

Central Administrative Tribunal, Principal Bench

O.A.2516/1997

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New Delhi, this the 22nd day of December, 2000

Hon'ble Mr.Kuldeep Singh,Member (J)
Hon'ble Mrs.Shanta Shastry,Member (A)

B.P. Meena
704/4, Lodi Colony
New Delhi-3

....Applicant

(By Advocate: Sh.K.C.Mittal with Sh.Harvir Singh)

Versus

1. Secretary
Ministry of Industry,
Department of Public Enterprises
Govt. of India, Udyog Bhawan, New Delhi
2. Joint Secretary
Department of Public Enterprises
Ministry of Industry
Block No.14, C.G.O. Complex,
Lodi Road, New Delhi
3. Shri T.P.Singh
Assistant Director
Department of Public Enterprises
Ministry of Industry
Block No.14, C.G.O. Complex,
Lodi Road, New Delhi
4. Shri M.M.Gupta,
Assistant Director
Department of Public Enterprises
Ministry of Industry
Block No.14, C.G.O. Complex,
Lodi Road, New Delhi
5. Shri M.P.Fulzele
Deputy Director
Department of Public Enterprises
Ministry of Industry
Block No.14, C.G.O. Complex,
Lodi Road, New Delhi
6. Shri H.S.Puri, Deputy Director
Department of Public Enterprises
Ministry of Industry
Block No.14, C.G.O. Complex,
Lodi Road, New Delhi
7. Shri M.R. Nair
Deputy Director
Department of Public Enterprises
Ministry of Industry
Block No.14, C.G.O. Complex,
Lodi Road, New Delhi

....Respondents

(By Advocates: Shri Rajeev Bansal for official
respondents and Shri S.K.Gupta for
private respondents)

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ORDER

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By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant who is working under the respondents has a grievance regarding his seniority. He has further grievance that he belongs to ST category and a post of Assistant Director had fallen vacant on 14.8.89 which was reserved for ST as per roster point but his case for promotion from that date had been ignored and he had been given appointment to the post of Assistant Director w.e.f. 28.8.96. He claims that the post which had fallen vacant on 14.8.89 was meant for ST category, so he should have been given that roster point. On this background, he has made the following prayers:-

- "8.1 To fix up the seniority of the applicant as per the roster point available for ST category since the year 1989;
- 8.2 To grant the applicant all such consequential benefits as he would have deemed to be promoted w.e.f. 14.8.1989 to the post of Asst. Director;
- 8.3 To take into account the experience of his previous service in the deemed capacity of Asst. Director w.e.f. 14.8.1991 for being promoted to the next higher post; and
- 8.4 To produce before the Hon'ble Tribunal all such records pertaining to DPC and roster register."

2. The applicant has also indicated in para 4.5 the roster position which is reproduced below:

Point	Name of Officer	Recruitment Year/Promotion in the Year	Category
1.	Sh.P.K.R.Menon	1978	SC (Filled by General candidate)

[Handwritten signature/initials over the table]

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2. Sh.S.P.Banerjee	1978	General
3. Sh.P.C.Verma	1983	General
4. Sh.M.P.Fulzele	1990	ST (Filled by SC adjusted against vacancy 1978 in violation of reservation policy
5. Sh.H.S.Puri	1990	General
6. Sh.M.R.Nair	1990	General
7. Sh.R.D.Verma	1990	General
8. Sh.M.M.Gupta	1992	SC (Filled by General candidate in violation of reservation policy
9. Sh.Promod Kumar	1992	General (Ad-hoc reverted in Dec. 94)
10. Sh.T.P.Singh	1994	SC (Ad-hoc on reversion of Sh.Promod Kumar
11. Sh.Promod Kumar	1995	General (Ad-hoc)

3. In order to claim the seniority w.e.f. 14.8.89, the applicant has pleaded in the grounds that he belongs to ST category and the respondents have ignored Govt. of India instructions issued by the DOPT from time to time for filling up promotional posts of ST category. He claims that since the roster point of ST category was available on 14.8.89, he should have been given that point from the date when he had become eligible for promotion. He has further claimed that at least one post each of Assistant Director out of four filled up on regular basis in June, 1990, should have been reserved for SC & ST respectively. In the year 1978, the point first meant for S.C., was not filled up despite the fact that even SC candidate was available. One SC candidate was adjusted against the ST post but no-one was promoted

