

Central Administrative Tribunal
Principal Bench

OA 1844/97

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New Delhi this the 13 th day of August, 1998.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

C.P. Singh,
S/o Shri Hari Singh,
R/o 118-C, Sec.4, Pushp Vihar,
New Delhi. Applicant.

By Advocate Shri A.K. Bhardwaj.

Versus

Union of India through

1. Secretary,
Ministry of Finance,
North Block,
New Delhi.
2. Director General,
Directorate of Revenue Intelligence,
"D" Block, I.P. Bhawan,
New Delhi.
3. Deputy Director (Admn.),
Directorate of Revenue Intelligence,
"D" Block, I.P. Bhawan,
New Delhi. Respondents.

By Advocate Shri N.K. Aggarwal, Sr. Counsel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has impugned the Order No. 45/97 dated 1.7.1997 issued by the respondents reverting him to the post of Assistant w.e.f. 31.7.1997:

2. The applicant initially joined the respondents as LDC in August, 1964 and was promoted as Assistant in March, 1984. By the Office Order dated 26.10.1994, he was promoted on ad hoc basis as Office Superintendent (O.S.). In his representation dated 14.5.1997, the applicant himself has stated that he was promoted to the post of O.S. due to the ad hoc promotion of Shri Ratan Lal to the post of Administrative Officer. The applicant's contention is that he has been

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continuously working as O.S. w.e.f. 26.10.1994 and performing his duties diligently and as such the impugned order of reversion could not have been passed. In the impugned order dated 1.7.1997, it has been stated that the applicant is reverted consequent on reversion of Shri Ratan Lal as O.S. in the Directorate. Shri A.K. Bhardwaj, learned counsel for the applicant, has contended that consequent upon the retirement of Shri Mahender Prakash w.e.f. 31.3.1997, one post of O.S. fell vacant. He submits that the vacancy had fallen at Serial No. 17 of the 40 point Reservation Roster which was reserved for ST category and since the applicant belongs to the SC category, he should have been appointed against this post on exchange basis. He has submitted that in any case the applicant ought not to have been reverted to the post of Assistant on the ground that Shri Ratan Lal has been reverted. He has also very vehemently submitted that since the post at Serial No. 17 of the 40 Point Roster was a reserved post for ST category, it should not in any case have been filled by a general category candidate and should have been given to the applicant who belongs to the SC category.

3. The respondents have filed their reply and controverted the above facts and we have also heard Shri N.K. Aggarwal, learned Sr. Counsel. They have relied on the Office Memo dated 12.7.1997 which has been issued consequent to the judgements of the Constitution Bench of the Supreme Court in R.K. Sabharwal Vs. State of Punjab (1995 (2) SCC 745) and Union of India Vs. J.C. Mallick (SLJ 1996 (1) SC 115). They have submitted that the applicant was promoted as O.S. purely on ad hoc basis which has not been disputed by the applicant. They have submitted that following the judgement of the Constitution Bench of the Supreme Court in R.K. Sabharwal's case (supra), the vacancy based rosters of SC/ST candidate have been replaced

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by the post based rosters in accordance with the instructions issued on 2.7.1997. They have also stated that out of the four posts of O.Ss, one post was lying vacant and another was already occupied by the SC candidate namely, Shri Ratan Lal. They have submitted that in view of the revised instructions of the Government, the applicant cannot, therefore, claim the post which fell vacant on the retirement of Shri Mahender Prakash who is also a SC candidate. Shri Ratan Lal had been appointed on ad hoc basis as Administrative Officer in 1994 and hence the applicant had also been promoted as O.S on ad hoc basis. In the post vacated by Shri Ratan Lal. They have further submitted that after the retirement of Shri Mahender Prakash, the applicant had no doubt been continued against his vacancy for some time in the administrative interest and convenience so that the work would not suffer till the DPC proceedings were held. Thereafter, the applicant was reverted from the post of O.S w.e.f. 31.7.1997. They have also submitted that this being a single vacancy of O.S and also occurring in the initial recruitment year has to be filled from the general category candidate on the basis of seniority-cum-fitness. They have also relied upon the instructions contained in Paragraph 12 of Annexure-I to the O.M. dated 2.7.1997 which provides that in the case of small cadres (upto 13 posts), all the posts shall be earmarked on the same pattern as in the model post based rosters. There is only one reserved post for SC candidate which is already filled up. In the facts and circumstances of the case, they have submitted that the applicant is not entitled to be appointed against the existing posts of O.S as contended by him. The respondents have relied on the judgement of the Constitution Bench in Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Ors. (1998 (2) Scale 772).

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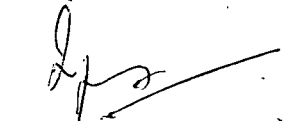
4. In reply Shri A.K. Bhardwaj, learned counsel, has submitted that since the post of O.S. fell vacant on the retirement of Shri Mahender Prakash w.e.f. 31.3.1997 i.e. prior to the issuance of the O.M. dated 2.7.1997, these instructions cannot be applied with retrospective effect to the facts of the case. This submission of the learned counsel cannot be accepted as the O.M. dated 2.7.1997 merely sets out the guidelines, based on the Constitution Bench judgement of the Supreme Court in R.K. Sabharwal's case (supra) which has been delivered in 1995. These guidelines are, therefore, fully applicable to the facts of the present case.

5. We are also unable to agree with the contentions of Shri A.K. Bhardwaj, learned counsel that the applicant was entitled for promotion to the post of O.S. on the basis of inter-changeability with the post which fell for a ST person as he is a SC candidate, based on the earlier DOP&T instructions. These instructions will not apply to the facts of this case, having regard to the instructions contained in the O.M. dated 2.7.1997. Admittedly, out of the four posts of O.Ss, one post has already been occupied by Shri Ratan Lal, SC and following the O.M. of 2.7.1997 which is based on the judgement of the Hon'ble Supreme Court, on no occasion the percentage of reservation category should exceed 50%. Merely because the respondents continued the applicant in the post of O.S. on ad hoc basis due to administrative exigencies till they passed the impugned order reverting him, cannot also give him a right to continue in the higher post. We have also considered the other submissions made by Shri A.K. Bhardwaj, learned counsel, but do not find any justification to interfere in the matter.

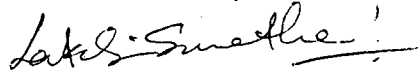
J.B.

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6.. In the facts and circumstances of the case, we find no merit in this application. The same is accordingly dismissed. No order as to costs.



(K. Muthukumar)
Member(A)



(Smt. Lakshmi Swaminathan)
Member(J)

"SRD"

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