

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1430 of 1988.

Date of decision: 5/2/92

Shri Nathu Lal Meena

...Applicant

Versus

Union of India & Others.

...Respondents

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE-CHAIRMAN.
THE HON'BLE MR. I.P.GUPTA, MEMBER (A).

Shri Sant Lal

...Counsel for the
applicant

Shri M.L.Verma

...Counsel for the
respondents

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?

JUDGMENT

(DELIVERED BY HON'BLE MR. I.P.GUPTA, MEMBER(A))

.....

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant was appointed as Sorter on 3-1-1966 in Rajasthan Postal Circle. Later, he was transferred to Haryana Circle. The applicant belongs to Scheduled Tribes. He was promoted to the Lower Selection Grade (LSG) from 22.1.1976. Later, the Director of Postal Services, North West Circle, Ambala, by his Memo. dated 12.7.84 promoted the applicant to Higher Selection Grade (HSG) Grade II purely on temporary and ad hoc basis. The applicant was reverted to his post in LSG by the order of Director of Postal Services dated 28.2.85. The said order at annexure A-I mentioned that Shri Sardul Singh II was/vice the applicant

reverted (not approved by the DPC).

2. The applicant has sought the relief that the impugned order dated 28.2.85 (annexure A-I) be set aside and the respondents be directed to promote him as HSG Grade II w.e.f. the date he was reverted with all consequential benefits.

3. The learned counsel for the applicant contended that :

(i) No specified period was mentioned in the order dated 12.7.84, promoting the applicant to HSG-II, though this promotion was temporary and ad hoc. Moreover, the appointment was made against the vacancy reserved for Scheduled Tribe.

(ii) The applicant submitted his appeal to the Post Master-General; revision petition to the Member (Personnel) and Memorial to the President but they were all rejected. It was alleged that the order of the appellate authority and higher authorities were non-speaking orders.

(iii) Shri Sardul Singh, who was promoted vice the applicant was not a Scheduled Tribe, though the applicant was holding the vacancy reserved for Scheduled Tribe. Therefore, a general candidate could not be promoted against this post, against the instructions of the Government of India.

(iv) Though ^{certain} minor penalties were imposed upon the applicant, yet he was never communicated any adverse entry to the effect that he was not yet fit for promotion. However, when he was promoted on ad hoc basis in 1984, the competent authority would

have considered him fit before making the ad hoc appointment.

4. The learned counsel for the respondents argued that :

(i) The application is barred by limitation as the relief sought is for quashing the order dated 28.2.85 and the application was filed on 1st Aug. , 1988.

(ii) The applicant was temporary and ad hoc in the promotional post of HSG II and the post was subsequently filled by Shri S.K.Meena on 1.7.87. Shri Meena also belonged to the Scheduled Tribe.

(iii) The applicant was considered by the DPC on 29.10.84 and he was found unfit for promotion by the DPC. Therefore, he had to be reverted to his substantive post of LSG. At the time of his appointment on ad hoc basis, he was unapproved by the DPC and, therefore, his promotion was purely temporary and ad hoc.

(iv) At the time of the sitting of DPC, no other Scheduled Tribe candidate was available for promotion to HSG-II cadre. Therefore, the reserved point was carried forward and not filled by a general candidate. The reserved point was subsequently filled by Shri S.K.Meena w.e.f.1.7.87 when as approved candidate (S.T.), he was available.

(v) The appellate order is a speaking order, in that, it has been clearly spelt out therein that DPC held subsequently for regular promotion did not recommend him as a suitable candidate for the promotional post and the appointing authority accepted the

recommendations. There was, therefore, no option but to order his reversion, which was not a penalty.

5. Analysing the facts and arguments in the particular case, we find that the impugned order is of 28.2.85 but the applicant submitted appeal dated 20.5.85; revision petition to Member (Personnel) dated 21.7.86 and Memorial to the President on 26.6.87. They were rejected. The rejection of the ~~was~~ Memorial to the President/dated 23.9.87. The application was filed on 1st Aug., 1988. Therefore, the application has been filed within one year of the rejection of the Memorial. The General Regulations as contained in Posts and Telegraphs Manual provide for representations to higher authorities and also for Memorial to the President. Rule 20(3) of the Administrative Tribunals Act, 1985 says that any remedy available to an applicant by way of submission of a Memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such Memorial (emphasis ours). In the circumstances, we are proceeding with the examination of the merits of the case without dismissing the application on the ground of limitation.

6. It is found that the applicant was promoted vide Order dated 12.7.84 purely on ad hoc and temporary basis. His promotion was not on recommendation of D.P.C and that is why, it was ad hoc. When he was not approved by the D.P.C., the

applicant was reverted after a period of about 7 months. Though a general candidate was posted against his vacancy, the respondents pointed out that the reserved raster point was later filled by a S.T. candidate only in 1987 when he was available after approval by the D.P.C. The suitability of the applicant was duly considered by the D.P.C. despite punishment. No body has a right to promotion but has only a right to be considered for promotion and the applicant was so considered.

7. In the conspectus of the aforesaid facts and circumstances of the case, we see no merit in the request of the applicant to quash the order dated 28.2.85 reverting him to his lower post. However, it is not clear from the records nor from the pleadings whether the applicant, who was considered by the DPC on 29.10.84 and found unfit, was later again considered during 1985, 1986 or 1987 when his junior (ST), Shri S.K.Meena was promoted. We, therefore, direct that in case the applicant was not considered by the DPC when Shri S.K.Meena (ST), junior to the applicant, was considered, or by any DPC, if held between 1985 and the year in which Shri S.K. Meena (ST) was considered and found fit, review DPCs. may be held within 4 months from the date of receipt of a copy of this Order to consider the case of the applicant, and if found fit, consequential benefits be allowed. This is being directed since the raster point occupied by the applicant was, as stated by the respondents, filled by Shri S.K.Meena (ST) who was junior to the applicant. If, however, the applicant was so considered, no cause of action would lie.

With the above direction, the case is disposed of. There is no order as to costs.

File No. 2
(I.P.GUPTA)
MEMBER(A) 5/2/92

2
(RAM PAL SINGH)
VICE-CHAIRMAN(J)