

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 314/88

Date of decision: 9.8.1989.

Shri Albel Kachhap

....Applicant

Vs.

Union of India & Another

.....Respondents

For the Applicant

....Shri J.P. Verghese,
Counsel

For the Respondents

....Shri P.P. Khurana,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. M.M. MATHUR, ADMINISTRATIVE MEMBER

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

(The judgment of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who is working as Senior Investigator in the office of the Directorate General Employment and Training, Ministry of Labour, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for quashing the impugned orders dated 17.12.1987, 8.12.1987 and 11.10.1985 and for directing the respondents to continue him in the post of Research Officer ad hoc until regular appointment is made.

2. The facts of the case in brief are that the applicant was appointed as Senior Investigator as a direct

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recruit with effect from 29.7.1982. He belongs to the Scheduled Tribe community. The next promotion for him is to the post of Research Officer. According to the Recruitment Rules of 1961 as amended in 1984, the post of Research Officer is a selection post. 50% of the vacancies are to be filled by promotion, failing which by transfer on deputation and failing both by direct recruitment and 50% by direct recruitment. A Senior Investigator with 3 years service in the grade rendered after appointment is eligible for promotion.

3. A vacancy in the post of Research Officer arose in June, 1983 when the applicant was not eligible for promotion as he had not put in 3 years' service after his appointment as Senior Investigator. That vacancy had been reserved for Scheduled Tribes in accordance with the 40 Point Roster. The respondents promoted Shri R.P. Katnoria, Senior Investigator in the said vacancy as he had completed 3 years of service as Senior Investigator and as he belonged to the Scheduled Caste community. This was done in view of the provisions of Para 11.2 of Chapter 11 of the Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Services (vide impugned order dated 11.10.1985). On 5.6.1987 the applicant was appointed to officiate on ad hoc basis as Research Officer but by the impugned order dated 17.12.1987, he along with Smt D.K. Bedi was reverted to the post of Senior Investigator. By the impugned order dated 8.12.1987, the respondents promoted Shri S. Balakrishnan, Senior

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Investigator on ad hoc basis for a period of six months or till the regular incumbent reports for duty whichever is earlier.

4. The case of the applicant in short is that he is the senior-most Scheduled Tribe candidate and, therefore, he should have been promoted as Research Officer by relaxing the provision in the Recruitment Rules relating to experience. According to him, Shri Katnoria was promoted against the vacancy reserved for Scheduled Tribe and this could not be done under Para 11.2 of the Brochure mentioned above. The relevant rule affecting the exchange of posts between the Scheduled Caste and Schedule Tribe also requires carry forward of posts for three subsequent years. He was given ad hoc appointment to the post of Research Officer not on the basis of seniority but on the basis of reservation. He has contended that Shri S. Balakrishnan was promoted as Senior Investigator on ad hoc basis at a time when the post was not available. The Recruitment Rules require that promotion to the post can be made from Senior Investigators holding the post on regular basis. It was in order to make way and legalise the illegal order whereby Shri Balakrishnan was promoted on ad hoc basis that the respondents passed the impugned order dated 17.12.1987 whereby the applicant along with Smt. Bedi ~~were~~^{was} reverted from the post of Research Officer to that of Senior Investigator with effect from 4.12.1987. He has also relied upon the decision of the Supreme Court

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in Bihar State Harijan Kalyan Parishad and Others Vs. Union of India delivered on 21st January, 1987 wherein it has been observed as follows:-

".....the SC/ST officers who are senior enough to be within the zone of consideration for promotion should be included in the Select List against the vacancies available to the members of SC/ST according to the Roster, provided they are not considered unfit for promotion".

