

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(11)

O.A./~~TXA~~ No1051/1997

Decided on: 10.3.98

Satish Kumar Bansal & Ors:....Applicant(s)

(By ~~XXXX~~ Mrs. Meera Chhibber Advocate)

Versus

Indian Council of Agriculture:....Respondent(s)
Research and Others


(By Shri R.S. Aggarwal and Advocate)
V.S.R. Krishna

CORAM:

THE HON'BLE ~~XXXX~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? y
2. Whether to be circulated to the other Benches of the Tribunal? L


(K. MUTHUKUMAR)
MEMBER (A)

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1051 of 1997

New Delhi this the 6th day of March, 1998.

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Satish Kumar Bansal
S/o Ved Prakash Bansal
R/o 68, Shiv Shankar Puri,
Meerut City.
2. Rai Bahadur
S/o Shri Har Gulal,
R/o 6, Hari Nagar,
Meerut City.

....Applicants

By Advocate Mrs. Meera Chhibber.

Versus

1. Indian Council of Agriculture
Research through its Secretary,
Krishi Bhawan,
New Delhi.
2. Project Director,
Directorate for Cropping System Research
Modipuram,
Meerut.
3. Smt. Jai Lata Sharma
W/o Shri K.K. Sharma,
C/o Project Directorate for Cropping,
System Research,
Modipuram,
Meerut.

..Respondents

By Advocates Shri R.S. Aggarwal and Shri V.S.R. Krishna.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A).

The point for consideration in this application is whether in filling up promotional post of Grade 'C' Stenographers in the scale of Rs.1400-2600 where Recruitment Rules provide for 66.2/3% by promotion and

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33.1/3% by Limited Departmental Competitive Examination (hereinafter referred to as 'LDCE'), the department can fill up the vacancies without strictly following the above quota for promotion.

2. The brief facts in this case are as follows:-

Applicants were appointed as Junior Stenographers in the grade of Rs.1200-2040 under respondent No.2 and by the orders of the respondent dated 22.4.1992, they were adjusted against the post of Stenographers in the scale of Rs.1400-2600 from 19.5.1990 till further orders. The applicants 1 and 2 are at S.No. 4 and 5 of the seniority list of Junior Stenographers as on 1.8.1995 as circulated by the circular dated 22.8.1995, Annexure P-5. Respondent No.3 is senior to the applicants at S.No.3 of the aforesaid seniority list. By the office order dated 8.9.1995 impugned at Annexure P-1 in this application, respondents issued promotion orders and three junior Stenographers to the grade of Stenographers in order of the seniority and respondent No.3 was the third person promoted in the aforesaid order, the other two being senior to her.

3. In terms of the Recruitment Rules for the post of Stenographer, which is a non-selection post, the rules provide that where the institutes have more than 3 posts, the recruitment to the post of Stenographer will be as follows:-

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(i) 66.2/3% by promotion of junior stenographers having 5 years approved and continuous service in the grade in the order of seniority in the grade subject to the rejection of unit on the basis of Annual Confidential Reports.

(ii) 33.1/3% by Limited Departmental Competitive Examination of Junior Stenographers who have rendered 3 years approved service in the grade.

4. The grievance of the applicants is that the respondents while promoting the Junior Stenographers under the promotion quota of 66.2/3% should have simultaneously held the LDCE and promoted the eligible Stenographers under 33.1/3% quota. In other words, according to them, where promotions to 3 posts are made, it should be in the proportion of 2:1, i.e., 2 to be promoted under 66.2/3% promotion quota and one to be promoted under 33.1/3% quota by LDCE. It has been alleged that respondents while promoting respondent No.3 under the promotion quota itself without conducting the LDCE, have violated the Recruitment Rules and have operated the rules in such a manner as to deprive the applicants of their due opportunity to compete through the LDCE for promotion against the third post. In the light of this, they allege that the promotion of the third respondent against the third post is not in accordance with the rules. They, therefore, pray for quashing the promotion of respondent No.3 and also for a direction to fill the third post by way of LDCE in accordance with the rules. It has also been alleged by the applicants that as per the roster for reservation of

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posts for Scheduled Castes and Scheduled Tribes, the third post has to be filled by general candidate. They further pray for a direction to the respondents to fill the 4th post from among the reserved category in accordance with the instructions on the subject.

