

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

(19)

O.A. NO. 132/2001

NEW DELHI, THIS THE 31st DAY OF DECEMBER 2001.

HON'BLE SMT. LAKSHMI SWAMINATHAN, V. CHAIRMAN(J)
HON'BLE SH. GOVINDAN S. TAMPI, MEMBER (A)

1. Raghubeer Singh
S/O. Shri Nand Lal
R/O. 8/243, D.D.A. Flats
Four Storey, Garhi
East of Kailash, New Delhi - 110 065.
2. Radhey Shyam
S/O. Shri Nathi Singh
R/O. C-5/17 Yamuna Vihar
Delhi.
3. Smt. Pushap Lata Arvind
W/O. Shri Hemant Kumar
R/O. B-386, Nirman Vihar
Delhi - 110 092.
4. Dharamvir
S/O. Shri Hardeva Ram
R/O. V.P.O. Kharakjatan
Tehsil Meham, District Rohtak
(Haryana)
5. Fateh Singh
S/O. Late Shri Karua
R/O. Dr. Ambedkar Nagar
Palwal, Aligarh Road
District Faridabad (Haryana).
6. Duli Chand
S/O. Late Shri Kanwal Singh
R/O. 342, Income Tax Colony
Pitampura, Delhi 110 034.
7. Antriksh Kumar
S/O. Shri Shiv Lal
R/O. 39-B, Pocket-E, Dilshad Garden
Shahdara, Delhi - 110 032.
8. Rajinder Singh
S/O. Late Shri Girdhari Lal
R/O. 305, Income Tax Colony
Delhi - 110 034.
9. Harisharan
S/O. Shri Nathu Singh
R/O. 68, Ambedkar Basti
Ghonda, Delhi - 110 053.

10. Mewa Ram
S/O. Shri Jiwan Lal
R/O. House No.10578, Manak Pura
Karol Bagh, New Delhi - 110 005.

11. Gianender
S/O. Shri Bhajan Singh
R/O. WZ-527, Tihar
Tilak Nagar, New Delhi - 110 018.

12. Sunil Kumar
S/O. Shri Ram Pal
R/O. K-32, Gandhi Ashram
Narela, Delhi - 110 040.

13. Raj Kumar
S/O. Shri Nathu Ram
B-709, Mangole Puri
New Delhi - 110 83.

14. Bhim Singh
S/O. Suba Singh
R/O. A-2/102, LIG Flats
Paschim Vihar
New Delhi - 110 067

15. Gun Raaj
S/O. Late Shri Ram Lal,
R/O. 331, Income Tax Colony,
Uttari Pitampura,
Delhi - 110 034.

(By Sh. K.S. Chauhan along with Sh. Salal and Chowd Hasan, Advocates
Versus

1. Union of India
through its Secretary
Department of Revenue
Ministry of Finance
North Block, New Delhi - 110 001.
2. Central Board of Direct Taxes
through its Chairman
Ministry of Finance
North Block, New Delhi - 110 001.
3. Chief Commissioner of Income-Tax (Admn.)
C.R. Building
I.P. Estate, New Delhi - 110 002.

... RESPONDENTS.

(By Sh. V.P. Upal, Advocate) -----3/-

O R D E R

✓ By Hon'ble Shri Govindan S. Tampi, Member (A)

Fifteen applicants in this OA, belonging to Reserved Category communities, challenge the orders of promotion to the cadre of Income ^{Tax} Inspectors, ordered by the respondents, which according to them, are illegal and against the principles of reservation. (21)

2. Heard Dr. K.S. Chauhan alongwith S/Sh Dalal and Chand Kiran for the applicants and Sh. V.P. Uppal for the respondents.

