

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1844/2000

New Delhi, this the 15th day of March, 2001

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member (A)

Mr. U.Siva Prasad
Aged 50 years
S/o Late Shri U.Padmanabham
R/o D-729, Mandir Marg
DIZ Area
New Delhi - 110001

...Applicant

(By Advocate : Sh. Abhay N. Dass)

V E R S U S

Union of India : Through

1. Additional Secretary (SR)
Cabinet Secretariat
Government of India
Bikaner House (Annexe)
New Delhi - 110011.

2. Director
Aviation Research Centre
Directorate General of Security
Cabinet Secretariat
Government of India
East Block 5
R.K.Puram
New Delhi - 110066

...Respondents

(By Advocate : Shri A K Bhardwaj)

O R D E R (ORAL)

By Hon'ble Shri Govindan S. Tampi, Member (A)

Reliefs claimed in this OA are as below:

" The applicant prays that this Hon'ble Tribunal may please :-

(i) to direct the respondents to revise the seniority list of Field Officer (T) in terms of the judgements of the Hon'ble Supreme Court in Ajit Singh Januia Vs. State of Punjab {JT 1996 (2) SC 727}, Union of India Vs. Virpal Singh {JT 1995 (7) SC 231} and clarified in Ajit Singh and Ors. Vs. State of Punjab (JT 1999 (7) SC 153) and restore the seniority of the applicant as FO (T) for the purpose of promotion to the post of Assistant Technical Officer.

(ii) to direct the respondents not to hold any DPC/Review DPC without revising the seniority list of FO (T)s as prayed for above.

(iii) to direct the respondents to take immediate steps to ensure that the seniority of FO (T) is in accordance with the judgement of the Hon'ble Supreme Court in Ajit Singh-II and to take all appropriate steps necessary consequent upon such revision of seniority.

(iv) to grant any other relief which this Hon'ble Tribunal deems appropriate and necessary in the facts of the case; and

(v) To grant the cost of this petition to the applicant."

2. Heard both the learned counsel for the applicant and the respondents.

3. The brief facts of the case are that the applicant who joined as Deputy Field Officer (Technical) in the Aviation Research Centre of Directorate General of Security, Cabinet Secretariat, New Delhi on 13-6-1975, was placed at the seniority list of DFO dated 26-4-1976 while nine other officers who joined subsequently were placed below him. The applicant was promoted on 27-9-1991 as Field Officer (Technical), but the nine officers mentioned above as they belonged to the reserved category got promotions earlier during 1986-1991 and were placed in the seniority list of Field Officers as on 1993 at Sl. Nos. between 60 to 106, while the applicant was placed at Serial No. 149. Applicant presently seeks that the benefits of the decision of the Hon'ble Supreme Court in the case of Ajit Singh II (1999 SCC (L&S) 1239 should be extended to him and he be permitted to regain his seniority vis-a-vis the SC/ST candidates, who were originally his juniors but got promotion earlier as Field Officer only on account of their belonging to the reserved category of SC/ST.

4. Ably arguing the case of the applicant Shri Abhay N.Dass, learned counsel reiterates the pleadings made in the application and avers that the applicant has made representations to the Head of the organisation for the restoration of his seniority on the basis of the decision of the Hon'ble Supreme Court in Virpal Singh Chauhan's case (supra) detailed and reiterated in Ajit Singh II case, on 28.9.99. He had also issued reminders on 1.3.2000 and on 3.4.2000, when he knew that a DPC was to take place to the next higher level of Asstt. Technical Officer, but the same did not yield any result. His representation was rejected on 27.4.2000 and his juniors who got incorrect promotion were being ^{incorrectly} permitted to reap the benefits of the said action of the respondents. According to the learned counsel, the basis adopted by the respondents for rejecting his representation on 27.4.2000, that in terms of paras 2 & 3 of DOPT's OM dated 30.1.97 was only prospective and did not relate to cases like that of the applicant which relate to the prior period, was not correct and legal, in view of apex court's decision in Ajit Singh II and he should regain his seniority vis-a-vis those who were originally his juniors as Dy. Field Officers, but became Field Officer earlier solely on account of reservation. His cause being genuine, he should get the benefit, argues Shri Das, so that for consideration for promotion to the next stage i.e. Asstt. Technical Officer, wiping off the set back he suffered, only on account of the fact that he was not

a SC Officer. The counsel, therefore, seeks the Tribunal's intervention in the case to render him justice.

