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Central Administrative Tribunal, Principal Bench

Original Application No.44 of 2000

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

Hon'ble Mr.V.K.Majotra, Member (A)
Hon'ble Mr.Shanker Raju, Member(J)

T.No.1814/RSSD Karamvir Singh, Carpenter &
Joiner Skilled, Ordnance Depot, Shakurbasti,
Delhi-110056.

- Applicant

(By Advocate Shri Hori Lal)

Versus

1. The Secretary, Govt. of India, Ministry
of Defence, New Delhi-110011.
2. The Director General of Ordnance
Services, Master General of the Ordnance
Branch, Army Headquarters, New
Delhi-110011
3. The Commandant, Ordnance Depot,
Shakurbasti, New Delhi-110056.
4. T.No.1333/RSSD Sh. Jaipal Singh Rawat,
Carpenter & Joiner Skilled HS Gde II,
Ordnance Depot, Shakurbasti, New
Delhi-110056.

- Respondents

(By Advocate Shri D.S.Mahendru)

O R D E R

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

The applicant joined as Mazdoor on 14.5.1979 and promoted as Carpenter Mate on 1.7.1992. He was further promoted as Carpenter & Joiner Highly Skilled Grade-II (for short 'CJ HS Gde-II') in the scale of Rs.4000-100-6000 with effect from 1.11.1997 after qualifying a test, against a regular post. On 29.4.1998 vide Annexure-A his promotion was cancelled and he was reverted to the post of Carpenter & Joiner Skilled (for short 'CJS') with retrospective effect from 1.11.1997. The applicant has challenged afore-stated order of cancellation of his promotion and consequential reversion on the ground that he was not given any notice or opportunity of hearing. His representation dated 24.7.1998 was also rejected in October, 1998 vide Annexure-B. This too has been challenged by the applicant.

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2. According to the applicant as per Annexure-C dated 30th April, 1997 he was placed at serial no.2 in the panel prepared for promotion from CJS to CJ HS Gde-II while respondent no.4, who was promoted as CJ HS Gde-II in place of the applicant on his reversion, was at serial no.4. Thus, according to the applicant though he is a scheduled caste candidate he had been promoted on his merit unconnected with the reservation point in the roster, therefore, he could not have been reverted. The applicant has sought quashing of orders dated 29.4.1998 and October, 1998 (Annexures-A & B) and a direction to the respondents to restore his promotion and consequential benefits with effect from 1.11.1997 when he was reverted and that respondent no.4 should be reverted instead.

3. The respondents have in their counter maintained that the applicant had been wrongly promoted beyond the roster and thus his promotion was void ab initio. The applicant can be promoted on the availability of reserved vacancy (SC) in the roster. The respondents have further stated that the panel formulated as a result of the trade test at Annexure-C does not indicate merit and seniority of the applicant. The respondents have also raised the plea of limitation.

4. The applicant has filed a rejoinder as well.

5. We have heard the learned counsel of both sides and perused the material available on record as well as the records produced by the respondents in respect of the availability of number of posts for which the trade test was held and promotions were made and the results of the trade test held in February/March, 1997.

6. We will first deal with the point of limitation raised by the respondents. Whereas the

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promotion of the applicant was cancelled and he was reverted on 29.4.1998 (Annexure-A) his representation dated 24.7.1998 was rejected by the respondents in October, 1998. However, the same was received by the applicant on 17.6.1999. The averment of the applicant that he received the orders rejecting his representation on 17.6.1999 has not been controverted by the respondents. The OA was filed by the applicant on 7.1.2000. In this view of the matter, the OA has certainly been filed within the time limit.

7. From the seniority list as on 1.6.1997 produced by the applicant, which has not been controverted by the respondents who were given opportunity to check the same and produce the relevant documents in proof thereof, it is found that whereas the applicant is at serial no.8, respondent no.4 Jaipal Singh is at serial no.14. Thus, the applicant is senior to respondent no.4. From the records relating to promotion to the post of CJ HS Gde-II we find that two vacancies (one general and one SC) were obtaining at the relevant time. In the panel prepared on the basis of the results of the trade test held in February/March, 1997, we find that the applicant was placed at serial no.2 and respondent no.4 was at serial no.4. Whereas the applicant belongs to SC, respondent no.4 is a general candidate. Although the respondents have denied that the panel on the basis of the trade test was as per respective merit of the candidates, they have not produced any proof in support of their contention that the panel did not indicate the respective merit and seniority of the candidates. The learned counsel of the respondents only contended that the applicant had been erroneously promoted against the roster point meant for general candidates. Therefore, he was reverted and

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respondent no.4, who is a general candidate was promoted in his place. From the model roster presented by the respondents point no.8 in the roster is meant for SC and point no.9 is unreserved. It has been contended on behalf of the applicant that he was at serial no.2 in the merit and, therefore, he was promoted against the second post which was unreserved. The learned counsel of the applicant drew our attention to Office Memorandum dated 2nd July, 1997 (Annexure-1 to the rejoinder) issued by the Department of Personnel & Training on the subject of reservation roster in implementation of the judgment of the Hon'ble Supreme Court in the case of R.K.Sabharwal Vs. State of Punjab (1995) 2 SCC 745 b. The relevant portion of the circular is as follows:-

"The Court also held that persons belonging to the reserved categories, who are appointed on the basis of merit... and not on account of reservation.....are not to be counted towards the quota meant for reservation".

8. As we have already held that on the basis of panel of the trade test the applicant was placed at serial no.2 in merit vis-a-vis respondent no.4 who was at serial no.4, the instructions contained in Annexure-1 dated 2nd July, 1997 are squarely applicable to the case of the applicant, who had been promoted on the basis of his merit and not on account of reservation. The respondents have not shown any rules/instructions prohibiting appointment of reserved candidates on unreserved post on the basis of general merit. The respondents have also not been able to rebut the allegation of the applicant that he had been reverted without any notice although he had already functioned on the promotion post for a period of four months. This arbitrary action of the respondents can also not be countenanced.

9. Having regard to the above reasons, facts and

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circumstances of the case, the OA succeeds. Impugned orders dated 29.4.1998 and October, 1998 (Annexures-A&B) are quashed and set aside. The respondents are further directed to restore the promotion of the applicant as CJ HS Gde-II with consequential benefits with effect from 1.11.1997. The respondents are further directed to pay a cost of Rs.2000/- (Rs.Two thousand only) to the applicant for having caused unnecessary harassment and litigation.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A)

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