5. The respondents in their reply have admitted that after the imposition of 5% cut in the sanctioned strength of Stenographers, there were 4 posts of Stenographers to be filled. According to them, three posts are earmarked for promotion quota and one post is earmarked for LDCE. It is also stated that separate reservation rosters are maintained for this purpose. In view of this, the respondents aver that the impugned orders promoting three junior Stenographers including respondent No.3 to the three posts under the promotion quota was quite valid and in accordance with the rules. In the case of ^{the} post to be filled by LDCE, the post has to be filled by SC candidate as per separate roster for this purpose. However, due to non-clearance of post in question and court case etc. and other administrative problems LDCE had been delayed. Further, there were also instructions issued by the Ministry of Finance that no administrative category post to be filled up after 16.6.1997, Annexure R-1 and Annexure R-II. In view of this, no further appointment could be made to fill existing vacancies. Prior to the receipt of the aforesaid instructions, the Department had, in fact, decided to hold LDCE to fill up the vacant post and they issued the circular to this effect vide the Circular dated

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24/28.4.1997, Annexure P-II to the O.A. In the light of the above submissions, the respondents maintain that there had been no violation of the instructions of the Government of India and the Recruitment Rules not only on the question of filling up the vacant post under the Recruitment Rules but also on reservation for SC and ST candidates. They also maintain that the first vacancy/post under the LDCE quota has also to be filled by SC candidate as per the roster and this was also notified by the Corrigendum issued in this behalf by the letter dated 3.5.1997. The applicants, however, question this and point out that the LDCE quota is applicable to the third post and not to the 4th post, as stated by the respondents.

6. We have heard the learned counsel for the parties and have perused the record.

for respondent

7. The learned counsel/has raised the preliminary objection that the application is barred by time. The respondents have not raised the issue of limitation in their counter reply. The applicants had been representing in the matter right from November 1996 praying for holding LDCE examination and also raising the issue that the post was liable to be filled up through LDCE but had been filled up by promotion. This matter was also discussed in the Administrative Staff Meeting on 27.2.97. The respondents officially replied to the applicant No.1 by their letter dated 10.4.97 that his request is already

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under consideration. As no further developments had taken place in the matter, this application was moved. Therefore, the contention of the learned counsel for the respondents on the question of limitation, is not acceptable.

8. The crucial point for consideration in this case is whether in filling up the post of Stenographers under the Recruitment Rules the respondents are simply to allocate the number of posts under the promotion quota and LDCE quota and then promote them with reference to any sequence or whether the quota has to be filled in the sequential order in the ratio of 2:1. In other words, for every 2 promotions made under the promotion quota one post to be filled under the LDCE quota. In the instant case admittedly, there were 4 posts to be filled by both promotion and departmental examination quota. The respondents earmarked the three posts for promotion quota and made the first three promotions from the eligible persons in accordance with the seniority. They could not simultaneously conduct the LDCE due to certain reasons and subsequently in 1997 after further consideration of the matter, they invited applications for the said examination by the Circular dated 26/28.4.1997. Even this could not be held as in the meanwhile, there was restriction for further filling up of administrative posts with effect from 16.6.1997. The respondents seem to have adopted the following pattern for filling up the posts under the quota rule for 66.2/3% quota where there are 4 posts. The three posts were earmarked for promotion quota and one

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post for LDCE quota on the basis of the following:-

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|-------|----------------------|---|---|
| (i) | Promotion quota post | - | 1 |
| (ii) | Promotion quota post | - | 2 |
| (iii) | LDCE post | - | 3 |
| (iv) | Promotion quota post | - | 4 |

9. By this, they contend that three posts are earmarked for promotion quota and one is earmarked for examination quota. In view of this, the respondent No.3 who is eligible for promotion under the promotion quota earmarked for promotion quota of three posts and her promotion along with the other people senior to her was in accordance with the rules. As stated above, the applicant's contention is that the third post should have been filled up in the sequential order only by eligible candidate under the LDCE quota and only after filling up that post, the next post could be filled under promotion quota. What is, therefore, agitated in this application is the sequential order in which these promotions are to be ordered both under promotion/LDCE quota. Under the rota-quota principle, the filling up of posts are to be done in accordance with the quota prescribed. Where it is possible to fill up the posts from both the streams, i.e., promotion quota and LDCE quota, the respondents are bound to follow this. Admittedly, the promotion order was issued in September, 1995 itself when there was no

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restriction in filling up any administrative post. Although the respondents say that due to certain administrative reasons the LDCE examination could not be held and was delayed and, therefore, they went ahead with the promotion of respondent No.3 out of the posts earmarked for promotion quota.

