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Central Administrative Tribunal, Principal Bench

Original Application No.374 of 2000

New Delhi, this the 17th day of August, 2000

Hon'ble Mr.Justice Ashok Agarwal Chairman
Hon'ble Mr.V.K.Majotra, Member (Admnv)

Shri Chain Sukh, S/o Late Sh.Goma Ram, R/o
110-R, Sector-IV, M.G.Road, New Delhi.
Working as Daftry, in o/o Deptt. of
Revenue, Ministry of Finance, N.Delhi. - Applicant

(By Advocate Shri M.K.Gupta)

Versus

1. Union of India through its Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.
2. Sh. Vijay Kumar, Record Keeper, Admn.1B, Room No.44, Deptt. of Revenue, North Block, New Delhi-110001.
3. Sh. S.Narayanaswamy, Under Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001 - Respondents

(By Advocate Shri V.P.Uppal)

O R D E R (Oral)

By V.K.Majotra, Member(Admnv) -

Applicant has challenged validity of the action of respondent no.1 in neither considering him for promotion to the post of Record-keeper nor following the sealed cover procedure. It is alleged that rather a junior person, namely, Sh.Vijay Kumar, a general candidate respondent no.2 has been promoted to the said post against the vacancy caused on the retirement of Sh.Gyasi Ram, an SC officer. He has stated that a vacancy caused on the retirement has to be filled from amongst category of persons to whom the vacancy belongs. According to the applicant his representation against the said action has neither been considered nor answered and that he has also not been supplied a copy of the recruitment rules at his cost.

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2. The applicant has been working as a Peon (Group 'D') with effect from 21.12.1973 in the office of respondent no.1. According to him a criminal case was registered against him vide FIR no.91/95 at Police Station Prasad Nagar, New Delhi which has been quashed by the Hon'ble High Court of Delhi vide its judgment of 18th March, 1998 in Cr.M(M) No.650/98. Due to aforesaid registration of FIR case and consequential arrest of the applicant he was placed under deemed suspension vide order dated 1.7.1997 which was revoked later by order dated 15.4.1998. As per the seniority list of Daftaries as on 1.6.1997 the applicant's name figures at serial no.9 vis-a-vis respondent no.2's name at serial no.27 (Annexure-A-3). As his junior had been promoted to the post of Record Keeper, the applicant made a representation on 27.4.1998 (Annexure-A-2) after his acquittal in the criminal case but no action was taken on his representation.

3. The applicant has averred that the Department of Personnel on a reference made to it by respondent no.1 advised the respondents on 4.10.1999 that the respondents had committed an error in not considering the promotion case of the applicant and as such the review DPC should be held to rectify the mistake, but the respondents have not held the review DPC.

4. The applicant has sought quashing of communication dated 18.2.2000 (Annexure-A-1) whereby his request for supply of a copy of recruitment rules for the post of Record Keeper was rejected. Now that a copy of these recruitment rules have been placed on record of the present OA by the respondents, the relief in this

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behalf is not being insisted upon by the applicant.

5. The applicant has also sought quashing of the promotion order of respondent no.2 to the post of Record Keeper and has sought a direction to respondent no.1 to consider and promote the applicant to the post of Record Keeper from 12.5.1997 when his junior Shri Vijay Kumar was so promoted to the said post with consequential benefits.

6. The respondents have, in their counter, raised a preliminary objection that the OA suffers from laches and delay and is barred by limitation. According to the respondents the post of Record Keeper is an isolated post which is not in the direct line of promotion from Group 'D'. Although the recruitment rules provide for promotion from amongst Group 'D' officers with the requisite qualification, yet the post is filled in by selection. The applicant's case was considered by a review DPC on his reinstatement after suspension but since no reservation slot was available he could not be considered against the reserved point. According to the respondents in all there are 10 posts of Record Keepers and there were as many as 4 SC candidates already working against these posts. A new roster has been prepared in terms of the Department of Personnel & Training Memorandum dated 2nd July, 1997 (Annexure-R-2). A copy of the roster is filed at Annexure-R-3. As per the roster there ~~are~~ ^{is} already excess reservation of SC candidates which in terms of the guide-lines contained in paragraphs 5 & 6 of afore-stated OM ^s have to be adjusted. No roster slot has thus to be filled up consequent upon the retirement of Shri Gyasi Ram, Record Keeper as it is not the reserved slot. In view of this,

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the question of giving promotion to the applicant on the retirement of Shri Gyasi Ram does not arise. The applicant has filed a rejoinder as well.

