

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 39
T.A. No.

1986.

DATE OF DECISION 13.1.1987.

Shri V.M.Thareja, Petitioner

Shri R.K.Kamal, Advocate for the Petitioner(s)

Versus

Secretary, Ministry of Defence Respondents
and others

Mrs. Raj Kumari Chopra Advocate for the Respondent(s)
(for 1 to 3)

Shri T.L.Aggarwal, Advocate for Respondent 4.

CORAM :

The Hon'ble Mr. Justice K.Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

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? *No*
4. Whether to be circulated to other Benches? *No*

Kaushal Kumar
(Kaushal Kumar)
Member
13.1.1987.

K.Madhava Reddy
(K.Madhava Reddy)
Chairman
13.1.1987.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

REGN. NO. 39/1986

13th January, 1987.

Shri V.M.Thareja Applicant

Versus

Secretary, Ministry of Defence
and others ... Respondents

CORAM:

Shri Justice K.Madhava Reddy, Chairman.

Shri Kaushal Kumar, Member.

For the applicant	In person and through counsel Shri R.K.Kamal.
For respondents 1 to 3	Mrs. Raj Kumari Chopra, Counsel.
For respondent No.4	Shri T.L.Aggarwal, counsel.

(Judgement of the Bench delivered
by Shri Justice K.Madhava Reddy, Chairman)

The applicant who is a Junior Scientific Assistant in the Composite Food Laboratory, Delhi calls in question the promotion of Shri K.S.Sachdeva, 4th respondent herein to the post of Senior Scientific Assistant ordered vide Army HQ letter No.50910/Q/ST 8 dated 13.8.1985 and seeks a direction against the respondents to declare the post at Sl.No.2 of the panel drawn by D.P.C. on 19.10.1983 as "unreserved" and for a further direction against them to appoint the applicant to the said post w.e.f. 1.4.1983 when that vacancy became available.

2. The post of Sr. Scientific Assistant is a selection post. It is common ground that the D.P.C. met on 19.10.1983 and considered all eligible Junior

Scientific Assistants at Sl.No.1 to 8 in the nominal roll, including the applicant, and selected one Shri Qamruddin and the applicant for appointment as Sr.Scientific Assistant. Admittedly there were only 2 posts of Sr. Scientific Assistants vacant and of these the second post was reserved for S.C. candidate. The applicant is not a S.C. candidate nor was Shri Qamruddin. The D.P.C. while drawing up the panel, therefore, specifically noted that the selection of applicant was subject to ^{de-}reservation of S.C. vacancy. The Ministry was addressed for dereservation; but it did not agree. A review D.P.C. was, therefore, held on 11.4.1985 and considered the 4th respondent who was the only Scheduled Caste candidate eligible to be considered for the post of Sr. Scientific Assistant against the Reserved vacancy and selected him for appointment. The 4th respondent was accordingly promoted as Sr. Scientific Assistant w.e.f. September,1985.

3. The first contention of the applicant is that the vacancy of Jr. Scientific Assistant occurred on 1.9.1982 and if only the D.P.C. had met prior to that, to draw up the panel for promotion to post of Sr. Scientific Assistant, the applicant would have been considered for the promotion even in the year 1982. That not having been done, the applicant was not promoted. It may be noticed at this stage that from 1982 to 1985 only two vacancies in the post of Senior Scientific Assistants occurred, one of which was a vacancy reserved for

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Scheduled Caste. Against these posts only two were promoted- one was Shri Qamruddin who was selected by the D.P.C. which met in 1983 and the other was 4th respondent, a Scheduled Caste candidate who was selected for the Reserved vacancy by the D.P.C. which met in October, 1985. Unless this post was dereserved, even if the applicant were to be selected in 1982, he could not have been appointed. It, therefore, matters little whether the D.P.C. met in 1982 and selected him or not. The only unreserved vacancy that was available from 1982 to 1985 was filled in only in the year 1983 by appointing Shri Qamruddin who was selected along with the applicant for appointment by the D.P.C. which met on 19.10.1983. The second being a vacancy reserved for S.C. candidate, none was appointed against that vacancy. The fact that the D.P.C. did not meet in 1982 thus did not affect the applicant's right in any way. Further the vacancy had occurred in the post of Jr. Scientific Officer and not in the post of Sr. Scientific Assistant to which the applicant claims promotion. Even if a panel were drawn up for filling up the post of Sr. Scientific Officer by the D.P.C. unless that vacancy was filled up, no vacancy in the post of Sr. Scientific Asstt. would have occurred and no Junior Scientific Assistant including the applicant could have no grievance. This contention therefore, fails.

