

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. No. 2084 of 1995 Decided on: 17.9.96

Ms. Sushma Jain APPLICANT(S)
(By Shri Jog Singh Advocate)

VERSUS

U.O.I. & Ors RESPONDENTS
N.S. Mehta for official respondents
(By Shri K.S. Chauhan for pvt. respondent
Advocate)

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THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? No

S.R. Adige
(S.R. ADIGE)

MEMBER (A)

(21)
CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 2084 of 1995

New Delhi, dated the 17th Sept., 1996

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

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Ms. Sushma Jain,
Addl. Legislative Counsel,
Official Languages Wing,
Ministry of Law, Justice &
Company Affairs,
Indian Law Institute Building,
Bhagwan Das Road,
New Delhi-110001.

..... APPLICANT

BY Advocate: Shri Jog Singh

VERSUS

1. Union of India through
the Secretary,
Legislative Deptt.,
Ministry of Law, Justice &
Company Affairs,
4th Floor, Shastri Bhawan,
New Delhi-110001.

2. The Chairman,
U.P.S.C.,
Dholpur House,
Shahjahan Road,
New Delhi-110001.

3. Shri Sunder Lal,
Addl. Legislative Counsel,
Official Languages Wing,
Legislative Deptt.,
M/o Law, Justice & Co. Affairs,
Indian Law Institute Building,
Bhagwan Das Road,
New Delhi-110001. RESPONDENTS

By Advocate: Shri N.S. Mehta for R-1 & 2
Shri K.S. Chauhan for R-3
(Pvt. Respondent)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Ms. Sushma Jain, Addl. Legislative Counsel, Official Languages Wing, Legislative Dept., Ministry of Law and Company Affairs, New Delhi has impugned the recommendation of the DPC dated 18.10.95 for the post of Jt. Secretary & Legislative Counsel, Hindi Branch, Legislative Dept., Official Languages Wing, Ministry of Law, New Delhi.

2. As per the Recruitment Rules, the post in question which is a General Central Service (Group 'A') in the scale of Rs.5900-6700 has to be filled by promotion through selection failing which by transfer on deputation and failing both by direct recruitment. For promotion three years regular service as Addl. L.C. is required failing which 8 years combined service in the grade of Addl. L.C. and Dy. L.C. The recruitment rules further provide that the DPC for promotion will consist of the Chairman or Member of the UPSC as the Chairman, Secretary, Legislative Dept. of Ministry of Law as a Member and Addl. Secretary, Official Languages Wing, Legislative Dept., Ministry of Law as a Member.

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3. The DPC accordingly met on 18.10.95. One post was to be filled and there were two candidates for the post namely the applicant and Respondent No.3 Shri Sunder Lal, Addl. L.C. who belongs to the S.C. Community. It is not denied that he became senior to the applicant in 1981 when he was selected directly by UPSC as Dy. Leg. Counsel on 27.11.81, when the applicant joined on such only on 19.5.83. The DPC recommended ^{Sunder Lal} Shri / for promotion to the post, and it is reported that he has already joined on 14.12.95. The applicant is aggrieved by that recommendation and hence this O.A.

4. We have heard Shri Jog Singh for the applicant. Although Shri N.S. Mehta had filed reply on behalf of both respondents No.1 (UOI) and No.2 (UPSC) Shri Mehta stated that he would be making submissions only in respect of Respondent No.1 and Respondent No.2 (UPSC) themselves have stated in their letter dated 24.11.95, a copy of which was taken on record that as no relief was claimed against them, they did not intend to enter appearance. Shri K.S. Chauhan, counsel for Respondent No.3 Shri Sunder Lal was heard.

5. The first ground pressed by the applicant's counsel Shri Jog Singh is that the DPC proceedings are vitiated because the DPC itself was constituted in violation of the recruitment rules with malafide intention. It has been emphasised that the recruitment rules

✓ provide that the DPC consist of

i) Member, UPSC as Chairman

ii) Secretary, Legislative Dept. as
Member

iii) Addl. Secretary, Legislative Deptt.
as Member

It is contended that a fourth member, the Addl. Secretary, Dept. of Legal Affairs was included in the DPC on the ground that a member of SC/ST should also be included to safeguard their interests, in spite of the fact that the Secretary, Legislative Deptt. who also happens to belong to the SC community was already a member. It is contended that this was done to influence the judgment of the DPC in favour of Respondent No.3 who is also a member of SC Community and such a flagrant violation of the statutory rules violates the DPC's recommendations and has caused prejudice and discrimination against the applicant's rights, claims and interests.

6. The official respondents in their reply have challenged **these** averments as being baseless and have contended that the constitution of the DPC was completely in accordance with the provisions of the recruitment rules and DP&T's instructions contained in their O.M. dated 10.4.89 (Ann. R-1) regarding coopting one member of SC/ST category in the DPC.