3. The applicants who are Assistants, Stenographers and Tax Assistants, eligible for being considered for promotion as Inspectors of Income Tax, allege that on the pretext of post based reservation, they were being denied promotion. Respondents have violated the directions of the Hon'ble Supreme Court's directions in the cases of R K Sabharwal Vs State of Punjab [1995(2) SCC 745] and Indira Sawhney Vs UOI[1992 Supp (3) SCC 217] by considering for reservation quota even those SC/ST candidates who have been appointed/promoted on general merit, without any relaxation. All the applicants, belonging to the feeder cadres, have been placed in the list of Officers who have qualified the Inspectors Examination, circulated vide F No. P-315/2/Inspector/2000-01/7198 dated 28.11.2000. All of them also fulfil and satisfy the conditions laid down in the Recruitment Rules, 1986. According to the Rules, all who qualify are arranged in two lists - in the order of seniority and on the basis of the date/year of the examination in the order of seniority. After approval of the two lists promotion

would be made alternatively. It is alleged that the rosters for promotions have not been prepared properly.

Hence the O.A. Grounds raised in the OA are that :

- i) the respondents have failed to appreciate that all the applicants have fulfilled the necessary requisites for being promoted as Inspectors.
- ii) a reserved category candidate appointed to a general post, on merit cannot be included for computation of reserved posts.
- iii) vacancies arising by the retirement of a SC/ST candidate can be filled up only by another candidate of the same category.
- iv) only those candidates appointed/promoted on the basis of relaxed standards and with less merit be counted against reserved post (14 persons are mentioned as having qualified on general merit but shown against reserved posts),
- v) in addition, one death, one retirement and five promotions have taken place, leaving seven more posts to be filled by promotion only by SC/ST categories on post based reservation,
- vi) a number of others from SC/ST category (19) also have been promoted against the general category and therefore, equal number would have to be treated as SC/ST category for being filled separately and
- vii) there has been wrong dereservation in respect of nine vacancies instead of exchange between SC/ST Candidates, by manipulation.
Respondents have not taken any action on the representation of the applicants indicating that 40 more promotion be granted to SC/ST which had led them to come to the Tribunal.

4. During the oral submission Dr. Chauhan , learned counsel for the applicant has forcefully reiterated the pleas in the OA and averred that the respondents have attempted to deny the applicants their due promotion by manipulation of documents and incorrect application of principles of reservation inspite of judicial pronouncements and therefore called for immediate intervention by the Tribunal. He specifically referred to the 40 posts (14+7+19) mentioned above , which he felt had been wrongly denied to them.

5. In their reply respondents strongly deny that 40 vacancies in the grade of Inspector of Income Tax to be filled up from SC/ST candidates existed, as alleged by the applicants. According to them principles laid down by the Hon'ble Supreme Court in the cases of R.K. Sabharwal Vs State of Punjab and Indira Sawhney Vs Union of India (supra) have been strictly adhered to and the vacancy position had been correctly worked out by them in terms of DoPT's O M No. 36012/2/96. Estt. (RES) dated 2.7.97 enumerating the scheme for implementation of post based Roster. Following the decision in Sabharwal's case, Vacancy position ^{has been} worked out of the total cadre strength and the number of persons of various categories occupying the posts, taking into account mutual exchange ^{of} vacancies between SC and ST candidates, made in accordance with Home Ministry's O.M. dated 24.9.62, which held the field even at present. The posts thus exchanged had to be subsequently adjusted. Therefore only 2 SC posts and 3 ST posts ^{remained} ~~left~~ to be filled up. However, only 2 ST candidates were available in the entire feeder cadre, but as it was the first year of carry forward and the lone vacant post of ST was kept unfilled. Respondents have fully adhered to the instructions on the subject and while initiating the operation of the new roster the existing appointments were adjusted. This was the ^{only} ~~the~~ correct and proper measure to have been adopted. The allegation made by the applicants in para 5.6 of the OA that 14 SC/ST candidates who have qualified for Inspector Examination have done so on merit and are to be treated as general standards was patently wrong as all of them had qualified, as per the relaxed standard available to the

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reserved candidates. ¹⁶ the 18 persons of SC/ST category, shown in para 5.8 as having been promoted against the general category were in fact promoted only against their respective reserved slots and not on the basis of general merit. All of them have been promoted on the basis of relaxed standards and they had to be counted only in the reserved category . Besides, the applicants contention about the existence of nine vacancies for exchange between SC & ST candidates was also wrong. In fact only 2 SC and 3 ST vacancies were present, though only two ST candidates were available and this being the first year, there was no requirement of any exchange. All the arguments by the applicants are incorrect and deserved to be rejected according to the respondents.

