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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 284 OF 1992.

Shri N. B. Kamble ... Applicants

Versus

Union Of India & 4 Others ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Applicant in person.
2. Shri Suresh Kumar for Shri M. I. Sethna,
Counsel for the applicant.

JUDGEMENT

DATED : 29.5.95

¶ Per.: Shri B. S. Hegde, Member (J) ¶

1. The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the order of the Respondents dated 10.12.1991 annexure - II and seeking promotion from Scientist Grade 'C' to Grade 'F', etc. Applicant in person appeared and for the Respondents, Shri Suresh Kumar for Shri M.I. Sethna, Counsel, appeared. On perusal of the O.A., We find it difficult to make out any specific issue which he intends to challenge except stating that he has not been promoted to the post of Scientist 'F'. However, on perusal of the reply by the Respondents, issues raised by the applicant becomes rather clear and during

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 284 OF 1992.
~~Transfer Application No.~~
~~XXXXXXXXXXXXXXXXXXXX~~

Date of Decision : 29.5.95.

Shri N. B. Kamble,

Petitioner

Applicant in person.

Advocate for the
Petitioners

Versus

Union Of India & 4 Others,

Respondents

Shri Suresh Kumar for Shri M.I. Sethna,


Advocate for the
respondents

C O R A M :

The Hon'ble Shri B. S. Hegde, Member (J).

The Hon'ble Shri M. R. Kolhatkar, Member (A).

- (1) To be referred to the Reporter or not ? γ
- (2) Whether it needs to be circulated to
other Benches of the Tribunal?


(B. S. HEGDE)
MEMBER (J).

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the course of hearing we sought clarifications from the applicant, what he wants to say in the O.A.

2. In this O.A., the applicant has got grievances against the respondents that his promotion from the grade of S.S.A. to J.S.O. which ought to have been made by the Respondents in the year 1971 has not been done and the same was given to him in the year 1975. Further promotion to the grade of Scientist 'C' which was given to him in 1985, ought to have been given to him in the year 1978 and also he should have been promoted to Scientist Grade 'F' with effect from 01.07.1990. At present, the petitioner is working as a Scientist Grade 'C' and promotion to Grade 'D' has not been given to him, therefore, the question of further promotion of Grades 'E' and 'F' does not arise. The respondents in their reply denied the allegations of the applicant and states that the application is totally misconceived and suffers from the vice of misjoinder of the causes of action and the petition is hopelessly time barred. In case the relief prayed by the applicant is granted, it is likely to affect such persons directly, who have been promoted and not made party in this O.A. Therefore, the O.A. is required to be dismissed. The applicant's main contention is that he should have been promoted to the post of S.S.A. Grade-II in the year 1971 against which he filed an application in the year 1992. Apparently the claim preferred by the applicant is barred by time. In view of the Administrative Tribunals Act, 1985 does not vest any power or authority in CAT to take cognizance

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of a grievance arising out of an order passed prior to 01.11.1982.

3. In the instant case, we are of the view, that his grievance against non-promotion in the year 1971 is hopelessly barred by time and this Tribunal cannot at this stage entertain the same. Further, on perusal of the records we find, though the applicant has joined the department in the year 1967, while considering him for promotion to the grade of Junior Scientific Officer (JSO) of Defense Science Service (DSS) in his SP subject "Metallurgical Engineering" after completion of three years regular service as prescribed in the Recruitment Rules by the Departmental Promotion Committee (DPC) held in the year 1971. The D.P.C., based on his record of service and seniority vis-a-vis other eligible candidates, did not recommend him for inclusion in the panel for promotion to the grade of JSO. The next DPC was held in December 1973 and at that time the applicant had already been selected and appointed as Senior Scientific Officer Grade-II of DSS in No. 3 BRD Air Force on the recommendations of the Union Public Service Commission. However, he was reverted back to the post of SSA at his own request and was posted to R & DE(E), Pune. Therefore, he has no grievance against the 1973 D.P.C. The only grievance is against 1971 D.P.C. ⁱⁿ which he was found to be not suitable by the D.P.C. He was not promoted in the year 1973 although he was found suitable by the D.P.C.

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During the course of hearing, the applicant has furnished a copy of the Notification issued by the Departmental of Personnel vide dated 23.06.1975 wherein it envisages that reservation in service for Scheduled caste and scheduled tribes : Exemption of scientific and technical posts as per the Ministry circular which is being in vogue since 06.10.1969 onwards. Therefore, the question of invoking this SC/ST order for the purpose of promotion does not arise. The second contention is that he should have been promoted to the post of Scientist 'F' which is three grade higher than the post which he is holding at the moment. It is an admitted fact, that all these posts are filled through DPC's recommendations and on the basis of 'Flexible Complementing Scheme' which is in vogue in the department. During the course of hearing the Learned Counsel for the respondents draws our attention that similar matter has been dealt with by the Ernakulam Bench in O.A. No. 307/92 and 303/92 wherein the Tribunal has held that Tribunal has considered the Department of Personnel Notification dated 23.06.1975 and O.M. dated 02.11.1963 respectively in which reservation order in favour of Scheduled Castes/ Scheduled Tribes have been made in applicable and the Tribunal also held that in view of the clear ruling of the Supreme Court in 'Indra Sawhney & Others', both the O.Ms. are found to be valid and in accordance with the constitutional provisions. They also made an observation that in accordance with the rules and under the 'Flexible Complementing Scheme' promotions from Grade 'B' to Grade 'C' of Scientists are made 'in situ'

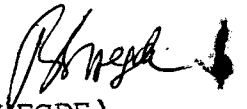
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irrespective of the availability of the vacancy, on the basis of the performance and merits of the Scientists, etc. Hence, the facts of this case are similar to the facts narrated in the Ernakulam Bench decision and in this case the applicant has not established any legitimate ground in which he should have been promoted to the post of Scientist, therefore, it is but natural that the O.A. is liable to be dismissed and it is devoid of merits. Further, the applicant being in a scientific field, further promotion is not depending on the availability of vacancies but purely on the performance and merits of the candidates viz-a-viz his colleagues. It is a well known principle that promotion is not a matter of right and the applicant could be considered if there is any injustice done to him, that is not the case. Considering the pleadings and the records, We find that there is no merit in the O.A. and the same is dismissed. No order as to costs.



(M. R. KOLHATKAR)

MEMBER (A).



(B. S. HEGDE)

MEMBER (J).