

Central Administrative Tribunal, Principal Bench

(12)

Original Application No. 973 of 1998

New Delhi, this the ²⁹th day of September, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

Shri P.S. Vasudeva, Asstt. Foreman (STA),
Institute of Nuclear Medicines &
Allied Sciences (INMAS),
Lucknow Road,
Timarpur,
Delhi-110 054.

- Applicant

(By Advocate - Shri B.L. Babbar)

Versus

1. The Union of India (through)
Scientific Adviser & Director General,
Research and Development Organisation,
(SA&DGR&D), Min. of Defence,
South Block,
New Delhi.
2. The Director,
INMAS, R&D,
Lucknow Road, Timarpur,
Delhi-110 054.
3. The Chairman DPC-II (INMAS/DIPAS)
C/o Director DIPAS, R&D Org.,
Lucknow Road, Timarpur,
Delhi-110 054.
4. Shri Khem Chand, Tech. Officer-8,
INMAS, R&D Organisation,
Lucknow Road, Timarpur,
Delhi-110 054. - Respondents

(By Advocate - Shri Gajender Giri)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this case has challenged the promotion of respondent No. 4 as Assistant Foreman w.e.f. 15.9.83 against a SC vacancy of Assistant Foreman and thereafter by a review DPC, the respondent No. 4 had been further promoted as Foreman w.e.f. 15.9.86 against the vacancy of SC.

2. The facts in brief are that the applicant

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was initially appointed as Machinist in the year 1962 in INMAS and thereafter he was promoted to the post of Instrument Mechanic in 1963, Precision Mechanic in 1968, Chargeman Grade-I on 15.9.1981 and Assistant Foreman on 27.11.1991. It appears that for the post of Assistant Foreman, the Chargeman is the feeder grade. The applicant claims that in the seniority list issued by the INMAS the name of the applicant figures at S.No.2 showing him promoted as Chargeman-I regular w.e.f. 2.4.82 whereas the name of respondent No.4 figures at S.No.5 showing his seniority as Chargeman-I w.e.f. 15.3.88 and for this purpose there is a combined seniority and common Departmental Promotion Committee of INMAS and DIPAS and there is only one post of Assistant Foreman in both the establishments, i.e., INMAS.

3. It is further stated that as per the orders of respondent No.1 in pursuance of the judgment given by the Bangalore Bench of the CAT, a review DPC was held on 21.3.1996 and panels for promotion to the various grades were revised/reviewed, as per Annexure A-8 and in the said panel the name of Khem Chand, respondent No.4 has been shown as promoted as Assistant Foreman w.e.f. 15.9.1983 against SC vacancy of Assistant Foreman and the applicant's date of promotion as Assistant Foreman has been shown as 27.11.1991 and even prior to the review DPC and respondent No.4, Khem Chand was shown as promoted as Foreman w.e.f. 15.9.86 against SC vacancy.

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4. It is further stated that the action of the review DPC is erroneous and irregular because one Shri Zile Singh was already promoted as Assistant Foreman w.e.f. 15.9.83 and subsequently as Foremen w.e.f. 15.9.86 against SC vacancy but the review DPC omitted to include the name of Zile Singh inadvertently perhaps he had superannuated on 25.8.95 although he happened to be Senior Chargeman in the SC category. So it is stated that promotion of Khem Chand against SC vacancy in the grade of Assistant Foreman w.e.f. 15.9.83 and later promotions otherwise are all irregular and illegal as the reservation is against a post and not against a vacancy and secondly there being a single post of Assistant Foreman, it cannot be filled when he is not due in his turn which tantamounts to 100% reservation which is against the decision of the Apex Court. The applicant claims to have made various representations but to no avail but the representation which seems to have been finally rejected is at Annexure A-1, which is impugned in this OA. The applicant has, therefore, prayed for the following reliefs:-

"(1) That the promotion of Shri Khem Chand (SC), respondent No.4 to the post of Assistant Foreman w.e.f. 15.9.83 retrospectively done by the Review DPC held on 21.3.96 and his further promotion likewise to the post of Foreman against single vacancy in both the case, be declared void ab-initio."

