

Central Administrative Tribunal, Principal Bench

Original Application No.424 of 2000

New Delhi, this the 22nd day of August, 2000

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

Shri D.C.R.Azad, son of late Shri Sehdev
Ram, R/o 4/23, Lodhi Colony, New Delhi. - Applicant

(By Advocate Shri Rajesh Kumar Gogna)

Versus

1. Director General, Directorate General of Works, C.P.W.D., Nirman Bhavan, New Delhi-110001
2. Union of India, through Secretary, U.P.S.C. Dholpur House, Shahjahan Road, New Delhi.
3. Sh.S.P.Sharma, A-138, Sector-26, Noida, UP.
4. S.P.Verma, 22/1057, Lodhi Colony, New Delhi.
5. Sh. M.M.L.Bhatnagar, 1134, Sector 4, R.K.Puram, New Delhi.
6. G.S.Bhandari, 467, Laxmi Bai Nagar, New Delhi.
7. Dr.Satyavir Singh, A-51, Anand Vihar, Delhi-92. - Respondents

(Official respondents by Advocate Shri A.K.Bhardwaj & private respondents by Advocate Shri M.M.Sudan)

ORDER (Oral)

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

The applicant is aggrieved by an order dated 7.1.2000 (Annexure-A-I) whereby his representation for promotion to the post of Deputy Director (Horticulture) {for short 'DD (Hort)'} against reserved point of scheduled caste has been rejected allegedly in violation of the decision of the Apex Court in the case of R.K.Sabharwal & others Vs. State of Punjab and others, (1995) 2 SCC 745 : 1995 SCC (L&S) 548: (1995) 29 ATC 481 and the subsequent guide-lines issued by the Department of Personnel & Training (for short 'DOPT')

vide OM No.36012/2/96-Estt.(Res) dated the 2nd July,1997
(Annexure-A-III).

2. The applicant is working as Assistant Director (Hort) {for short 'AD(Hort)'} since 1984 with respondent 1. Due to cadre review of Horticulture Wing of CPWD, 5 posts of DD(Hort) in the pay scale of Rs.10,000-Rs.15,200 were created vide OM dated 23.9.1999 (Annexure-A-II). 2 vacancies also became available in the grade of DD(Hort) on account of promotion of two DDs(Hort) as Additional Directors vide order of 11.2.2000. The respondents have sent a proposal to the UPSC for filling up 7 posts of DD(Hort) by promotion from the feeder grade of AD(Hort) on 9.11.1999. According to the applicant as per the ratio in the case of R.K.Sabharwal (supra) and afore-stated guide-lines of 2nd July,1997 the reservation of jobs for SC/ST/OBC should apply to posts and not vacancies. The vacancy-based rosters can operate only till such time as the representation of persons belonging to the reserved categories, in a cadre, reaches the prescribed percentage of reservation. Thereafter the roster cannot operate and vacancies released by retirement, resignation, promotion etc., of the persons belonging to the general and reserved categories are to be filled by appointment of persons from the respective category, so that the prescribed percentage of reservation is maintained.

3. The applicant has claimed that Shri V.K.Verma and Shri Bankey Lal have been reckoned against the reserved quota of SC at point nos. 7 and 15 respectively. On promotion of Shri V.K.Verma to the post of Additional Director and on his regularisation as

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such in February, 2000, the post of DD(Hort) at point no.7 has fallen vacant and as per the DOPT's guide-lines it should be filled by appointment/ promotion of a person belonging to the SC category in order to maintain the prescribed percentage of reservation. Thus, according to the applicant he has become entitled for promotion to the post of DD(Hort). However, despite applicant's representation in this behalf of ~~on~~ 1.11.1999 (Annexure-A-IV) the respondents have gone ahead with advising the UPSC to convene DPC for the posts of DD(Hort) in which as per his information the applicant is not being considered for promotion, though he is the senior-most candidate belonging to SC category. The applicant has sought quashing of order dated 7.1.2000 rejecting his request for his promotion to the post of DD(Hort) and a direction to respondent no.2 to consider the applicant for his promotion to the post of DD(Hort) against the post vacated by Shri V.K.Verma.

4. According to the respondents after taking into account 5 newly created posts of DD(Hort) the total cadre strength of DD(Hort) is 16. Based on post-based roster of reservation, effective from 2.7.1997 the break up of these posts is SC-2, ST-1, and unreserved 13. Against this, the existing cadre strength is SC-4, ST-1, Unreserved-4. Thus, according to the respondents there is a shortfall of 9 unreserved candidates and an excess of 2 SC candidates and as such 7 vacancies have been treated by them as unreserved based on roster ^{positions.} point. Hence the requisition dated 9.11.1999 to the UPSC to prepare a panel of 7 DDs(Hort) without any reservation for SC/ST. The UPSC has sent a panel of 7 DD(Hort) on

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21.6.2000 to the respondents. The respondents have stated that the applicant is at serial no.11 in the consideration zone. He was considered but not recommended on the basis of assessment of his service records for promotion as DD(Hort). The respondents have further referred to the OM dated 2.7.1997 stating that the provision that if a SC/ST candidate has been promoted on his own merit, his appointment will not count towards reservation quota, is applicable for direct recruitment and not in the case of promotion. Moreover, if 2 SC candidates in roster have been shown against unreserved point due to non-availability of unreserved candidate, it cannot be interpreted that they are not to be counted against reserved points. They have also relied upon the same guide-lines while projecting that present incumbents may be adjusted as per quota given in the post-based roster and then the excess/less in any category may be carried out in future promotions/ recruitments. On promotion of Dr.V.K.Verma (SC) as Additional Director (Hort), the respondents have proposed to make adjustment of excess/ shortfall with reference to the roster points. Thus, according to the respondents the applicant cannot be promoted against the vacancy fallen vacant by promotion of Dr.V.K.Verma.

