

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.943/96

New Delhi this the 11th Day of March, 1997.

Hon'ble Dr Jose P. Verghese, Vice Chairman (J)
Hon'ble S.P. Biswas, Member (A)

Shri S. Thakur,
Assistant Director/LK
I.P. Headquarters
New Delhi. Applicant

(By Advocate : Shri Yunis Malik)

VERSUS

UNION OF INDIA, THROUGH

1. The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. The Secretary,
Dept of Personnel & Training,
North Block,
New Delhi.
3. The Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi
4. The Director
Intelligence Bureau,
North Block, New Delhi.
5. Shri Bhagirath Lal Mina,
Asstt. Director, SIB, House No.70
Sector 7, New Power House Road,
Jodhpur.
6. Shri S.L. Prakash,
Asstt Director, SIB/110
Mall Road, Lucknow. 7. Shri K.C. Behira,
through Director, I.B.,
North Block,
Delhi.
8. Shri M. Arumusham,
Assistant Director/SIB, 2 Nimmo Road,
Madras.
9. Shri M.C. Katyayan,
Asstt/Direcotr, I.B Headquarters
through Director
North Block, New Delhi.
10. Shri Ranjit Singh,
Assstt. Director/SIB,
41-C, Gandhi Nagar,
Barrielly-243 002. Respondents

(By Advocate : Shri VSR Krishna)

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ORDER

(By Hon'ble Dr Jose P. Verghese, Vice Chairman (J))

1. The main relief sought in this petition by the petitioner is that the seniority of the petitioner in the cadre of Assistant Director may be revised placing the applicant at Serial No.5 instead of at Serial No.13 since all the reserved candidates in the said Seniority List of Assistant Directors are junior to the applicant in feeder channel, and after placing him at Serial No.5 in the Seniority list, he may be considered by review DPC for promotion to the rank of Dy Director.

2. As referred to in the relief sought by the petitioner, there was a list of candidates with 15 names which are reproduced here below, as it is given by the petitioner himself in Para 1 of the O.A.

S.No.	Name	Category	Date of Birth	Date of Joininf	Date of Promotion	Remarks
1.	AS Sundershan	Gen	23.5.43	11.4.8	-	Appointed AD/ EX Under quota
2.	Bhagirath Lal Meena	ST	2.10.38	15.6.63	26.11.75	Recommended at S.No.2
3.	Sachchindanand Singh	Gen	1.8.83	11.4.60	1.05.72	Recommended for promotion as DD by DCP - S1.No.1
4.	K Krishnan	Gen.	20.7.39	15.6.63	10.11.75	- do - S1 No.3
5.	S.L. Prakash	SC	11.08.40	10.01.64	16.8.76	- do - S1.No.4
6.	K.C. Behira	SC	25.12.39	22.12.63	22.9.76	- do S1 No.5
7.	Bijay K. Das	SC	09.5.38	9.1.64	6.7.79	
8.	M. Arunmsham	SC	3.6.40	13.1.64	10.8.78	
9.	M.C. Katyayan	SC	13.9.39	8.1.64	09.7.79	

10. Ranjit Singh	SC	01.7.40	20.1.65	16.4.74
11. Satish Kumar	Gen	13.6.37	16.11.61	29.6.73
Sahani				
12. Avadh	Gen	02.9.39	1.11.69	31.8.73
Naresh Singh				
13. Sachchidanand	Gen	30.1.39	1.5.62	18.7.73
Thakur				
14. Bhanu Pratap	Gen	12.2.40	8.5.62	1.8.73
Singh				
15. Narboo	ST	6.7.38	15.7.64	11.9.78
Upasak			(National Promotion	
			from 22.9.76)	

3. The first question to be decided is whether

this list of 15 candidates is a seniority list, a gradation list or a select list. The submission of the petition is that it is a seniority list. On the face of it, it has to be stated that by no stretch of imagination, this can be a seniority list. While finalising a Seniority List in a particular cadre, provisional seniority list is to be published first and after objections are invited, a final seniority list is to be promulgated. The petitioner himself by an additional affidavit has produced the seniority list without indicating what is the date of the said seniority list; at any rate, the list above referred is not at all a seniority list.

