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(Reserved)

(Bench No.1)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD.

Registration No. 40 of 1986

Om Prakash vs. Union of India and others.

Hon'ble S. Zaheer Hasan, Vice Chairman.

Hon'ble Ajay Johri, Member (A).

(Delivered by Hon'ble S. Zaheer Hasan, V.C.)

This is an application under Section 19 of the Administrative Tribunals Act (No. XIII of 1985), for quashing the order contained in Annexure-10 to the application in which the applicant was asked to appear in the test, and the order contained in Annexure-14 to the application informing the applicant that the test held on 16.7.1985 was cancelled. There is a further prayer that the applicant be ordered to be promoted as Inspector with effect from 29.12.1984 when other persons were promoted to that post.

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Applicant Om Prakash joined the Central Excise and Customs Department as a Lower Division Clerk in the year 1978 after passing Intermediate Examination. He was selected in sports quota. After Graduation he moved an application on 19.1.1984 (Annexure-1 to the application) with a prayer that he should be promoted as Inspector in sports quota. On 5.7.1985 the applicant was asked to appear in the test to be

held on 16.7.1985. The applicant appeared in this test along with another candidate, and we are told that this test was cancelled due to copying and law and order situation. In this connection the applicant made various representations and ultimately his representation was rejected on 2.7.1984 (vide Annexure-3 to the application). A second test was held in which the applicant did not appear.

The contention of the applicant is that one Arunesh Tewari, Lower Division Clerk, was promoted as Inspector in sports quota in 1983; and Rajendra Singh, A.N.Srivastava, and H.W.Handery, who were also Lower Division Clerks, were promoted as Inspector in sports quota in January 1984. All these persons got their promotion from Collector, Central Excise and Customs, Kanpur. The applicant was working under the Collector, Central Excise and Customs, Allahabad. His contention is that Smt. Sukesha Saggi of Allahabad Collectorate was promoted on 6.1.1986 as Inspector in sports quota, and in this way there was a discrimination. The contention of the respondents is that it was necessary for the applicant to appear in the test. He appeared in the first test which was cancelled due to law and order situation, but did not appear in the second test inspite of notice. As regards Smt. Sukesha Saggi, it was stated that she was an Upper Division Clerk and she had already passed the written test before appointment and the standard of the test for Upper Division Clerk and Inspector was the same. Therefore, Smt. Saggi was not subjected to any written test again and she was appointed as Inspector after completing all other formalities and obtaining the Board's approval. As regards the ~~mkh~~

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aforesaid persons, it was stated that they were considered by the Kanpur Collectorate.

The applicant passed Intermediate ^{examination} and was selected as Lower Division Clerk in the Department of Central Excise and Customs in the year 1978. After Graduation he moved an application on 19.1.1984 for his promotion as Inspector in sports quota. It was conceded before us that a Lower Division Clerk cannot get promotion as Inspector as of right; whereas an Upper Division Clerk can be promoted as Inspector. The applicant being a Lower Division Clerk could not be promoted as Inspector. Of course, he could apply for his selection as Inspector in sports quota and in that case it is necessary to pass the prescribed test which is held at the time of direct recruitment. In the letter dated 9.9.1983 addressed to the Collector of Central Excise, Allahabad it was stated that the letter dated 4.4.1980 does not exempt the meritorious sportsmen from written test for appointment in Group 'C' and Group 'D' posts under the Government. In view of this letter which was issued in consultation with the Department of Personnel and Administrative Reforms, even a sportsman is not exempt from written test. So, if the applicant wanted to be appointed (not promoted) as Inspector, he had to appear in the written test. He did appear in the first test which was cancelled. He did not appear in the second test with the contention that the test was uncalled for and, therefore, he would not appear. It does not stand to reason that absolutely no incident took place and the authorities concocted a false case that due to copying, law and order situation was created and, therefore, the first test was

cancelled. There is nothing to suggest that the finding of the authorities in this connection is perverse. We are not sitting in appeal over that finding.

The applicant being a Lower Division Clerk, and not an Upper Division Clerk, could not be promoted as Inspector. He could be considered for the post of Inspector after passing the required test referred to in the aforesaid letters of the Government irrespective of the fact that he was a sportsman of extra-ordinary merit. He had to appear in the test. He did appear, but due to valid reasons that test was cancelled. He did not appear in the second test and for that he is at fault. The Department was ready to take him in case he passed the test. However, it will be open to the Department to invite the applicant to appear in the next test and do the needful.

The main contention of the applicant's counsel was that since Smt. Shaggi of Allahabad Collectorate and four persons of Kanpur Collectorate were promoted as Inspector, but in his case a discrimination was made. The meaning of the principle of equality embodied in Articles 14 and 16 of the Constitution is that similarly situated persons should be treated equally but in accordance with law. It does not mean that if an illegality was committed in considering a Government servant to a particular post, another illegality should be permitted to be committed in considering the case of another Government servant. This is not the meaning of the principle of equality. For, two wrongs do not make one right. If the scope and effect of certain rule or standing order was misconstrued, it does not mean that it should be similarly misconstrued in all other

cases in the name of equality. We cannot issue a direction for repetition of error in favour of the applicant. The aforesaid four persons promoted belonged to Kanpur Collectorate. They and Smt. Saggi have not been impleaded in the case before us. Of course, Smt. Saggi belonged to Allahabad Collectorate, but her case was different. She was an Upper Division Clerk and was promoted as Inspector. Amongst equals the law should be equal. Like should be treated alike. Unequal treatment does not arise as between persons governed by different conditions and different set of circumstances. Even if we assume for the sake of argument that appointment of Smt. Saggi is against the departmental directions, we cannot direct repetition of similar mistake in favour of the applicant. So, to our mind, there was no discrimination. The applicant should have appeared in the second test. However, the Department is at liberty to call him at the time of next test and do the needful.

With the observations made above, the application is dismissed with costs on parties.

September 11th, 1986. Vice Chairman.

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Member.