

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

New Delhi: this the 1st day of October, 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. KULDIP SINGH, MEMBER (J)

1) O.A.No.768/98

Smt. Balbir Kaur,
W/o Sh. Paramjit Singh,
R/o Qr.No.1077, Sector-V,
R.K.Puram,
New Delhi

....Applicant.

2) O.A.No.801/98

O.D. Sharma,
S/o Shri Shiv Charan Sharma,
C/o Central Bureau of Investigation,
CGO Complex, Lodhi Road,
New Delhi

....Applicant.

3) O.A.No.860/98

1. Sumer Singh,
S/o Shri Chiranjit Lal,
R/o 47-F, CBI Colony,
Vasant Vihar,
New Delhi.

2. Suresh Chand,
S/o Shri Bhankay Lal,
R/o LIG Flat No.243, Pocket-4,
Sector-2, Rohini,
Delhi

....Applicant.

(By Advocate: Shri Sarvesh Bisaria in all 3 cases).

Versus

1. Union of India,
through
Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2. Director,
Central Bureau of Investigation,
CGO Complex, Block No.3,
Lodhi Road,
New Delhi.

....Respondents.

(By Advocate: Shri V.S.R.Krishna in all 3 cases).

(10)

ORDER

HON'BLE MR.S. R. ADIGE, VICE CHAIRMAN (A).

As these three OAs involve common questions of law and fact, they are being disposed of by this common order.

2. Applicants impugn respondents' orders dated 19.2.98; 27.2.98 and 15.4.98 rejecting their representations and seek a direction to respondents to promote them to the post of Accountant-cum Head Clerk on the basis of 14th Ltd. Departmental Competitive Exam., based on notification dated 10.3.97 w.e.f. 26.11.97 with consequential benefits.

3. Applicants contend that respondents issued notification dated 10.3.97 for holding the 14th LOCE for promotion from UDC to Accountant-Cum Head Clerk. Applicants who were eligible for the same, participated in the said exam., which was conducted on 14th and 15th June, 1997 and whose results were declared on 15.7.97. Applicants assert that the written exam. was held for 9 vacancies, and they secured a position within the first 9, but on the basis of the DPC conducted by respondents on 8.9.97, only 3 persons were promoted on 26.11.97 which is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution.

4. Respondents in their reply state that the result of the 14th LOCE was declared on 15.7.97 but meanwhile, based upon the judgment of the Apex Court D P & T had issued instructions vide OM dated 2.7.97 to revise the Rosters from vacancy based to post based Rosters, and according to the post based reservation Roster, for promotion under Exam. quota, only 3 vacancies existed. Accordingly the department

had to convene a DPC for promotion of only 3 UDCs to the rank of Accountant-cum-Head Clerk, and all three UDCs so promoted had accepted the same.

5. We have heard applicants' counsel Shri Bisaria and respondents' counsel Shri VSR Krishna.

6. Shri Bisaria has contended that the OM dated 2.7.97 could not be operated retrospectively, and as 9 vacancies were to be filled up before the issue of the OM dated 2.7.97 respondents were duty bound to promote 9 persons. Reliance has been placed by him on AIR 1999 SC 1529.

7. While no doubt the written exams. were held prior to 2.7.97 by the time the results of the same were declared, and well before the DPC was held, the OM dated 2.7.97 had come into force, based upon a judgment of the Apex Court. Under the circumstance, respondents cannot be faulted for reassessing the number of vacancies on the basis of the post-based reservation roster and making promotions accordingly. In the particular facts and circumstances of these cases, AIR 1999 SC 1529 does not advance the claim of applicants.

8. However, there is one aspect of the matter to which we would advert. From the minutes of the DPC meeting held on 8.9.97 to consider these promotions, we note that the DPC was informed that there were 5 posts of Accountant-cum-Head Clerk lying vacant under exam. quota of which 3 were reserved for ST

2

and 2 were of general category. As reservation could not exceed 50%, respondents proceeded to fill up 3 posts of Accountant-cum-Head Clerks through general category candidates, but kept the 2 vacancies reserved for ST candidates vacant on the ground that no qualified candidate in ST category was available.

9. In our view before filling up one of the three posts reserved for ST candidates by a general category candidate, on the ground that reservation should not exceed 50%, respondents should have taken approval of the competent authority to get the post formally reserved. Furthermore, instead of keeping the 2 vacancies reserved for ST candidates vacant on the ground that qualified ST category candidates were not available, respondents should have examined the possibility of exchanging the ST vacancies for SC vacancies in accordance with rules and adjusting 2 SC candidates against those vacancies and carried forward the ST vacancies. In this connection, we note that both the applicants in OA No. 860/98 belong to SC category.

10. While we would not like to interfere with the appointment of Shri R.P. Sharma, a general category candidate who was 3rd in overall merit and was appointed against one of the three posts reserved for ST candidates, as his appointment has not been specifically impugned, we dispose of the OA by calling upon the respondents to examine the question of accommodating the applicants in OA No. 860/98 (both of whom are SC candidates) against the two vacancies reserved for ST candidates in accordance with rules and instructions

(13)

-5-

and carry forward the ST vacancies. These directions should be impleaded by means of a detailed, speaking and reasoned order within 3 months from the date of receipt of a copy of this order. If the applicants in OA No. 860/98 are so promoted, they would be entitled to consequential benefits flowing therefrom.

11. These 3 OAs are disposed of in terms of para 10 above. No costs.

Let a copy of this order be placed on each of the OA's case records.

(KULDIP SINGH)
MEMBER(O).

(S.R.AOIGE)
VICE CHAIRMAN(A).

/ug/

Rule 41
Court Officer
Central Administrative Tribunal
Prinsep Bazaar, New Delhi
Fareket House,
Cochin Road,