

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

O.A 532/87

DATE OF DECISION: 18.9.1992

I.D.Garg

... Applicant

vs.

Union of India through
Secretary, Human Resources & Culture,
New Delhi and Others.

... Respondents

For the Applicant

... Shri G.K. Aggarwal,
Advocate

For the Respondents

... Shri P.P. Khurana,
Advocate

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THE HON'BLE MR. S.P. MUKERJI, VICE CHAIRMAN

THE HON'BLE MR. T.S. GBEROI, JUDICIAL MEMBER

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

JUDGMENT

(Hon'ble Shri S.P. Mukerji, Vice Chairman)

In this application dated 11th April, 1987 the applicant who has been working as Assistant Superintending Archaeological Chemist (ASAC) has challenged the impugned advertisement dated 21.2.1987 issued by the UPSC at Annexure-I for direct recruitment for the post of Deputy Superintending Archaeological Chemist (DSAC) in the Archaeological Survey of India and has prayed that the respondents be directed to appoint the applicant to that post on the basis of the 1983 UPSC panel and to promote the applicant from December 1979 from the post of ASAC to DSAC. The brief facts of the case are as follows.

2. The applicant has been working in the present post of ASAC with effect from 4.12.1976. It appears that respondent No.3 who was working with him in 1956 at Dehradun was left out in favour of the applicant for an assignment at Delhi and later in July 1978, the same respondent was appointed to the present post of Director and became the controlling officer of the applicant. Eversince 1956 respondent No.3 has been prejudiced against him. In 1978 respondent No.3 repeatedly withheld the T.A claims of the applicant and got the applicant transferred from Delhi to Aurangabad in the middle of academic session. In 1979 when the applicant was offered the post of Chief Chemist in the Andhra Pradesh Government, respondent No.3 saw to it that the applicant is not relieved, as a result of which the offer had to be cancelled. Respondent No.3 did not clear the Efficiency Bar of the applicant in December 1978 and December 1983 and these Efficiency Bars were cleared retrospectively in June 1984 and December, 1984. In this background when the applicant admittedly completed three years of regular service as ASAC on 3.12.79 he became eligible for promotion to the next higher post of DSAC and was the only seniormost person possessing M.Sc(Physical Chemistry) degree. Accordingly the first vacancy in the 25% promotion quota ought to have gone to him. The applicant's grievance is that the respondents did not hold the meetings of the DPC from 1979 onwards and got not only the 75% vacancies ^{filled} by direct recruits but got the 25% vacancies in the promotion quota also filled up by direct recruits on the plea of non-availability of eligible departmental

candidates. In any case the applicant applied in 1983 against a direct recruitment quota vacancy, but was not appointed even though there was a vacancy. In December, 1985 another post of DSAC fell vacant, but no meeting of the DPC was held. His numerous representations did not bring forth any results. In order to block his promotion he was given an adverse entry in 1984 which was communicated to him only in 1987. He has, thus, challenged the impugned advertisement dated 21.2.87 for direct recruitment when none of the posts in the promotion quota had been filled up from 1979 onwards.

3. In the counter-affidavit the respondents have denied any malafide or vindictive action taken against the applicant against his tour programme of 1978, but have admitted that he became eligible for promotion to the post of DSAC on 4.12.1979 as per the Recruitment Rules. They have, however, stated that at that time there was no vacancy available against the promotion quota for which he could be considered. The applicant could not be allowed to cross the Efficiency Bar in December 1978 and December 1983 as there was a vigilance case contemplated against him. They have stated that in accordance with the Recruitment Rules amended on 24.11.1976 25% posts of DSAC are to be filled by promotion, failing which by direct recruitment. In 1977 when no departmental candidate was eligible "it was decided to fill up ^{the} first three posts by direct recruitment keeping the 4th vacancy for promotion quota later on in order to provide promotional opportunities to the departmental candidates.

Accordingly first three vacancies were filled up by direct recruitment. The fourth vacancy could not be filled by promotion (pertaining to year 1977) since no departmental candidate had the requisite qualifying service in the grade of Asstt. Superintending Archaeological Chemist. That was also filled up by direct recruitment". The respondents have given a tabular statement about all the appointments made from 1977 onwards. They have further stated that in 1983 two posts were advertised by the UPSC for direct recruitment for which the applicant was also a candidate, but he was not selected. They have stated that the adverse remarks for the year 1984 have been expunged.

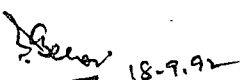
4. On 28.5.1987 the learned counsel for the respondents confirmed before the Tribunal the statement made on 19.5.1987 that one post of DSAC shall not be filled up by direct recruitment but will be filled up by promotion and the applicant will be considered for that post. By a further order dated 31.1.1989 it was further directed that the direct recruitment made by the advertisement dated 26.11.88 would be subject to the outcome of this application.

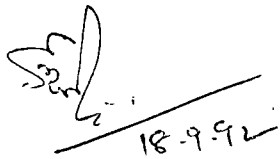
5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The statement filed by the respondents along with their counter affidavit dated 3.9.87 clearly shows that the first three vacancies of DSAC were filled up by direct recruitment during 1976-77. The fourth vacancy which according to the respondents themselves was to go to the promotion

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quota and was to be filled up in 1977 could not be filled up by promotion as no departmental candidate fulfilling the qualifying service was available. Accordingly a Scheduled Tribe candidate Shri K.S.Rana was appointed against that vacancy on 4.8.81 by considering that vacancy to be a reserve vacancy for Scheduled Tribe. Again the fifth vacancy was filled up by Shri T.S.Tiwari on 24.9.79 by direct recruitment. The sixth vacancy was filled up by direct recruitment in 1985. The seventh vacancy was also to be filled by a direct recruit Dr.P.K.Mandal who failed to join. Action has been initiated for filling up the eighth vacancy by promotion. This will show that so far though seven vacancies of DSACs were filled up, none of them was filled up by promotion, even though according to the respondents themselves, the applicant became eligible for promotion to the post of DSAC on 4.12.79. The learned counsel for the applicant pertinently brought to our notice by reference to Govt. of India's DP&AR's O.M. No.36021/7/75-Estt of 25.2.76 (page 136 of G.D.I's Brochure on Reservation for SC & STs in Services (7th Edition), that since direct recruitment for the post of DSAC being 75% is more than $66 \frac{2}{3}\%$, there can be no reservation in the promotion quota. Thus, the ^{fourth} vacancy which fell during 1977 but was filled up by a direct recruit Scheduled Tribe candidate Shri Rana on 4.8.81 should have been filled up by considering the applicant who had become eligible on 4.12.79. If he was not to be found suitable, he should have been considered in the following year for promotion before ~~by~~ direct recruitment was made.

6. In the conspectus of facts and circumstances we allow the application to the extent of directing that the applicant should be considered for promotion as DSAC notionally from 4.12.79 onwards each year and if he is found suitable for promotion in a particular year after 4.12.79 onwards, he should be given ~~notional~~^Δ promotion from the date on which any direct recruit was appointed in that year with all consequential benefits of seniority and arrears of pay and allowances. If there is no vacancy available in that year because of the direct recruitment, supernumerary post should be created till the post is adjusted against the earliest available vacancy. There will be no order as to costs.


(T.S. OBEROI)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

n.j.j