

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA.No1505/90

New Delhi, dated this the 16th of September, 1994.

Shri N.V. Krishnan, Hon. Vice Chairman(A)
Shri C.J. Roy, Hon. Member(J)

Shri Mahender Parkash,
S/o Shri Teka Singh,
Aged 50 years and
R/o 999, Sector IV,
R.K. Puram,
New Delhi 110 023.
By Advocate: Shri D.C. Vohra
versus

...Applicant

Union of India through

1. Secretary,
Department of Revenue,
Ministry of Finance,
North Block Sectt.
New Delhi 110 011.
2. Directorate of Revenue Intelligence,
through its Director,
Drum Shaped Building,
I.P. Bhawan,
New Delhi 110 001.

...Respondents

By Advocate: Shri M.K. Gupta.

O R D E R

By Shri C.J. Roy.

This application is filed under Section 19 of the Administrative Tribunal's Act, 1985, claiming the following reliefs:-

- (1) A direction to Respondent/1 & 2 to quash/set aside/revoke their order No.A.23020/1/89-Estt. dated 21.3.90 denying to the applicant the seniority due to him as SC/employee on roster point from the date when the vacancy was available and when a general category employee was illegally appointed to the post though subsequently reverted;
- (2) A direction to Respondents/1 & 2 to assign seniority to the applicant from the date vacancy was available at the roster point for SC candidate as per Government instructions on the subject;
- (3) A direction to the Respondents/1 & 2 to grant to the applicant all the consequential reliefs after the proper assigning of seniority in the grade of office superintendent as per rules and regulations governing SC/ST employees.

2. The brief facts of the case are that the applicant has been working in the office of respondent No.2 since 1.11.81 as an Assistant and claims that he is entitled for promotion to the post of Office Superintendent w.e.f. 4.12.87. According to him, the vacancy fell on the roster point meant for SC employee. He further avers that the respondent No.2 illegally appointed a General category Assistant to the said post, but on his representation, reverted him, and appointed the applicant on that post on 8.12.88 (Annex. A,B &C).

3. On this the applicant made a representation that he should be given seniority in the post of Office Superintendent from the date, from which, the vacancy was in fact available because it was a reserved vacancy and could not be manned by a General category employee illegally and that should have been given to him.

4. This representation was rejected by the respondents by a non-speaking order. Subsequently, he filed an appeal to the Deputy Director (Admn.) dated 5.3.90 (Annex.F) requesting for reasons to be given for the rejection of his representation for counting his seniority, from the date from which, the vacancy became available. Accordingly, a reply was given by the respondents on 21.3.90 (Annex.G).

5. The applicant again represented on 10.4.90 (Ann.H) requesting for exchange of reservation in SC and ST point for promotion. Having received no reply, the applicant has filed this application.

6. The respondents have assailed the application stating that the applicant has ^{already been} promoted on 8.12.88. When Shri K.B. Bhatia, Administrative Officer was

promoted in November 1987, vacancy for Office Superintendent arose in the Directorate in November which fell at roster point-11. 1987, To fill up this post, the DPC took place on 2.12.87. All the papers and briefs were prepared and placed before the DPC. It is also mentioned that according to the roster, SC point 8/82 was being carried forward. As such, this point should be filled by SC candidate only. The candidates eligible for promotion to the post of Office Superintendent are given as follows:-

1.	Shri R.S. Dogra	:	General category
2.	Shri A.D. Israni	:	-do-
3.	Shri Gulab Singh	:	-do-
4.	Shri P.S. Chopra	:	-do-
5.	Smt. Shanti Rehani	:	-do-
6.	Shri Rattan Lal	:	SC candidate
7.	Shri Mohinder Parkash		SC candidate

7. The DPC decided to consider the ACRs of the above persons for the last 5 years for the post of Office Superintendent to be filled up by promotion from the cadre of Assistant. As per the roster point No.11 was to be filled. Point No.8 was reserved for SC candidate. It is carried forward from the year 1982. In view of the higher grading given to the General category candidate, the DPC decided to promote Shri R.C. Dogra on ad hoc basis and also get the post dereserved from the Ministry.