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from ST category despite the fact that the post was meant for ST candidate. The post meant for ST category was neither filled up by ST category by relaxing the recruitment rules nor carried forward inspite of the Government directives to carry forward the same for at least three recruitment years. Had this post been carried forward, the applicant would have got promotion w.e.f. 14.8.91, i.e. the date on which he had completed five years service in the feeder grade and had become eligible for promotion. The applicant has also pleaded that when the post of ST point had fallen vacant, the competent authority had the power to relax the required experience in his case as per the judgement of the Hon'ble Supreme Court in the case of Sales Tax Commissioner etc. vs. B.G.Patel etc, 1995 (1) Scale 88 and since the roster point had not been followed, he was entitled for promotion against the roster point which had fallen vacant in the year 1989 and from the date, he had become eligible.

4. The respondents are contesting the petition. The plea of the respondents is that as for vacancy at point no.1 is concerned, it was meant for SC candidate and had fallen vacant in the year 1978. It was got de-reserved but the carrying forward of such like vacancies is not permissible under the rules as per Annexure 'F' relied upon by respondents (at page 68 of the paper book), according to which if a de-reserved vacancy could not be filled for three years by a SC

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candidate, then it could not be carried forward further. So the respondents have pleaded that in view of Annexure 'F', this point could not be carried further.

5. As for the point meant for ST candidate is concerned, the respondents have pleaded that when the vacancy at point no.4 meant for ST candidate had arisen, at that point of time, no ST candidate was eligible and available, so the vacancy was given to an SC candidate Mr.M.P.Fulzele as per the policy of the Government and the carrying forward of the same was not permissible. Regarding the vacancy at point no.8, the respondents have submitted that since it was a single vacancy, it was meant for General candidate but as the applicant had also become eligible for promotion by that time, his case also alongwith other eligible candidates was considered by the DPC and a proposal was sent to the UPSC for selecting a suitable candidate. The applicant was not found suitable, so he could not be appointed at that time. It has been denied that the applicant was ignored for ad-hoc promotion as Assistant Director. It is stated that applicant was considered for ad-hoc promotion in the year 1995 and was promoted w.e.f. 9.10.95.

6. Private respondents have also contested the petition.

7. We have heard learned counsel for the

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parties and gone through the records.

8. Shri K.C.Mittal, learned counsel appearing for the applicant submitted that the vacancy reserved for ST candidate which had fallen vacant in the year 1990, could have been given to applicant by relaxation of eligibility condition with regard to experience and since the same has not been done, it should be treated that the applicant had been ignored. He has further stated that this ST vacancy should have been carried forward and when the vacancy for SC was available in the year 1992, at least at that time, the applicant should have been adjusted against the same.

9. As for the plea of applicant regarding relaxation of condition is concerned, we may mention that it was for the department to give relaxation or not. But the fact remains if relaxation is not given, then the applicant as per his own admission was not eligible for the post which fell vacant in the year 1990.

10. Relaxation also cannot be claimed as a matter of right. The applicant has also not proved that circumstances did exist which warrant the Government to relax condition in the case of applicant. As such, we are of the considered opinion that when vacancy occurred in the year 1990, applicant was not eligible as per recruitment rules.

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11. As for 1992 vacancy is concerned, it was otherwise a general vacancy, so the applicant could not be adjusted even against that.

12. However, from the perusal of the annexures enclosed with the counter affidavit, particularly annexures 'E' and 'F' which contain the instructions regarding carrying forward of vacancies between SCs and STs, that shows that in case of promotion by selection from group 'C' to group 'B', within group 'B' and from group 'B' to the lowest rung of group 'A' where carrying forward of vacancies are not permitted, vacancies can be exchanged between SCs and STs during the same year of recruitment. Para 11.1 and 11.2 of annexure 'E' and 'F' shows that the respondents had followed the instructions regarding carrying forward and exchange of vacancies between SCs and STs and we find that there is no ground existing to interfere in this O.A. The O.A. is accordingly dismissed. No costs.

Shanta F
(Mrs. Shanta Shastray)
Member (A)

Kuldeep
(Kuldeep Singh)
Member (J)

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