

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 59 of 1986  
~~P.A. No.~~

DATE OF DECISION 15-4-1987.

Shri N.V. Swamy & Ors. Petitioner

Shri S.C. Luthra Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri M.L. Verma Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. V.S. Bhir, Member (A)

The Hon'ble Mr. G. Sreedharan Nair, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

*[Signature]*  
(G. SREEDHARAN NAIR)  
MEMBER (J)

*[Signature]*  
(V.S. BHIR)  
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.

O.A.No.59 of 1986.

15-4-1987.

Shri N.V.Swamy & Ors.

... Applicants.

vs.

Union of India & Ors.

... Respondents.

For applicants:

Shri S.C.Luthra, counsel.

For respondents:

Shri M.L.Verma, counsel.

Coram:

The Hon'ble Mr.V.S.Bhir, Member (A)

The Hon'ble Mr.G.Sreedharan Nair, Member (J)

(The Judgment of the Tribunal was pronounced  
by Shri G.Sreedharan Nair)

Four Deputy Directors attached to the Central Water Commission have filed this application claiming promotion to the grade of Director. All of them belong to scheduled caste. The post of Deputy Director and Director are posts falling within Group 'A'. The post of Director is a selection post on the scale of Rs.1500 - 2000. Twenty vacancies in the post of Director arose during the year 1983 and eleven during the year 1984. A Departmental Promotion Committee was held on 29-5-1985 for the promotion of the Deputy Directors to these vacancies of Director, and based on its recommendation, twenty four Deputy Directors were promoted. It is alleged by the applicants that though they were eligible to be included in the zone of consideration for promotion in view of clause (c) of

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paragraph 3 of the Office Memorandum dated 24-12-1980 issued by the Department of Personnel and Administrative Reforms, they have not been considered and hence they seek a review of the proceedings of the DPC held on 29-5-1985 by including them also in the zone of consideration. The applicants further pray for promoting them to the post of Director with effect from 29-5-1985 based on the directions of the Government of India, Ministry of Home Affairs, O.M. dated 26-3-1970 and Department of Personnel and Administrative Recorms O.M. dated 23-12-1974. This relief is claimed by way of implementation of a judgment of the Supreme Court as well, wherein a Presidential Directive similar to the instructions contained in the aforesaid Official Memoranda was considered and interpreted by the Supreme Court.

2. A reply has been filed on behalf of the respondents. It is contended that clause (c) of paragraph 3 of the O.M. dated 24-12-1980 is not applicable since ~~no~~ vacancies have been reserved for S.C./S.T. candidates for promotion to the post of Director. The Departmental Promotion Committee held on 29-5-1985 has considered all those who fell within the zone of consideration according to the above O.M. and hence there is no question of review as prayed for. It is stated that the policy regarding reservation for S.Cs. and S.Ts. in appointment to posts/services under the Central Government is formulated by the Department

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of Personnel, while, as far as the public sector undertakings are concerned, it is done by the Department of Public Enterprises. The implementative guidelines issued by one are not applicable to the other. It is pointed out that the judgment of the Supreme Court relied upon by the applicants was in connection with a Presidential Directive issued by the Department of Public Enterprises.

3. The main question that falls for determination is whether a review of the DPC held on 29-5-1985 is called for.

4. Admittedly, the post of Director, Central Water Commission, is a selection post, to be filled up by promotion from among the eligible Deputy Directors. For the guidance of all Ministries, the principles for promotion to the selection post have been laid down by the Department of Personnel and Administrative Reforms in its Office Memorandum dated 24-12-1980 (Annexure R.1). ~~xxxxxxxxx~~ in Clauses (a) and (c) of paragraph 3 of the said O.M. are reproduced hereunder:-

"3. Zone of consideration for promotion to posts filled by selection.

.....

(a) The Departmental Promotion Committee (DPC) shall for the purpose of determining the number of officers who should be considered from out of those eligible officers in the feeder grade(s) restrict the field of choice as under, with reference to the number of clear regular vacancies proposed to be filled in the year.

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<u>No. of vacancies</u>	<u>No. of officers to be considered.</u>
(1)	(2)
1	5
2	8
3	10
4 or more	three times the number of vacancies.

(b) .....

(c) Where adequate number of SC/ST candidates are not available within the normal field of choice as above, the field of choice may be extended to 5 times the number of vacancies and the SC/ST candidates (and not any other) coming within the extended field of choice should also be considered against the vacancies reserved for them.

