

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Primer Panel Bench, NEW DELHI.

O.A. NO. 449 1988.
P.D. NO.

DATE OF DECISION December 19, 1989

Om Prakash Sharma PETITIONER

Shri Sant Lal Advocate for the
Petitioner(s)

VERSUS

Union of India & others RESPONDENT

Mrs. Raj Kumar Chopra Advocate for the
Respondent(s)

CORAM :

The Hon'ble Mr. Justice Kamleshwar Nath, I.C.

The Hon'ble Mr. P. C. Jain, A.M.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to other Benches ? Yes

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

NEW DELHI

Registration O.A. No.449 of 1988

Om Prakash Sharma Applicant

Versus

Union of India & Others Opposite Parties.

Hon. Justice Kamleshwar Nath, V.C.

Hon. Mr. P.C. Jain, A.M.

(By Hon. Justice K. Nath, V.C.)

✓ This application under Section 19 of the Administrative Tribunals Act XIII of 1985 seeks a direction to quash Annexure-A1 dated 13.8.87 promoting a scheduled caste candidate, opposite party No.3 K.S. Pipa as Assistant Manager, Mail Motor Service and consequently reverting the applicant from that post to his earlier post of Inspector, Mail Motor Service. There is also a prayer to quash Annexure-2 dated 12.12.87 whereby his representation against Annexure-A1 was dismissed. ✓

2. [On 17.12.74, the applicant was appointed as Adhoc Inspector, Mail Motor Service. That appointment was regularised on 11.8.75. By Annexure-A.3 dated 24.5.85, the applicant was promoted adhoc and in temporary capacity as Assistant Manager, Mail Motor Service until further orders in the vacancy of Krishna Kumar who had retired.] It was specifically stipulated in the order that the applicant would have no claim for regular absorption as Assistant Manager, ^{and} that the

promotion would not count for seniority in the cadre or for promotion to the next higher grade. It may be mentioned that in the endorsement of the order made to the Delhi Circle Office requested that the eligibility in officiating arrangement of Scheduled Caste and Scheduled Tribe candidates may be examined in the Circle Office as the roster for Scheduled Caste and Scheduled Tribe candidates was being maintained in the Circle Office.

3. On 10.8.87, the impugned order, Annexure-A1 was passed. Three appointments from Inspector, Mail Motor Service were made to the post of Assistant Manager. H.C. Garg was appointed in the vacancy of Bal Mukund promoted as Deputy Manager, M.S. Yadav was appointed in the vacancy of Amrit Singh promoted as Deputy Manager and opposite party No.3, K.S. Pipal was appointed in the vacancy of Krishan Kumar who had retired. The order went on to direct that the applicant who was officiating as Assistant Manager on purely temporary and adhoc basis under orders dated 24.5.85, Annexure-A.3 would stand reverted to the post of Inspector. It is admitted that opposite party No.3, K.S. Pipal, a Scheduled Caste candidate was junior to the applicant who belongs to the general category.

4. The applicant's case is that according to the roster prescribed for Scheduled Caste/Scheduled Tribe candidates the vacancy in which opposite party No.3 was appointed related to point No.7 which belonged to

unreserved category and therefore the appointment of opposite party No.3 on that post by reverting the applicant was invalid and arbitrary because the applicant was senior to opposite party No.3.

5. The reply of opposite party No.3 is that the vacancies for which the impugned order was passed, arose against points No. 6,7 and 8 of the 40 point roster of which points 6 & 7 fell for unreserved candidates and point No.8 fell for reserved candidate and therefore his appointment was valid. It is admitted by the parties that 40 point roster was appropriate roster and that vacancies No. 5,6 and 7 fell in the non reserved category while point No.8 fell in the reserved category. The applicant reiterated in para 6.3 to 6.5 of his rejoinder that it was absolutely incorrect that opposite party No.3 was appointed against point No.8; it was reaffirmed that the appointment was made against point No.7 which was illegal.

