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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2617/93

NEW DELHI THIS THE 1ST DAY OF SEPTEMBER, 1994.

**MR. JUSTICE S.K.DHAON, ACTING CHAIRMAN
MR. B.N.DHOUNDIYAL, MEMBER(A)**

1. Shri Rajeev Sharma
Qr.No.281, Sector-7,
Pushp Vihar
New Delhi-110006.
2. Shri Mohinder Singh
H.NO.767/7, Govindpuri
Kalka Ji
New Delhi.
3. Shri Pawan Kumar
C/o Shri Amar Singh
H.No.93, Katwaria Sarai
New Mehrauli Road
New Delhi-110016.

APPLICANTS

BY ADVOCATE SHRI A.K.BHARDWAJ.

Vs

Union of India through
Secretary,
Ministry of Science & Technology
New Mehrauli Road
New Delhi.

RESPONDENTS

MS. PROTIMA PROXY COUNSEL FOR
SHRI K.C.MITTAL, ADVOCATE.

ORDER(ORAL)

JUSTICE S.K.DHAON:

The controversy pertains to the appointment to the post of Technical Assistant, a selection post.

2. The applicants are admittedly Junior Technical Assistants. Admittedly, sometime in 1991, a departmental promotion committee met to consider the candidature of Junior Technical Assistants to be promoted to the posts of Technical Assistant. The matter is governed by rules framed under the proviso to Article 309 of the Constitution. It is applicants' own case that in 1991 when the departmental promotion committee met to consider their cases, they did not have 5 years' regular service in the grade and they acquired that eligibility on 28.3.1992, 14.6.1993 and 29.9.1993 respectively. The respondents have set up the case that the rules itself provided that 66/2/3% of the posts of Technical Assistant shall be filled by promotion failing which by direct

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recruitment. They asserted that the departmental promotion committee did not find any candidate qualified to be appointed as a Technical Assistant and, therefore, they (the respondents) referred the vacancies to the Union Public Service Commission (the Commission) for filling them up by the process of direct recruitment. It is stated that in the meanwhile out of 25 ~~16~~ posts, 16 posts had been abolished and, therefore, the Commission was left with only 9 vacancies to be filled up.

3. It appears that the Commission consumed some time in completing the process of selection by direct recruitment and, therefore, the respondents on 26.11.1992, sent a communication to the Commission requesting it to treat the requisition made by them as withdrawn so as to enable them (the respondents) to proceed with the process of filling up the vacancies by the method of promotion. It appears that the respondents in the meantime realised that applicants have acquired the necessary qualification. The Commission, on 18.3.1993 informed the respondents that their request could not be acceded to as in the meantime, the process of recruitment had been commenced by it.

4. We may note that the Commission has not been arrayed as one of the respondents to this original application. Learned counsel for the applicants has prayed that we may grant him time to amend this application for bringing on record the Commission so as to enable the applicants to challenge the legality of the decision taken by the Commission in not acceding to the request of the respondents for treating their requisition as cancelled. The decision of the Commission, in our opinion, is an independent transaction. It gives a fresh cause of action to the applicants. It would, therefore, not be appropriate to permit the applicants to challenge the decision of the Commission in these proceedings.

We, however, make it clear that it will be open to the applicants, if they are so advised, to challenge the legality of the decision of the Commission by taking appropriate proceedings in an appropriate forum.

5. It appears that some of the candidates who had not been considered by the departmental promotion committee (not the applicants) came to this Tribunal by way of OA No.2314/93. That OA was dismissed summarily on 5.11.1993.

6. There is no substance in this original application. It is accordingly dismissed. No costs.

B.N.Dhundiyal
(B.N.DHOUNDIYAL)
MEMBER(A)

S.K.Dhaon
(S.K.DHAON)
ACTING CHAIRMAN

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