4. The next contention of the applicant is that this vacancy should have been dereserved because in the

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year 1983 there was no eligible S.C. candidate available for consideration. Admittedly unless the post is dereserved, the applicant cannot be appointed to that post even if he was selected. According to the roster point this reserved vacancy had occurred only in 1983. There was a S.C. candidate among the Jr. Scientific Assistants and he had become eligible by 7.6.1983. As the Government did not agree to dereserve the 2nd vacancy, the next Review D.P.C. was held on 11.4.1985 by which time the 4th respondent had become eligible according to the roster. He was, therefore, rightly considered, selected and appointed. The applicant has no right to claim that this post should have been dereserved even in 1983. No provision of law or instructions has been brought to our notice which obligates the Government to dereserve a S.C. post the moment the vacancy occurs and an eligible S.C. candidate is not available. In fact the instructions are to the contrary and they direct that they should be carried forward for a period of at least 3 years. This contention of the applicant also, therefore, fails and it is accordingly rejected.

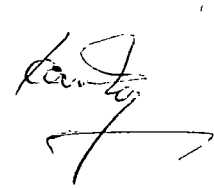
5. The applicant next contended that the 4th respondent was not a S.C. candidate and was, therefore, not eligible to be appointed. Even if it be so, the Applicant has no right to be appointed to that post for he is not a S.C. candidate. Initially the applicant contended that according to the roster point this vacancy was not reserved for S.C. candidate. The arguments in this case were first addressed

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by the applicant in person but with the leave of the Court they were resumed by Shri R.K.Kamal, counsel on his behalf and the learned counsel specifically gave up this contention. Even so we examined that contention and find no merit in it. From the service record placed before us, it is clear that the 4th respondent produced S.C. certificate when he entered service. He was accepted to be a member of the S.C. and was appointed as Jr. Scientific Assistant as a S.C. candidate in the year 1971. It is now nearly 15 years that he has been in service. That he belongs to the S.C. category was not questioned to this day. Even the applicant had not questioned this earlier. Material placed before us also establishes beyond all doubt that he belongs to the S.C. category. The contention of the applicant that the 4th respondent does not belong to S.C. category is, therefore, rejected.

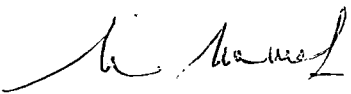
that

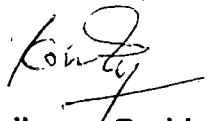
6. The applicant also urges/the vacancies for these two posts which occurred in 1982 rest at roster point No.25 and 26 as unreserved ones and that in terms of Ministry of Home Affairs (Department of Personnel) letter No.22011/3/76/Est.(D) dated 20.5.1981, candidates who were not qualified by 31st March,1983, as per the record of service were not eligible to be considered for the said vacancies. According to the applicant the 4th respondent had not completed 7 years of service as



Jr. Scientific Assistant even by 31.3.1983 and was, therefore, not eligible to be considered for appointment against any of these vacancies.

7. In the counter affidavit filed on behalf of the respondents 1 to 3 it was averred that roster points for these 2 vacancies was at points 14 and 15 and not at points 25 and 26 as averred by the applicant. Roster point 15 is reserved for S.C. No material is placed before us to substantiate the claim of the applicant that the roster point of these two posts was 25 and 26 as claimed by him. The record of the D.P.C. as well as the other record placed before us shows that the second post was reserved for S.C. and it is on that basis that the selection was made and it was specifically noted by the D.P.C. and that the applicant is selected against the second vacancy subject to dereservation of S.C. vacancy. That is further substantiated by the proceedings of the subsequent review D.P.C. held on 11.4.1985. This contention also does not merit acceptance. In the result this petition fails and ^{is} accordingly dismissed with no order as to costs.


(Kaushal Kumar)
Member
13.1.1987.


(K. Madhava Reddy)
Chairman
13.1.1987.

RA. 14/87

Resol. No. 105 dated 13.1.1987