6. The above averments were reiterated by Shri V.P. Uppal , counsel for the applicant . He also showed that the points raised in para 5.6 of the OA with specific reference to 14 candidates were wrong. An affidavit was filed by him to prove the points raised by the respondents.

7. We have carefully considered the matter. The point for determination is whether the respondents correctly followed the principles of Reservation as enunciated by the Hon'ble Supreme Court in the cases of R.K. Sabharwal and Indira Sawhney. While the applicants aver that the respondents have failed to abide by the said principles, the latter assert that they had acted fully in tune with the above directions.

Respondents have also stated that 40 vacancies (14 +7 +19) meant for SC/ST had not gone to general category candidates as alleged by the applicant. The Hon'ble Apex Court had

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held in Sabharwal's case (supra) that while the vacancies meant for candidates from reserved category can be filled up by those from the said category, reserve category candidates can compete for the non-reserve posts and" in the event of their appointment to the said posts, their number cannot be added and taken into consideration for working out the percentage of reservation." In other words SC/ST category candidates who have made the grade on general standard and merit , will be shown only as general candidates and will not be included in the reserved category. It is to be seen whether the respondents have kept in mind, the above principles while ordering promotion. The applicants would have a case only if the respondents have given a go bye to the above. Out of the 40 posts referred to by the applicants, 14 concern those recruited directly as Inspectors of Income Tax , who according to the applicants have been selected by SSC on general merit and therefore are to be included in general category and not SC/ST category. These 14 posts would have to come to them extra, in the SC/ST pool . However, relative position of all the fourteen persons in the seniority list prepared keeping in view their respective dates of appointment as well as the year of their examination, makes it clear that they had been recruited only as candidates from the reserved category and not appointed on the basis of general merits. They have therefore been correctly shown against the SC posts and the applicants asking for the further additional posts in *lieu* *hereof* *therein* is clearly untenable. Even otherwise , the applicants who are from the promotee group have no right whatsoever, for being appointed against posts *for* *hand* *direct* recruitment.

8. In para 5.7 of the OA reference is made to 7 vacancies in the cadre of Inspector, vacated by SC candidates - one by death, one by retirement and five by promotion - which should have gone only to the candidates from the same category. Respondents have clearly established that before drawing up the new post based reservation roster they had to adjust the positions in the old vacancy based roster so that the excess and shortage are set against one another. This exercise was necessary to ensure that the earlier reservation points had been correctly filled up. With the result, certain posts which had been filled up in excess of the reservation quota, had gone to the general candidates. This was the correct step to have been taken.

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9. With regard to 19 candidates from the SC/ST Category who have been promoted also the applicants have stated that they have been promoted on the basis of the general merit and therefore they should be counted only in the general category and not in the reserve category, and therefore, those posts also have to be reserved for them additionally. It is found on perusal of the documents that this averment has no basis and that all those individuals have been promoted only under the Reserved Category and not on the basis of general merit. Averments to the contrary are to be repelled. It is thus evident that the 40 vacancies/posts (17+4+19), in respect of which the applicants have laid their claims, are not available to them in addition to what has been given to them and the arguments raised by the applicants do not have any legs to stand on. While we fully appreciate and endorse the propositions canvassed by the

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applicants that the principles laid down by the Hon'ble Supreme Court in the cases of R K Sabharwal and Indira Sawhney (supra) are meant to preserve constitutional safeguard of reservation for the SC/ST candidates, We find that the applicants have not succeeded in this OA in proving that respondents had included in the SC/ST category those who were directly recruited or promoted on the basis of general standard and those should have gone to general category resulting in that many additional posts should go to them. It is clear that the respondents had worked out the vacancies in the earlier vacancy based roster for reservation and have thereafter drawn up the new post based reservation roster prepared, in tune with the pronouncement of the Hon'ble Supreme Court . That being the case, their action cannot at all be assailed.

10. In the above view of the matter , the applicants can not seek any relief against the orders issued by the respondents which are correct both on facts and in law. We are convinced that the applicants have not at all made out any case for our interference. The O.A. fails and is accordingly dismissed. No costs.

(Govindan S. Tampi)
Member (A)

Patwal

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Vice Chairman (J)