

27. 4. 93

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No. 590/89

Date of decision:

Sh.M.R.Singh

...

Applicant

versus

Union of India
through Secretary,
Ministry of Urban Development,
New Delhi & ors. ... Respondents

CORAM: THE HON'BLE SH.I.K.RASGOTRA, MEMBER(A)
THE HON'BLE SH.J.P.SHARMA, MEMBER(J)

For the Applicant .. Sh.S.K.Bisaria,
Counsel.

For the Respondents .. Sh.P.P.Khurana,
Counsel.

JUDGEMENT

(BY HON'BLE MR.J.P.SHARMA, MEMBER(A))

The applicant retired from service as Section Officer on 30.7.91 while he was working in the Ministry of Urban Development. The grievance of the applicant is that although his number in the combined Seniority List of Section Officers is at Sl.No.253 and he has been working on a regular basis as Section Officer with effect July 1979, he having completed 8 years regular service in the year 1987 became eligible for next promotional post of Under Secretary, Grade I of the Central Secretariat Service but he has been denied that promotion though juniors to him have been promoted as such in July 1988. The applicant belongs to the category of Scheduled Caste and there is a reservation of quota as per instructions of Government of India in the promotional posts also. The applicant had made a representation but being dissatisfied by the reply dated 30.10.90 filed the present application which was amended subsequently and prayed for grant of the following reliefs:-

" direction to the respondents to consider the claim of the applicant for promotion from the post of Section Officer to the post of Under Secretary, Grade I in the CSS on ad hoc basis with effect from 1.7.88 or earlier when juniors to the applicant had been promoted

as Under Secretary on ad hoc basis."

2. The applicant has filed a copy of the reply given to him on 30.10.90 (Annexure A-VIII) in which the respondents have informed him that his request for promotion to the post of Under Secretary could not be agreed to as he had not reached his turn according to the cadre Seniority List. His case for promotion will be considered as and when his turn comes.

3. The respondents have contested the OA and in their reply opposed the grant of reliefs prayed for stating that the officers of the Central Secretariat Service are promoted and appointed as Under Secretary and Deputy Secretary under the Central Staffing Scheme. However, Office Memorandum dated 24.6.71 issued by the Department of Personnel and Training has delegated powers to the Ministry/Departments to make ad hoc promotions against leave vacancies and short-term vacancies for a period of 60 days at a time. These powers were subsequently withdrawn by the Office Memorandum dated 28.9.83. In case any ad hoc appointments were to be made, the proposal has to be made to the Establishment Officer for approval. It is stated that the promotions which were made of Section Officers in the Union Public Service Commission on ad hoc basis were solely on account of the fact that the UPSC is a Statutory Body and has its own rules called "UPSC (Staff) Regulations, 1958". Regulation 7 of the said Regulations empowers the Chairman of the Commission for making officiating arrangements for a period not exceeding three months. The non-consideration of the applicant, therefore, on the basis of the combined Seniority List when certain Section Officers were promoted in the UPSC cannot be said to be against the Central Staffing Scheme for promotion to the post of Under Secretary/Deputy Secretary in the offices of the Central Secretariat Service. Thus, it is averred

in the reply that no discrimination has been made in enforcing the orders/decisions uniformly in the CSS by the Respondents.

3. We have heard the learned counsel for the parties and have gone through the records of the case carefully. It is not in dispute that the applicant became eligible in 1987 for consideration for promotion to the post of Under Secretary after having put in 8 years service as Section Officer. The contention of the learned counsel for the applicant is that on 1.7.88, 12.9.88 and 3.10.88 three persons belonging to SC and one person of ST category was promoted out of the combined Seniority List of 1979 in the UPSC i.e. Sh.Puran Chand at Sl.No.330, Smt.P.Kautia at Sl.No.315, Sh.S.C.Maitra at Sl.No.317 all belonging to the SC category and Sh.T.Lugun ST at Sl.No.352 of the combined Seniority List of 1979. The name of the applicant appears at Sl.No.253. of the said Seniority List. This grievance has also not been pressed seriously by the learned counsel for the petitioner in view of the fact that these promotions were effected in the UPSC and the respondents have clearly stated that the UPSC is a Statutory Body and has its own rules called " UPSC(Staff) Regulations,1958". By virtue of Regulation 7 of the said Regulations the Chairman of the Commission was authorised to make officiating arrangements for a period of not exceeding three months. The applicant was working in the Ministry of Urban Development and was not considered for ad hoc promotion as the promotion was made only in the UPSC on ad hoc basis. The contention of the learned counsel for the applicant that the applicant should be given promotion on ad hoc basis with effect from July 1988 cannot be accepted.