4. This is also not a gradation list rather it is a select list as it is evident from Para 1 of the O.A. itself. According to the petitioner this is the list considered by DPC and as it is noticed, that the candidate at Serial No1 was already appointed directly and Serial No.2 to 6 were further recommended for promotion against 5 vacancies. The recommendations of

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DPC on the basis of a select list prepared on merit, is in order since while recommending for promotion they have strictly adhered to merit.

5. The DPC has prepared the select list on the basis of the eligibility of the candidates according to the recruitment rules and thereafter looking into the merit of the case and after following the selection procedure prescribed. The Recruitment Rules for the post of Deputy Directors are as given below :-

"Assistant Directors (Executive) Central Intelligence Officers with 12 years' regular service in the grade including regular service, if any, rendered in the grade Joint Assistant Director (Executive) or Senior Intelligence Officer (since redesignated as Joint Assistant Director), are eligible failing which Assistant Directors (Executive)/Central Intelligence Officers with 8 years' regular service, if any, in the grade of Joint Assistant Director (Executive) or Senior Intelligence Officer (since redesignated as Joint Assistant Director) provided that such officers should have completed a total of 19 years of Gazetted service starting from the Group 'B' level of Deputy Central Intelligence Officer (Rs.2000-3500)".

6. All the Officers now being considered by the DPC are those who have 19 years of combined service in Group A, including 8 years of regular service in the grade of Senior Intelligent Officers. Let us compare the select list supplied by the Respondents with the seniority list supplied by the petitioner himself; it is obvious that the DPC has listed all the 15 candidates



eligible for promotion as per the recruitment rules namely, whose who have completed a total of 19 years of gazeted service.

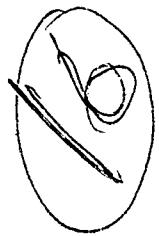
7. Thus, the contention of the petitioner that the said list is the seniority list and the promotions are being made on the basis of Seniority and the reserved candidates could not have been considered for promotion is not tenable in law.

8. The DPC has further arranged the 15 candidates in the order of merit following the guidelines prescribed by the Government of India in 1989 and the following gradings to be assigned to each candidate on a selection basis, namely (i) outstanding (ii) Very good (iii) Good (iv) Average (v) Unfit. However, the DPC considered the 'bench mark' for promotion to the post of Dy Director as 'Very good'. Thus, the Officers obtaining very good or above gradings by the DPC only, are to be empanelled for promotion arising out of the categories they belonged. The Officers obtaining 'Outstanding' were placed en block above those who have 'very good' in the DPC for promotion as Dy Director to the extent of number of vacancies to be filled up. Reserved category Officers were also included in the merit list according to their merit for the reason that there was no reservation for SC/STs for promotion to the post of Dy Director as these posts carry pay scale of the ultimate salary of Rs.6150/-.



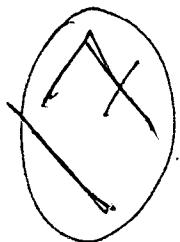
9. As per the Government's order on the subject where promotions are made on the basis of selection by the DPC, seniority of promotees shall be in the order in which they are empanelled and recommended for such promotions by the DPC. Thus, the reserved category Officers promoted against the reserved categories cannot be denied seniority on promotion i.e. to say reserved categories candidates are on the select list not on the basis of seniority rather on the basis of merit they obtained. And the post being Selection post and there is no reservation, the recommendation of the DPC, with regard to the reserved candidates, namely 2 SC/ 1 ST is perfectly in order. The petitioners seem to be under the wrong impression that the names of the reserved candidates appear in the list on the basis that they have obtained an accelerated promotion in the feeder cadres and as such the seniority should be recalculated according to the recent decisions of the Supreme Court, before giving promotion to the reserved candidates. That is not the situation in the case before us. In this case reserved candidates found place at Serial No.2, 5 and 6 mainly on the basis of merit and after they became eligible in accordance with the Recruitment Rules and it has absolutely no relationship with the seniority position which they obtained on the basis of the promotions made in the feeder cadres. That had no relevance for being considered for promotion against the selection post on the basis of merit.