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(2) To direct the official respondents to consider the case of the applicant for promotion to the post of Assistant Foreman and Foreman w.e.f. 15.9.86 (instead of 27.11.1991 as Assistant Foreman) and 31.5.95 respectively being the immediate next senior in the feeding grade on the said relevant dates and with all consequential benefits".

5. The respondents contested the O.A. and have stated that applicant in Para 4(3) had referred to a seniority list showing his name as Chargeman against S.No.2 and Khem Chand at S.No.5 but the said seniority roll has undergone revision consequent upon the judgment of the CAT Bangalore Bench in OA Nos. 600/91, 245/92 128 and 179 to 202 of 1993.

6. It is further stated that in pursuance of the directions given in these OAs, the DPC proceedings were reviewed for the period from 15.9.81 to 15.3.93 and respondent No.4 Khem Chand had been promoted against the carry forward SC point (1/81) to the grade of Assistant Foreman w.e.f. 15.9.1983 by review DPC-II as per the then existing rules on reservation. The applicant's promotion to the grade of Assistant Foreman had been made effective w.e.f. 27.11.1991 only after the receipt of dereservation order of ST point (4/91).

7. It is further stated that Shri Zile Singh, an SC candidate was promoted to the grade of Chargeman Grade-I w.e.f. 15.9.81. However, consequent on the revision of seniority on the basis of the judgment given by the Bangalore Bench of the CAT, Shri Zile

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Singh was found ineligible for promotion as a result of which respondent No.4 got promoted in his place. The promotion of Zile Singh to the post of Chargeman Grade-I was post dated 15.3.1988, so it is not correct that Shri Zile Singh was omitted by the review DPC.

8. It is further pleaded that review DPC-II had taken for the period 1981 to 1995 and the post based reservation cannot be applied as till that time this post based reservation was not implemented and the order to that effect was issued only on 2.7.97.

9. It is further submitted that as regards the reservation on post based is concerned, it is stated in the case of R.K. Sabharwal VS. State of Punjab decided on 10.2.1995 that reservation instead of vacancy based should be given on post based basis but the said judgment was prospective in nature and had no retrospective effect.

10. It is further stated that Shri Khem Chand, SC had been considered for promotion to the grade of Assistant Foreman against a carry forward vacancy (Point 1/81) as per the then applicable rules when only one vacancy occurred in the initial recruitment year and corresponding roster point which happened to be for an SC/ST vacancy, should be treated as unreserved and filled accordingly and the reservation point is carry forward, for subsequent three recruitment years. Even if there is only one vacancy

it should be treated as reserved against the carry forward reservation for the initial recruitment years, and SC/ST if available, be appointed against.

11. It is further stated that the applicant seems to have failed to appreciate the rule position followed in case of reserved candidate.

12. It is further stated that the promotion of Khem Chand had been made against carry forward of SC post and the same was done in accordance with the rules.

13. We have heard the learned counsel for the parties and have gone through the records of the case.

14. The main contention of the learned counsel for the applicant is that at relevant time there was single vacancy so the same could not be given to a SC candidate. To support this contention the learned counsel for the applicant has referred to the case of Dr. Chakradhar Paswan Vs. State of Bihar and Others, 1988 SLJ SC 110 and on the basis of this he submitted that giving a post to the SC candidate when there is only one post is in violation of the law laid down by the Hon'ble Supreme Court so the department could never give promotion to Shri Khem Chand. Besides that he had also submitted that the reservation relates to post and not to the vacancy and since there was only one post of Assistant Foreman on which Shri Zile Singh

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was earlier promoted and Shri Khem Chand could not be promoted against that single post, which action of the respondents was illegal.