7. We have heard the learned counsel of both sides and have considered the material available on record.

8. The learned counsel of the applicant has drawn our attention to the averments made in the OA that the respondents have not held the review DPC in pursuance of the advice of the DOPT to rectify the mistake in not considering the case of the applicant for promotion. The learned counsel of the respondents has stated that as per the roster prepared in terms of DOPT's memorandum dated 2nd July, 1997 (Annexure-R-2) since there is already excess reservation of SC candidates, the question of giving promotion to the applicant on the retirement of Shri Gyasi Ram (SC) does not arise. The learned counsel of the respondents has also stated that the applicant's case was not considered because he was under suspension and the post of Record Keeper is an isolated post and not in the direct line of promotion from Group 'D'. Only eligible candidates who had made their applications as per the relevant circulars were considered.

9. The learned counsel of the respondents has also contended that since the post of Record Keeper is not in the direct line of promotion from Group 'D', therefore the question of adopting sealed cover procedure for promotion also does not arise in the present case. He further drew our attention to DOPT's instructions contained in the reservation roster circulated vide memo of 2nd July, 1997 (Annexure-R-2).

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It states that "[E]xcess, if any, would be adjusted through future appointments and the existing appointments would not be disturbed". Since 4 personnel belonging to SC category were already manning the post, of Record Keepers against a total of 10, the excess relating to this category as per the aforesaid circular ~~through th~~ had to be adjusted ~~to~~ future appointments.

10. The averment of the applicant that the respondents had not held the review DPC to rectify the mistake of not considering the promotion case of the applicant has not been clearly denied by the respondents though they ~~had~~ maintained that the review DPC had been held. The learned counsel of the respondents also stated that the case of the applicant was not considered because he was under suspension and there was already an excess representation of the SC category candidates on the post of Record Keeper.

11. The learned counsel of the applicant has particularly drawn our attention to the decision in the case of R.K.Sabharwal and others Vs. State of Punjab and others, (1995) 2 SCC 745 (para 5) wherein it has been held by the Hon'ble Supreme Court that "[W]hen 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-reserve posts and in the event of their appointment to the said posts, their number cannot be added and taken into

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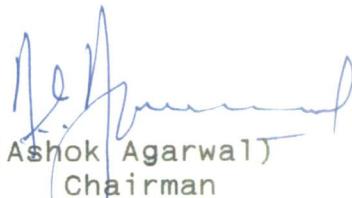
consideration for working out the percentage of reservation". He has also brought to our notice that the respondents have issued a fresh circular on 10th March, 2000 inviting applications for the post of Record Keeper. This post is reserved for general category candidate. He also mentioned that the applicant had made a fresh application dated 9.5.2000 in response to the aforesaid circular of 10.3.2000.

12. Having regard to the above discussion, we find that in view of the fact that four posts of Record Keeper were manned by the SC personnel out of a total of 10, the contention of the respondents that there is already excess reservation of SC candidates is correct and this excess has to be adjusted through future appointments without disturbing the existing incumbents as per the instructions relating to reservation roster (Annexure-R-2). As per the model roster for cadre strength of 13 posts (Appendix to Annexure-II of Annexure-R-2) the seventh point is reserved for SC. The post vacated by Shri Gyasi Ram, a SC officer is, therefore, not available for consideration of the applicant for promotion as a SC candidate. However, as per the ratio in the case of R.K.Sabharwal (supra) and the advice of the DOPT the applicant can certainly be considered for promotion for the post of Record Keeper, which is reserved for unreserved category. Basically an error has been committed by the respondents in not considering promotion case of the applicant ^{even} for the post ~~of~~ reserved for unreserved category, for which they should have held a review DPC to rectify the mistake, which was not done because the applicant happened to be under suspension and belonging to a reserved category.

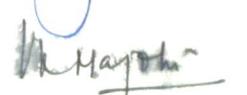
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13. As stated earlier the applicant has already made an application in response to the circular dated 10th March, 2000. In the facts and circumstances of the case we direct the respondents to consider the applicant's case for the post of Record Keeper, within a period of three months of the communication of this order. In case the applicant is found to be suitable for promotion to the post of Record Keeper he should be accorded promotion against the vacancy circulated on 10th March, 2000, so that the position of respondent 2 Shri Vijay Kumar who had been promoted earlier and has worked for approximately more than three years on the post of Record Keeper is not disturbed. However, the applicant will be entitled to notional seniority vis-a-vis respondent no.2.

14. The OA is accordingly allowed with the above terms, however, without any order as to costs.



(Ashok Agarwalla)
Chairman



(V.K. Majotra)
Member (Admnv)

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