5. Vigorously controveering the above Shri A.K.Bhardwaj, learned counsel for the respondents states that while the facts are not disputed, the points in law raised by the counsel for the applicant are not correct. He has invites our attention to the Office Memorandum bearing No.20011/1/96-Estt. (D) dated 30-1-1997, which was issued by the DOPT in the wake of the judgement by the Hon'ble Apex Court in the case of UOI & Ors. Vs. Virpal Singh Chauhan Etc., (JT 1995 (7) SC 231), which states as below :-

"Provided that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior General candidate who is promoted later to the said immediate higher post/grade the General/OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade.

The OM states that these orders shall take effect from the date of the issue of this Office Memorandum"

Shri Bhardwaj, learned counsel argues that in spite of the decision of the Hon'ble Apex Court in Ajit Singh-II, which has been relied upon the applicant, the position does not change. In this context Shri Bhardwaj refers to paragraphs 87 to 92 of the said judgement which clarified the earlier decision in the case of R.K.Sabharwal Vs. State of Punjab [(1995) 2 SCC 745] relating to changes required to be brought in the procedure.

Shri Bhardwaj points out citing the decision that the reserved candidates who get promoted at two Levels by roster points (say) from Level 1 to Level 2 and Level 2 to Level 3 cannot count their seniority at Level 3 as against senior general candidates who reached Level 3 before the reserved candidates moved up to Level 4. The general candidate has to be treated as senior at Level 3." The only proper interpretation of the decision permissible is that the applicant would be entitled for the benefit only if his case related to the promotion Level 3 and not earlier. In this case the promotion is from Level 1 to Level 2 and, therefore, he cannot get any benefit. Further, it is not his case that he has suffered on account of the fact that there has been promotions of the reserved candidates, which was made in excess of the quota which is frowned upon by the Hon'ble Supreme Court in R.K. Sabharwal's case. That being the position, the applicant does not have any case on merits, according to Shri Bhardwaj. Further, in this case the impugned promotions had taken place much earlier than 1996. The cause of action, if any, arose at that time and not on any later date and the application suffered from delay and laches. Sh. Abhay Dass learned counsel for the respondents contests the above stating that the applicant's cause of action arose only after the decision of the Hon'ble Supreme Court in the case of Ajit Singh-II and therefore, his plea was not at all hit by limitation.

6. We have carefully deliberated on the rival contentions and perused the papers placed before us.

7. We find that the point for determination in this application is whether the applicant who is a Field Officer and who is in the second level of promotion would be entitled for getting the benefit of restoration of the seniority vis-a-vis their colleagues belonging to the reserved categories who went above him earlier on the basis of the decision of the Hon'ble Supreme Court. The points laid down by the Apex Court's decision in R.K. Sabharwal's case (supra) are as follows :-

RESERVATION

"Reservation quota for scheduled castes, scheduled tribes and backward classes - Punjab Service of Engineers Class I PWD (I.B.) Rules 1964 - Roaster for promotion - Held -

(i) Roster point reserved for a backward class has to be filled up by way of appointment/promotion of a member of the said class and no general category candidate can be appointed against a slot in the roster which is reserved for the backward class.

(ii) Reservation to be operated in accordance with Roster to be implemented in the form of running account from year to year so that there is no excessive reservation - Running account is to operate till quota is reached and not thereafter as roster does not survive after the quota is filled in.

