

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. No. 560/97
T.A. No.

Date of decision 9.7.98

Sh. Manohar Lal Meena .. Petitioner

Sh. P. M. Ahlawat .. Advocate for the Petitioner(s)

Versus

UOI and Ors .. Respondents

Sh. R. P. Aggarwal .. Advocate for the Respondents

CORAM

The Hon'ble Shri S. R. Adige, Vice Chairman(A)

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

1. To be referred to the Reporter or not? Yes

2. Whether it needs to be circulated to
other Benches of the Tribunal ? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
O.A. 560/1997

(16)

New Delhi this the 9th day of July, 1998.

Hon'ble Shri S.R.Adige, Vice Chairman(A)
Hon'ble Smt.Lakshmi Swaminathan, Member (J)

Shri Manohar Lal Meena,
S/O Shri Ram Charan Meena,
Quarter No.863, Type-II,
N.H.IV, Faridabad.

..Applicant

(By Advocate Shri P.M.Ahlawat)

VS

Union of India, through:

1. The Secretary to the Govt.of India,
Ministry of Planning & Programme
Implementation,
Dept.t of Statistics,
Sardar Patel Bhawan, Sansad Marg,
New Delhi-1
2. The Director,
National Sample Survey Organisation,
(Field Operation Division)
C-Block, 3rd Floor, Pushpa Bhawan,
Madan Giri Road, New Delhi-62.
3. The Deputy Director,
National Sample Survey Organisation,
(Field Operation Division)
Central Government Officers Building,
Block-II, N.H.IV, Faridabad-121001

..Respondents

(By Advocate Sh.R.P.Agarwal)

O R D E R

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

The applicant is aggrieved by the Memorandum dated 20.3.1996 issued by the respondents informing him that his representations are very much debarred as seniority has already been adopted after circulation of the draft list dated 13.3.1991.

2. The applicant who was appointed as Investigator in the Office of the National Sample Organisation, Respondent No.3, was promoted as Assistant Superintendent on ad hoc basis by Order dated 22.2.1985 in which his name has been shown at Serial No. 82 in the promotion list of 84 promotee officers(Ann.A.2). According to him, he had assumed the

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charge of that post on 8.3.1985 at Shimla. The applicant claims that he was eligible for regular promotion as Assistant Superintendent and therefore, he has to be assigned seniority below the persons promoted in 1983 and above the persons promoted on regular basis in 1987, as his promotion is against carry forward reserved vacancy for ST, to which community he belongs, after following the extant Rules and instructions. By Office order dated 16.10.87(Annexure A.3) the respondents have promoted officers who were Investigators as Assistant Superintendents on regular basis. The applicant has submitted that many Investigators who were promoted as Assistant Superintendents on 16.10.1987 have also been shown senior to him ~~applicant~~ and the other Scheduled Castes and Scheduled Tribes candidates promoted to make good the shortfall in the reserved quota for them on 22.2.1985. Shri Ahlawat, learned counsel, has submitted that as it can be seen from the orders passed by the respondents(Ann.A.2 and Ann.A.3) they are neither maintaining the rosters nor following the statutory Rules/instructions of the Govt.of India regarding filling of the posts which are reserved for SC/ST candidates as these candidates have been bunched at the bottom of the list which is contrary to the Constitutional and statutory provisions which have been made to safeguard their interest.

3. According to the applicant, ^{which 18} he has mentioned in the OA as well as reiterated in the rejoinder, ¹⁸ that the relevant seniority lists have not been shown to him or got noted by him. In the circumstances, he has submitted ^{that 18} the submissions of the respondents that the case is barred by limitation cannot be accepted as they have themselves violated the Govt.of India Rules/instructions to maintain roster in respect of reservations for SC/ST candidates which is, therefore, clearly in violation of the provisions of

✓ Articles 14 and 16 of the Constitution of India.

