

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

HON. SHRI A.V. HARIDASAN, VICE-CHAIRMAN  
HON. SHRI R.K. AHOOJA, MEMBER 'A'

O.A. NO. 2034/96

NEW DELHI, THIS 21<sup>ST</sup> DAY OF MARCH, 1997.

(2)

SHRI HARIBHUSHAN SHARMA  
S/o Shri Ram Swaroop  
R/o B-68, Pandara Road  
NEW DELHI

...APPLICANT

(By Advocate - Shri S.Y. Khan)

VERSUS

1. Secretary  
M/o Information & Broadcasting  
Shastri Bhawan  
NEW DELHI

2. The Chief Producer  
Films Division  
24 Peddar Road  
BOMBAY-26

3. Secretary  
Union Public Service Commission  
Dholpur House, Shahjahan Road  
NEW DELHI

4. Shri C.L. Dogra  
Assistant Admn. Officer  
Films Division  
Ministry of I & B  
Soochna Bhawan  
Lodi Road  
NEW DELHI

..RESPONDENTS

(By Advocate - Shri M.M. Sudan  
with Shri E.X. Joseph  
and Shri V.S.R. Krishna)

contd...2/-

2

R.K. AHOOJA, MEMBER (A)

13

The applicant who is an Assistant Administrative Officer in the pay scale of Rs.2375-3500 is aggrieved by the action of the respondents in not considering him for promotion to the post of Administrative Officer in the scale of Rs.3000-4500 in the office of Films Division. The case of the applicant is that he is number one in the seniority list. A vacancy of Administrative Officer (A.O. for short) became available on 31.8.1992 when he was asked to look after the work of that post in addition to his own duties. This arrangement prevailed till 24.3.1993. As per rules, the post of A.O. is to be filled up "100% by promotion, failing which by transfer on deputation, from the category of Assistant Administrative Officers (for short-A.A.O.) with seven years service". The applicant acquired the requisite seven years experience as AAO on 31.12.1993 but the respondents in the mean time, on 30.9.1993, appointed one Shri V.K. Malhotra as A.O. on deputation for a period of three years under the "failing which clause". Shri Malhotra thereafter sought premature repatriation and was relieved on 19.6.1996, whereupon the applicant was again asked to look after the duties of the post of A.O. A requisition was however sent by his Ministry to UPSC on 12.7.1996 for filling up the post of A.O. from amongst eligible candidates and two names (that of the applicant and another at S.No.2) were sent. It was however made clear that the vacancy belonged to ST community.

D2

and further that no ST candidate was available and Shri C.L. Dogra (Respondent No.4) would become eligible only on 1.10.1996. However, the UPSC requisitioned the ACRs of Shri Dogra also. It is the case of the applicant that Shri Dogra was not eligible for consideration to the exclusion of a general candidate and therefore he has sought a direction to consider his claim for promotion.

2. Respondents 1, 2 and 3 in reply have stated that there are two posts of AOs, one at Bombay and one at Delhi. The Delhi post fell vacant w.e.f. 1.9.1992. Since none of the officers in the feeder grade of AAO had the minimum seven years service on that date, the post was filled up by the "failing which" method of transfer on deputation. The deputationist left on 19.6.1996. According to the 40 point roster prescribed by the DOP&T, there was a carry forward reservation for ST category in the third year which point is inter-changeable with an SC officer. A meeting of the DPC presided over by a Member of UPSC was held on 24.9.1996 and Shri C.L. Dogra was found to be the only eligible officer belonging to SC community and has since been recommended for promotion to the post of A.O. However, as per the interim stay granted by the Tribunal, the recommendations of the DPC have not so far been acted upon. We have heard the counsel on both sides and also gone through the pleadings on record. The written briefs submitted by the parties have also been perused.

3. In short, two issues arise which need to be decided. The first point is that in case a vacancy is filled up by deputation then is it to be counted against

(5)

the roster point or not? Secondly, whether in the instructions of the DOP&T regarding the cut-off date for eligibility, the relevant year is the year in which the vacancy occurs or the immediately preceding year. The first controversy may now be discussed.

