

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

(3)

O.A. NO. 434 of 1994

New Delhi this the 31st day of October, 1994.

Shri N.V. Krishnan, Vice Chairman(A).

Shri C.J. Roy, Member(J).

1. C.D. Bhatia,
S/o Late Shri Mani Ram,
R/o 870/7, Govindpuri,
New Delhi.
2. Sohan Singh
S/o Shri Banta Singh,
R/o Flat No. 10, F-4,
Sector-15, Rohini,
New Delhi.
3. Sri Bhagwan,
S/o Shri Kashi Ram,
R/o Flat No. 10, F-4,
Sector-15, Rohini,
New Delhi.
4. Brahm Singh,
S/o Shri Ram Singh,
851/7, Govindpuri,
New Delhi.
5. R.S. Kaim,
S/o Shri Krishan Lal,
R/o F-170, Vill-Khanpur,
New Delhi.
6. R. Sanehwal,
S/o Late Shri Nachhatar Singh,
G-304, Preet Vihar,
Delhi.
7. Mangat Ram Bali,
S/o Shri Amar Dass,
R/o G-222, Nanakpura,
New Delhi.
8. R.V. Singh,
S/o Shri C. Ram,
R/o C-5A/161, Janakpuri,
New Delhi.

...Petitioners.

By Advocate Shri S.K. Dubey.

Versus

1. Union of India through
Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
North Block,
New Delhi.
2. Establishment Officer and
Additional Secretary,
Department of Personnel & Training,
North Block,
New Delhi.

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3. Director (Central Services),
Department of Personnel & Training,
Lok Nayak Bhawan,
New Delhi. .. Respondents.

By Advocate Shri Madhav Panikar.

O R D E R (ORAL)

Shri N.V. Krishnan.

After hearing this case, we have found that the issue in dispute lies within a very narrow compass.

2. Briefly, the facts are that the eight applicants are Scheduled Castes and Section Officers and have a grievance that when ad hoc promotions were ordered by the respondents in 1993, as many as 117 Section Officers belonging to general category have been given promotion on ad hoc basis whereas corresponding to that number, the Scheduled Castes and Scheduled Tribes who are also entitled to ad hoc promotion have not been given such promotion based on reservation.

3. It is seen that an order was passed in C.A. Nos. 3797-99 of 1991 by the Supreme Court on 18.8.92 directing Union of India to finalise the seniority list of Section Officers within three months from that date on proper consideration of the objections. It was further ordered that no promotion to the post of Under Secretary shall be made pending finalisation of the list except, as submitted by the Attorney General, in regard to the Scheduled Castes and the Scheduled Tribes and that no promotion so far made on temporary basis shall be disturbed until and subject to the decision of the competent authority in regard to the seniority list. The

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applicants have, therefore, prayed for a direction to the respondents to promote them on ad hoc basis to the posts of Under Secretary Grade-I within the quota reserved for them.

4. The grievance made appeared to be genuine and, therefore, notice was issued to the respondents. The respondents have submitted a reply which has been supplemented by two supplementary affidavits. Their case briefly is as follows:

4.1. Ad hoc promotions were made in 1993 only after common seniority list of Section Officers was finalised on 29.1.1993. On the preparation of this common seniority list, it transpired that the last general candidates who had been promoted earlier in 1992 was Shri K.C. Ghosh, at Serial No. 1268. Likewise, the ^{last} ~~1~~ Scheduled Caste candidate who was promoted in 1992 was Shri Babu Lal at Serial No. 1995.

4.2. Admittedly, 117 general candidates have been promoted on ad hoc basis in 1993 in different ~~tests~~ ^{lots} and no SC/ST candidate was appointed. For, on every occasion, it was found that there was no S.C candidate even in the extended zone.

4.3. Even if all the 117 vacancies are taken together, the extended zone of consideration for implementing the reservation policy would be to take the zone of consideration to 585 names. As the last general candidate promoted was at serial No. 1268, the extended zone of consideration would go upto 1853. In addition, 77 persons had already been promoted earlier or had retired and were not in position. Taking their names also into account, the extended zone of consideration would have gone upto 1930 only. All the eight applicants are placed in the common seniority list much later and, therefore,

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they could not be appointed.

4.4. The respondents also state that, above Babu Lal, the last scheduled caste candidate promoted in 1992, there is no surviving scheduled caste candidate for consideration. In other words, names of scheduled castes and scheduled tribes now available for appointment are found only after serial No. 1995 i.e. Babu Lal. With the appointment of 117 general candidates and taking into account the list of 77 persons who had retired and been promoted earlier, the last general candidate who came to be promoted in 1993 is at Serial No. 1462.