5. The reply of opposite parties 1 & 2 is that the guidelines for reservation in promotion are contained in Ministry of Home Affairs, Department of Personnel, Cabinet Secretariat, O.M. No.27/2/71-SCT dated 27.11.72; this position is admitted by all the parties. It was then said that first recruitment was made in 1977 against two vacancies. Wherein appointment of Amrit Singh, a Scheduled Caste candidate was made at point No.1 of the roster and that of Bal Mukund, a general category candidate was made at point No.2, that the second

recruitment was made in 1980 against two vacancies in which appointment of Krishna Kumar of general category was made at point 4 after dereservation of that point which was reserved for Scheduled Tribe as no Scheduled Tribe candidate was available. It was further said that in the third recruitment made in 1982, one vacancy was filled by appointing Hukum Chand Garg of general category at point No.5 while in the fourth recruitment of 1985 one vacancy was filled by appointing Maha Singh Yadav of general category at point No.6. In the fifth recruitment made in 1987, according to opposite parties 1 & 2, only one vacancy was to be filled at Point No.7. That point belonged to the general category but Point No.4 reserved for Scheduled Tribe of 1980 was being carried forward and it was exchanged with the Scheduled Caste candidate in the subsequent third year of recruitment i.e. 1987 in accordance with the applicable instructions. That is how, according to opposite parties 1 & 2, appointment of opposite party No.3 was made at Point No.7 by impugned Annexure-A1 and the applicant was reverted. It was further said that the Departmental Promotion Committee for the vacancies for the year 1982 onwards was held only on 23.7.87 and not earlier because the roster was not available.

6. In the rejoinder to the counter of opposite parties 1 & 2, the applicant said that it was incorrect that 1987 was the third year of recruitment for promotion. It was said that the post for Point No.7 had fallen

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vacant on 1.5.87 on the retirement of Krishna Kumar against which the applicant was promoted adhoc by order dated 24.5.85, Annexure-A3. In para 9 (H to I of the rejoinder), the applicant urged that the impugned appointment of opposite party No.3 was a clear case of manipulation by which two vacancies of 1985 has been split and shown for recruitment years 1985 and 1987 to favour opposite party No.3 by setting up the plea of exchange of vacancy in the third recruitment year. He said that one vacancy occurred in 1982, two vacancies occurred in 1985 and that no vacancies occurred in 1986 or 1987. He referred to Ministry of Home Affairs, Department of Personnel & Administrative Reforms O.M. No.16/5/74-Estt(SCT) dated 11.6.74 to show that recruitment year meant a calendar year and that for the purpose of three years limit for carrying forward of reserved vacancies it means the year in which the recruitment is actually made. He asserted that appointment of opposite party No.3 against unreserved vacancy at Point No.7 was arbitrary and illegal.

7. We have heard the learned counsel for the parties and have gone through the various orders on the subject. The first question is whether the disputed vacancy was at Point No.7 or Point No.8 of the roster. The best person to state on that fact is the Department concerned and therefore the version of opposite parties 1 & 2 has to be accepted in the absence of any positive material to the contrary. The applicant also had admitted that the

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vacancy was at Point No.7 of the roster giving details of various recruitments from 1977; opposite party No.3 who claimed the vacancy to be at Point No.8 has failed to produce any material in support of the allegation. We hold that the vacancy in question was at Point No.7 of the roster and not at Point No.8. In the ordinary course of things, that vacancy was for unreserved category, not for reserved category.

8. The real question is whether it could be filled by carrying forward the vacancy reserved for Scheduled Tribe at Point No.4 in 1980 and was exchanged to be for Scheduled Caste in the subsequent third year of recruitment i.e. 1987 as urged by opposite parties 1 & 2.

9. The version of opposite parties 1 & 2 that the first recruitment was made in 1977 when two vacancies were filled at Points 1 & 2 and the next recruitment was made in 1980 when two vacancies at Points No.3 & 4 were filled is not in dispute. It is also admitted that vacancy at Point No.4 was reserved for Scheduled Tribe candidate but since none was available it was got dereserved and a general candidate Krishna Kumar was appointed at it.

