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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. 2648/90

New Delhi this the 29th day of May, 1995.

Hon'ble Shri N.V. Krishnan, Vice Chairman(A).

Hon'ble Dr. A. Vedavalli, Member(J).

Thomas Mathew,
S/o Shri K.K. Mathew,
R/o 49B/AN, Shalimar Bagh,
Delhi. ...Applicant.

By Advocate Shri V.K. Rao.

Versus

1. The Chief Election Commissioner,
Ashok Road,
New Delhi.

2. The Union of India,
through The Secretary,
Ministry of Personnel, Public
Grievances and Pension,
New Delhi.

3. The Union of India,
through The Secretary,
Ministry of Law & Justice,
(Legislative Department),
New Delhi.

4. Shri Ram Kishan,
Under Secretary,
Election Commission of India,
Ashok Road,
New Delhi.

5. Shri Babu Ram,
Section Officer,
Election Commission of India,
New Delhi. ...Respondents.

By Advocate Shri P.H. Ramchandani, Sr. Counsel (For
official respondents)

By Advocate Shri Murlidhar (For Respondent No.5)

O R D E R (ORAL)

Hon'ble Shri N.V. Krishnan.

The applicant, who belongs to the "other
community", made a representation to the Chief Election
Commissioner, the first respondent, on 27.6.1990 (Annexure
A-IV). He prayed that the seniority list in the grade of

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Section Officers should be re-arranged by placing Respondents 4 and 5 below him. These respondents are scheduled castes and are included at higher places in the select list against reserved vacancies and hence, given higher seniority on promotion. A revision of the select list for promotion as Under Secretary was also sought. This claim was made on the basis of a decision of the Allahabad Bench of the Tribunal in Virpal Singh Chauhan Vs. Union of India and Ors. (ATJ 1987(2) CAT 71). It was stated in the representation that a SLP against this decision of the Tribunal has been filed in the Supreme Court but it has not been stayed. That representation has been rejected by the Election Commissioner by the letter dated 12.11.1990 (Annexure A-V). It is this order that is impugned in this O.A. Consequently, prayers are made to direct Respondent No. 1 to revise the seniority of Respondent Nos 4 and 5 as Section Officers, review the promotion of the 4th respondent as Under Secretary and for a direction not to promote Respondent No. 5 until a revised seniority list is prepared.

2. The respondents have filed a reply opposing this claim.

3. The matter came up for final hearing and it was then pointed out to the learned counsel for the applicant that, perhaps, the O.A. itself can be disposed of in the light of a Full Bench Judgement of the Tribunal in Durga Charan Halder & Others Vs. Union of India and Ors. rendered on 21.2.1994 at Calcutta (CAT-FB Vol.III, Page 323).

4. The matter was heard again today. The learned counsel for the applicant submits that in that case,

directions were given that the concerned O.As should be kept pending until the appeals pending in the Supreme Court ~~are~~ ⁱⁿ ~~ever~~ disposed of. The learned counsel for the official respondents, did not have any objection. The learned counsel for Respondent No. 5 submitted that the applicant has already resigned voluntarily in 1994 and hence this O.A. has become infructuous.

5. Such a plea has not been taken by the official respondents. In our view, the resignation, even if tendered and accepted, need not necessarily render the O.A. infructuous. It is quite possible that the applicant becomes entitled to some benefit before such resignation.

6. On merits, it was agreed that the decision of the Full Bench has to be followed.

7. As stated in the representation, the Allahabad Bench of the Tribunal has held in Virpal Singh's case (supra) that accelerated promotions to scheduled castes and scheduled tribes on the basis of reservation do not give them a right to count seniority from the dates of promotion. When their erstwhile seniors in the ⁱⁿ feeder grade posts, who could not be promoted on their ~~return~~, because of the reservation, get promoted when their turn comes according to the roster, the seniority of the SC/ST promotees and the promotees belonging to other communities should be refixed, on the basis of the respective seniority in the lower cadre, or at the entry stage. This was followed by the Patna Bench of the Tribunal in Kameshwar Sharma & Ors. Vs. Union of India & Ors., 1990(12)ATC 26. However, a Full Bench of the Tribunal sitting at Hyderabad took a contrary view in this regard in V. Lakshminarayanan & Others Vs. Union of India & Others (Page-91), (CAT-FB Vol.3 page 91), though the two earlier decisions were not either cited or

considered. That Full Bench held that the scheduled caste and scheduled tribe candidates can reckon seniority in the promoted cadre from the dates they were promoted.

8. The Full Bench sitting at Calcutta noted that the decision of the Patna Bench of the Tribunal in Kameshwar Sharma and Ors. Vs. Union of India (1990 (12) ATC 26) has been challenged in the Supreme Court in Civil Appeal Nos. 18/90 and 5044/89, the same having been directed to be heard along with the appeal in J.C. Malik's case. It held that as the Supreme Court is seized of the appeals, it would only be appropriate that the Division Bench which referred the O.As to the Full Bench should await the decision of the Supreme Court. Accordingly, such directions were issued. However, the Full Bench held that in the interregnum, it would be proper to give the scheduled castes and scheduled tribes candidates the benefit of the decision of Full Bench in Laxminarayan's case (Supra) in respect of seniority, until a contrary view was taken by the Supreme Court.

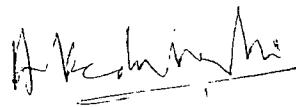
9. In the present case, the need for such an interim order does not arise because Respondents 4 & 5 who are scheduled castes have already got that benefit. Therefore, the only appropriate direction that may be given is that the seniority already determined will be reviewed on the basis of the decision of the Supreme Court in the aforesaid appeal.

10. In the circumstance, we dispose of this O.A. with a direction that the seniority assigned to respondents 4 and 5 as Section Officers shall be reviewed and finally determined by the first respondent on the basis of the

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judgement that may be delivered by the Supreme Court in the appeals referred to above against the decision of the Tribunal in the case of Kameshwar Sharma (Supra).

11. O.A. is disposed of accordingly.



(DR. A. VEDAVALLI)
MEMBER(J)



(N.V. KRISHNAN)
VICE CHAIRMAN(A)

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