

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1908/99

New Delhi, this the 21st day of March, 2001

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri Ganesh Ram
S/o Shri Mukh Lal Ram
aged about 37 yrs working as Packer
under ordnance Depot Shakurbasti, Delhi
& R/o RZ F-151 Nihal Vihar, Nangloi,
NEW DELHI.

...Applicant.

(By Advocate : Shri T.D.Yadav)

V E R S U S

1. Union of India : Through
Secretary,
Ministry of Defence,
Govt. of India, New Delhi.
2. The Director General of Ordnance
Services (DS-8C) Master General of
the Ordnance Branch Army Headquarters
D.H.Q. P.O.
New Delhi - 110001.
3. The Commandant
Ordnance Depot
Shakurbasti
Delhi.
4. The Admn Officer
Ordnance Depot
Shakurbasti
Delhi.
5. The Personal Officer (Civil)
Ordnance Depot
Shakurbasti,
Delhi.
6. Shri Bijendra Singh, T.No.-340
Packer (Special) (To be served through R-4)
Ordnance Depot,
Shakurbasti,
Delhi.

...Respondents

(By Advocate : Shri K.R.Sachdeva)

O R D E R (ORAL)

Shri Govindan S. Tampi, Administrative Member

The applicant in this case seeks directions to
promote him to the post of Packer (Special) w.e.f.
27-11-98 when Shri S.K.Verma, his batch mate on the

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select list of trade test was so promoted.

2. Heard learned counsel for the applicant and the respondents.

3. The applicant has been working as Packer (ordinary) in the Ordnance Depot, Shakur Basti since 26-9-88. The applicant belongs to the Scheduled Caste category. By their letter dated 23-4-88, respondents invited applicants from the eligible departmental candidates for trade test for promotion to the three posts (Two for General and one for Scheduled Caste) of Packer (Special). Applicant applied for the same and was placed at Sl.No.2 among the list of six candidates, declared successful in the test, while the respondent No.6, who belonged to the general category and was also his junior was placed at Sl.No.3 in the list. Respondent No.6 was at Sl.No.9 in the seniority list in the feeder cadre while the applicant was at Sl.No.6. Still the promotion as Packer (Special) was given to respondent No.6, causing him prejudice as well as loss of promotion, increased avenues for advancement, which was by his as of right.

4. Reiterating the above pleadings, Shri. T.D.Yadav, learned counsel for the applicant, argues that he has been denied what he should have ~~been~~ got as a right not only on account of his having been SC candidate, but also on account of his being senior in the feeder cadre and also placed higher in the list of successful candidates vis-a-vis the respondent No.6, a general category candidate, who was given the appointment. Still he was denied the appointment on the alleged ground of abolition of one post due to the

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policy decision to cut 10 % posts. According to the counsel even if the 10 % cut in posts was implemented, it should not have gone against the applicant, as he was No.2 in the list of successful candidates and there were two posts even ^{with} abolition of one out of three posts. The application should, therefore, succeed, pleads the counsel.

5. Shri K.R.Sachdeva, learned counsel for the respondents, states that the trade test conducted on 25-26th August, 1998 ~~and~~ originally keeping in mind the strength of the organisation at 2031, but as it was reduced to 1803 on the basis of 10 % cut, ~~whereby~~ the strength of Packers also came down from 15 to 14 and, therefore, as against 3 posts for which tests were ~~to be~~ done only 2 could be considered for being filled up. This was in accordance with Army Headquarter's instructions dated 12-9-98, whereunder it was also indicated that as no vacancy for S.C.candidate existed, no S.C. candidate be trade tested ; even if any person~~s~~ from that category appeared in the list. Still the applicant was tested and he was declared successful, but as there was no vacancy for SC candidate, DPC did not approve his promotion. This was the correct procedure adopted by the Department, according to the counsel. During the hearing Shri Sachdeva also placed before us for perusal, proceedings No. 1053/R/Misc/252/08/Estt-Ind dated 12-3-99, which he feels supports his case. The same is below :-

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1. Reference Army HQ letter No. B/13006/OS-8C(ii) dated 3-3-99.

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2. In this connection it is submitted that during the course of trade test in 1998, there were two general vacancies to be filled up. As per DOPT letter No.36012/2/96/Estt(Res) dated 2-7-97, posts are to be filled by appointment of persons from respective category so that the prescribed percentage of reservation is maintained. Therefore, the available general candidates have been promoted.