10. Rosters to implement the policy of reservations provide a continuous process from its commencement upto the various vacancies which are filled from time

to time. Instruction II in Appendix 'A' to Ministry of Home Affairs O.M. No.42/21/49 NGS dated 28.1.52 at page 31 of " Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Services" 7th Edition (1987 Edition) issued by the Govt. of India is as follows :-

" The roster is running account from year to year and must be maintained accordingly. For example, if recruitment in a year stops at point 6 of the cycle, recruitment in the following year will begin at point 7."

Hence the roster has been correctly operated from 1977 when the first recruitment was made, and was made use of till 1987 when the impugned recruitment was made.

11. It is also laid down in various orders of the Government that where a suitable candidate for a reserved vacancy is not available, it can be dereserved, and filled by a person of the general category. It is also well settled that on such dereservation, the reserved vacancy can be carried forward to three subsequent years of recruitment, and in the third year the nature of the reservation can be exchanged between Scheduled Caste and Scheduled Tribes categories. That is how the vacancy at point 4 of the roster reserved for a Scheduled Tribe candidate, was de-reserved in the recruitment of 1980, filled by a general candidate,

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and carried forward to the later years of recruitment. The carried forward reserved vacancy could not be made use of in 1982 and 1985. In the year 1987, which undoubtedly was the third "subsequent year" of recruitment (i.e. the third of the years in which recruitments were actually made), three steps were taken by the opposite parties :-

(i) The carried forward vacancy of Scheduled Tribe at point 4 of the roster was exchanged into Scheduled Caste vacancy;

(ii) The roster point 7, which was unreserved was treated as reserved; and

(iii) Opposite Party No.3 was promoted in that vacancy by superseding the applicant of general category senior to him.

Of these steps (i) and (ii) are justified by several orders of the Govt. referred to at page 185 of the Brochure (supra). The question is whether step (iii) violates Department of Personnel O.M. No.27/2/71-Estt(SCT) dated 27.11.72 contained in Annexure-A.5. Para 3 lays down the procedure to be followed for promotion on the basis of seniority subject to fitness, as in this case. According to sub para (ii) separate lists of eligible Scheduled Castes and Scheduled Tribes officials have to be drawn up and arranged in order ^{of} their inter-se-seniority in the combined seniority list of all officials. According to sub para (iii) the Scheduled Caste and

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Scheduled Tribe officials have to be adjudged by the D.P.C. separately in regard to their fitness for promotion. The D.P.C. has also to prepare a separate list of general category officials regarded fit for promotion. These three select lists have then to be combined into a "combined select list" of all officials found fit by the D.P.C. under sub para (iv) which runs as follows :-

" When the select list of officers in the general category, and those belonging to Scheduled Castes and Scheduled Tribes have been prepared by the Departmental Promotion Committee, these should be merged into a combined select list in which the names of the selected officers, general as well as those belonging to Scheduled Castes and Scheduled Tribes are arranged in the order of their inter-se seniority in the original seniority list of the category or grade from which the promotion is being made. This combined select list should thereafter be followed for making promotion in vacancies as and when they arise during the year." (Emphasis supplied).

12. According to the applicant, the criterion of 'seniority subject to fitness' is satisfied by simply following the combined select list because all the officials on that list have been found fit, and that should be the end of the matter in promotion. According to the opposite party in addition to the criterion of seniority, the policy of reservation in promotion has to

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given effect to, and since point 7 of the roster must be treated to be a reserved vacancy in view of the rule of carry forward opposite party No.3 must be promoted in preference to the applicant.