Officers belonging to SC/ST selected for promotion against vacancies reserved for them from out of the extended field of choice under sub-para (c) above, would however, be placed en bloc below all the other officers selected from within the normal field of choice."

5. The DPC held on 29-5-1985 was to select candidates for filling up twenty vacancies for the year 1983, and eleven for the year 1984. In view of clause (a) of paragraph 3 of the O.M., for the vacancies of 1983, sixty Officers had to be considered normally. However, in view of clause (c) if adequate number of SC/ST candidates are not available within the above sixty, the field of choice may be extended to one hundred and the SC/ST candidates coming within this extended field of choice should also be considered against the vacancies reserved for them. (Emphasis supplied).

6. The applicants have furnished the list of Deputy Directors at Annexure 7 according to which they are at Serial Nos. 60 to 62 and 64. The correctness of this list is challenged by the respondents in their reply. According to them, the applicants have omitted to

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include the name of Shri S.A.Char who was the senior-most person in the eligibility list and was also considered by the DPC. The counsel of the respondents have made available the file relating to the DPC proceedings held on 29-5-1985. It shows that for the twenty vacancies for the year 1983, sixty were considered of whom Shri S.A.Char was No.1, and that none of these applicants was in the list. When S.A.Char is also included it is clear that all these applicants are beyond the normal eligible zone of consideration. The question is whether the field of choice should have been extended to five times the number of vacancies, in which case certainly the applicants would have come within the extended field of choice. As there was only one candidate belonging to the SC within the normal field of choice, applying the principle under clause (c) the field of choice can be extended to five times the number of vacancies and the SC/ST candidates coming within the extended field can also be considered, if there are vacancies reserved for them. It is to be noted that clause (c) does not prescribe that in all cases where adequate number of SC/ST candidates are not available within the normal field of choice, the field of choice is to be extended and the SC/ST candidates coming within the extended field should also be considered. Such extension of normal field of choice and such

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consideration of the SC/ST candidates coming within the extended field can be done only where vacancies are reserved for them. There is no case for the applicants that in the matter of promotion of Deputy Directors to the post of Director, there is reservation of any vacancy for the SC/ST candidates. Indeed to a pointed question put by us to the counsel of the applicants on this aspect, as well as to the 4th applicant who was present before Court at the time of hearing, it was admitted that <sup>There was no reserved vacancy</sup> ~~xxxxxxx no vacancy has been reserved for~~ the SC/ST candidates.

7. It follows that the prayer of the applicant for review of the DPC held on 25-9-1985 to include the applicants in the zone of consideration in accordance with clause (c) of paragraph 3 of the O.M. dated 24-12-1980 is not sustainable.

8. The other relief that is claimed is for promoting the applicants with effect from 25-9-1985. When it is admitted that the post of Director is a selection post to be filled up by promotion of the Deputy Directors on the recommendation of a duly constituted Departmental Promotion Committee, and when it is on record that on constituting such a Committee, promotions have been made to the post from among the eligible candidates, and that there is no scope for review of the proceedings of the DPC, the applicants cannot claim to be promoted to the grade of Director

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at this stage. In the context of this relief, the applicants have relied on the O.M. dated 26-3-1970 issued by the Ministry of Home Affairs and that of the Department of Personnel and Administrative Reforms dated 23-12-1974. The former deals with concession to SC/ST in posts filled by promotion within class I service which carry an ultimate salary of Rs.2000/- per month or less. By the latter O.M. the amount of ultimate salary has been enhanced to Rs.2250/-. The O.M. dated 26th March 1970 is extracted hereunder:-

"Ministry of Home Affairs O.M.No.1/9/69-Estt.(SCT),  
dated 26th March 1970.

Subject:- Concessions to Scheduled Castes and  
Scheduled Tribes in posts filled by  
promotion - Class I Services/posts.

The question of increasing the representation of Scheduled Castes and Scheduled Tribes employees in Class I Services/posts under the Government of India has been under the consideration for some time past. In this Ministry's O.M. No.1/12/67-Est.(C) dated 11th July, 1968, certain concessions have been provided to Scheduled Castes and Scheduled Tribes inter alia in the matter of promotion by selection to the lowest rung or category in Class I. It has now been decided that the following concessions and facilities will be provided to Scheduled Castes and Scheduled Tribes officers for their promotions within Class I also.