4. The respondents have with their reply annexed a copy of the roster being followed by them 'R-1' according to which, when the 1988 vacancy was reserved for ST, as none was available it was carried forward to the next vacancy which occurred in 1991. At that time also, no one was found from the ST community and hence it was to be carried forward to the third year when it was to be interchangeable with SC candidate also. This is the point at which the controversy arises. As mentioned earlier, the next vacancy arose in 1992 but since none of the candidates from any of the communities was eligible, it was decided to fill it up through the second method, viz., "deputation". The deputationist left in 1996. The case of the applicant is that the 1992 vacancy which was in 1993 filled up through deputation exhausted the third carry-forward and therefore in 1996 the vacancy was to be treated as unreserved. It has been argued on behalf of the applicant that the contingency for filling up the post by deputation arose precisely because no ST or SC officer was available in the feeder grade and hence, an opportunity for filling up the post through reservation having been provided, the same ought to be set off against the third carry over. On the other hand, the case of the respondents is that since the rules do not provide for reservation in the case of posts filled

DA NO.2034/96

(16)

by deputation, vacancies so filled are outside the purview of the 40-point Roster. We find merit in this contention of respondents. The Government of India orders regarding reservation extracted in the Brochure on Reservation for SCs and STs in Service (MHA OM No.16/2/67-Estt.C, dated 27.9.1967 AND D/o Personnel & A.R. OM No.36021/6/75-Estt.SCT dated 9.10.1975 - copy taken on record) show that reservations do not apply to posts filled by deputation even though instructions exist that SC/ST candidates who are eligible to be sent on deputation should also be considered along with other eligible employees for such deputation. Deputation by definition is a temporary and transit phenomenon adopted either because the post itself is short-term or because primary methods of filling up the posts, either by promotion or by direct recruitment or both, are not feasible. The deputationist comes for a specified period and then leaves for his parent cadre. He thus fills in a gap temporarily and is not counted against the permanent employees of the borrowing Department. If it were otherwise then in the present case it would have been incumbent upon the borrowing authority to call for suitable deputationists on a community basis. This was admittedly not done and hence there was no reservation in filling up of the post. We have thus no doubt that the vacancy of 1992 cannot be counted in the 40-point Roster and for that reason cannot be set off against the third carry-over of the ST vacancy. This carry-over would occur only in the 1996 vacancy when the deputationist went back to his parent cadre.

contd...6/-

DA NO. 2034/96

5. The second controversy relates to the cut off date regarding eligibility. It is the contention of the applicant that as per the DOP&T instructions, the cut-off date pertains to the year preceding the year in which the vacancy arises. The respondents contend otherwise. To determine the correct position, we may take a look at the relevant Government order. The DOP&T O.M. No. 22011/7/86-Estt.(D) dated 19th July, 1989 (copy taken on record) on the subject of eligibility of officers to be considered for promotion by DPC - fixing of crucial date of - reads as follows:-

".....it has now been decided that while holding DPCs during a year, the crucial dates for determining the eligibility of officers for promotion would be prescribed as under:-

- (i) 1st July of the year in cases where ACRs are written calendar yearwise; and
- (ii) 1st October of the year where ACRs are written financial year-wise."

In the present case, the ACRs are written financial year-wise and hence the crucial date will be 1st October of the year. There is no mention that this will be the previous year and hence the obvious literal meaning that it will be the 1st October of the year in which the vacancy occurs. In case the intention had been to fix the cut off date in the previous year, then this would have been clearly mentioned in the afore-quoted instructions. The learned counsel for the applicant has argued that this Tribunal has already come to the opposite conclusion in DA No. 666/95 D.P. MALIK VS. UOI. We have perused a copy of that order.

contd... 7/-

(18)

dated 25.10.1995 and find that neither this issue arose there in nor was it answered, since the whole controversy revolved around relaxation of the qualifying service which was allowed by the respondents in some cases and not others. The subsequent Contempt Petition No.148/96 also gives no indication regarding the interpretation of the DOP&T instructions regarding the cut-off date. The applicant has also cited the judgement in OA No.1600/95 delivered on 4th October, 1996 also by a Bench in which both of us were party. We have gone through that order once again and find that the issue there was entirely different. The DPCs there were held in the year 1994 for vacancies arising from 1982 onwards and the controversy was where the cut-off date should be 1st October and where it would be 31st December. The afore-quoted instructions of 1989, in so far as prospective vacancies are concerned, had no such problem. Hence, the aforesaid orders in OA No. 1600/95 have no bearing on the issue raised here.

6. We thus find, on the basis of above discussion, that firstly the carry over of ST vacancy covered the 1996 vacancy which was the third year and could thus be exchanged for the SC reservation. Secondly, the cut-off date was 1st October and since the respondent No.4 had already completed the qualifying seven years service prior to that date and even prior to holding of the DPC, his consideration could not be faulted on the ground that he was ineligible in terms of qualifying service. We therefore find no merit in the O.A. which is accordingly dismissed. No costs.

  
(R.K. AHUJA)  
MEMBER 'A'

  
(A.V. HARIDASAN)  
VICE-CHAIRMAN 'J'

/AVI/