Delhi Cantt.
2. Shiv Dayal Ahuja,
MES - 305708,
Supdt. E/M Grade-1,
Chief Engineer Delhi Zone,
Delhi Cantt.
3. R. C. Nagpal,
MES - 306741,
Supdt. E/M Grade-1,
G.E. Subroto Park,
Delhi Cantt.
4. Kuldeep Nayyar,
Supdt. E/M Grade-1,
E-in-C's Branch,
Kashmere House,
DHQ P.O. New Delhi-11. ... Applicants

(By Advocate Shri R. P. Oberoi)

Versus

1. Union of India through
Secretary to the Govt.
of India, M/C Defence,
New Delhi.
2. Engineer-in-Chief
(Deptt. of Personnel Branch),
Army Hqrs., DHQ P.O.
New Delhi-110011. ... Respondents

(By Advocate Shri V. S. R. Krishna)

O R D E R

Shri S. R. Adige, Member (A) -

In this application, Shri Kewal Krishan and three others, all Superintendents E/M Grade-1 in the MES, have prayed that the respondents be directed to hold

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a review DPC keeping in view the total vacancies, i.e., vacancies already considered by the DPC in its meeting held in November (this should read September), 1988 and the new posts sanctioned by the Government of India's letter dated 21.10.1988; to grant retrospective promotion to the applicants if they are ranked higher to their juniors by the review DPC; and to postpone holding a fresh DPC till after the holding of the review DPC.

2. Admittedly, a DPC meeting was held to consider filling up vacancies for the vacant posts of Asstt. Engineers B/R and E/M which concluded its sitting on 27.9.1988 and considered the vacancies that existed at that point of time. It is also admitted that 230 additional posts of Asstt. Engineers B/R and E/M were sanctioned as a result of cadre review by Government of India's letter dated 21.10.1988. As the DPC concluded its sitting well before the issue of the Government letter sanctioning the additional 230 posts consequent to cadre review, the respondents have correctly stated that the applicants' contention that 230 vacancies ought to have been reported to the DPC is wholly devoid of any merit because the DPC has to base its recommendations upon the existing vacancies and not vacancies which may or may not arise in future.

3. During arguments, Shri Oberoi, learned counsel for the applicants, contended that as these 230 vacancies were created by orders dated 21.10.1988, the mode of filling up these posts should have been in accordance with the rules prevailing at that point

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of time, and not in accordance with the D.P.A.R.'s O.M. dated 10.3.1989 (Annex.-1). In this connection, he relies upon the ruling of the Hon'ble Supreme Court in P. Mahendran vs. State of Karnataka : AIR 1990 SC 404; and Y. V. Rangaiya & Ors. vs. J. Srinivasa Rao & Ors. : AIR 1983 SC 852. From a perusal of the materials on record, we note that although the 230 additional posts were no doubt created on 21.10.1986, some of them had to be upgraded to that of Asstt. Executive Engineer while the balance had to be apportioned between B/R grade and E/M grade. This took some time and eventually out of the 230 sanctioned posts, 68 posts of A.E.s against the 1988 vacancies were upgraded to that of A.E.E. vide Govt. of India's letter dated 15.12.1989, while the remaining 162 posts were apportioned in the ratio of 2 : 1 between B/R and E/M grades on 13.10.1989 as a result of which 108 vacancies were released towards B/R grade and 54 vacancies were released towards E/M grade. The applicants have disputed the exact number of posts that fell in the B/R and E/M grades, but there is no doubt that these ~~sanctioned~~^{newly} sanctioned posts had to be apportioned between the two grades. The applicants contend that had the respondents acted with due speed and promptitude in apportioning ^{the} 230 posts immediately after they were created on 21.10.1988 and the vacancies filled up immediately thereafter, the manner of filling of these posts would have been governed by the procedure as it stood in 1988, and not by the procedure as amended by O.M. dated 10.3.89.

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While it is nobody's case that the respondents should not have acted with speed and promptitude, it cannot be gain said that the procedure for apportionment of posts between different wings of an organisation ^{does not} ~~thus~~ takes some time ^{as} ~~if~~ the posts have been created, having regard to the requirements of those different wings and other relevant factors. This time period can no doubt be reduced if advance action is taken, but even so it cannot be denied that some time is likely to elapse in all such exercises. There is nothing to indicate that the respondents acted mala fide or arbitrarily or in violation of the provisions of the Constitution in conducting this exercise to apportion the ^{newly} ~~created~~ created posts between B/R and E/M grades, and those which required upgradation to the grade of A.E.E. In the meantime, the O.M. dated 10.3.1989 prescribing a modified procedure for filling up such posts issued, and when the DPC next met ^{for filling up vacancies appointed to E/M grade}, they naturally had to go by this modified procedure as prescribed in the O.M. dated 10.3.1989, as that was the procedure then in force, and not the procedure that was applied ^{initially} ~~when~~ when the 230 posts were ^{initially} sanctioned on 21.10.1988. Under the circumstances, the rulings relied upon by Shri Oberoi, learned counsel for the applicants, are of no help to him.

4. In the result, the action taken by the respondents warrants no interference, and this application is dismissed. No costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

S. R. Adige
(S. R. Adige)
Member (A)

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