(iii) If roster is permitted to operate till the total posts in a cadre are filled and thereafter vacancies are to be filled in by same category of persons whose retirement caused the vacancies, then the balance will always be maintained - Non availability of backward candidate enables State to carry forward the point - The direction to be operated prospectively.

In this decision the Apex Court has endorsed the reservation pattern and directed that once the level of reservation has been reached, maintenance of roster would no longer be relevant. A few months later in UOI & Others Vs. Pal Singh Chauhan's (JT 1995(7) SC 231) the Apex Court has held that while the "rule of

reservation shall be applied and the roster followed in the matter of promotions to or within a particular service, class or category, the candidate promoted earlier by virtue of the rule of reservation roster shall not be entitled to seniority over his service in the feeder category and that as and when a general candidate who was senior to him in the feeder court is promoted, such general candidate will regain his seniority over the reserved candidate notwithstanding that he is promoted subsequent to the reserved. There is no unconstitutionality involved in this." This has been strongly reiterated in Ajit Singh II case as well as the relevant portions contained in paras contained in paras 89 to 91" are as below.

It is axiomatic in service jurisprudence that any promotions made wrongly in excess of any quota are to be treated as ad hoc. This applies to reservation quota as much as it applies to direct recruits and promotee case. If a court decides that in order only to remove hardship such roster-point promotees are not to face reversions-then it would, in our opinion be, necessary to hold-consistent with our interpretation of Articles 14 and 16(1)-that such promotees cannot plead for grant of any additional benefit of seniority flowing from a wrong application of the roster. In our view, while courts can relieve immediate hardship arising out of a past illegality, courts cannot grant additional benefits like seniority which have no element of immediate hardship. Thus, while promotions in excess of roster made before 10.2.1995 are protected, such promotees cannot claim seniority. Seniority in the promotion of cadre of such excess roster-point promotees shall have to be reviewed after 10.2.1995 and will count only from the date on which they would have otherwise got normal promotion in any future vacancy arising in a post previously occupied by a reserved candidate. That disposes of the "prospective" point in relation to Sabharawal. Prospective of Ajit Singh Coming to the "prospective" of Ajit Singh decided on 1.3.1996 the question is in regard to the seniority of the reserved candidates at the promotional level where such promotions have take place before 1.3.1996. We have accepted, while dealing with Points 1 and 2 that the reserved candidates who get promoted at two levels by roster points(say) from Level 1 to Level 2 and Level 2 to Level 3

cannot count their seniority at Level 3 as against senior general candidates who reached Level 3 before the reserved candidates moved up to Level 4. The general candidate has to be treated as senior at Level 3.

8. In the instant case the applicant's case would succeed only if it is proved that the promotion granted to the SC candidates are in excess of their quota and also if they show that they are in level 3. On neither count has the applicant established a case. Nothing has been brought on the show that the level of representation through reservation has been reached, prohibiting further reservations. Besides, the applicant is only on level 2 and Ajit Singh II decision would become applicable only from Level 3. Hon'ble Supreme Court has held that reserved category candidate who got promoted at 2 levels from level 1 to level 2 and Level 2 to Level 3 as against senior general candidates who reached level 3 before reserved candidates moved up to level 4, in which case the general candidate has to be treated as senior at level 3. In other words the applicant can have his seniority restored once he becomes promoted to the next grade of Asstt. Technical Officer, vis-a-vis a reserved category officer who has reached that post earlier than this, inspite of having been his junior earlier, for the next promotion, if both of them remain in the same post. Only to that extent has the judgement cited by the applicant, has helped his cause and not otherwise.

9. In the above view of the matter, we hold that the applicant has not made out any case for our interference. The application in the circumstances, fails and is accordingly dismissed. No costs.

GOVINDAN S. TAMPI
MEMBER (A)

Vikas

(ASHOK AGARWAL)
CHAIRMAN