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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1631/1996

New Delhi this the 29th day of February, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

1. I.S. Garg
S/o Shri Jagdish Sharan Garg
2. J.N. Joshi
3. A.K. Chohdda
S/o Late Shri V.P. Chohdda
4. Ravi Gupta
S/o Late Shri O.P. Gupta
5. V.L. Sharma
S/o Shri Laxman Prashad
6. S.R. Chandra Sekaran
S/o Late Shri S.R. Radhakrishnaier
7. O.P. Sharma
S/o Shri Tara Chand Sharma
8. Mohd. Yunus
S/o Mohd. Ismail
9. A.D. John
S/o Late Shri A.J. Daniel

All Deputy Director, Directorate General of
Supplies & Disposal, Jeevan Tara Building
5, Parliament Street, New Delhi.Applicants

(None for the applicants)

-Versus-

1. Union of India through
Secretary,
Department of Supplies
Ministry of Commerce
Nirman Bhavan
New Delhi-110 011.
- 1A. Director General,
DGS&D
5, Jeevan Tara Building
New Delhi-11.
2. Shri G.V. Rajan
3. Shri Harbans Lal

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4. Shri Bansi Lal
5. Shri N. Haldar
6. Shri Surjit Lal

Respondents 2 to 6
All Director,
DGS&D, Jeevan Tara Building
5, Parliament Street
New Delhi-110 001.

... Respondents

(None present for the respondents)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Parties and their Advocates are absent. We have perused the record and we proceed to dispose of the OA in terms of Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

2. By the present OA, applicants seek to impugn the promotions granted to respondents 2 to 6 from the posts of Assistant Director to the posts of Deputy Director and thereafter to the posts of Director. Applicants and respondents 2 to 6 who belong to the Indian Supply Service are engaged in the Directorate General of Supplies and Disposals, New Delhi. Applicants as also respondents 2 to 6 initially joined as Assistant Directors. Applicants having joined earlier, claim seniority over respondents 2 to 6. The Indian Supply Service Rules, 1961 (hereinafter, for the sake of brevity referred to as the Rules of 1961) ^{are applicable to them} Under the said rules, entry to the service is in Grade III (Assistant Directors). Recruitment in Grade III takes place on the basis of Combined Engineering Services Examination conducted by the Union Public Service Commission. For Grade II, i.e. Deputy Directors, it is by promotion based on seniority.

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Applicant No.1 after having qualified the aforesaid engineering competitive examination joined service as Assistant Director on the basis of 1970 examination. Respondent No.6 also joined service as Assistant Director on the basis of the said examination as a Scheduled Caste candidate. Applicant No.1 was senior to respondent No.6.

3. Applicants 2 & 3 joined service as Assistant Directors through the same process on the basis of 1971 examination whereas applicants 4 to 9 were selected on the basis of 1972 examination. Respondents 2 to 5 were also selected as Scheduled Caste candidates on the basis of 1972 examination and were junior to the applicants. Respondents 2 to 6, however, have been promoted to the posts of Deputy Director on the basis of their belonging to the reserved category, namely Scheduled Caste on different dates and were subsequently promoted as Directors in Grade I bypassing the claim of the applicants. It is the case of the applicants that appointment of respondents 2 to 6 to the posts of Deputy Director and Director has been made only on the basis of their belonging to the reserved category, namely Scheduled Caste by following the reservation policy in the matter of promotion. This has been done despite the fact that the Rules of 1961 do not provide for reservation at the promotional level.

4. Reliance has been placed on a decision of the Supreme Court in the case of Union of India vs.

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T.R. Mohanty being Civil Appeal No. 3844 of 1989 decided on 14.7.1994. The Supreme Court in the aforesaid case has quashed the retrospective amendment of Rule 13 of the Indian Statistical Service Rules with the following observations:

"Respectfully, following the law laid down by this Court in the judgements referred to and quoted above, we are of the view that the retrospective operation of the amended Rule 13 cannot be sustained. We are satisfied that the retrospective amendment of Rule 13 of the Service Rules takes away the vested rights of Mohanty and other general category candidates senior to Respondents 2 to 9. We, therefore, declare amended Rule 13 to the extent it has been made operative retrospectively, to be unreasonable, arbitrary and as such violative of Articles 14 and 16 of the Constitution of India. We strike down the retrospective operation of the rule. In the view we have taken on the point it is not necessary to deal with the other contentions raised by Mohanty."