13. In the first place, the points in roster are not meant for determining the order of actual appointment or seniority but for determining the number of reserved vacancies: vide Department of Personnel & Administrative Reforms O.M. No.10/52/73-Estt(SCT) dated 24.5.74. It is not necessary therefore, that point No.7 for general category must be filled by a general category official. Secondly, when a reserved vacancy is carried forward, any recruitment of Scheduled Caste candidate will first be counted against the brought-forward vacancy (see page 186 of the Brochure, supra). The carried forward vacancy at point No.7 therefore is required to be filled by a Scheduled Caste official. Thirdly, the provision of reservation in promotion on the criterion of seniority subject to fitness inserted by the O.M. dated 27.11.72 (supra) in supersession of the earlier Memoranda which had specifically excluded reservation in promotion on that criterion, must afford priority in appointment to opposite party No.3 even though it involves supersession of the applicant. If that was not so, the insertion of policy of reservation in promotion would be meaningless and the earlier bar would continue to operate. It is not disputed that of the three vacancies

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which were being filled in 1987, one had to go to a Scheduled Caste candidate. In this situation, the "carried forward" reserved vacancy at point 7 of the roster was correctly assigned to opposite party No.3 even though it involves supersession of the applicant.

14. There may be some worth in the contention of the applicant that the so called vacancy of 1987 was in fact the vacancy of 1985 when Krishan Kumar, Asstt. Manager retired on 1.5.85 (vide Annexure-A.3). It is not quite clear in which year those vacancies arose against which Hukam Chand Garg and Maha Singh Yadav were promoted as Asstt. Manager respectively in the year 1982 and 1985 (vide paras 4 and 5 of the Counter Affidavit of opposite party Nos.1 & 2). But against all these vacancies, whenever they arose only adhoc appointments were admittedly made. According to the applicant that was a device to defeat the claim of the applicant by accumulating the vacancies and creating a right of reservation. Be that as it may, the noticeable feature is that at point 4 of the roster no Scheduled Caste/Scheduled Tribe candidate was available, hence it was filled by a general candidate, and therefore that reserved vacancy had to be carried forward and was to be filled first if eligible reserved category candidate became available. This appears to have been secured by making adhoc appointments. The

policy of law, supporting the reservations, being what it is, the applicant cannot make any real grievance of that situation.

15. The applicant has referred to a decision of the Allahabad High Court in the case of Dr. S.M. Chaturvedi Vs. Ministry of Railways and Others 1983 (2) SLJ 148, but it does not concern the question of promotion/reversion in the context of reservation of vacancy.

16. On the effect of reservation leading to supersession of general category candidates, significant observations are to be found in the case of Akhil Bhartiya Shoshit Karmchari Sangh Versus Union of India and Others 1981 SC 298. In paragraph 68 at page 319, the Supreme Court observed that the junior Scheduled Caste candidates can certainly steal a march over every senior members of service which is inevitable where reservation is permissible. It was observed in para 85 that if there is no "rampant vice of every Harijan jumping over the heads of others", the provision of reservation cannot be treated to be unconstitutional.

17. The decision of the Supreme Court in the case of S.S. Sharma and Others Vs. Union of India & Others 1981 SC 588 in para 10 would indicate that no fault may be found necessarily if the finalisation of the select list of a particular year is made after the expiry of the year. The Court observed as follows :-

"There is no requirement in law that the select list pertaining to a particular year must be finalised within that year. It is open to the Govt. to complete the process of selection and finalise it after the expiry of that year."

18. In that case the select list of 1977 was kept in abeyance although it contained 91 names of general category candidates for the purposes of filling up 29 reserved vacancies. Before finalising the selection, the Govt. introduced a Rule of holding a limited departmental competitive examination in the year 1979. The Supreme Court found nothing wrong in that process. The basic concept is to render social justice to the backward sections of the society by inducting them into the public services and one of the recognised modes of doing that is to introduce reservation at the stage of promotion.

19. On a careful consideration of all the aspects, we are of the opinion that the applicant is not entitled to the relief sought.

20. The application is dismissed; parties shall bear their costs.

(Signature)
(P.C.JAIN)
Member (A)

(Signature)
(KAMLESHWAR NATH)
Vice Chairman

Pronounced in open court
Dated the 15th Dec., 1989.

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(Signature)
15/12/89