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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3022/2001

New Delhi this the 18th day of December, 2002.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Shri P.K. Singh,
S/o Shri N.M. Saroj,
R/o H.No.D-5, Radio Colony,
Phase-III Mall Road,
Almora, Uttaranchal

-Applicant

(By Advocate Shri M.P. Raju)

-Versus-

1. Union of India,
through Secretary,
Ministry of I&B,
Shastri Bhawan,
New Delhi.

2. Director General,
All India Radio,
Akashvani Bhawan,
Parliament Street,
New Delhi.

-Respondents

(By Advocate Shri A.K. Bhardwaj)

O R D E R

By Mr. Shunker Raju, Member (J):

Applicant impugns respondents' order dated 9.7.99 and assails seniority position assigned to him in the select panel for the year 1990-91 for promotion from junior time scale of IB (E) to senior scale. He has sought direction to quash the impugned orders dated 9.7.99 and 9.11.2000, whereby he has not been considered for promotion in the review select panel for 1988-89. He has further sought direction to implement the judgment of the Tribunal dated 19.11.98 in OA-2207/1997. He has lastly sought consequential benefits.

2. Applicant joined as direct recruit ASE, through UPSC on 31.5.89 and was accorded seniority at serial No.830 in JTS cadre. Junior to applicant one Sh.

T. Sanappa who stood at serial No.864 in the seniority list of STS cadre was promoted whereas applicant was not considered.

3. Applicant represented to respondents seeking benefit of decision in Rakesh Kumar's case dated 18.11.96 and as the grievance of applicant was not redressed he filed OA-2207/97 which was disposed of on 19.11.98, directing the respondents to consider the case of applicant by holding a review DPC for promotion to the higher post of Senior Time Scale.

4. Purportedly, in compliance of the directions of this Court and in supersession of various orders issued from time to time for promotion to the grade of STS pertaining to vacancies from 1988-97 respondents promoted 388 JT officers on 9.7.99. Applicant though senior was placed at serial No.67 against the vacancies for the year 1990-91.

5. Learned counsel for applicant Sh. M.P. Raju states that earlier the directions have been issued to consider in review the promotion of applicant to STS and while doing so junior of applicant Sh. T. Sanappa was placed above him, which smacks of arbitrariness and is violative of Articles 14 and 16 of the Constitution of India. Moreover, it is stated that from the perusal of eligibility list it transpires that despite availability of more vacancies of SC/ST officer applicant could have been considered for promotion in the panel for 1988-89 as well as 1989-90 as there were vacancies of 15 posts since backlog vacancies have yet to be filled up whereas only one

person has been considered, the remaining 23 posts have not been filled up. It is further stated by placing reliance on a decision of Apex Court in U.P. Rajya Vidyut Parishad SC/ST Karamchari Kalyan Sangh v. U.P. State Electricity Board & others, CA No. 4026/88 decided on 23.11.1994 and C.D. Bhatia & Others v. Union of India & Others SLP No. 14568-69/95 decided on 20.10.95 that there has to be a separate zone of consideration for SC/ST candidates and clubbing the SC with general officers in the same zone of consideration, which has been done in the instant case would defeat the very purpose of reservation. As the respondents have violated the guidelines laid down for SC/ST in the matter of promotion and reservation, the action is contrary to law and is liable to be set aside.

6. On the other hand, respondents have taken a preliminary objection as to the jurisdiction of this court by placing reliance on a decision of the Single Bench at Allahabad Bench of the Tribunal in OA-1192/96 by contending that the Prasar Bharti is no more under the jurisdiction of this court in absence of any notification under Section 14 (1) of the Administrative Tribunals Act, 1985 and a person appointed to Prasar Bharti would not be treated as holder of a civil post or service.

7. However, on merits respondents have given the factual position, as directed by the Court regarding the vacancies and the reserved quota and further stated that for the years 1987-88 and 1989 proposals have been sent for de-reservation due to non-availability of eligible SC/ST

candidates in feeder grade. As in the year 1988-89 no SC/ST candidate was available except one ST candidate whose name was placed under sealed cover.

8. Moreover, Sh. Bhardwaj states that case of T. Sanappa cannot be equated as he belongs to ST category whereas applicant belongs to SC cannot claim promotion with reference to T. Sanappa.