15. Respondents in reply to this submitted that as per the then prevailing rules and the Brochure on Reservation for SC/ST as mentioned in Para 11.3 reads as follows:-

"In cases where only one vacancy occurs in the initial recruitment year and the corresponding roster point happens to be for a scheduled caste or a Scheduled Tribe, it should be treated as unreserved and filled accordingly and the reservation carried forward to subsequent three recruitment years, but in the subsequent recruitment year (s), even if there is only one vacancy, it should be treated as 'Reserved' against the carried forward reservation from the initial recruitment year, and a Scheduled Caste/Scheduled Tribe candidate, if available, should be appointed in that vacancy, although it may happen to be the only vacancy in that recruitment year (s). This provision applies also to promotion by selection Group 'C' to Group 'B', within Group 'B' from Group 'B' to the lowest rung of Group 'A' where if there is a single vacancy, it may, be treated as unreserved and the reservation carried forward to three subsequent recruitment years even though carrying forward of reservations are not permitted in the particular promotion".

16. We have considered the rival contentions raised by the respective parties and we find that in this case we have to see whether the benefit of reservation was available and could be extended to respondent No.4 in this case or not. First of all we would like to mention that when Shri Zile Singh was appointed to the post of Assistant Foreman giving him the benefit of reservation as a SC candidate the

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applicant had not challenged the same though Shri Zile Singh was given the benefit of reservation. Subsequently because of the judgment passed by the Bangalore Bench of the CAT, his promotion was set aside and review DPC was constituted, Zile Singh was found ineligible to be promoted to the post to which he had been promoted as an SC candidate. It shows that the post at time had to be filled by a SC candidate. Since it was on a roster point and Zile Singh was not eligible to hold the post, as such the department was right in looking forward for a eligible SC candidate to man that post. So finding Khem Chand to be eligible to hold that post the department had promoted him, against the reserved quota.

17. The contention of the counsel for the applicant that the reservation is post-wise based and not vacancy-wise based, but we find that this contention of the applicant again has no merit because this post-base reservation has been introduced only after the judgment of the Hon'ble Supreme Court in R.K. Sabharwal's case (Supra.) and in that very judgment it has been held that the judgment is prospective from the date of decision and had no retrospective effect. The said judgment was delivered somewhere in the year 1995 and here we are concerned with the promotions made in the years 1981-95 etc. so the principle of reservation of post based enunciated in Sabharwal's case could not have been applied in this case.

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18. Now coming to the next point whether on a single post, reservation can be given to the SC or not, in this regard the applicant has referred to a judgment of Dr. Chakradhar Paswan Vs. State of Bihar and Others, SLJ 1998 Vol.3 SC 110, wherein the Hon'ble Supreme Court had held as follows:-

" [t] hat if there is only one posts in the cadre, there can be no reservation with reference to that post either for recruitment at the initial stage or for filling up a future vacancy in respect of the post. A reservation which would come under Article 16(4), pre-supposes the availability of at least more than one posts in that cadre".

19. However, the aforesaid judgment has also been considered by the Hon'ble Supreme Court in the case of Shri Suresh Chand Vs. Shri J.B. Agarwal and Others, JT--1997--(5) SC 72, wherein it was held as follows:-

" This court has considered the entire case law in Union of India and Another Vs. Madhav (JT 1996(9) SC 320). The Bench of three Judges, to which both of us were members, held that in case of solitary isolated post on the basis of the rule of rotation, the benefits and facilities should be extended to the reserved candidates, namely, Scheduled Castes and Scheduled Tribes for appointment by promotion to the single post and, therefore, application of the rules of reservation is not unconstitutional".

20. Since in the above case also, as relied upon by the respondents, they have categorically stated that department had also applied the rule of rotation of roster for single vacancy of Assistant Foreman, as respondent no.4 was appointed against carry forward vacancy.

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21. Hence we find that the action of the department is fully within the four corners of the Judgment given by the Hon'ble Supreme Court in the case of Shri Suresh Chandra (Surpa) wherein the case of Dr. Chakradhar Paswan Vs. State of Bihar & Others, JT 1988(1) SC 496 relied upon by the applicant had also been considered and discussed.

22. No other contention was raised before us. In view of our discussion above, OA does not call for any interference and the same is dismissed.

S.A.T.Rizvi

(S.A.T. Rizvi)
Member (A)

Kuldip Singh

(Kuldip Singh)
Member (J)

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