

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN. No. OA 728/87

Date of decision: 8-6-90

Shri Prakash Chander Applicants

vs.

Union of India & anr. Respondents

CORAM: THE HON'BLE MR. P.K.KARTHA, VICE CHAIRMAN(J)
THE HON'BLE MR. D.K.CHAKRAVORTY, MEMBER(A)

For the Applicant Sh.J. P.Verghese, Counsel.

For the Respondents Sh.P. P.Khurana, Counsel.

1. Whether Reporters of local papers may be allowed to see the judgement?

2. To be referred to the Reporter or not?

(Judgements of the Bench delivered by Hon'ble
Mr.D.K.Chakravorty, Member)

JUDGEMENT

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is an Assistant Engineer in the C.P.W.D and belongs to the Scheduled Caste, has prayed for issue of a direction to the respondents to follow the Office Memoranda dated 30-4-1983 and 30-9-83 regarding consideration of SC/ST employees for ad hoc promotion, for preparation of a separate list of candidates belonging to the SC/ST communities for the total number of reserved vacancies and make appointment on the basis of seniority out of the said list. He has also prayed that in the first instance the backlog from amongst the SC/ST candidates who are eligible and available for such appointments should be filled up and then only proceed to select the candidates from the general category. He has also sought for a direction for promoting the applicants forthwith and grant of all consequential benefits including arrears of pay etc. with interest thereon.

2. The applicant has stated that he has filed this application in a representative capacity on behalf of

himself and 43 other similarly placed officers out of whom three belong to the ST community and the rest to the SC community and all of them are due for promotion to the posts of Executive Engineer. A list of the names of all the 44 officers has been given at Annexure -I of the paperbook. However, we have heard this case only for the applicant himself and not in a representative capacity.

3. The applicant has stated that the respondents are appointing officers on promotion on ad hoc basis without complying with the rules of reservation affecting such promotions. 18 Assistant Engineers were promoted on ad hoc basis to the posts of Executive Engineer on 30-6-86 and again another 17 Assistant Engineers were similarly promoted on 10-7-86. Out of these, 35 promotions, there are only 4 members who belong to the reserved category. Since all the promotions have been made on the basis of seniority and the condition of passing departmental examination within 2 year has been imposed, these promotees will be entitled to all the benefits of regular promotion. The applicant has stated that the respondents had made similar appointments in 1980, 1981, 1982 and 1984 without considering any of the reserved category candidates. In these years 102, 32, 16 and 7 promotions respectively were made but not a single SC/ST was promoted. The applicant has alleged that the respondents are about to make 50 more ad hoc promotions in the current year in violation of the rules governing reservations in services. The instructions and guidelines contained in Office Memoranda dated 30-4-83 and 30-9-83 issued by the Department of Personnel and Administrative Reforms regarding consideration of cases of SC/ST employees for ad hoc promotion have been violated by the respondents. The applicant has also challenged the notifications dated 31.1.79 and February 1979 (Annexures 6 &7 of the paper-book) affecting the seniority of the Assistant Engineers.

4. According to the applicant, although the relevant service rules do not foresee any departmental remedy in the event like the present one, he has made representation in October 1986 followed by ^a second one on 11-2-87 but there has been no reply to either of them.

5. In the written statement submitted on behalf of the respondents, it has been stated that promotion to the grade of Executive Engineer is made on the basis of selection in accordance with the provisions of the Recruitment Rules. According to the Office Memorandum dated 24-12-80 issued by the Department of Personnel and Administrative Reforms, the normal zone of consideration for the posts filled by selection shall be three times the number of vacancies but for promotion against the reserved vacancies, the zone of consideration shall be extended upto five times the number of vacancies for SC/ST candidates in case sufficient number of officials belonging to these categories are not available within the normal zone to fill up their quota/vacancies. Due to certain administrative reasons, like non-finalisation of seniority list because of pendency of court cases, the promotions to the grade of Executive Engineer are being made on ad hoc basis since 1973. While doing so, the interests of eligible SC/ST candidates have always been kept in view. The applicant is a diploma holder and has completed 10 years service as Assistant Engineer. Although he is eligible for consideration for promotion his position in the supplementary seniority list of the Assistant Engineers is 193 and so far Assistant Engineers upto Sl.No.1304 of the main seniority list have been considered for promotion after December 1985 as per the zone of

consideration. The applicant's name does not figure even in the extended zone of consideration as per his assigned seniority. The respondents have vehemently denied the allegation that no SC/ST candidate has been promoted from 1981 to 1984 and that orders of reservation have not been complied with. It is stated that 4 and 3 candidates belonging to the SC/ST community were promoted in 1983 and 1984 respectively. It has been averred that ad hoc promotions are generally made on relaxed standards as compared to that followed for making regular promotions and promotions made on purely ad hoc basis will not confer on the promotees any right to [redacted] claim for regular promotion or seniority or any other incidental benefit of regular promotion. The impugned notifications at Annexures 6 & 7 of the paper-book have already been superseded. The seniority list based on the Seniority and Confirmation Rules 1982 was issued on 27-12-1982 and the supplementary seniority list on 25-4-86. Since the rights of the applicant and others have not been violated, the question of any departmental remedy does not arise. In view of ^{cannot} this, the applicant/be promoted unless and until his name figures in the zone of consideration and, therefore, the application may be dismissed.

6. We have gone through the records of the case carefully and have heard the learned counsel for both parties. While there is no formal reservation for Scheduled Castes/Scheduled Tribes in the matter of ad hoc promotions, certain guidelines have been laid down by the Department of Personnel and Administrative Reforms in their Office Memoranda dated 30-4-83 and 30-9-83 which are to be followed in such cases. The Office Memorandum dated 30-4-83 envisages the vacancies to be placed on the appropriate roster, consideration of the SC/ST candidates

in the order of their general seniority as per the gradation list and locating such candidates by going down the seniority list to the extent required. The Office Memorandum dated 30-9-83 clarifies that SC/ST candidates who/within the number of actual vacancies should be considered in accordance with their general seniority and if the number of such candidates is less than the number of vacancies falling to their share, additional SC/ST candidates to the extent required should be located by going down the seniority list but within 5 times the number of vacancies being filled on a particular occasion.

7. The Office Memoranda dated 30-4-83 and 30-9-83 envisaged ad hoc promotions to be given to the SC/ST candidates, provided they come within the zone or extended zone of promotion. There is no further relaxation in the matter of ad hoc promotion. The general seniority as per gradation list has not been done away with in regard to ad hoc promotions.

8. The position of the applicant is at Serial No.193 in the supplementary seniority list of Assistant Engineers. The respondents have stated that his name does not figure even in the extended zone of consideration as per his assigned seniority and that so far Assistant Engineers upto Serial No.1304 of the main seniority list only have been considered for promotion after 1986. The applicant has not controverted the above factual position in his rejoinder affidavit.

9. In the light of the above, we see no merit in the present application and the same is dismissed. The parties will bear their respective costs.

Deekshay
(D.K.CHAKRAVORTY)

MEMBER

8/6/890

Deekshay
(P.K.KARTHA)

VICE CHAIRMAN

8/6/890