

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.3198/2002

New Delhi this the 8th day of August, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)  
Hon'ble Shri R.K.Upadhyaya, Member (A)

Mahendra Kumar Meena (ST),  
B-189, Prahladpur,  
New Delhi.

. Applicant  
(By Advocate Shri G.K.Agarwal )

VERSUS

1. Union of India through Secretary,  
Dept. of Personnel and Training  
North Block, New Delhi.
2. Secretary,  
Ministry of Information and  
Broadcasting, Shastri Bhawan,  
New Delhi.
3. Defence Secretary,  
South Block, New Delhi.
4. Shri R.C.Meena, (ST),  
Section Officer, Ministry of  
Defence, South Block, New Delhi.
5. Sh.S.R.Meena (ST), Section Officer,  
I & B Ministry, Shastri Bhawan,  
New Delhi-1

. Respondents  
( By Advocate Ms.R.O.Bhutia )

O R D E R (ORAL)

( Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J) )

The applicant has impugned the orders issued by the respondents, namely, Govt.of India, DOP&T OM dated 25.4.2001, 1.8.2002 and the rejection of his representation by respondent No.2 by letters dated 29.6.2001 and 15.11.2002.

2. The brief relevant facts of the case are that the applicant who belongs to the reserve category (ST) and working as Assistant submits that he has already

3/2

completed the requisite number of years of regular service in that grade for promotion as Section Officer (SO) on regular basis before 1999 in the Central Secretariat Service (CSS), which service is governed by the CSS Rules, 1962 as amended from time to time. His grievance is that in the OM dated 25.4.2001 two other reserve candidates who also belong to ST category, namely, S/Shri R.C.Meena and S.R.Meena whose seniority positions are at serial numbers 825 of 1989 and 141 of 1988, respectively were given promotion as regular Section Officers (SOs). However, when the turn of the applicant came for promotion in the office of respondent 2, the same pattern has not been adopted by the respondents, who have, instead revised their policy. His contention is that in the subsequent year 2000, the respondents have instead of promoting the applicant who was the seniormost ST candidate in that office, brought in respondent No.5 i.e. S.R.Meena (ST) to the office of respondent No.2 from the Ministry of Road Transport and Highways. The main ground urged by Shri G.K.Aggarwal, learned counsel is that the respondents should stick to one policy and should not deprive the applicant his promotion to the post of SO by adopting one standard in 1999 that the seniority would be Ministry-wise and secondly <sup>as</sup> <sub>1</sub> different standard in the year 2000, fixing a different yard-stick that the promotion would be on an overall seniority basis and not Ministry-wise. In the circumstances, the applicant has prayed for quashing and setting aside the impugned letter dated 29.6.2001 and consequent modification of DOP&T OM dated 25.4.2001 so

18

that he is given promotion in the year 1999 as SO or amend the OM dated 1.8.2002 so as to promote the applicant in place of Sh.S.R.Meena/Respondent No.5 as regular SO in the office of respondent No.2. The above facts show that what the applicant is seeking is a kind of mixture of the methodology adopted by the respondents in the select list of 1999 with those adopted for the select list of 2000, in a manner advantageous to applicant and not in the manner they have done in both these years.

3. We have seen the reply affidavit filed by the respondents and heard Ms.R.O. Bhutia, learned counsel. They had raised a preliminary objection that the OA is barred by limitation with regard to the select list (seniority quota) for SO issued by the Department in April, 2001. However, taking into account the facts and circumstances of the case, MA 2750/2002 filed by the applicant for condonation of delay has been allowed and disposed of accordingly by Tribunal's order dated 28.2.2003.

4. On the merits of the case, the respondents have submitted that the CSS comprises of four grades and there are 33 (thirty three) Cadre Controlling Authorities maintaining the cadre seniority of all the Assistants in their respective Ministries/Departments. According to them, respondent No.1 is the nodal authority and coordinates the process of appointment and maintains a combined/common seniority list known as Supplementary Common Seniority List (SCSL) of all the Assistants

92

working in the 33 cadres, prepared on an all Secretariat basis for the purpose of promotion in accordance with (Regulation 3 of the Central Secretariat Service (Preparation of Common Seniority List) Regulation, 1970. According to them the select list for the grade of SO 1999 prepared by Respondent No.1, in which neither any person junior to the applicant in his own cadre nor any other person in any other cadre has been included. The two candidates, who were promoted and retained in the cadre of respondent No.1, were quite senior to the applicant bearing rank Nos.138 of 1988 and 764 of 1989, respectively, when admittedly the seniority position of the applicant is at Serial No. 793 of 1989. The respondents have, therefore, submitted that even other persons who were senior to the applicant in the Central Panel were not included in the Select Panel for the year 1999 for the grade of SO.