M.J. As far as respondent No. 1 is concerned, it is ~~stated~~ ^{conceded} that the Rules of 1961 do not expressly provide for reservation for Scheduled Castes and Scheduled Tribes at the promotional level. Reliance is placed on Rule 9(4) of the Rules of 1961 which provides as under:-

".....appointments to the Service made otherwise than by promotion, shall be subject to orders issued from time to time by the Ministry of Home Affairs regarding special representation in the Service for specific sections of the people."

Reliance on the aforesaid rule, in our view in the context of the facts arising in the present case, is misplaced as the same deals with appointments to the service made otherwise than by promotion. The same,

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therefore, would apply ^{only} at the stage of initial appointment and not at the promotional stages.

6. Further reference is made by respondent No. 1 to the Indian Supply Service Rules, 1985 (hereinafter for the sake of brevity referred to as the Rules of 1985) which have ^{oversuled} ~~repealed~~ the Rules of 1961. Rules of 1985 were notified in February 1985 and the same came into force with effect from 9.3.1985. Rule 15 of the Rules of 1985 provides as under:-

"15. Savings: Nothing in these rules shall affect reservation, relaxation of age limit and other concessions required to be provided for persons belonging to the SCs, the STs and other special categories of persons in accordance with the orders issued by the Government from time to time."

Aforesaid rule deals with reservation, relaxation of age limit and other concessions required to be provided for persons belonging to the Scheduled Castes, Scheduled Tribes and other special categories of persons. The phrase "other concessions", in our judgement, cannot and does not relate to concessions in respect of reservation at the promotional level. The said reservation at promotional level cannot be inferred unless it is specifically provided for.

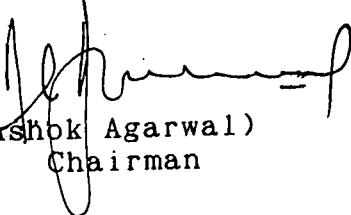
7. Aforesaid provision, it is contended has been retained in the Indian Supply Service Rules, 1994 (for short, referred to as the Rules of 1994) notified on 9.9.1994. Aforesaid provision, in our view, does not provide for reservation at the promotional level. The same merely specifies reservation at the

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recruitment level. Unless reservations are specifically provided for at the promotional level, the same cannot be inferred by ^{adopting} the process of inferential reasoning.

8. Respondent No.1 has thereafter gone on to contend that benefits of reservation were extended to Scheduled Caste and Scheduled Tribe officers at the promotional level in compliance with executive directions. What these executive directions are has not been spelt out. What is the source of power for issue of such executive directions is also not spelt out. All that has been averred is that the executive directions were issued prior to the Rules of 1985. In our judgement, if reservations are to be provided at promotional level, the same have to be provided under the rules. The same cannot be done by issuing executive directions especially so when the source of power has not been spelt out in order to fathom whether the same will be enforceable in law. In the circumstances, we are clearly of the view that the promotions granted to respondents 2 to 6 to the posts of Deputy Director and Director on the strength of their belonging to the reserved category, namely Scheduled Caste and Scheduled Tribe cannot be sustained. The same are accordingly quashed and set aside. Respondent No.1 is accordingly directed to carry out the promotion process of applicants and respondents 2 to 6 after considering the claim of applicants on the basis of their placement in the seniority list of Assistant Directors by ignoring the higher placement of respondents 2 to 6 in the

seniority list of Deputy Directors based on their belonging to the reserved category, namely Scheduled Caste and Scheduled Tribe. Applicants would be entitled to all consequential benefits arising out of the implementation of the aforesaid directions.

9. OA is accordingly allowed. There will, however, in the facts and circumstances of the case, be no order as to costs.


(Ashok Agarwal)

Chairman


(V.K. Majotra)

Member(A)

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