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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 730/98

New Delhi, this the 17th day of May, 1999

HON'BLE SHRI S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE SHRI T.N. BHAT, MEMBER (J)

In the matter of:

R.S. Nagar
S/o Sh. Sarvan Nagar
R/o A-105, Dakshinpuri,
New Delhi-110062.
(By Advocate: Mrs. P.K. Gupta alongwith
Sh. Harvir Singh) Applicant

Vs.

1. Union of India
Cabinet Secretariat,
North Block,
Govt. of India,
through its Cabinet Secretary.
2. Director
Office of the Director of Accounts,
(Cabinet Secretariat)
East Block No.IX, Level-7,
R.K.Puram, New Delhi.
3. Shri P.K.Bhatnagar
Section Officer (Accounts),
Office of Director of Accounts,
East Block No.IX, Level-7,
R.K.Puram, New Delhi.
4. Shri Dushyant Jain,
Section Officer (Accounts),
Office of Director of Accounts,
East Block No.IX, Level-7,
R.K.Puram, New Delhi.
(By Advocate: Sh. Madhav Panikar) Respondents

JUDGMENT

By Hon'ble Shri T.N.Bhat, Member (J)

The applicant who is working as Senior Auditor in the office of Resp. No.2 herein is aggrieved by his non-promotion to the post of Section Officer and the rejection of his representations seeking promotion to that post. The orders impugned are those passed by the respondents on 28.11.97 and 21.1.98, as at Annexures A-1 and A-2, respectively.

W.W. / 17.5.99

(a)

2. The contention of the applicant is that having qualified in the departmental examination which is the requisite qualification for promotion to the post of S.O. the applicant was considered by a DPC held in 1993 for filling up two anticipated vacancies and on the recommendation of the DPC a select panel containing the names of 6 candidates, including the applicant, was drawn, out of whom 2 belonged from SC category, the applicant being one of them. At that time according to the applicant the respondents had 3 vacancies against the reserved roster point 14 (SC) 3rd Carry forward, reserved roster point 17 (ST) 2nd Carry forward and roster point 22 (SC) which was a fresh point. However, the respondents promoted two General category candidates, namely, Sh. P.K. Bhatnagar and Sh. Dushyant Jain. One Sh. Bhagwan Dass who also belongs to the SC category and whose name also figured in the select panel was not promoted and similarly the applicant was also not granted promotion.

3. Subsequently, in the year 1995 four more vacancies arose but, again, the applicant was denied promotion. Later, the aforesaid Bhagwan Dass filed OA No.1028/97 in this Tribunal which was allowed by the order of which a copy, as at Annexure A-5, is annexed to the OA. The Tribunal gave a direction that the life of the panel may be extended in accordance with the rules but should be confined to the number of vacancies for which the DPC was held and the subsequent vacancies shall be considered by a fresh DPC and only those persons who are empanelled afresh shall be considered.

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4. One Sh. K.L.Meena, who belongs to the ST category and had qualified in the examination held in December 1994 and who was eligible for consideration against the roster point 17 2nd Carry forward (ST) and who had been denied promotion, also filed an OA, being OA No. 369/97. That OA was also allowed by the Tribunal. The respondents issued two promotion orders one promoting Sh. Bhagwan Dass w.e.f. 1.3.94 (A-7) and another promoting Sh. K.L.Meena w.e.f. 1.4.95 (A-7). However the applicant's claim was again ignored. The applicant accordingly made a representation on 10.11.97 in reply where to the respondents gave the answer a copy of which is annexed at A-1. Another representation was made by the applicant through the National Commission for SC/ST on 20.12.97. This representation was also replied to and rejected by the respondents by the letter dated 21.1.98 (A-2). According to the applicant the respondents admitted in the impugned letters that in 1994 there were two vacancies for which the DPC was held and that the respondents were required to apply the rule of 50% reservation in one year. But even so the respondents did not promote any person belonging to the reserved category. As regards another person, namely, Sh. P.C.Bhattacharya no DPC was held and even so the said Sh. P.C.Bhattacharya was promoted though the vacancy was actually at the reserved roster point 22 (SC) Cycle II. The applicant claims promotion at least against the aforesaid vacancy.

