

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2111 of 1994

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New Delhi this the 30/8 day of August, 1995

HON'BLE SHRI J. P. SHARMA, MEMBER (J)

HON'BLE SHRI B. K. SINGH, MEMBER (A)

Shri K. D. Sonker S/o
Shri Dwarika Prasad,
103/89 Colonel Ganj,
Kanpur - 208001.

... Applicant

(By Ms. Raman Oberoi, Advocate)

Versus

1. Union of India through
Secretary to Government of India,
Ministry of Labour, DGE&T,
Shram Shakti Bhawan,
2-4 Rafi Marg,
New Delhi - 110001.
2. Director,
Advanced Training Institute,
Udyog Nagar,
Kanpur - 209022.
3. Shri M. C. Verma,
Maintenance Mill Wright,
Advanced Training Institute,
Udyog Nagar,
Kanpur - 208022.
4. Shri Ram Kishore,
Asstt. Training Officer,
Advanced Training Institute,
Udyog Nagar,
Kanpur - 208022.

... Respondents

(By Shri M. K. Gupta, Advocate)

O R D E R

Shri J. P. Sharma, M (J) :-

The applicant belongs to Scheduled Caste category. He has a grievance that respondent No.3, Shri M. C. Verma, was given promotion on ad hoc basis against a reserved vacancy though the applicant, an SC candidate, was eligible and available for regular promotion. He has filed this original application in October, 1994 after making unsuccessful representations and prayed for grant of reliefs that directions be issued to respondents to treat the applicant

promoted to the post of Maintenance Mill Wright in the cadre of Assistant Training Officer (for short, ATO) with effect from 9.2.1986 with all consequential benefits of pay, seniority and arrears of pay and allowance payable to ATOs. He has also prayed that the promotion of respondent Nos. 3 and 4 w.e.f. 31.1.1985 and 27.6.1989 respectively be declared null and void.

2. On notice, the respondents contested this application and opposed the grant of relief on the ground that the applicant was not eligible till 31.1.1985 for the promotional post of ATO and at that time unamended rules were in force which were amended in March, 1986 and thereafter the applicant was not eligible by virtue of the amended rules, to be considered for the post of ATO. The various contentions raised in the O.A. have been denied as to the availability of a reserved quota vacancy and also the eligibility of the applicant for consideration for the post in question. It is stated that the application apart from being belated, has no merit and be dismissed.

3. Relevant facts of the case are that the applicant joined at Kanpur in the Advanced Training Institute as Tool Store Incharge in 1971 and was promoted as Skilled Worker in February, 1981. The next promotional post of ATO where 75% of the vacancies are filled by promotion and 25% by direct recruitment. The incumbents of various feeder cadres are divided in three categories, namely, (1) Vocational Instructors appointed prior to 26.5.1970, (2) Vocational Instructors appointed subsequent to 26.5.1970, and (3) other posts carrying identical scale of Senior Draughtsman, Skilled Workers etc. Before March, 1986, rules came into force by way of amendment. The first category of incumbents which was given preference were 2nd and 3rd categories combined. After

the aforesaid amendment of March, 1986, preference was given in the order of 1st, 2nd and 3rd categories respectively. All the incumbents belonging to any of the above three categories with five years (seven years for 2nd and 3rd categories after amendment in March, 1986) of regular service in the grade/post and having respective trade requirements, were eligible to be considered for promotion to the cadre of ATO. The case of the applicant is that he had completed the eligibility for promotion to the ATO cadre in February, 1986 and there were vacancies available against ST category at point No.4, SC category at point No.14 and ST category at point No.17, in the year 1986. No regular promotion to the post was done till 1989 but one Shri M. C. Verma (respondent No.3), a general category candidate, was appointed on ad hoc basis w.e.f. February, 1983. This ad hoc appointment was extended from time to time till 1989. One Shri M. H. Siddiqui had obtained an injunction from a Civil Court at Kanpur that Shri M. C. Verma should not be regularised. By these averments, it is stated that there was a vacancy available directly in SC quota or by exchanging the vacancy in ST quota, and as such the respondents have wilfully and arbitrarily withheld the promotion of the applicant to the ATO cadre as Maintenance Mill Wright. Since the applicant was promoted as a Skilled Worker in February, 1981, he was eligible having put in five years of regular service in February, 1986. Ignoring the claim of the applicant, the respondents gave promotion to respondent No.3, M. C. Verma. It was only in March, 1986 that the recruitment rules were amended and at that time seven years' qualifying service in the feeder cadre of Skilled Workers was laid down, but the applicant has to be considered with respect to the unamended rules.

4. The respondents, however, in their reply have opposed the various averments made by the applicant, firstly that the

(A)

post cannot be exchanged between SC and ST categories upright. A definite order after a decision has to be passed. The point Nos. 4, 14 and 17 are not denied by the respondents and also the 40-point communal roster of Kanpur unit is also admitted. But these three vacancies which could not be filled for want of eligible reserved category candidates were coming up since 1979 at point No.4, since 1982 at point No.14 and since 1983 at point No.17, and were de-reserved by the competent authority vide DGE&T letter No. DGET.A 14013/18/84-TA-I dated 31.1.1985 subject to the de-reservation being carried forward to the subsequent recruitment years as per orders in force. Thus the applicant has no claim for any of the SC vacancies as before de-reservation he was not eligible and the DPC which met in February, 1986 rightly did not consider the claim of the applicant. Thus, the applicant has no case.