5. So far as the claim of the applicant regarding inclusion in the Select List for the year 2000 is concerned, our attention has been drawn by the learned counsel for the respondents to the extracts from the Minutes of the 55th Ordinary Meeting of Departmental Council (JCM) attached as annexure R-5 to the counter reply in which the date of JCM meeting held was not mentioned. Learned counsel has submitted a document of the extracts of the JCM meeting which shows that it was held on 21.1.2000, copy placed on record. She has further submitted that due to the large size, the JCM had taken a decision that the zone for consideration should be limited to the extent of number

85

of vacancies i.e. 1.25 times of the vacancies. Accordingly, at the request of the Staff Side, a decision was taken at the JCM meeting that in case of promotion from Assistant to S.O., 1.25 size will be tried. Accordingly for the select list of 2000, this formula was adopted. The respondents have submitted that since the applicant was not covered under this restricted zone of 1.25 times of the number of vacancies, his name did not find place in the Central Panel and, therefore, he could not be promoted against 01 ST vacancy available in his cadre. The break up of figures given by the respondents shows that in the Select List for the year 2002 there were 10 vacancies reserved for STs as per the DOP&T OM dated 1.8.2002, and all of them have been promoted who are seniors to the applicant from various cadres. The last one of the ST candidates who has been shown promoted to SO is one Shri Joseph Atul T. Barla who is shown at Serial No. 776 of 1989. The respondents have submitted that as the applicant is at Serial number 793 of 1989 and even persons senior to him, though eligible, were not placed in the Central Panel therefore there is no discrimination against him with regard to promotions to the post of ~~SO~~<sup>8</sup>. Learned counsel has therefore, submitted that the OA may be dismissed. We have also heard Shri G.K. Aggarwal, learned counsel in reply who has more or less reiterated the same arguments, <sup>but</sup> no written rejoinder has been filed.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

18

From the annexures filed by the respondents to the counter affidavit i.e. the extract from the Minutes of 55th Meeting of JCM held on 21.1.2000, it is noted that against item No. 52.1 on the subject of limiting the range of zone to the extent of number of vacancies for the preparation of Section Officer's select list, the request of the Staff Side has been noted. Accordingly a decision has been taken that the zone of consideration for promotion will be restricted to 1.25 times of the number of vacancies to minimise disparity in promotion. Accordingly, the size of select list for the year 2000 has been issued in accordance with this decision. Admittedly, there were 46 vacancies and 58 persons had been considered on the basis of their inter-se-seniority in the SCSL. There were 33 General posts, 3 for Schedule Castes and 10 for Schedule Tribe candidates. A perusal of DOP&T OM dated 1.8.2002 shows that 10 persons belonging to various Ministries/Departments have been selected, the last one being Sh. Joseph Atul T. Barla whose seniority is shown at serial No. 776 of 1989. Admittedly, the applicant's seniority is at Serial No. 793 of 1989. In any way we look at the matter, no juniors to the applicant in the ST category has been selected and placed in the promotion list of SOS for the select year 2000. In this view of the matter, the action of the respondents cannot be held to be either unreasonable or arbitrary to justify any interference in the matter. It is also relevant to note that the Staff Side itself made a request for a restricted zone of consideration i.e. 1.25 times of the existing vacancies for the Select List of 2000

Y/

and on this ground it also cannot be held that the decision of the JCM is arbitrary or discriminatory against any particular staff. The decision has apparently been taken by the JCM to limit the range of zone to the extent of number of vacancies for preparation of SO's select list to 1.25 size on trial basis which was agreed to ~~by~~ in the JCM.

7. In the facts and circumstances of the case, we find no merit in the OA or in the contention of the learned counsel for the applicant that another criteria had been adopted by the respondents in the year 1999 when the applicant was in the zone of consideration. That criteria has been later modified by the JCM in which the Staff Side has also represented and the Select list has been prepared accordingly. The earlier select list of 1999 which has been issued by the respondents was based on the criteria followed by them uniformly prior to the decision of the JCM in January 2000, which cannot be faulted. There is also no illegality or arbitrariness when the policy decision was changed in the JCM. This has been done by adopting uniform standards for all the candidates in the year 2000. Earlier, the criteria was that candidates who had completed 8 years of regular service were eligible for consideration which had led to a large number of Assistants being considered for promotion to the grade of SOS. The policy adopted by the Govt. in the JCM meeting dated 20.1.2000 was to restrict the zone of consideration to 1.25 times of the actual vacancies. This was to short list the large number of candidates, which is neither arbitrary nor unreasonable, taking into account the issues involved in this case. It is also relevant to

-8-

note that no ST candidate junior to the applicant has been promoted by the impugned Office Memo. dated 1.8.2002, Therefore from whatever angle the issues raised by the applicant are looked at, we do not find any good grounds to justify interference in the matter. We have also considered the other submissions made by the learned counsel for the applicant but find no merit in the same.

8. In the result, for the reasons given above, the OA is dismissed. No orders as to costs.

(R.K.Upadhyaya)

( R.K.Upadhyaya )  
Member (A)

Lakshmi Swaminathan

( Smt.Lakshmi Swaminathan )  
Vice Chairman (J)

sk