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Central Administrative Tribunal
Principal Bench: New Delhi.

Date of decision: 24.9.90

.....
Review Application No.16 of 1990.

in

Registration OA No.449/1988

Om Parkash Sharma

..... Applicant.

Versus

Union of India & Ors.

..... Respondents.

Hon.Mr. Justice Kamleshwar Nath, V.C.,
Hon.Mr. P.C. Jain, Member(A)

(By Hon.Justice K.Nath, V.C.).

This application was originally decided by us by the Judgement dated 19th December, 1989. A Review application No.16 of 1990 was filed by the applicant, Om Parkash Sharma on several grounds. One of the grounds was that the promotion of respondent No.3, Shri K.S. Pipal was upheld by this Tribunal in the judgement on the basis that point 4 of the Roster meant for the Scheduled Tribe (ST) reserved category candidate would be validly exchanged for the Scheduled Caste (SC) reserved category candidate in the recruitment made in the year 1987 and on that basis Shri K.S. Pipal who was a SC candidate could be promoted. It was urged that our judgement suffers from an apparent error on the basis of the record inasmuch as we treated the promotion recruitment of 1987 to be the 3rd year of recruitment in which the exchange of the category of the vacancy could be done. In a detailed order dated 16.7.90, we considered it appropriate to hear the review application on the merits on the limited point of the alleged error in regard to the true nature of the recruitment made in the year 1987. Notices were issued to both the parties for hearing the review application on merits and in case the review application is allowed also for rehearing of this original application on the merits.

2. When the review application was taken up for hearing on 19.9.1990 all the parties were found to be served.

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Shri Sant Lal, Advocate appeared for the applicant Shri Om Parkash, Shri Shree Chand, Asstt. Superintendent made appearance as the Departmental Representative for respondents No.1 and 2. No one appeared for respondent No.3 although he had been duly served with notice. On the hearing the parties we passed the following order:

"The departmental representative who appeared on behalf of respondents No.1 & 2 stated that they do not want to file any reply to the RA. It is not necessary for us to repeat our observations contained in our order dated 16.7.1990. We find sufficient cause for review. Our judgement dated 19.12.1989 in OA-449/88 is set aside and the OA is taken for disposal on merits on the limited points indicated in our order dated 16.7.1990."

3. That is how this application is again before us for disposal on merits as already indicated to confine our decision to the question of true nature of the recruitment made in the year 1987. All other points raised in the review application were rejected in the order of 16th July, 1990.

4. We have heard the learned counsel for the parties. The representative of respondents No.1 and 2 stated that he had to add nothing to the written statement filed in the OA.

5. This case concerns promotion from the post of Inspector, Mail Motor Service to the post of Assistant Manager, Mail Motor Service having regard to reservation quota. It is admitted that 40 Point Roster had to be adopted by which point No.1 was reserved for a SC candidate and Point No.4 was reserved for a ST candidate.

6. It is also admitted that in 1977 Amrit Singh a SC candidate was promoted at point 1 and Bal Mukand a general category candidate was promoted at point 2. In 1980, Krishan Kumar Gugnani was promoted at point 3. Point 4 which was reserved for ST candidate had to be dereserved because a ST candidate was not available. Consequently, one Krishan Kumar ~~Saxena~~ was promoted at that point. Simultaneously, the ST vacancy was carried forward.

7. In 1982, Shri Hukam Chand Garg, a general candidate was

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appointed at point 5. In 1985, Maha Singh Yadav also a general candidate was appointed at point 6.

8. In 1987, the vacancy of ST candidate at point 4, being carried forward, was exchanged into that of a SC candidate because through out this period ST candidate was not available. That was at point 7 which was for a general category candidate. The applicant, Shri O.P.Sharma was senior but the vacancy having been exchanged to be that for a SC candidate, Shri K.S.Pipal who was junior to the applicant was given appointment. It is this appointment which was challenged in this application because by virtue thereof, the applicant, who was already officiating as Assistant Manager, Mail Motor Service was reverted to the post of Inspector and his representation against reversion had been rejected.