5. We have heard the learned counsel for the applicant, Ms. Raman Oberoi and also Shri M. K. Gupta, learned counsel for the respondents, and perused the records. It is not disputed by either party that a regular vacancy of Maintenance Mill Wright occurred on 31.11.1982. This was considered to be filled up by SC candidate but no SC candidate was eligible as per recruitment rules and the vacancy could not be kept in abeyance in the interest of training. M. C. Verma, respondent No.3, a Vocational Instructor, as per recommendations of the DPC belonging to 1st category referred to hereinabove, was promoted to the post of Maintenance Mill Wright only on ad hoc basis w.e.f. 11.2.1983. At this time, the applicant was promoted as a Skilled Worker only in February, 1981 did not have to his credit the qualifying service of five years and was not eligible. A proposal for de-reservation was sent in 1984 and the competent authority

had finally by the order of January, 1985 referred to above, de-reserved the vacancy. One Shri Siddiqui got an injunction from a Civil Court at Kanpur that Shri M. C. Verma who had been recommended by the DPC in February, 1983 and was given ad hoc appointment should not be regularised. However, the ad hoc appointment of Shri Verma was continued. This civil suit was dismissed as withdrawn and the ex parte injunction was also vacated by the Central Administrative Tribunal, Allahabad Bench on 29.5.1989. Shri Verma was promoted on the recommendations of the DPC held on 23.6.1989 on regular basis but was given, on his representation, retrospective promotion w.e.f. 31.1.1985 on regular basis against a de-reserved vacancy. Since there was no vacancy available when the applicant gained the eligibility qualification of five years' regular service as Skilled Worker in February, 1986 he could not be considered on the unamended rules. In the year 1987, one vacancy in the cadre of ATO was created and this vacancy had gone on consideration to Shri Ram Kishore, respondent No.4, also an SC candidate, in compliance with the criterion laid down in the amended rules and the backlog vacancy was filled up. This was the roster point 14 of SC which was carried forward on de-reservation of the vacancy. The applicant belonged to the 3rd category under the heading 'Promotion' in column 11 of the amended rules and Shri Ram Kishore belonged to the 1st category and, therefore, he was rightly given promotion on a reserved vacancy. As already referred to above, the Vocational Instructors and officials belonging to the categories 1 and 2 in column 11 have a preference over officials belonging to 3rd category.

6. The learned counsel has repeatedly argued that when the applicant became eligible in February, 1986, he should have been given the vacancy of an earlier year and the provisions

(b)

of unamended rules of 5 years' eligibility where categories 2 and 3 are to be considered simultaneously should have been applied. This contention has no force. After de-reservation of the vacancy it has to be treated as an un-reserved vacancy and as per recruitment rules, the eligible candidates as per seniority list have to be considered. The applicant cannot on his eligibility in February, 1986 be considered in a subsequent vacancy after March, 1986 on the basis of unamended rules. That will be totally against the provisions of amended rules where eligibility and preference in various feeder posts has gone material change. In order to accommodate the applicant, the preference cannot be changed and the applicant cannot be appointed de hors the rules.

7. The learned counsel for the applicant has referred to certain correspondence wherein it is mentioned that the case of the applicant be also considered on a reserved point, but that correspondence cannot be treated as giving a relaxation in the recruitment rules and giving promotion to the applicant on the basis of unamended rules prior to March, 1986. Reliance has been placed on the case of S. S. Sodhi vs. State of Punjab reported in 1990 (2) SCC 694.

8. The further contention of the learned counsel for the applicant is that respondent No.3 cannot occupy a reserved vacancy. Objection to the promotion of Ram Kishore, respondent No.4, an SC candidate, has not been hotly pressed by the counsel for the applicant and it is only the promotion of respondent No.3 that has been challenged. We find that respondent No.3 is quite senior and belongs to 1st category referred to above. The respondents, not to keep the training post vacancy vacant, considered the case of the applicant and the DPC which was held in February, 1983 considered this vacancy which had fallen in November, 1982 and he was rightly

given promotion on ad hoc basis which was subsequently regularised by the DPC of January, 1989. Respondent No.3 has already worked for about six years without any break and has also faced civil suit filed against him by M. H. Siddiqui who alleged himself to be senior to respondent No.3. That civil suit had finally been dismissed holding that Shri M. C. Verma, respondent No.3, had a claim to the post of ATO. It is now disputed by the applicant's counsel that preference has to be made in effecting promotion in a particular ratio. That rule has not been challenged. In the promotional post of 75% quota there are a number of feeder posts. It is only the experience which can be waived by the respondents but the eligibility or change of category cannot be relaxed. The respondents do not think it a case of relaxation to accommodate the applicant on a reserved category post which was available at the time when the applicant had completed five years in February, 1986 as a Skilled Worker. That relaxation prayer has not been made nor any representation against that, nor any representation for claiming relaxation has been made by the applicant. In view of this, the Tribunal cannot enter into new arena and to probe into the matter whether it was a fit case for relaxation with SC category vacancy was available in the year 1982. Against a vacancy of reserved category the applicant cannot be considered because he falls within 3rd category, which is the last category, when category 1st fails and 2nd is exhausted, and still the DPC finds none eligible in either of the categories, then the case of the applicant can be favourably considered. The unamended rules of course combined categories 2nd and 3rd together for selection but the amended rules have made all the three categories independent of each other and the last category to get preference only when none is available from categories 1st and 2nd. Thus, we find that

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the applicant has no case at all as there was no eligibility obtained by him when there was SC category vacancy available and when he became eligible in February, 1986, the vacancy at point No.4 of SC category had already been de-reserved in January, 1985 and the DPC held subsequently after amendment of the rules.

9. The applicant, therefore, has no case and the original application is dismissed, but without any order as to costs.

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(B. K. Singh)
Member (A)

J. P. Sharma

(J. P. Sharma)
Member (J)

/as/