

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 1301 ~~1301~~ 199
T.A. No. T-1154/85
CW-1617/85

DATE OF DECISION 31.07.1991

<u>Shri John Bage</u>	<u>Petitioner</u>
<u>Shri J.P. Varghese</u>	<u>Advocate for the Petitioner(s)</u>
<u>Versus</u>	
<u>U.O.I. & Ors.</u>	<u>Respondent</u>
<u>Shri M.L. Verma</u>	<u>Advocate for the Respondent(s)</u>

CORAM

The Hon'ble Mr. ~~Judge~~ M.C. Srivastava, Vice Chairman

*The Hon'ble Mr. I.P. Gupta, Member

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 ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(JUDGEMENT of the Bench delivered by
Hon'ble Mr. ~~Judge~~ Justice U.C. Srivastava)

We have received two applications at different point of time. They have been filed by the same person and more or less depends on the same facts. The writ was for order declaring the actions of the respondents in not regularising him and instituting enquiry proceedings against him as violative of the Articles 14, 15 and 16 of the Constitution of India. The respondents may be directed to follow the rosters applicable in the case of the applicant and promote him accordingly and they may also be directed to pay all past dues and damages including those for the humiliation and mental agony the applicant has suffered at the hands of the Respondents.

4

2. In the second application O.A.1301/90, the applicant has prayed for quashing the order dated 15.6.89 as illegal, malafide and passed with ulterior motives and entire proceedings taken against the applicant may also be quashed.

3. The applicant is a member of Scheduled Tribe. When he filed an application in 1985, he was holding the post of Assistant Labour Commissioner in the scale of pay of Rs.700-1300. He joined the Department earlier in the year 1965 as a Labour Enforcement Officer and he continued to hold the post upto December 1978 when the Respondents No.1&2 posted him as Assistant Labour Commissioner on adhoc basis at Chaibasa, the District Headquarters of District Singhbhum, Bihar.

4. He states that his promotion was not given in due course and he was deprived of his right of regular promotion in turn. The Departmental Committee for the post of Assistant Labour Commissioner prepared a panel of 16 person and the applicant, as also evident from the counter reply, was placed at the bottom. According to the applicant, 50% posts are to be filled up by promotion and 50% posts are to be filled up by direct recruitment in accordance with the Recruitment Rules and even if his position was at 16, in view of the 40 point roster, the applicant being a member of the Scheduled Tribe was entitled to get the post No.4 in view of the roster enforced by the Government of India.

W

Q

Notwithstanding that the applicant was the only ST member and he was not promoted and by giving adhoc promotion he was sent to Chotta Nagpur. Applicant was depressed and made representation to the Labour Department regarding determination of seniority.

5. "GENERAL PRINCIPLE 6" read as under:

A roster should be maintained based on the reservation for direct recruitment and promotion in the Recruitment Rules. Whether the reservation for each method is 50%, the roster will run as follows:

(i) Promotion (ii) Direct Recruitment (iii) Promotion (iv) Direct Recruitment and so on. Appointment should be made in accordance with this roster and seniority determined accordingly."

6. The applicant was charge-sheeted on 23.2.82 and reply was given by him on 15.3.82. On 15.1.83, the applicant was given another memorandum and a reply sent immediately and a further reminder within a month thereafter. Regarding the case of the applicant, the Enquiry Officer directed the other side to furnish necessary documents by a particular date and lateron passed an order to produce by 29.2.84. Again the Enquiry Officer passed an order to allow inspection by 30.6.84. The applicant by means of amendment impleaded all the persons, and 27 person according to him were wrongly promoted and he was wrongly excluded.

lu

(b)

7. In the reply filed by the respondents, they have stated that there was no design in posting the applicant to Chaibasa in 1978 as alleged. During his stay at Chaibasa he was formally charge-sheeted for alleged negligence of official duty and lack of control and supervision over his staff thereby resulting in non-maintenance of official records and grave financial irregularities, during the period from 9.1.79 to 7.4.80 and he was proceeded against for major penalty. Regarding convening of DPC in 1978, it was stated that although a panel of 16 was prepared but lateron it was found that, at that point of time only 12 regular vacancies existed, as some deputationists were expected back. The vacancies were given to the first 12 candidates in the panel except that candidate at serial No.12 who had already been better placed in seniority under direct recruitment; he was not considered and in his place the candidate at serial No.13 who was a member of Scheduled Caste was promoted. The remaining 3 candidates Sita Ram (SC), Mool Chandra Kureel (SC) and the applicant (ST) were left out. The left over candidates were to be promoted when the regular vacancies were available. The said Sita Ram and the applicant were promoted on adhoc basis and the third candidate was being permanantly absorbed in M/s Bharat Heavy Electricals Ltd.(BHEL) and thus not considered for promotion post.

4

(P)

8. However, the respondents have admitted that if the number of vacancies had been calculated correctly, 2 SC candidates and 1 ST candidate would have found place in the panel of 12 for appointment to the post of Assistant Labour Commissioner on regular basis. The interests of SC/ST candidates have been adversely affected on account of unilateral mistake. The Government of India are therefore convening a review DPC in consultation with UPSC.

9. In the second application, the petitioner has made grievance against the enquiry proceedings and it was stated that it was a trivial matter. The enquiry officer after holding the enquiry submitted his report on 21.2.86 holding the Article I,II,III & IV were proved and disciplinary authorities passed an order 3 years after on 15.6.89 and the penalty of withholding of annual increment for a period of two years without cumulative effect was awarded. Apart from repeating his grounds regarding non-promotion, the applicant has stated that although the respondents have power to initiate disciplinary enquiry but the said power has been used for unjust and illegal purposes. In the circumstances, it cannot be held valid and he has been made to suffer the evil of discrimination against all persons who have been promoted and the findings are malafide.

W

8

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 16members and lateron it was found that 12 vacancies have existed. Whatever may be the position, according to the roster point, one vacancies 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.

11. The respondents are directed to promote the applicant w.e.f. the date other 12 persons were promoted and give him consequential benefits. However we may add that this order does not mean that those who were promoted earlier are to be reverted and adjustment can always be made. So far as disciplinary proceedings are concerned, we do not find any malafide has been established. The charges are supported by evidence on the record and have been proved by the documentary evidence. The applicant was given opportunity to defend himself in the inquiry and in the inquiry we have not found any flaw or any lapses by the Enquiry Officer. The documents have been examined and no pleadings have been called for and there is no ground to set aside the enquiry proceedings resulting in punishment.

12. Accordingly, the prayer made in these two applications against the enquiry proceedings or resulting punishment deserves to be dismissed. The two

6

9

applications are disposed of in the above manner and the respondents are directed to promote the applicant in the post of Assistant Labour Commissioner, ~~the applicant~~ along with other persons ⁱⁿ who were promoted in the year 1978, with all consequential benefits.

13. There shall be no order as to the cost.

I.P. Gupta
(I.P. GUPTA)
MEMBER

U.C. Srivastava
(U.C. SRIVASTAVA)
VICE CHAIRMAN