(vide page 11 of the Paper Book)

5. The case of the respondents is that the applicant was also considered against the 50% of the selection post of Research Officer to be filled by promotion. The question of relaxing the rules in his case did not arise as the provision relating to relaxation applies only to appointment by direct recruitment. In 1983 the applicant was not eligible to be considered for promotion. Though the vacancy which occurred in June, 1983 was reserved for Scheduled Tribes, the respondents instead of resorting to de-reservation invoked the provisions contained in Para 11.2 Chapter 11 of the Brochure mentioned above wherein it is provided that "in case of promotion by selection from Group 'C' to Group 'B', within Group 'B' and from Group 'B' to the lowest rung of Group 'A' where carrying forward of reservations are not permitted, vacancies can be exchanged between Scheduled Castes and Scheduled Tribes in the same year of recruitment".

6. Shri Katnoria who was promoted as Research Officer belonged to the Scheduled Caste community and he had the requisite length of service for promotion in 1983. The respondents have also stated that the applicant was promoted on ad hoc basis in accordance with the Roster as maintained

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by them. Two separate Roster registers have been maintained, one for regular promotion and the other for ad hoc promotion. The applicant was promoted on ad hoc basis against Point No.4 reserved for Scheduled Tribe. As regards the promotion of Shri Balakrishnan, the respondents have stated that he was considered only in the light of the general policy of the Government to promote the employment of blind persons to which category Shri Balakrishnan belongs. The reversion of the applicant along with Smt. Bedi was due to the joining of the regular incumbents.

7. We have carefully gone through the records of the case and have heard the learned counsel of both parties. It is clear from the record that at the time of promotion of Shri Katnoria in October, 1985, the applicant had not put in the requisite number of 3 years of service in the post of Senior Investigator which was mandatorily required under the Recruitment Rules for promotion to the 50% ^{promotion on} quota. Shri Katnoria had fulfilled this requirement. Shri Katnoria belongs to the Scheduled Caste community. Para 11.2 of Chapter 11 of the Brochure mentioned above permits exchange of reservation between Scheduled Castes and Scheduled Tribes. According to the said para, the normal provision is that the exchange is permissible only for the reservations which have been carried forward to 3rd and subsequent year of recruitment. However, "in case of promotion by selection from Group 'C' to Group 'B', within Group 'B' and from Group 'B' to the lowest rung of Group 'A' where carrying forward of reservations are not permitted, vacancies can be exchanged between Scheduled

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Castes and Scheduled Tribes in the same year of recruitment".

8. In view of the above, we are of the opinion that there is no legal infirmity in the appointment of Shri Katnoria as Research Officer on regular basis.

9. We also do not see any force in the contention of the applicant that before the de-reserving the posts, the methods of recruitment under the Recruitment Rules should be exhausted. The respondents have not resorted to de-reservation in the instant case. It cannot also be contended that if promotion is not feasible, the respondents should consider appointment of a person by transfer on deputation and failing this, they should resort to direct recruitment. There is no substance in this contention as the Brochure mentioned above contains an enabling provision under which vacancies could be exchanged between Scheduled Castes and Scheduled Tribes in the same year of recruitment.

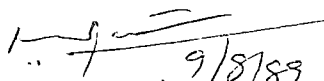
10. We also do not see any force in the contention of the applicant that the provisions in the Brochure mentioned above regarding the carrying forward of vacancies for three subsequent recruitment years is applicable to the instant case. The learned counsel of the applicant drew our attention to the Department of Personnel and Administrative Reforms OM dated 3rd February, 1975 which provides, inter alia, that when a vacancy falling on a reserved point in the Roster is treated as unreserved due to its being the only vacancy during the year of promotion, the reservation so due against the reservation point should be carried forward to subsequent three recruitment years. The same

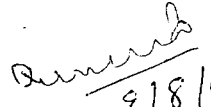
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office memorandum, however, reiterates that the instructions in para 2(vi) of OM dated 20th July, 1984 relating to exchange of vacancy reserved for Scheduled Tribes in favour of Scheduled Castes and vice versa in the same year itself in which reservation is made would remain unaffected.

11. In the facts and circumstances of the case, we do not see any merit in the present application and the same is dismissed.

The parties will bear their own costs.


(M.M. MATHUR) 9/8/89
ADMINISTRATIVE MEMBER


(P.K. KARTHA) 9/8/89
VICE CHAIRMAN(J)