5. The learned counsel of private respondents 3 to 7 have adopted the counter filed by respondents 1 & 2. The applicant has filed a rejoinder as well.

6. According to the learned counsel of the respondents against the sanctioned strength of 2 posts reserved for SC, 4 SCs are actually occupying the position of DD(Hort). Thus, there is an excess of 2 SC

category personnel in position. The learned counsel of the respondents drew our attention to instructions dated 2.3.1997 (Annexure-A-III) as follows:-

5. At the stage of initial operation of roster, it will be necessary to adjust the existing appointments in the roster. This will also help in identifying the excess/shortages, if any, in the respective categories in the cadre. This may be done starting from the earliest appointment and making an appropriate remark - "utilized by SC/ST/OBC/Gen", as the case may be, against each point in the rosters as explained in the explanatory notes appended to the model rosters. In making these adjustments, appointments of candidates belonging to SCs/STs/OBCs which were made on merit (and not due to reservation) are not to be counted towards reservation so far as direct recruitment is concerned. In other words, they are to be treated as general category appointments.

6. Excess, if any, would be adjusted through future appointments and the existing appointments would not be disturbed".

Thus, according to the learned counsel of the respondents even if a post manned by SC category falls vacant cannot be offered to a SC candidate as long as the excess of the SC candidates is not adjusted in future. A SC candidate shall be considered only when one of the last two unadjusted SC posts falls vacant. According to the learned counsel of the respondents the post-based roster in pursuance of the judgment in the case of R.K.Sabharwal (supra) and DOPT's instructions dated 2.7.1997 has still not been completed. As the quota provided under the instructions having not been completed as per the category-wise prescribed percentage of posts, in the view of the learned counsel of the respondents, there is no justification to operate the replacement ^{principle b} _{member} ^{applicable b} which becomes only after the roster has been completed by achieving the respective percentage of reservation provided for all categories.

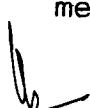
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The learned counsel of the respondents drew our attention to the 200 Point Post-based Roster for the post of DD(Hort) effective from 2.7.1997.

7. According to the learned counsel of the applicant the reservation roster is complete in all respect, in respect of the reserved category candidates. On points 7 and 15 scheduled caste candidates, namely Shri V.K.Verma and Shri Bankey Lal have been shown. Scheduled caste candidates are also manning posts at unreserved points 1, 5 & 9. It is indicated that these candidates are occupying unreserved points on their own merits. ST candidate Shri H.R.Warkade is occupying reserved point 14 (ST). According to the learned counsel of the applicant the seventh point reserved for SC personnel occupied by Shri V.K.Verma having fallen vacant on his promotion has to be made available for promotion to the applicant being the senior-most SC candidate.

8. The applicant's counsel is of the view that the adjustment of unreserved candidates against the excess positions occupied by reserved candidates should not be adjusted through future appointments. The short fall of unreserved vacancies in the present case should be made up only when the respective points occupied by reserved category fall vacant. The reserved points on falling vacant must go to the share of the reserved candidates. The learned counsel relied on the following ratio laid down in the case of R.K.Sabharwal (supra) :-

"4. When 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



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candidates belonging to the general category are not entitled to be considered for the reserve 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 consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the backward class/ classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular backward class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/ promoted against the general seats. As mentioned above the roster point which is reserved for a backward class has to be filled by way of appointment/ promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/ promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/ Rules providing certain percentage of reservation for the backward class are operative the same have to be followed. Despite any number of appointees/ promotees belonging to the backward classes against the general category posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention raised by the learned counsel and rejected the same."

9. According to the learned counsel of the applicant in view of the ratio of R.K.Sabharwal (supra) even if the appointees/ promotees belonging to backward classes occupying general category posts, the excess has not to be adjusted as required under the DOPT's

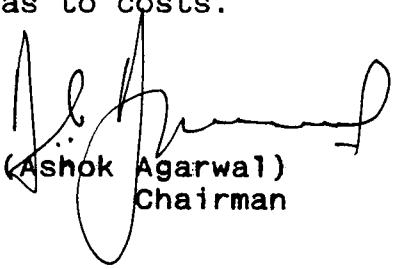
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instructions. The given percentage for backward classes has to be provided in addition to the existing position. In this view of the matter the respondents cannot deny applicant's consideration as a SC candidate against the post of DD(Hort) fallen vacant by promotion of Shri V.K.Verma at roster point no.7.

10. The respondents have not been able to point out any mistake in the post-based reservation roster for the post of DD(Hort) effective from 2.7.1997. Although DOPT's instructions do require adjustment of excess through future appointments, the respondents have failed to counter the interpretation provided by the applicant to the ratio of R.K.Sabharwal(supra) in accordance with which "[D]espite any number of appointees/ promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition". Agreeing with the learned counsel of the applicant in the light of ratio of R.K.Sabharwal (supra) we hold that the post fallen vacant on promotion of Shri V.K.Verma at roster point no.7 has to be provided to a SC candidate.

11. In the result the OA is allowed. The impugned order dated 7.1.2000 is quashed. The respondents are directed to convene a review DPC to consider the case of the applicant along with other eligible SC candidates to fill up the vacancy caused due to promotion of Shri V.K.Verma at roster point no.7, and if the applicant or any other eligible SC candidate is found fit for promotion as DD (Hort), he should be promoted against point no.7, within a period of three months of the communication of this order. No order as to costs.


rkv.
(V.K. Majotra)
Member (Admnv)


(Ashok Agarwal)
Chairman