5. The applicant seeks the following relief:-

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a) In view of the humble submission made in the foregoing paras, the applicant most respectfully prays to this Hon'ble Tribunal to be graciously pleased to set aside and quash the promotions of the private respondents, which is illegal and being initiated as aforesaid;

b) Respondents may be directed to consider the applicant for promotion to the post of S.O.(Accounts) with due seniority from the date on which the vacancy in respondent 1995 arose to the post of S.O., giving him all consequential benefits.

c) The Hon'ble Tribunal may direct the respondents No.2 to place before the Tribunal all relevant records pertaining to the applicant and the case including the roster register.

d) To declare promotion of Respondents No.4 to 6 illegal.

e) To direct the respondents to hold the DPC for the 4 vacancies of 1995 as per Rules.

6. The respondents have in their reply stated that promotion has been granted to Sh. Bhagwan Dass and Sh. K.L.Meena against the reserved points 14 & 17, but, significantly, they have not cared to refer to the 3rd reserved point vacancy of which a specific pleas has been raised by the applicant in the OA which is against roster

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point 22. It is, however, averred that there was no vacancy in 1996 though a vacancy admittedly arose in May 1997 against which one Sh. Chander Prakash was given promotion w.e.f. 6.5.98.

7. The applicant has filed rejoinder to the reply filed by the respondents in which he has reiterated the averments made in the OA. It is further stated that in all 5 vacancies had arisen, one in March 1995, second in April 1995, one in May 1995 and one in 1997, besides the one which arose in 1994 and which was given to Sh. Bhagwan Dass. It has been further reiterated that while holding the DPC for filing the vacancies of 1995 the respondents ought to have considered the name of the applicant against roster point 22 (SC) and that this would not have gone against the principle of restricting promotion to the reserved category candidates to 50%.

8. We have carefully gone through the pleadings of the parties and have heard the learned counsel for the parties at some length. As already mentioned, the respondents are completely silent on the point as to whether roster point 22 against which admittedly a person belonging to the SC community ought to have been promoted was in existence in 1995 or at any rate whether that vacancy is available at present. The applicant has filed a copy of an order passed by this Tribunal in OA No. 369/97 passed on 2.4.97. In this order it has been stated that the respondents had in that case not made it clear whether Sh. Bhagwan Dass was appointed against roster No.22 which was admittedly reserved for SC candidates. A copy of the common judgment of the Tribunal

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dated 2.9.97 in OA-369/97 and 1028/97 is also on the file and we find the respondents in those OAs seem to have raised the plea that the 4 vacancies which arose had been filled up from among the candidates available in the panel prepared in December 1993. The Tribunal held that the life of the panel can be extended only in accordance with the rules but that the same has to be confined to the number of vacancies for which DPC was held and the vacancies which arose subsequently have to be filled up by holding a fresh DPC. It has also been held in the aforesaid judgment that the 3rd Carry forward vacancy of reserved point No. 14 and the second Carry forward vacancy of reserved point No.17 should be given to the applicants in those two OAs, namely, Sh. Bhagwan Dass and K.L.Meena. A direction was given that the name of K.L.Meena should be considered against reserved point No.17.

9. As regards reserve point No. 22 no directions were given by the Tribunal. But as already indicated, it was not specifically contended by the respondents either in that case or in the instant OA that the vacancy against reserved point No.22 (SC) was not available. We are convinced that the applicant is entitled to be considered against such a vacancy from the date the vacancy arose. If that vacancy is still available the applicant will have to be considered against the same and if found fit he will have to be promoted.

10. For the foregoing reasons we hereby allow this OA and direct the respondents to consider the applicant for promotion to the post of SO against the



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reserved point 22 in the roster and if found fit to give promotion to him. This shall be done within a period of 3 months from the date of receipt of a copy of this order.

11. With the above order, the OA is disposed of, leaving the parties to bear their own costs.

Received 17.5.99.
(T.N. BHAT)
Member (J)

Antalgi
(S.R. ADIGE)
Vice Chairman (A)

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