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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.439 of 1999

Dated this 20th day of December, 1999

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VC(J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

Mohan Singh
S/o Shri Raghbir Singh
R/o L-153/A Lajpat Nagar
Ghaziabad.
(U.P.)

... Applicant

(By Advocate: Shri Y.P. Anand)

Versus

1. Secretary to the Govt. of India
Ministry of Home Affairs
Deptt. of Official Language
Lok Nayak Bhavan, IInd Floor
Khan Market
New Delhi-110003.

2. The Director
Department of Personnel & Training
North Block-110001.

3. Secretary
Union Public Service Commission
Shahjahan Road
New Delhi-110011.

... Respondents

(By Advocate: Shri A.K. Bhardwaj)

O R D E R

Mrs. Shanta Shastri, M(A):

The applicant is seeking relief against the impugned order dated 8.9.1998 with a direction to be issued for his regularisation against the permanent vacancy of Deputy director (OL) with effect from 26.6.1998.

2. The applicant joined the Central Secretariat Official Language Service as an Assistant Director(OL) in the year 1991. He was promoted as Deputy Director on ad hoc basis on 17.9.1997. The

applicant belongs to Scheduled Caste category. A consolidated proposal for appointment of Deputy Director (OL) on regular basis was sent to the UPSC by the department of Official Language in 1998. The name of the applicant was not forwarded for consideration in this proposal. As such, his name did not appear in the list of candidates who were promoted to the grade of Deputy Director(OL) vide order dated 8.9.1998.

3. The learned counsel for the applicant submits that great injustice had been done to the applicant by not even considering him for regular appointment to the post of Deputy Director when he was fulfilling all the requisite qualifications. The respondents excluded his name and did not even refer it to the UPSC for consideration by the DPC held on 26.6.1998. He was thus deprived of his legitimate right for inclusion of his name. The learned counsel for the applicant further contends that there are 50 posts of Deputy Director. DoP&T have issued circulars dated 2.7.1997 and 13.8.1997 laying down the guide-lines and principles for operating post-based rosters for implementation of the Government policies relating to the reservation of jobs for the SC/STs and other backward classes. According to these guidelines, there should have been at least 12 posts reserved for the SCs. The applicant being 11th person among the SC/STs as on 1.4.1997, he should have been considered for

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promotion to the post of Deputy Director against the quota of 12 for SCs. The applicant further feels pained that even though he was given ad hoc promotion on 17.9.1997 he was placed against a deputationist's post. He apprehends that he might be reverted the moment any deputationist reverts to the Headquarters. This will affect his seniority. Also two other officers who were promoted on ad hoc basis later to him have been placed against the permanent vacant posts.

4. The learned counsel for the applicant further points out that relaxation was given to some officers in the past inspite of falling short of qualifying service. Such relaxation in some cases has been given upto two years whereas in the case of the applicant, no such relaxation in qualifying service was allowed so that his name could have been forwarded to the UPSC. The applicant is critical of the respondents that they failed to appreciate the various provisions of Articles 14 & 16(4A) of the Constitution. The learned counsel for the applicant relies on the following judgments of the Hon'ble Supreme Court besides some others:-

(i) Indira Sawhney Vs UOI 1992 Sup(3)SCC 217 (9JJ)

(ii) R.K. Sabharwal & Ors Vs State of Punjab & Ors. 1995(2) SCC745

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(iii) Union of India & Ors Vs M/s J.C. Malik &
Ors. 1996 (SLJ) (1) Sc 115

(iv) Jagdish Lal Ors Vs State of Haryana & Ors AIR
1997 SC 2366.

Relying on these judgments the applicant claims that he is entitled to be regularised against the permanent vacant post of Deputy Director..

5. The learned counsel for the respondents explains that the applicant's name was not forwarded to the UPSC for consideration of the UPSC because he had not completed eight years of regular service as on 1.10.1998 in the grade of Assistant Director (OL) as required under the recruitment rules.

6. There are a total of 50 posts of Deputy Directors. There were 18 vacancies. For filling up 18 vacancies, the zone of consideration is of 40 candidates. The applicant's name being at sl.no.45 in the seniority list, there was no question of considering him. Actually a list of 28 persons was sent to the UPSC because others did not fulfil the condition of qualifying service. While admitting that in the past a relaxation was granted in qualifying service to some officers, the learned counsel for the respondents states that a conscious decision was taken not to forward the cases of candidates who did not have the requisite qualifying

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service. The respondents had ascertained the position of reservation on the basis of the O.M. dated 2.7.1997 of the DOP&T which prescribes the post-based roster and according to the roster for 50 posts, 7 points are reserved for SC and 3 for STs (the roster for promotion is at Annexure-3 p.63 of the OA). At the time the proposal was sent to the UPSC there were already 6 SC officers in position as Deputy Directors and 1 ST officer on regular basis. Therefore, of the 18 vacancies reported to the UPSC only one post could be reserved for SC candidates and 2 for ST candidates to complete the reservation quota. One SC candidate who fulfilled all the eligibility criteria and who is also senior to the applicant was already available in the zone of consideration of 28 candidates whose names were forwarded to the UPSC. This officer was, therefore, adjusted against the slot reserved for SC candidate. Since no ST was available another another SC candidate who was also available in the zone of consideration and who fulfilled the condition, was taken against the ST slot. This being the position, there was no need to extend the zone of consideration because the requisite number of SC candidates were available within the normal zone of consideration. Even if relaxation were to be granted to the applicant, he could not have been considered as only one slot was available for the SCs and a senior officer was already available. Therefore, the applicant's grievance is not tenable.

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applicant and did promote him on ad hoc basis when such an opportunity was available. It is not that the respondents did not consider any SC officer for regular promotion. SC officers senior to the applicant fulfilling all the conditions of eligibility who were already available in the zone of consideration were considered and also promoted. The respondents have not denied that reservation is available for the SC/ST as has been granted under the judgment in Indira Sawhney's case(supra). There is no question of ~~that~~ the applicant's seniority being wiped out after promotion of general candidates. The respondents have not acted contrary to any of the judgments cited by the applicant. They have followed the instructions of the Government issued from time to time in the light of the various judgments pronounced by the Hon'ble Supreme Court in regard to reservation for backward classes. No bias can be attributed to the respondents in the present case in not considering the applicant for promotion. The question of relaxation in qualifying service would have arisen if there had been no other SC candidate or had there been more vacancies reserved for SCs.

9. We have perused the Register maintained on roster points for promotions of SC/St. We are satisfied that 6 SC candidates were in position as Deputy Directors as on the date on which the proposal was sent to the UPSC. In a roster of 50

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points, there can be only 7 points for the SCs. The respondents have accordingly provided for 7 SC slots. In the light of this factual position, it cannot be said that the respondents have acted contrary to the spirit envisaged in the various judgments of the Hon'ble Supreme Court. Since the applicant's turn had not come, there is really no cause of action.

10. The apprehension of the applicant that he would be reverted again is not maintainable because ad hoc appointments do not vest of any right in the incumbents for promotion or regular appointments by the very nature of such appointments. They are purely temporary and cannot be continued forever.

11. In the facts and circumstances of the case, we do not find any merit in the OA. It is dismissed accordingly. We do not order any costs.

Shanta J.
(Mrs Shanta Shastry)
Member(A)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice Chairman(J)

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