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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY - 1.

ORIGINAL APPLICATION NO. 1239/1995
AND
ORIGINAL APPLICATION NO. 1267/1995.

Friday, this the 15th day of December 1995

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

1. O.A. No.1239/95. (m.p.no. 841/95)

All India Association of Non-Gazetted Officers & Another.
(By Shri S.P.Saxena) ... Applicants.

V/s.

Union of India & Ors. ... Respondents.
(By Shri R.K.Shetty)

2. O.A. No.1267/95 (m.p.no. 807/95)

S.G.Phatak & Ors. ... Applicants
(By Shri H.Y.Deo with
Shri M.S.Ramamurthy)

V/s.

Union of India & Ors. ... Respondents.
(By Shri R.K.Shetty)

O R D E R

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

Heard the arguments of Shri S.P.Saxena in O.A. No.1239/95 and Shri H.Y.Deo along with Shri M.S. Ramamurthy in O.A. No.1267/95 for the applicants and Shri R.K.Shetty, counsel for the Respondents.

2. The Tribunal in O.A. No.1239/95 after hearing the learned counsel for the applicants passed an interim order on the contentions made by the counsel that the distribution of various categories as stated in Annexure A-2 is not in accordance with

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the scheme prescribed by the department. In this connection he draws our attention to Annexure A-2 wherein he submitted that the required distribution quota has not been complied and accordingly he prayed for interim relief and the same was granted for a period of 14 days. On 30.10.1995 the O.A. was admitted and the respondents did not file their reply. The interim relief passed was made absolute and directed the respondents to file their reply.

3. Similar relief has been claimed in O.A. No.1267/95 stating that the subject matter is one and the same accordingly interim relief was granted on 20.10.1995. The respondents have filed their reply and have also filed an M.P. (M.P. No.841/95) for vacation of the interim order passed by the Tribunal.

4. The issues involved in both the case is one and the same i.e. distribution of posts in various disciplines was discussed in PPB Meetings held on 24.7.1995 and 25.8.1995 at length. After extensive deliberations it was decided to adopt pro-rata method of distribution in various categories. However, certain very marginal adjustments could be allowed in the disciplines/categories where there had been certain inherent structural deficiencies. That a cadre review proposal for Group 'B', 'C' and 'D' employees of DGQA Organisation was formulated in 1989 taking into account functional requirements of the organisation and the necessity of improving career prospects while keeping

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in view the changed system and procedures in the organisation to meet the requirement of modern technological developments. The proposals were considered by Ministry of Defence and Ministry of Finance at various levels. While examining the Cadre Review proposal the Ministry of Finance (Department of Expenditure) requested to re-cast the proposals in such a way that pyramidical structure of the cadre is maintained. Keeping in view the above guidelines the proposals were modified in consultation with Staff Side JCM-III Level Council and submitted to Ministry of Finance for their final approval which was accordingly approved in June, 1995. The respondents further submitted that creation, abolition and deployment of staff and creation of promotional posts are matters of policy which fall within the domain of the Executive Government as ruled by the Hon'ble Supreme Court of India in Union Of India V/s. Parmananda's case. Therefore, in these O.As the issue involved is one of creation of promotional posts which are matters of policy within the competence of the Central Government to decide and the Tribunal cannot interfere in the matter. It is also stated in Annexure A-1 that while re-structuring the posts certain marginal adjustments will have to be made by the respondents.

5. Even assuming that the respondents have deviated from the settled scheme/guidelines, the applicants do not have any enforceable right in not allowing the respondents to fill up the vacancies by obtaining an interim direction. According to the guidelines, it is open to the respondents

to effect changes in filling up the vacancies depending upon the facts and circumstances of the situation, etc. The merits of their action, whether they have adhered to the guidelines or not, would depend upon the ultimate results of the O.As. Since the prayer made both in the main relief as well as in the interim relief are almost the same and the interim relief was passed ex-parte after hearing the counsel for the applicants.

6. We are satisfied, that the interim order cannot be allowed to continue and the same is liable to be vacated. Since the balance of convenience lies with the Administration, as the filling up of posts is held up, the interim order passed earlier on 11.10.1995 and 20.10.1995 respectively, stands vacated. However, any promotions/fresh recruitments made subsequent to the filing of the O.As., the same is subject to the outcome of the O.As. In the light of the above, M.P. No. 841/95 in O.A. No. 1239/95 and M.P. No. 807/95 in O.A. No. 1267/95 are disposed of. Copy of the order be given to the parties.

(P. P. SRIVASTAVA)
MEMBER (A).

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

15/12/95
Order/Judgement despatched to Applicant/Respondent (s)
on 12/1/96

Copy to:-

1. All India Association of Non-Gazetted Officer & Anr.,(OA.1239/95), C/O. Mr. S.P. Kulkarni,Adv.
2. Mr. S.G. Phatak & Ors.(OA.1267/95), C/O. Mr. M.S. Ramamurthy,Adv.
3. The Union of India & Ors., through Mr. R.K. Shetty,Adv.

SECTION OFFICER.