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7. Respondent No.3 has also contended that the constitution of the DPC was in perfect order as per Office Order No.32 dated 9. 8.95 (Annexure R-1) which supersedes the earlier Office Order dated 5.7.90).

8. We have given this ground taken by the applicant our careful consideration. By Notification dated 18.7.88 (Annexure A-4), the Dept. of Official Languages Wing (Group A and Group B Posts) Recruitment Rules 1988 have been notified under Art. 309 of the Constitution, and Col.13 of the Schedule to those Rules provides that the DPC shall consist of

- i) Chairman/Member, UPSC Chairman
- ii) Secretary, Legislative Dept., M/o Law & Justice Member
- iii) Addl. Secretary, Official Languages Wing, Legislative Dept., M/o Law & Justice Member

9. Para 2.7 of the Respondents' O.M. dated 10.4.89 (Ann. R-1) lays down that in Group A and Group B services/Posts if none (emphasis supplied) of the officers included in the DPC as per composition given in the Recruitment Rules is an SC or ST officer, it would be in order to coopt a member belonging to the SC or ST if available within the Ministry/Dept.. If no such officer is available within the Ministry/Dept. he may be taken from another Ministry/Dept. It is not denied that this O.M. is applicable to

to the Legislative Dept., Ministry of Law and Justice, and it is possible to argue that it merely supplements and does not supplant the constitution of the DPC as contained in the statutory Recruitment Rules which have protection under Art. 309 of the Constitution with the objective of safeguarding the interests of members of the SC/ST community.

10. As mentioned above, the provision of coopting an officer belonging to the SC/ST community in the DPC held on 18.10.95 would have been in order if none of the other members of the DPC belonged to the SC/ST community. The respondents have however not denied and this is borne out by the DPC minutes dated 18.10.95 that the Secretary, Leg. Dept., who belongs to the SC community participated in the DPC meeting as a member and at the same time the Addl. Secretary, Dept. of Legal Affairs who belongs to the ST community also participated in that DPC meeting as a coopted member. The participation of another officer belonging to the ST community as a coopted member ^{when} one of the members of the DPC already happened to belong to SC community must be held to be in violation of paragraph 2.7 of Respondents O.M. dated 10.4.89, and hence in violation of the Recruitment Rules, which are statutory in nature and have the protection of Article 309 of the Constitution.

11. Respondent No.3 has averred that the constitution of the DPC was in accordance with Respondents' Office order dated 9.8.95 (Ann.R-1)

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issued in supercession of their earlier Office Orders dated 5.7.90, and by which inter alia the composition of the DPC for promotion to the grades of Jt. Secretary and Leg. Counsel (Hindi Branch) has been ordered as follows:

i) Chairman/Member, UPSC	Chairman
ii) Secretary, Legislative Dept.	Member
iii) Addl. Secretary, Legislative Dept.	Member
iv) An Officer of the appropriate level belonging to SC/ST to be coopted from any other Ministry/Dept.	Member

12. The Office Order dated 9.8.95 does not account for a situation where one of the 3 members of the DPC as constituted under the Recruitment Rules already happens to belong to the SC/ST community as happened in the DPC held on 18.10.95 in which the Secretary, Legilsative Dept., who admittedly belongs to the SC community participated as a member. As this Office Order has not been specifically impugned in the O.A., we refrain from commenting further on its legal validity, but we are satisfied that in the DPC dated 18.10.95, when the Secretary, Legislative Dept. who belongs to the SC community participated as a member, the cooption of the Addl. Secretary, Dept. of Legal Affairs who belongs to the ST community as a member ^{under the authority of that office order} of the DPC and his participation in that meeting constitutes a violation of the statutory recruitment rules relating to the composition of the DPC which is protected under Art. 309 of the Constitution, and which therefore warrants our judicial intervention.

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13. Applicant's counsel has urged various other grounds also, but as this OA is entitled to succeed on this ground itself, we do not consider it necessary to discuss the other grounds taken in the O.A.

14. In the result this OA succeeds, and is allowed to this extent that the recommendations of the DIC dated 18.10.95 and the action taken by the respondents pursuant to those recommendations in promoting Respondent No.3, as J.S. & L.C. is quashed and set aside on the ground that the DIC was not constituted as per statutory recruitment rules. We make it clear that we are not discussing the relative merits of the candidates. The respondents are directed to hold a fresh review DIC after the same has been properly constituted within two months from the date of receipt of a copy of this judgment and reconsider the matter in accordance with law. No costs.

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(DR.A.VEDAVALLI)
MEMBER (J)

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(S.R.ADIGE)
MEMBER (A).