4. During the course of arguments, the learned counsel for the applicant argued that by virtue of Office Memorandum dated 25.1.90 issued by the Department of Personnel & Training on the subject of ad hoc appointment of Section Officers of the CSS to Grade I of the Service(Under Secretary or equivalent), it has been laid down that ad hoc appointment should be ordered on the basis strictly of existing cadrewise seniority by the Ministries/Department controlling the Section Officer cadre. In fact, after the OM of 28.9.83 by which the power of ad hoc appointment was withdrawn this power was again conferred by the OM dated 25.1.90. The contention of the learned counsel for the applicant is that the applicant was posted as Section Officer in the Ministry of Urban Development and 6 vacancies were created and 6 persons were promoted from amongst the general category on ad hoc basis vide order dated 8.2.90 with effect from 6.2.90. By virtue of OM dated 30.9.83 issued by the Department of Personnel and Administrative Reforms on the subject of Scheduled Caste/Scheduled Tribe employees for ad hoc promotion, the Scheduled Caste and Scheduled Tribe candidates who are within the number of actual vacancies should be considered in accordance with their seniority on the principle of seniority-cum-fitness. If, however, the number of Scheduled Castes/Scheduled Tribe candidates fall short of the number of vacancies identified as falling to their share then additional Scheduled Caste/ Scheduled Tribe candidates to the extent required should be located by going down the seniority list to even 5 times the number of vacancies being filled on a particular occasion, subject to their eligibility and fitness. On the basis of the Office Memoranda dated 25.1.90 and 30.9.83, the learned counsel contended that according to the roster point, point No.1 is

to be filled by a Scheduled Caste candidate and point No.4 by a Scheduled Tribe candidate. However, the respondents have not promoted/considered any person for promotion out of the reserved category. It is further highlighted by the learned counsel that in June 1990 two more posts were filled in the Ministry of Development out of general category ignoring the claim of the applicant against roster point 8 out of total number of 8 vacancies. In view of this, it is stated that the applicant has been superseded and has not been considered in his turn for promotion to the post of Under Secretary in the reserved vacancies. Though there is some force in the contention of the learned counsel for the applicant but in the OA, the applicant has not made any averment to this effect, nor stated detailed facts which have been for the first time argued by the learned counsel for the applicant. The applicant in fact has had the occasion to amend the pleadings when his Misc.Petition on 30.4.91 was allowed and amended petition filed. But he failed to take this specific plea and in view of this fact the reply filed by the respondents does not cover this line of argument advanced by the learned counsel for the applicant. In fact, the pleadings are to be completed both on the factual statements as well as the other requirements and assertions on which the relief is prayed for by the applicant. This is because of this fact that the respondents are directed to file their reply and the applicant in turn a rejoinder so that the factual position may get clear and specified for the grant of the particular relief prayed for. The fact that

6 vacancies occurred in 1990 followed by two more in June 1990 is a statement of fact which should have been specifically stated by making an averment in the OA. It appears from the record that the OA had been filed on 7.3.89. So the applicant had no occasion to raise the specific issue at that time but atleast when he had an occasion to get the OA amended in 1991 he should have brought all these facts on record so that the respondents could have met all these points in their reply.

5. We, therefore, find that in the absence of specific plea the applicant cannot be granted another opportunity to raise such arguments which are not factually based on the pleadings.

6. The applicant has since retired on 30.7.91. The learned counsel desired another opportunity to get the pleadings amended but we considered that aspect and did not think it proper to grant the request at this belated stage.

7. In view of the above discussion, we find no merit in the OA and the same is dismissed with no order as to costs.

J.P.Sharma
(J.P.SHARMA) 27.4.92
MEMBER(J)

I.K.Rasgotra
(I.K.RASGOTRA)
MEMBER(A)

SNS