10. The petitioners, therefore, cited before us several decisions of the Hon'ble Supreme Court. ~



In the case of R.K. Sabharwal vs. Union of India 1995 (2) SCC p.745, the Hon'ble Supreme Court has held that once the post earmarked for Scheduled Castes/Tribes and Backward Classes on the roster are filled up and the reservation is complete, the roster can operate no further except for filling up of the vacancy as and when the points filled in become available to the respective categories. The Constitution Bench held (At page 745 SCC at page 750-751, Para 5)

"The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of 'running account' is to make sure that the Scheduled Castes/Scheduled Tribes and Backward Classes get their percentage of reserved posts. The concept of 'running account' in the impugned instructions has to be so interpreted that it does not result in excessive reservation, '16% of the posts ...' are reserved for members of the Scheduled Castes and Backward Classes. In a lot of 100 posts those falling at Serial Numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Castes. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards up to 91st post. When



the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The 'running account' is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive."

12. It was also held that the vacancies arising in the cadre, after the operation of the roster and the running account comes to an end, they have to be filled up from amongst categories to which post they belonged in the roster. The Constitution Bench vide Para 5 illustrates this by saying :-

"For example the Scheduled Caste persons holding the posts at roster points 1,7,15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation."

13. It was also said that the operation of the roster for filling up the cadre strength by itself ensures that reservation remains within 15% limit. It was further demonstrated by the Supreme Court as to what shall be the consequences if the roster is permitted to

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operate in respect of the vacancies arising subsequently after the total post in the cadre are filled up. To quote - (SCC p.753 para 10);

"We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100-point roster, 14 posts at various roster points are filled from amongst the Scheduled Caste/Scheduled Tribe candidates. 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Supposing all the posts in a cadre consisting of 100 posts are filled in accordance with roster by 31-12-1994. Thereafter in the year 1995, 25 general category persons (out of 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Castes and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc caused the vacancies then the balance between the reserve category and the general category shall always be maintained."

14. It can be thus seen that the case of Shri R. K. Sabharwal has no application to the present case since it is not the case of the petitioner that the roster point as exhausted nor present vacancies arose out of

retirement, death or resignation of general candidates nor was this the case of the petitioner as per his pleadings in the case.

15. Is the case of Union of India Vs Virpal Singh Chauhan (1995) 6 SCC 684, Mr Justice B.P. Jeevan Reddy, speaking on behalf of the Court, said (SCC p.702, para 25) ;

"Hence, the seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position. We have discussed hereinbefore the meaning of the expression 'panel' and held that in case of non-selection posts, no 'panel' is prepared or is necessary to be prepared. If so, the question arises, what did the circular/letter dated 31-8-1982 mean when it spoke of seniority being governed by the panel position? In our opinion, it should mean the panel prepared by the selecting authority at the time of selection for Grade 'C'. It is the seniority in this panel which must be reflected in each of the higher grades. This means that while the rule of reservation gives accelerated promotion, it does not give the accelerated - or what may be called, the consequential - seniority."

It has been further said: (SCC p.705,para 29)

"In other words, even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe candidate. The earlier promotion of the Scheduled Caste/Scheduled Tribe candidate in such a situation does not confer upon him

seniority over the general candidate even though the general candidate is promoted later to that category."