2. In promotions by selection to posts within Class I, which carry an ultimate salary of Rs.2,000 per month, or less, the Scheduled Castes/Scheduled Tribes officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the Select List has to be drawn up, would be included in that list provided they are not considered unfit for promotion. Their position in the select list would, however, be the same as assigned to them by the Departmental Promotion Committee on the basis of their record of service. They would not be given, for this purpose, one grading higher than the grading otherwise assignable to them on the basis of their record of service.

3. In order to improve the chances of Scheduled Castes/Scheduled Tribes officers for selection to the higher categories of posts in Class I, it has further been decided that:

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- (i) Scheduled Castes/Scheduled Tribes officers in Class I services/posts should be provided with more opportunities for institutional training and for attending seminars/Symposia/conferences. Advantage could in this connection be taken of the training facilities available at the National Academy of Administration, Mussoorie, National Police Academy, Mount Abu, Indian Institute of Public Administration, New Delhi, the Administrative Staff College, Hyderabad, etc.; and
- (ii) It should be the special responsibility of the immediate superior officers of the Scheduled Castes/Scheduled Tribes officers in Class I to give advice and guidance to the latter to improve the quality of their work.

Ministries/Departments under whom Scheduled Castes/Scheduled Tribes Class I officers might be serving should ensure that these decisions are implemented with expedition. Ministries/Departments (or the Heads of Departments) under whom such officers might be serving may specially watch the progress of these officers so that all appropriate steps are taken, wherever necessary, to improve the efficiency of these officers for the purpose of their selection to higher posts.

4. The orders contained in paragraph 2 above take effect from the date of issue except in respect of selections already made prior to the issue of these orders.

5. Ministry of Finance etc., are requested to bring the above decisions to the notice of all concerned.

6. In so far as persons serving in offices under the Comptroller and Auditor General of India are concerned, separate orders will issue in due course."

We are not able to find anything in the aforesaid O.M. in support of the claim of the applicants for promotion to the grade of Director. No doubt, by the O.M. a concession has been granted to the SC/ST in posts filled by promotion within Class I. The concession is that the Officers belonging to the SC/ST, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in the

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select list provided they are not considered unfit for promotion. This is indeed a concession, for, normally merely because the names of such SC/ST officers are in the zone of consideration, their names will not automatically figure in the select list.

9. The Government of India, Ministry of Finance, Bureau of Public Enterprises issued a directive to the Chief Executives of Public Sector Enterprises, as regards promotion within Group A. It was on the same lines as paragraph 2 of the O.M. issued by the Ministry of Home Affairs on 26th March 1970. Counsel of applicants submitted that this directive came up for consideration by the Supreme Court in Civil Writ No.680 of 1985 (The Bihar State Harijan Kalyan Parishad vs. The Union of India & Ors.) and that the interpretation of the directive by the Supreme Court has to be applied in interpreting paragraph 2 of the O.M. dated 26-3-1970 issued by the Ministry of Home Affairs. As against this, it was submitted by counsel of the respondents that since the Supreme Court was not considering the O.M. dated 26-3-1970 issued by the Ministry of Home Affairs and was only concerned with the directive relating to Public Sector undertakings which is not applicable to the Government Departments, there is no scope for a reference to the judgment of the Supreme Court. No doubt, the Supreme Court was not considering the O.M. issued by the Ministry of Home Affairs, but the directive that was

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considered was on identical terms as contained in paragraph 2 of the O.M. issued by the Ministry of Home Affairs. As such, we allowed the counsel of the applicants to refer to the judgment of the Supreme Court, and we have carefully studied the same. What we find is that the directive has been interpreted ~~and~~ to mean that those officers belonging to SC/ST will be considered for promotion who are senior enough to be within the zone of consideration, <sup>and</sup> thereafter a select list would be drawn up in which would also be included those officers belonging to the SC/ST who are not considered unfit for promotion. Thus it is clear that eligibility to be within the zone of consideration is a must, for the benefit of the concession, whether it be under the Presidential Directive relating to Public Sector Enterprises or under the O.M. dated 26-3-1970 issued by the Ministry of Home Affairs in relation to the selection to posts within Class I in Government. Since the applicants do not fall within the zone of consideration for promotion to the post of Director, the reliance placed on the judgment of the Supreme Court is of no avail.

10. It follows that the applicants are not entitled to the reliefs claimed.

11. The application is dismissed.

*RA 37/87  
filed*

*15-4-1987*

(G.SREEDHARAN NAIR)  
MEMBER (J)  
15-4-1987

*15-4-1987*

(V.S.BHIR)  
MEMBER (A)  
15-4-1987