3. Further, it is submitted that name of Packer Shri Ganesh Ram was erroneously included in the list of candidates for trade test in general category during 1998 and subsequently declared successful inadvertently. Now, the error is being rectified and his name is being excluded from the list of successful candidates.

4. In view of the above, it is requested that the case of the individual may please be treated as invalid.

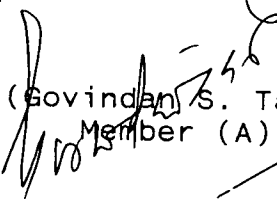
6. Shri Sachdeva further avers that the vacancies abolished have been restored w.e.f. 29-1-99, therefore, the applicant's case would be considered, as and when a vacancy arises in SC category. The applicant should, therefore, have no grievance is what the respondents state. Further, the applicant is seeking relief against Shiv Kumar Sharma, who was his senior. It may not be proper for granting any relief to the applicant vis-a-vis anyone who has been adjusted, as the ^{said relief} ~~same~~ has not been sought by the applicant specifically and the concerned persons have not been put on notice and the Tribunal should not undertake it, pleads the counsel for the respondents.


7. We have carefully deliberated on the rival contentions and also perused the records placed before us. It is not disputed that the applicant was one of the persons who qualified himself in the trade test conducted on 25/26-8-1998 for promotion to the post of Packers (Special), when it was indicated that there were 3 posts to be filled up, two for general category and one for SC category, and was placed at Sl.No.2 on

the merit list. However, he was not appointed on the ground that following the adoption of policy of 10 % cut in the posts, one of the posts was abolished and the axe fell on the post which was kept for SC category. We have attempted in vain to come across any statutory provision or rule or instruction which would permit a dispensation wherein a person belonging to SC category would be denied his due inspite of his being senior in the feeder cadre and his having passed the requisite trade test and placed in the merit list at Sl.No.2, when there were two clear vacancies; holding that the post fell in the general category and was not reserved for SC category. Interestingly, the respondents have sought to reply upon the instructions contained in DOPT's OM No.36012/2/96/Estt (Res) dated 2-7-97, issued following the decision of the Hon'ble Supreme Court in the case of R.K.Sabharwal Vs.State of Punjab. The Hon'ble Apex Court held that^o hereafter reservation should apply to posts and not vacancies and that vacancy based roster can operate only till such time as the representation of persons belonging to the reserved category in a cadre reaches the prescribed percentage of reservation. Thereafter, the roster cannot operate and the vacancies released by retirement, resignation, promotion etc. of persons belonging to general and reserved categories are to be filled by appointment of persons from the respective category so that the prescribed percentage of reservation is maintained "The O.M. goes on to state that the Court had held^o that the persons belonging to reserved categories, who are appointed on the basis of merit and not on account of reservation are not to be counted towards quota for reservation". The above if

at all comes to the help of the applicant and not the respondents. Nothing has been brought on record to show that the reservation percentage has been achieved or that the roster has ceased to operate. Still the applicant, in spite of his higher position in seniority and in the merit list has been denied the promotion, holding that no vacancy for the reserved/SC category candidate is available. ^{His} ~~Here~~ being meritorious and senior has cost the applicant, a SC candidate his due. What the respondents have done is affirmative action in the reverse ^{direction}, and reservation against the Scheduled Caste category candidate, which has neither ^{any} constitutional protection or legislative sanction. And the same should not have been done. Therefore, while the applicant cannot have a case against Shiv Kumar Verma, who is his natural senior, his plea against respondent No.6, who was junior to him and also below him in the merit list merits acceptance. However, if anyone else has been adjusted in the vacancy and promoted earlier, it would not be proper to order their reversion, without putting them on notice. In the circumstances, fully endorsing the just cause of the applicant for promotion as Packer (Special) on the basis of the trade test conducted on 25-26/8/1998, in the second vacancy, we direct the respondents to review the whole exercise and consider the applicant's promotion in accordance with law and after putting on notice, necessary parties if any.

8. The application is disposed of with above directions. No costs.


 (Govindan S. Tampi)
 Member (A)


 (Ashok Agarwal)
 Chairman