9. Moreover, it is stated that in a review DPC which is in continuance of the original DPC the case is required to be considered with reference to only technical or factual mistake which had taken place earlier but neither the grading of an officer would be changed nor the zone of consideration nor any increase in the number of vacancies which might have been occurred subsequently could be considered. Review DPC has taken into consideration vacancies/panels for the respective years from 1988 to 1997.

10. We have carefully considered the rival contentions of the parties and perused the material on record. In so far as the jurisdiction aspect is concerned, the officers who are on deemed deputation to Prasar Bharti are still holding their lien with the Government. Moreover, the cause of action had arisen on account of directions of this court and conditions of service of applicant are still governed by the Government. As such, as far as jurisdiction is concerned, the objection of the respondents is not well founded and is accordingly rejected.

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11. The procedure to be adopted by the review DPC has been laid down under para 18.1 of DOP&T OM issued and amended on 27.3.97, which reads as follows:

"When Review DPCs may be held

18.1 The proceedings of any DPC may be reviewed only if the DPC has not taken all material facts into consideration or if material facts have not been brought to the notice of the DPC or if there have been grave errors in the procedure followed by the DPC. Thus, it may be necessary to convene Review DPC to rectify certain unintentional mistakes, e.g., --

- (a) where eligible persons were omitted to be considered; or
- (b) where ineligible persons were considered by mistake; or
- (c) where seniority of a person is revised with retrospective effect resulting in a variance of the seniority list placed before the DPC; or
- (d) where some procedural irregularity was committed by a DPC; or
- (e) where adverse remarks in the CRs were toned down or expunged after the DPC had considered the case of the officer.

These instances are not exhaustive but only illustrative.

Review DPC only if the change in the number of vacancies will result in exclusion of any person(s) empanelled by the original DPC.--The Union Public Service Commission has expressed a doubt as to whether it is necessary to hold review DPC in cases where excess number of vacancies were reported to DPC which resulted in an inflated zone of consideration leading to consideration/empanelment of employees who would not have been covered by the zone of consideration, if the vacancies had been reported accurately. The basis of doubt is that, the situation has not been specifically enumerated in Para 6.4.2 or Para 18.1. of the O.M. dated 10-4-1989.

3. In this connection, it is clarified that the situations enumerated in the aforesaid Paras (6.4.2 and 18.1) are only illustrative and not exhaustive. As already mentioned in para 18.1. of the



said OM, the primary objective of holding a review DPC is to rectify any mistake that took place at the time of holding of the original DPC. Over-reporting of vacancies is also one of the mistakes which needs to be rectified by holding a review DPC. Therefore, the provision made in para 18.1 was/is required to be read to cover this situation also. However, it is directed that in the case of over-reporting of vacancies, a review DPC may be held only if the change in the number of vacancies would result in exclusion of any person(s) empanelled by the original DPC, on account of over-reporting of vacancies which led to inflated zone of consideration. As such, no review DPC need be convened where it may prove to be an infructuous exercise."

12. If one has regard to the aforesaid provisions a review DPC is to be held, if eligible persons were omitted to be considered or some procedural irregularities have been committed. The review DPC should not be held if there has been a change in the number of vacancies resulting in exclusion of any person empanelled by the original DPC on account of over-reporting of vacancies. Moreover, the original zone of consideration would not affect by subsequent increase in the vacancies. We also find that in the earlier order passed by the Tribunal directions were issued to review the case of applicant for promotion to STS nowhere he has been asked to be accorded seniority above his junior T. Sanappa with whom no parity can be claimed as T. Sanappa is a ST candidate having his own lien on promotion and reservation. It is settled principle of law that unequals cannot be equally.

13. Nothing has been brought on record to show that any junior SC candidate has superseded applicant in seniority. Moreover, resort to the decision of the Apex Court whereby zone of consideration is to be maintained

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separately for ST/ST and is not to be clubbed with general candidates. We do not find such an action taken by the respondents earlier in the original DPC. There were no factual errors or technical mistake which has occurred in the original DPC. As such change in the zone of consideration and increase in the vacancies which has arisen later on than the original DPC review DPC cannot consider the same. Applicant has been rightly accorded seniority on review DPC and his grievance raised in the present OA is not well founded.

14. In the result and for the foregoing reasons we do not find any merit in the present OA, which is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

"San."

V.K. Majotra

(V.K. Majotra)
Member (A)