10. Under the provisions of rota quota rule which no doubt applies to the case of appointment by direct recruitment/departmental promotion, there is no bar in filling up the promotion quota whenever the direct recruitment quota vacancies could not be filled due to one reason or the another but the whole rota-quota principle is to determine the question of inter-se seniority between direct recruits and promotees. In the present case although one of the three posts is earmarked or kept reserved for LDCE quota, it follows that the LDCE quota will have to be filled up only after conducting the examination. If no exams could be held due to some reason, that quota will remain unfilled and can be filled in a subsequent year subject to the determination of inter-se seniority of the promotees vis-a-vis LDCE candidates in accordance with the rota -quota principle on the analogy of the Government of India instructions in O.M. dated 3.7.1986 for operating the rota-quota rules as in the case of promotees and direct recruits. Therefore, it will not be correct to conclude that the respondent No.3 has usurped the post earmarked for LDCE quota by the action of the respondents in promoting her also under the promotion quota for the 4th post which has necessarily to

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be filled only under the promotion quota. In other words, the post earmarked for LDCE quota should be considered to have remain unfilled. As and when the post is filled after the conducting of the examination from among the eligible candidates, the candidate who succeeds, according to the highest merit position, will have to be accommodated against this unfilled post. It is thus clear that it is not as though the applicants can have direct claim on this post earmarked under the examination quota. The learned counsel for the applicant relied on judgment in OA.2066/92 decided on 26.5.94 in Suresh Sharma Vs UOI & Ors. In that case, the applicant prayed for quashing of the circular by which a post of LDCE was sought to be filled up by Departmental Competitive Examination and also prayed for a direction that it should be filled up on the basis of seniority-cum-fitness as per the Recruitment Rules, i.e. under promotion quota. In the present case, the applicants ^{have} questioned the respondents' action in filling up vacancy under LDCE quota by promotion under promotion quota. Although the facts and circumstances are not exactly the same in this case, we have held herein that the LDCE quota of vacancy is to be treated to have remained unfilled due to the examination not having been held so far and, therefore, the applicants would also be eligible for consideration against such examination quota, as per the Recruitment Rules.

11. As far as the promotion of respondent No.3 is concerned against the 4th post under promotion quota, it is stated by the respondents that they have followed the

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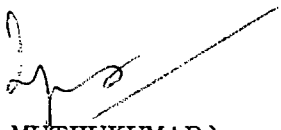
relevant instructions on reservation for Scheduled Castes and Scheduled Tribes in the promotion quota also. It is seen that as per the seniority list annexed by the applicants, respondent No.3 seems to be a general category candidate and is not a reserved category candidate. If separate roster is to be maintained for promotion quota as well, it is for the respondents to ensure that the respondent No.3 has been correctly promoted against the general point and not against any other point. It appears to us that as per para 9.1 of the Brochure on Reservation for SCs and STs, the reservation points for determining the number of vacancies to be reserved and the points that are to be shown as reserved points are prescribed. The respondents have to satisfy themselves about this aspect particularly as the 4th vacancy under the promotion quota is shown as a reserved ST point. This is actually a factual verification/review that has to be done by the respondents with reference to the roster maintained for this purpose and in accordance with rules and instructions in this behalf and if any corrective action is required, they should take such action as may be necessary in this behalf after due notice to the parties concerned. But as far as the applicants are concerned, they are entitled to be considered for the LDCE quota of vacancy, which has remained unfilled, subject to their results and their merit in the LDCE as and when such an examination is held.


12. In the light of the foregoing, the application is disposed of with the following directions:

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(i) The respondents are directed to consider the applicants against the unfilled LDCE quota vacancies as and when such an examination is held and subject to their relative merit position in such an examination.

(ii) To review the question of filling up the 4th vacancy under the promotion quota in the light of the observations in para 10 above and to issue appropriate order in this behalf within a period of 2 months from the date of receipt of a copy of this order. There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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