

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.2054/89

New Delhi this the 24th day of July, 1995

Hon'ble Shri N.V. Krishnan, Vice Chairman (A)
Hon'ble Dr A. Vedavalli, Member (J)

Shri Vishnu Shankar Prasad,
Asstt. Executive Engineer (Road)
Ministry of Surface Transport (Roads)
Transport Bhavan,
Parliament Street,
New Delhi. Applicant

(By Advocate : Shri Nilanjan Bose)

VERSUS

Union of India, through

1. The Secretary,
Ministry of Surface Transport
Transport Bhavan,
1 Parliament Street,
New Delhi.
2. Director General (Road Development)
Ministry of Surface Transport
(Road Wing), Transport Bhavan,
Parliament Street, New Delhi.
3. Director (Roads)
Ministry of Surface Transport (Road Wing)
Transport Bhavan, Parliament Street,
New Delhi.
4. Shri P. Halder
Asstt Executive Engineer (Road),
(Min. of Surface Transport, (Road Wing)),
8, Lindsley Street,
Calcutta.
5. Shri S.S. Nahar,
Assistant Executive Engineer (Road)
Ministry of Surface Transport (Roads)
Transport Bhavan,
Parliament Street,
New Delhi. Respondents

(By Advocate : Shri M.M. Sudan)

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ORDER (ORAL)

(Hon'ble Shri N.V. Krishnan, Vice Chairman (A))

This O.A. is being heard for the second time as the earlier order dated 28.4.94 had been recalled on review.

2. The claim of the applicant, who was an Assistant Executive Engineer, is that he should have been given adhoc promotion as an Executive Engineer when such promotions were ordered by the Annexure A-3 order dated 29.9.1989. Instead, he has been given promotion from a later date viz 7.3.90.

3. There is no dispute about the fact that the posts of Executive Engineers are to be filled by the Central Engineering Service (Roads) Group (A) of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976 as amended on 18.1.88. 75% of the vacancies are to be filled by promotion of Assistant Executive Engineers who have 4 years regular service. The remaining 25% is to be filled by promotional of Group 'B' Assistant Engineers who have rendered not less than 7 years service. Admittedly, the applicant was an Assistant Executive Engineer who had put in 4 years of service, when the Annexure A-3 order was issued. It is stated that there were 14 vacancies of Executive Engineers and thus, on 75% thereof (i.e. 10 posts) were allocated for ~~promotion of basic 10 posts were allocated for~~ promotion of Assistant Executive Engineers on

seniority. Out of this, 5 posts were reserved by the respondents for promotion of SC/ST Officers, including carry over vacancies from the past.

4. It is admitted that the respondents promoted 5 general candidates and 2 S.C. candidates to the rank of Executive Engineers. The remaining 3 posts reserved for the Scheduled Castes remained vacant and the respondents did not fill them up.

5. It is stated by the learned counsel for the applicant that a perusal of the Annexure A-1 of the seniority list of the Assistant Executive Engineers would show that the applicant was placed at Sr No.9. However, as the persons at Sr No.1 & 2 had already been promoted to the higher grade of Executive Engineer. and as the person at Sr. No.3 has also left service, in effect, the applicant was the next senior most person, after all the 5 persons above him, who were general candidates and promoted as Executive Engineer.

6. The applicant has urged two arguments for consideration.

(i) The first is that as there were 14 vacancies of Executive Engineers, the 75/ share of Assistant Executive Engineers

post would work out 11 and not 10 as taken by the respondents. This would be the result , if the vacancies are tabulated in a roster by allocaring the 4th vacancy only to the ~~stage~~ ^{share} of 25%. In that case, even if the 5 posts are earmarked for Scheduled caste, there would be six posts for general candidates. and he should have been promoted as the sixth general candidate.

(ii) The other is that the respondents have made a mistake in computing the vacancies reserved for Scheduled castes and Scheduled Tribes by including therein carry over vacancies. It is pointed out that, in the light of the instructions of the Department of Personnel on this subject (vide O.M. dated 30.4.89), there was no question of either dereservation or carry forward of reservation in respect of adhoc appointments. He, therefore, points out that if carry over vacancies had not ~~have~~ been taken into account it would have resulted in increasing the number of vacancies for general candidates. In that case also he should have been promoted.

7. We have heard the learned counsel for both the parties. In the view that we are taking, we do not find it necessary to give any

finding as to whether the number of vacancies to be filled up by promotion of Assistant Executive Engineers ~~with~~ ^{U/s} 10 or 11 ^{as} years. We notice that in respect of adhoc promotions, the Department of Personnel and Administrative Reforms has issued O.M.No.36011/14/83-Estt (ST) on 30.4.83 which makes it clear that the Scheduled Castes and Scheduled Tribes have to be considered for adhoc promotion but there is no concept of either dereservation or carry forward of such reservation. In other words the reservation is to be based ~~on~~ only the existing vacancies. If Scheduled Caste candidates are not available, the vacancies can be filled up by general candidates. There will be no carry forward. The respondents have clearly stated that, admittedly, the 5 reserved vacancies ^{U/s included} indicated carry over vacancies. Further, only 2 Scheduled Caste candidates were available for Scheduled Castes vacancies. 3 posts remained vacant. They were not filled up as it was decided to carry forward these vacancies. This was wrong. They should have been filled up and the available general candidates like the applicant. In this view of matter, we declare that the applicant was entitled to have his name included in the list of adhoc promotees whose promotion was ordered by the Annexure A-3 order dated 29.9.89.

8. We, therefore, dispose of this O.A. with a direction to the respondents to treat the applicant as having been promoted on an adhoc basis in terms of the Annexure A-3 order dated

29.9.89 with all consequential benefits. We also make it clear that promotion would be subject to the final decision of the Supreme Court referred to in Para 3 of the Annexure A-3 Order.

9. O.A. is disposed of accordingly.

A copy of this order be sent separately to the official address of the applicant's counsel, as requested by him.

A. Vedavalli

(Dr A. Vedavalli)
Member (J)

N.V. Krishnan
24.7.89

(N.V. Krishnan)
Vice Chairman (A)

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