

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

D.A No.605/87.

DATE OF DECISION : 18.9.1992

R.K.Nafaria .. Petitioner

Shri J.P.Varghese .. Advocate for the Petitioner
Versus

Union of India & Ors. .. Respondents

Shri P.P.Khurana .. Counsel for the Respondents

CORAM

The Hon'ble Mr.S.P.Mukerji, Vice Chairman

The Hon'ble Mr.J.P.Sharma, Judicial Member

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

JUDGEMENT

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

In this application dated 1st November 1987 the applicant who is a member of the Scheduled Caste and has been working as a Junior Engineer in the Directorate General of Works, Central Public Works Department, New Delhi has challenged the manner in which he and other Scheduled Caste Junior Engineers were promoted as Assistant Engineer by violating the roster system for reservation of promotion posts and has sought appropriate seniority by antedating ^{the promotion of} his and other Scheduled Caste Junior Engineers included in the panel of promotion as Assistant Engineer with all consequential reliefs including arrears of pay.

2. When the case, however, was taken up for arguments, the learned counsel for the applicant stated that the application should be considered only in respect of the individual grievance of the applicant who seeks promotion as Assistant Engineer from 1986 and not from 1987 with all consequential benefits. The brief facts of the case are as follows.

3. The applicant who is a member of the Scheduled Caste, joined service as Junior Engineer on 2.3.76 and as such he was entitled to promotion as Assistant Engineer against a reserved vacancy in accordance with the prescribed roster system. During 1978-79, due to non-availability of eligible Scheduled Caste candidates, 91 posts which were to be filled up by them, had to be filled up by general candidates and there was thus a backlog of 91 reserved vacancies to be filled up by Scheduled Caste/Scheduled Tribe candidates. In 1982 against 174 announced vacancies, a panel of 140 general candidates and 34 Scheduled Caste/Scheduled Tribe candidates ^{was} prepared. Initially the respondents filled up only 50 vacancies all by general category candidates without taking into account the backlog of 91 carried over vacancies and 34 vacancies to be filled up by SC/ST candidates. According to the applicant, in the first batch of 50 Junior Engineers who were promoted as Assistant Engineers, at least 50%, i.e., 25 vacancies should have gone to the SC/ST candidates to make up the short-fall of 91 vacancies and availability of 34 SC/ST candidates included in the panel. The applicant's grievance is that even if according to his seniority and position in the panel

prepared in 1982 he could not have been appointed against the 25 reserved/vacancies out of 50 vacancies wrongly filled up by general candidates in November 1983, his chances of earlier promotion were destroyed by the respondents by promoting 45 general candidates from the panel of 1982, in December 1983 even though 22 of these vacancies should have gone to the Scheduled Caste/Scheduled Tribe candidates. In that case, he should have been promoted in December 1983. It may be mentioned that in the panel of 174, the position of the applicant amongst the 34 Scheduled Caste candidates was third from the bottom. His earlier representations have not brought forth any results.

4. The respondents have not filed any counter affidavit despite several opportunities given to them. Accordingly, we heard the learned counsel for both the parties with the following results.

5. The main point which falls for decision is whether, when vacancies ~~which~~ are filled up at different points of time in batches from a larger/panel, the reservation points can be ignored for each batch in preference to the position in the panel where Scheduled Caste and Scheduled Tribe candidates occupy much lower positions. While the learned counsel for the applicant states that for each batch the roster points should be taken into account out of 40 point or 100 point roster as prescribed for determining the number of reserved vacancies, the learned counsel for the respondents argues that ^{the} sequence of filled ^{up} vacancies in one lot or in

batches should follow the sequence in the panel. This argument goes counter to the spirit of reservation. The roster points whether on a 40 point or 100 point basis is a running roster which has to be taken into account as and when the vacancies are filled up. For each batch covering a particular span of points, the number of vacancies reserved for Scheduled Castes and Scheduled Tribes is determined by the reserved points in the roster which fall within that span. Therefore in the first batch of 50 vacancies filled up in November 1983, the respondents should have applied the roster and appointed the SC/ST candidates from the panel in the order of their position in the panel. This should have been followed in the second batch of 45 vacancies filled up in December 1983, to the number of reserved/vacancies arising from the roster should have been added the back-log of ^{reserved} carried forward vacancies from 1978-79 and not more than 50% of the vacancies in each batch should have gone to the SC/ST candidates in the panel of 1982. The learned counsel for the applicant brought to our notice the decision of the Principal Bench of the Tribunal dated 31.7.1991 in O.A 1301/90 rendered by the Hon'ble Justice U.C.Srivastava, Vice Chairman. In that case, the applicant a Scheduled Tribe candidate was 16th in the panel of 16 officers for promotion as Assistant Labour Commissioner. He was not promoted because of his low position, even though in accordance with the 40 point roster, point No.4 was to be made available to him.

The following extracts from that judgment would be relevant:-

"10. We have gone through the entire records of the case. The position regarding the post of promotion is clear. The DPC declared a panel of 16 members and later on it was found that 12 vacancies have existed. Whatever may be the position, according to the roster point, one vacancy was to go to the applicant(ST). This has also been admitted by the respondents. As such, the applicant was wrongfully deprived of the promotion and accordingly, he is entitled to be promoted to the said post w.e.f. the date others were promoted."

The following extracts from the Ministry of Home Affairs O.M.No.10/52/73-Estt.(SCT), dated 24th May, 1974 , would also be pertinent:-

"Since in the case of direct recruitment through examination, generally all the selected candidates are appointed simultaneously, the question as to which order of appointments should be made against reserved vacancies, will not arise normally. However, a case has come to the notice of this Department in which all the candidates selected for appointment by direct recruitment through examination could not be appointed at the same time and offers of appointment were sent to a few candidates only, without however taking into account the reservations for Scheduled Castes and Scheduled Tribes which would have become due separately in those appointments. The remaining candidates were appointed in subsequent batches. As a result, some of the Scheduled Castes/Scheduled Tribes candidates who should have been appointed in the first batch itself were appointed only in the second batch. Where all appointments through examination for direct recruitment cannot

be made simultaneously, the correct procedure would be to determine the number of vacancies to be reserved for Scheduled Castes and Scheduled Tribes separately according to the roster in each batch of appointments and to make appointment of the required number of general and Scheduled Castes/Scheduled Tribes candidates in the batch." (emphasis added)

6. In the facts and circumstances we allow the application to the extent of directing the respondents to follow the 40 point roster for each batch of vacancies filled up in November, 1983, December, 1983 and subsequently and include the back-log of carried forward reserved vacancies also, subject to the condition that not more than 50% of the vacancies of each batch should be filled up by Scheduled Caste/Scheduled Tribe candidates from the panel of 1982. The applicant should be given notional promotion as Assistant Engineer in his turn in the panel against the reserved vacancies of each batch so reckoned. His date of actual promotion should be antedated to the date of notional promotion on the above basis with all consequential benefits including that of seniority in the cadre of Assistant Engineer. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.

J.P.Sharma
(J.P.Sharma) 18-9-92
Judicial Member

S.P.Mukerji
(S.P.Mukerji)
Vice Chairman