

Central Administrative Tribunal: Principal Bench

O.A. No. 764/94

New Delhi this the 19th day of February, 2001

Hon'ble Shri V.K. Majotra, Member (A)
Hon'ble Shri Kuldip Singh, Member (J)

Shri R.P. Vimal
167, DDA Janata Flat,
Nand Nagar,
Delhi-110093

-Applicant

(By Advocate: Shri S.R. Singh)

Versus

1. Union of India
through its Secretary
Department of Company Affairs
Ministry of Law, Justice and
Company Affairs,
Shastri Bhavan, New Delhi.
2. The Official Liquidator
Department of Company Affairs
A-2 WZ Barax Karson Rd/
Kastur Ba gandhi Rd,
New Delhi.
3. Smt. Kirtida Ben
Company Prosecutor Gr. II
through Department of Company Affairs
Shastri Bhavan, New Delhi.
4. Shri K. Srekumar
Company Prosecutor Gr. II
through Department of Company Affairs
Shastri Bhavan
New Delhi.

-Respondents

(By Advocate: Shri S.M. Arif)

O R D E R

Mr. V.K. Majotra, Member (A)

In OA-764/94 the issue of applicant's claim for promotion from Company Prosecutor (hereinafter referred to as CP) Grade-III to the next higher Grade-II of CP was under consideration. Vide order dated 6.9.99, the OA was allowed with the following directions:-

- "i) The DPC proceedings of December, 1992 are quashed in so far it recommended filling up of the roster point vacancy by a general candidate (Respondent No.3 or 4) in the post of CP-II.
- ii) The respondents shall hold review DPC to consider the applicant's case for promotion to the post of CP-II against roster point No. 25.

- iii) If found suitable, the applicant shall be eligible for promotion w.e.f. the date Respondents 3/4 were promoted with all consequential benefits.
- iv) The exercise pertaining to holding of the review DPC shall be completed within two months from the date of receipt of a copy of this order.
- v) There shall be no order as to costs".

The Tribunal had relied on Appendix-6 of the 40 point model roster annexed by the applicant in which roster point No.25 was shown as earmarked for a SC candidate. In RA 16/2000 in OA 764/94 the respondents brought to the attention of the Court Annexure-5, model roster of 40 point for filling up vacancies by promotion. The Court held that there was an error apparent on the face of the record and that provision of Annexure-5 of the 40 point Model Roster, dealing with vacancies to be filled by promotion was to be applied to the facts of the present case. Under this Annexure, point No. 25 is shown as unreserved point. It was further held in the facts and circumstances of the case and in the interest of justice that the claim of the applicant, a SC candidate, for consideration for promotion to Grade-II of CP from Grade-III against roster point No.25 as a S.C. candidate against an unreserved point in the Reservation Roster, cannot be accepted. The order dated 6.9.99, therefore, in OA-764/94 was recalled and the OA-764/94 was restored for hearing on merits. In this background, we have heard the learned counsel of both sides on merits.

2. The learned counsel of the applicant contended that the respondents have not produced the roster. According to him, the applicant is qualified and eligible for consideration for promotion to the post of C.P. Grade-II on the basis of the roster being a SC candidate.

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According to him, as per Appendix-6 a separate roster has to be maintained by the respondents as follows:-

"In posts filled by promotion where reservations have been provided for Scheduled Castes and Scheduled Tribes, a separate roster on the lines of the roster prescribed in Annexure-I to this Ministry's OM dated the 21st December, 1963, is required to be followed vide para 3(3) of this Ministry's OM No. 1.12 67-Est.(C) dated the 11th July, 1968. Pursuant to the decision in para-3 of this Ministry's Resolution dated 25th March, 1970 enhancing the percentages of reservation in such posts filled by promotion the roster prescribed in Annexure I to this OM is also to be followed for reservations in such posts filled by promotion".

He further referred to the following instructions relating to Model Roster contained in Chapter 4- 4.1

"To give proper effect to the reservations prescribed, every appointing authority should treat, vacancies as 'reserved' or 'unreserved' according to a model roster each of 40/100 points as described below:-

(iii)Promotions to which reservations apply-para 2.1 (iii) according to a separate roster on the same pattern as in Appendix 1. (For reservation of 15 per cent for SC and 7-1/2 per cent or S.T.) (For percentages of reservation fixed generally in proportion to the population of Scheduled Castes and Scheduled Tribes in the respective States/Union Territories)".

According to him, in the present case Appendix-6 is applicable where point No.25 in the Roster is shown as reserved for Scheduled Caste.

3. The learned counsel of the respondents stated that Appendix-5 and Appendix-6 filed by the applicant in the OA relate to reservation in posts filled by Direct Recruitment on All India Basis by open competition/otherwise than by open competition, respectively. However, he does not dispute the preparation of a separate roster on the same pattern as Appendix-1, for purpose of promotion as stated in instructions on Model Rosters paragraph-4.1(iii). Thus, as per Appendix-1 which though is a Model Roster for posts,

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filled by direct recruitment on All India Basis by open competition has been made applicable in the case of promotions to which reservations also apply. Actually there is no difference at all between Appendix 1 and Appendix 5. Roster Point No.25 has been shown as unreserved and since the applicant is a SC candidate his claim for consideration for promotion as Grade-II of CP from Grade-III against Roster Point No.25 as a SC candidate cannot be entertained. The learned counsel of the respondents drew our attention to the Annexure-5 in RA 16/2000 in OA-764 of 1994 which is a Model 40 point Roster for reservation for vacancies filled by promotion made on the basis of Appendix-1 under Chapter-4 para 4.1(iii) relating to rosters where points 24 & 25 have been shown as unreserved. In this connection, the learned counsel further contended that in reply to the R.A. the present applicant had not stated anywhere that provisions of Annexure-5 were not applicable to his case. This contention of the learned counsel of the respondents is borne out from record.

4. Keeping in view the instructions brought to our notice relating to Model Rosters and the Roster meant for reservation in the case of promotion, we are of the view that Annexure-5, Model Roster of 40 point for filling up vacancies by promotion is applicable to the facts of the present case. Under this Annexure point No. 25 is shown as an unreserved point. The applicant is a SC candidate, we do not find any force in the contentions of the learned counsel of the applicant regarding applicant's claim for consideration for promotion to Grade-II of CP from Grade-III against Roster point No.25 as a S.C. candidate which is certainly an unreserved point in the reservation roster as per Annexure-5 which is applicable to the facts of the present case.

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5. For the reasons given above, the OA is dismissed
being devoid of merit. No costs.

Kuldeep Singh
(Kuldeep Singh)
Member (J)

CC.

V.K. Majotra
(V.K. Majotra)
Member (A)