4. Shri Ahlawat, learned counsel has submitted that ^{the} ad-hoc promotion list promoting the Investigators to the post of Assistant Superintendents by Office Order dated 22.2.1985 showing all the SC/ST candidates right at the end of the list is not in accordance with the roster which is to be maintained by the respondents. He has also submitted that the select lists have not been prepared, keeping in view the year-wise vacancies providing reservation in the cadre for SC/ST candidates as per the extant Rules and instructions. He has also submitted that the reserved vacancies cannot be filled up by the ~~other~~ general candidates, without taking necessary approval of the competent authority for de-reservation in accordance with the rules which also the respondents have not done while promoting the Investigators as Assistant Superintendents on regular basis by Office order dated 16.10.1987. In short, his contention is that the respondents have flouted the reservation policy and the rules formulated by the Govt. which they cannot do (See Scheduled Castes and Scheduled Tribes Officers Welfare Council Vs State of Uttar Pradesh and another (AIR 1997 (SC) 1451). He has also relied on a number of judgments which have been referred to in the pleadings, including Ram Nath Chadha Vs UOI (SLR 1988 (2) CAT (PB) 273 and Ahmed Abdul Raheem Vs Senior Superintendent of Post Offices and others (SLR 1992 (2) CAT (Hy) 405. We find that the judgment in Ahmed Abdul Raheem's case (supra) will not assist the applicant as majority of the judgement of two Hon'ble Members on this point have dismissed the MA for condonation of delay.

5. The respondents in their reply have taken a preliminary objection on limitation. In the additional affidavit, they have submitted that due reservation has been provided as

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per the communal roster. They have submitted that while they have followed the reservation policy as laid down in the Govt. Instructions and final order promoting 334 Investigators on regular basis was issued on 16.10.87, the vacancies were not broken down year-wise since regular vacancies were not available between 1983 to 1986. We find this reply somewhat vague and unsatisfactory because it is settled law that the Departmental Promotion Committee(DPC) must consider the vacancies year-wise, when there has been bunching of vacancies for a number of years, which is the case here. The post of Assistant Superintendent is a feeder post for promotion to the post of Superintendent. According to them, the seniority lists of 9.12.88 and 13.3.91 were supplied to each and every Head of the Office and to the General Secretaries of the Associations and final seniority list was issued after due consideration of the representations received from the Assistant Superintendents.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. In the ad hoc promotion order dated 22.2.1985 promoting Investigators as Assistant Superintendents, we note that from Serial Nos. 1 to 66 general candidates have occupied the positions, SC candidates from Sl.Nos. 67 to 77, and ST candidates from Serial Nos. 78 to 84, wherein the applicant's name figures at Sl.No.82. Similarly in the Office Order giving promotion to the Investigators as Assistant Superintendents on regular basis dated 16.10.1987, there is a bunching of SC and ST candidates towards the later half of the list which contains 334 names, in which the applicant's name figures at Sl.No.330. The respondents in their additional reply have submitted that they have not broken down the vacancies year-wise from 1983 to 1986. They have, however, submitted that they have maintained the communal rosters

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and have followed the Government policy on reservation for SC/ST communities. We are unable to accept these statements. Merely a glance at the aforesaid impugned orders of 1985 and 1987 show that the SC/ST candidates have been bunched together at the end and *prima facie*, therefore, the respondents have neither maintained the roster nor followed the reservation policy which they are required to do. We are unable to understand as to how all the candidates belonging to the weaker sections, and in particular the ST candidates, can be bunched at the bottom of the lists, if the Government of India Instructions on reservations and maintaining year-wise vacancies in case of bunching of vacancies have been followed by the Respondents. These lists, therefore, appear to have been issued in clear violation of the relevant rules/instructions raising fundamental questions whether they should be allowed to stand.