9. The grievance of the applicant is that the SC vacancy at point No.4 dereserved and carried forward from 1980 could not be exchanged in 1987 for a SC vacancy at point 7 of the roster because the two intermediate appointments of Hukan Chan Garg at point 5 in 1982 and M.S.Yadav at point 6 in 1985 were not regular appointments/recruitments but were only ad-hoc. It is urged that according to provisions the exchange of the category of the vacancy could be done only in a 3rd year of recruitment and since the adhoc promotion made in 1982 and 1985 did not constitute recruitment in the eyes of law, the recruitment made in 1987 could not be treated to be the 3rd year of recruitment.

10. The fact that appointments of Hukam Chand Garg and M.S.Yadav in 1982 and 1985 were made entirely in an ad-hoc capacity were clearly urged by the applicant in para 6.3 of the application which was not denied in the counter affidavit of respondent 1 and 2 and further was admitted in para 6.3. of the counter of the opposite party No.3.

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It is clear, therefore, that the promotions of 1982 and 1985 were not regular recruitments. In that event the promotion in the year 1987 could not be held to be a 3rd year of recruitment and, therefore, it was not permissible under the law to exchange the ST dereserved carried forward vacancy at point No.4 to SC category at point No.7. The relevant provision in this regard is to be found at page 196 and 197 of Swamy's "Establishment and Administration" 2nd Edition dealing with the carried forward vacancies. It is stated that "whenever sufficient number of suitable candidates belonging to Scheduled Castes and Scheduled Tribes are not available in a year for appointment against reserved vacancies, such vacancies can be dereserved, and after such dereservation, the reservations will be carried forward to subsequent three recruitment years. The expression 'Recruitment year' in this context has been defined as follows

" 'Recruitment year' shall mean a 'Calander Year' and, for purposes of three years limit for carry forward of reserved vacancies shall ^{mean} / the year in which recruitment is actually made, i.e. for purposes of counting the effective years towards the period of carry forward, the years in which recruitment is actually made will alone be taken into account and the year in which no vacancy arises will be ignored."

11. It is clear from the above provision that the recruitment years for the purpose of the three years limit for carry forward of reserved vacancies, must mean the year in which the recruitment is actually made. Since, adhoc appointment is not a recruitment at all, the promotions of Hukum Chand Garg in 1982 and M.S. Yadav in 1985 both in ad-hoc capacity could not constitute a recruitment for the purpose of these provisions. We hold that after the ST vacancy at point 4 of the roster was dereserved in 1980 and was carried forward, the process for recruitment

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subsequent
at point 7 in the year 1987 was only 2ndnd year of recruitment. The vacancy meant for ST, therefore, could not be exchanged or converted into a vacancy for SC candidate. That being so, it was not permissible to promote respondent No.3 in preference to the applicant Shri O.P.Sharma, who was admittedly senior.

12. The result is that the promotion of respondent No.3 contained in Annexure I dated 10.7.1987 and the consequential reversion of the applicant from the post of Assistant Manager, Mail Motor Service must be quashed.

13. We may mention that all other points which had arisen in this original application had been fully dealt with by us in the earlier judgement dated 19th December, 1989 and need not be repeated here; as we have stated earlier, we have accepted a review of that judgement only to the extent of point which we are specifically deciding in this case.

14. The application is allowed and so much of the impugned order Annexure A-1 dated 10.8.1987 as concerns the promotion of respondent No.3 to the post of Assistant Manager, Mail Motor Service and consequently directs¹ reversion of the petitioner from the post of Assistant Manager, Mail Motor Service, to the post of Inspector, is quashed. The applicant shall be deemed to have continued to officiate as Assistant Manager, Mail Motor Service, from the date of his reversion and shall be paid his salary and allowances for that purposes since the date of reversion. The competent authority will consider the case of regular promotion of the applicant^{alongwith eligible persons} to the post of Assistant Manager, Mail Motor Service, in accordance with law and shall pass suitable orders within a period of three months from the date of receipt of a copy of this judgement.

G. C. Jain
(P.C. Jain)
Member (Admn.)

Kamleshwar Nath
(Kamleshwar Nath)
Vice-Chairman

Pronounced by me to day in the open Court.

G. C. Jain
24/9/90
(Member (A))