4.5. In 1994, 100 vacancies arose. The extended zone is 500. Taking note of 84 persons promoted earlier or retired, the extended zone of consideration came to 584. Reckoned from the last general candidate promoted at S.No. 1462, this zone extended to S.No. 2046 i.e. above Babu Lal at serial No. 1995. In this extended zone of consideration, the names of the applicants 3,5,6 and 8 fell and accordingly they were promoted in 1994. The first applicant C.D. Bhatia had superannuated in July, 1994. The name of Brahm Singh (Applicant No. 4) is not found in the seniority list. Likewise the name of M.R. Bali (7th applicant) is not found. There was one Mangat Ram who was not promoted. Sohan Singh (Applicant No. 2) was considered. He was to superannuate on 31.12.1994. No vacancy was available with the Department of Revenue. Therefore, he was not promoted.

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5. In this view of the matter, we felt that, prima facie, the respondents have explained why ad hoc promotions were not given to Scheduled Caste in 1993. The learned counsel for the applicants, however, contended that the computation of the zone of consideration in the manner described above is improper. He contends that as Babu Lal at serial No. 1995, a scheduled caste candidate, had already been promoted in 1992, there is no reason why, for ad hoc promotion of scheduled caste candidates, the zone of consideration should not be counted from serial No. 1995. The learned counsel was unable to produce any departmental instruction or memo to substantiate this claim.

6. We have considered this matter. In the scheme of promotion, a zone of consideration has to be determined. It is also admitted fact that in all departments the last promoted general candidate would occupy a higher place in the seniority list than the last scheduled caste candidate because the general candidate is picked up only from the normal zone of consideration while the scheduled caste candidate can be picked up from the extended zone of consideration. If three times the vacancies, which are in the normal zone of consideration, are counted from the serial number of last scheduled caste official promoted, it will happen that the number of persons to be considered would be much larger than the three times. Thus, in the present case when 117 vacancies existed, the normal zone of consideration would be 351 names. If counted from the last general candidate promoted, i.e. 1462 this will mean considering names upto S.No. 1813, whereas if it is counted from the last scheduled

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caste candidate promoted (i.e. S.No. 1995) it will mean that names upto S.No. 2346 would have to be considered. That is 884 names would have to be considered after Serial No. 1462. Therefore, the zone of consideration has to be reckoned only from the last general candidate who was last promoted. That would also apply to the extended zone of consideration. Hence, we are unable to accept the proposition put by the learned counsel for the respondents.

7. He, however, draws our attention to the Annexure R-3 filed by the applicants with their rejoinder dated 4.7.1994 tp the reply to the main O.A. Annexure R-3 is stated to be a list of SC/ST Section Officers who were promoted as Under Secretaries on regular basis in terms of the Supreme Court judgement dated 18.8.1992. The learned counsel clarified that the list includes not only the names of SC/ST but also of general candidates. This includes the names of such persons who either had been promoted on regular basis or ad hoc basis or who have since also retired/resigned and also some persons who are also not eligible because of the promotion rules. In the circumstance, he contends that in preparing the extended zone of consideration in 1993, the names of all these persons should have been excluded to find out whether the names of the applicants figure therein or not.

8. We have heard the learned counsel for the parties on the principle for excluding the names of persons for preparing the zone of consideration. This is a matter of detail which requires ^{verifi} ~~imp~~ication. We are also not quite sure whether names of persons

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who are not eligible for consideration should be excluded while preparing the zone of consideration or be included ~~and~~ dropped later by the DPC.

9. In the circumstance, we are of the view that the proper course would be to give suitable directions to the applicants and the respondents for the disposal of this O.A. Accordingly, we dispose of this O.A. with the following directions:

(i) The applicants are permitted to make a representation to the respondents in which they would indicate the names of the persons whose names should not be taken into account for preparing the extended zone of consideration in 1993 for filling up the 117 vacancies which were filled up in that year and the reasons therefor. This list shall be sent to the first respondent within two weeks from the date of receipt of this order.

(ii) On receipt of this order, the first respondent shall recompute the extended zone of consideration of 1993 with a view to verifying whether there is any mistake in their earlier computations and any corrective action has to be taken.

(iii) In case it is found on a fresh preparation of the extended zone of 1993, ~~that~~ any of the applicants became eligible for ad hoc promotion in 1993 itself, such orders shall be issued.

(iv) This exercise shall be taken within two months from the date of receipt of such representation.

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(v) The final decision taken by the respondents shall be communicated to the counsel for the applicants thereafter.

(vi) We also make it clear that in so far as the applicant No. 2 Sohan Singh is concerned, this order will not stand in his way to agitate separately the issue of his non-promotion on the grounds given by the respondents in their reply.

O.A. is disposed of as above.

W.S.R.
(C.J. ROY)

MEMBER(J)

N.V. Krishnan
(N.V. KRISHNAN)
VICE CHAIRMAN(A)

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