8. In a similar case, **R.K.Nafaria V.UOI & Ors**(OA 605/1987) decided on 18.9.92, the Tribunal has held as follows:

" The main point which falls for decision is whether, when vacancies are filled up at different points of time in batches from a larger panel, the reservation points can be ignored for each batch in preference to the position in the panel where Scheduled Caste and Scheduled Tribe/ ^{candidates} occupy much lower positions. While the learned counsel for the applicant states that for each batch the roster points should be taken into account out of 40 point or 100 point roster as prescribed for determining the number of reserved vacancies, the learned counsel for the respondents argues that the sequence of filling up vacancies in one lot or in batches should follow the sequence in the panel. This argument goes counter to the spirit of reservation. The roster points whether on a 40 point or 100 point basis is a running roster which has to be taken into account as and when the vacancies are filled up. For each batch covering a particular span of points, the number of vacancies reserved for Scheduled Castes

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and Scheduled Tribes is determined by the reserved points in the roster which fall within that span. Therefore, in the first batch of 50 vacancies filled up in November, 1983, the respondents should have applied the roster and appointed the SC/ST candidates from the panel. This should have been followed in the second batch of 45 vacancies filled up in December, 1983, to the number of reserved vacancies arising from the roster should have been added the backlog of carried forward reserved vacancies from 1978-79 and not more than 50% of the vacancies in each batch should have gone to the SC/ST candidates in the panel of 1982."

This judgement has been followed in **S.K.Dass and Ors v. UOI & Ors.** (OA 1474/95) decided on 24.12.97 (Copy placed on record), in which case also the objection on the ground of limitation was raised by the respondents. This was rejected following the observations of the Hon'ble Supreme Court in **K.C.Sharma and Ors. Vs. UOI & Ors.** (JT 1997(7)SC.58).

9. The judgement of the Hon'ble Supreme Court in **R.K.Sabharwal and Others Vs. State of Punjab and Others** (SCC 1995(2) 745 is also relevant in which it has been held:

"When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserved posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. For making any provision for reservation of appointments or posts in favour of any Backward Class of citizens, it is incumbent on the State Government under Article 16(4) of the Constitution of India to reach a conclusion that the Backward Class/Classes for which the reservation

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is made is not adequately represented in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the backward classes are operative the same have to be followed." (Emphasis added)

10. In the present case it is relevant to note that the impugned Memo. is dated 20.3.1996 by which the applicant's representations have been rejected on the ground that the draft seniority has already been accepted by order dated 13.3.1991. It is settled law that the respondents should not take the technical plea of limitation where otherwise on merits the application is entitled to succeed. Normally, the plea of bar of limitation taken by the respondents would have stood in the way of the claims of the applicant as he has challenged the Orders dated 22.2.85, and 16.10.87, and this OA has been filed on 5.3.97. However, the fact that the respondents themselves have not followed the reservation policy or the relevant rules on the subject is a serious matter and they cannot ^{therefore,} take shelter behind the plea of limitation. The respondents have no-where shown as to how they have followed the 40 point or 100 point roster on the basis of which they have allocated vacancies for the general candidates and the reserved category candidates in the impugned orders. The bunching of SC/ST candidates at the bottom of the lists by itself shows that there is merit in this application

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and much can be said on the contention of Sh. Ahlawat, learned counsel, that the respondents have failed to follow the extant reservation policy rules and instructions for SC/ST candidates. In the facts and circumstances of the case, we are of the considered view that this is a fit case in which we should condone the delay in filing the application as the respondents have clearly violated the Articles 14 and 16 of the Constitution, especially regarding reservation policy and holding of DPC (See **K.C. Sharma and Ors. Vs. UOI and Others**) (JT 1997(7)SC 58).

11. In the result, taking into account the facts and circumstances of the case, OA is allowed and the impugned order dated 20.3.96 is quashed and set aside. Consequently, actions of the respondents placing the applicant in the ^{bottom B} ~~last~~ position at Serial No.330 in the Office Order dated 16.10.87 showing the list of Investigators who have been promoted as Superintendents on regular basis, and the list dated 22.2.1985 showing promotion list of Assistant Superintendents on ad hoc basis where the applicant has been shown at Serial No.82 are also quashed and set aside. The respondents are directed to, ^{consider and} revise the seniority of the applicant, taking into account the relevant Govt. of India's instructions on reservations for SC/ST candidates and the observations made above. This shall be done as expeditiously as possible and preferably within four months from the date of receipt of a copy of this order and further action for promotion of eligible candidates in the post of Superintendent will be done in accordance with law and rules. No costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)