It was also said: (SCC pp.701+1, para 45)

"It is true that this case presents a rather poignant turn of events. Of course the thirty-three candidates being considered for eleven vacancies, all are Scheduled Caste/Scheduled Tribe candidates. Not a single candidate among them belongs to general category. The learned counsel for the respondent is justified in complaining that the appellants have failed to explain how such a situation has come about. Not only the juniors are stealing a march over their seniors but the march is so rapid that not only erstwhile compatriots are left far behind but even the persons who were in the higher categories at the time of entry of Scheduled Caste/Scheduled Tribe candidates in the service have also been left behind. Such a configuration could not certainly have been intended by the framers of the Constitution or the framers of the rules of reservation. In the absence of any explanation from the authorities the best we can do is to ascribe it to faulty implementation of the rule of reservation. In other words, not only have the Railways not observed the principle that the reservation must be vis-a-vis posts and not vis-a-vis vacancies but they had also not kept in mind the rule of seniority in the promotion posts enunciated in the Railway Board's circulars referred to supra. Yet another principle which the authorities appeared to have not observed in practice is that once the percentage reserved for a particular reserved category is satisfied in that service category or grade (unit of appointment) the rule of reservation and the roster should no longer be followed. Because of the Breach of these three rules, it appears, the unusual situation complained of by the general candidates has come pass.

The learned counsel for general candidates is right that such a situation is bound to lead to acute heartburning among the general candidates which is not conducive to the efficiency of administration."

16. Thus it is clear from the case of Virpal Singh Chauhan pertained to the seniority of the reserved candidates whenever the reserved candidates obtained accelerated promotion in the feeder cadre; that can apply only when the promotion post being considered at a given time is on the basis of the seniority. That is not the case at hand. The post of Deputy Director now being considered is not a seniority post, it is a selection post to be filled up only on the basis of merit.

Since the seniority has no role to play, in this procedure for promotion, since there is no reservation to the post of Deputy Director, and since the pay scale is higher than the stipulated one, there is no question of reservation nor seniority involved while filling up of the post.

The third important case cited by the petitioner is that of Ajit Singh Januja Vs State of Punjab reported in (1996) 2 SCC 715. The petitioner had relied up on this judgement alongwith additional affidavit stating therein that the combined effect of the ratio in the case of Virpal Singh Chauhan and that of Ajit Singh Januja is at least that when the reserved candidates obtained accelerated promotion, that is bound to affect the consequential seniority adversely. These candidates would not be in the zone of consideration, if their accelerated promotion were not considered for the purpose of their cases for promotion to the rank of Deputy Director. It is obvious

that since there were only 15 candidates, who fulfilled the eligibility criteria in the entire cadre, and there were five posts to be filled up, all the candidates belonging to the reserved categories did in fact come within the normal zone of consideration. That is to say the normal zone of consideration prescribed in such cases is 5 multiplied 3 namely 15 i.e. precisely what the DPC has done in the present case.

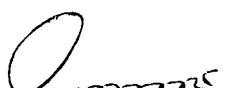
It is true that the case of Virpal Singh Chauhan and that of Ajit Singh Januja did consider the reasonability of not giving consequential seniority arising out of accelerated promotions on the ground that in that process, there was no occasion to examine the merit of such SC/ST candidates vis a vis his seniors belonging to the general category. But as in the present case, the total candidates eligible are 15 and there was full occasion to examine inter se merit of the candidates irrespective of the fact that they belonged to reserved communities or not, whether they are seniors or juniors; the ratio of both these cases are not applicable to the present case.

It was also laid down in those cases that whenever question arises for filling up a post reserved for SC/ST candidate in a still higher grade, such candidate belonging to SC/ST shall be promoted first but when the consideration is in respect of promotions against general category post in a still higher grade, then the general candidate who had been promoted later shall be considered senior and his case shall be considered first for promotion, applying the principle of

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'Seniority-cum-merit or merit-cum seniority'. Again this is not the issue in the present case. In the first instance, the post to be filled up is not a reserved post and the post to be filled up is not on the principle of seniority-cum-merit. In the present case, seniority has no relevance at all, and as such the cases, cited have no application of any kind.

17. In view of the matter the reliefs sought in this petition will have to be rejected and we do so with no order as to costs.



(S.P. Biswas)
Member (A)



(Dr. Jose P. Verghese)
Vice Chairman (J)

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