8. As per the directions of the DPC, a General category candidate was promoted as Office Superintendent on ad hoc basis on 4.12.87. As this is the decision of the DPC, it cannot be termed as illegal. It is further stated that though the

grading given by the DPC to both the SC candidates was same, it could be seen from the above seniority list, that, Shri Rattan Lal was senior to Shri Mohinder Parkash. Had the DPC promoted a SC candidate in 1987, it would be Shri Rattan Lal and not Shri Mohinder Parkash. According to the decision of the DPC, de-reservation proposal was sent to the Ministry for their approval, which by letter F.No.A-14013/23/88-AD.III.A dated 9.6.88 did not approve the proposal and directed to hold a fresh DPC and promote the SC candidate against the reserved point. Accordingly, a fresh DPC was held on 19.8.88 and approved the name of Shri Mohinder Parkash for the post of Office Superintendent. It is mentioned here that by that time the senior SC candidate Shri Rattan Lal changed his cadre from ministerial to executive and joined as Intelligence Officer on 20.4.88 as such, his name for the post of Office Superintendent was not considered in the DPC held on 19.8.88. After the approval of the DPC and consequent to reversion of general category candidate promoted on adhoc basis, Shri Mohinder Parkash was promoted as Office Superintendent w.e.f. 8.12.88. It is, therefore, pointed out that the applicant ~~seeks~~ that notional promotion be given to him at the point of time when he was not eligible for promotion to the post of Office Superintendent. Hence the case be dismissed.

9. We have heard the learned counsel for both parties and perused the documents on record, including copies of the DPC proceedings placed.

10. The short point involved in this case for consideration is whether the applicant Shri Mohinder Parkash is entitled for promotion with effect from

the date, the vacancy arose for the post of Office Superintendent on 4.12.87.

11. In the list of the eligible 'Assistants' placed before the DPC for consideration for promotion to the post of Office Superintendent (page 28 of the OA), we see that the applicant is placed at Sl.No.7 and Shri Rattan Lal is placed at Sl.No.6, both being SC candidates. It is clear that Shri Rattan Lal is the senior most SC candidate. Even assuming that the General category candidate is not considered by the DPC for promotion to the post of Office Superintendent, the most eligible candidate, suitable for promotion would be only Shri Rattan Lal and not Mohinder Parkash. Therefore, the claim of the applicant that he should have been appointed in the place of the General category candidate, does not hold good, because Rattan Lal is senior to him. Subsequently, when Shri Rattan Lal changed his cadre from ministerial to executive and joined as Intelligence Officer on 20.4.88, the name of the applicant was considered and was promoted as Office Superintendent w.e.f. 8.12.88 after reverting the General category candidate, who was promoted on adhoc basis.

12. The applicant has relied on the following decisions:

State of Punjab vs. Hira Lal (AIR 1971 (SC) 1777); Sood vs. State of Karnataka (AIR 1987 (SC) 2359) and P.K.Dixit vs. State of U.P. (Air 1988 (SC) 260).

We have perused these judgements. They have no relevance for the issue involved in this case.

13. As regards the contention of the applicant that he should be given promotion as per the roster point,

the observation of the Hon'ble Supreme Court in the case of Union of India & Ors. vs. K.K. Vadhera & Ors. (ATC 1991 (7) 170) is that:

"5. There is no statutory provision that the promotion is to the post of Scientist 'B' should take effect from July 1 of the year in which the promotion is granted. It may be that, rightly or wrongly, for some reason or other, the promotions were granted from July 1, but we do not find any justifying reason for the direction given by the Tribunal that promotions of the respondents to the posts of Scientist 'B' should be with effect from the date of the creation of these promotional posts. We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances it is difficult to sustain the judgement of the Tribunal."

14. Therefore, it is clear that the applicant is not entitled to the post, when it fell vacant but actually when he was promoted to that post.

15. We are of the view that the applicant could not have any grievance when Shri Rattan Lal is senior most to him as SC candidate at the time when general candidate is appointed on adhoc basis. Therefore, it is clear that the applicant is not entitled to the post when it fell vacant and was considered by the DPC subsequently on 8.12.88, when the senior most SC candidate Shri Rattan Lal changed from Ministerial to Executive and joined as Intelligence Officer on 20.4.88.

16. It is not as if that the respondents kept the post vacant and the applicant claims benefit from the date of vacancy. The post was filled up irregularly. If Rattan Lal had made a claim, we might have allowed him the benefit from the date of the irregular appointment of the general candidate ie. 4.12.87. The applicant became the only eligible 'SC' candidate on 21.4.88. On that date, it was filled up irregularly by a general candidate. Therefore, though the applicant was selected only on 8.12.88, he could be given the benefit of promotion from 21.4.88, at least for seniority and for reckoning service for promotion, what was prayed by the learned counsel for the applicant.

17. In the conspectus of the above facts and circumstances of the case, we hold that the applicant is not entitled to be considered, so long as Shri Rattan Lal, the senior most SC candidate eligible for promotion to the post of Office Superintendent was available. However, when he changed the cadre from ministerial to executive w.e.f. 21.4.88, the applicant became eligible for promotion to the post of Office Superintendent, being the next eligible SC candidate for promotion. In the circumstances, we direct the respondents to notionally treat the applicant as having been promoted from 21.4.88, only for the purpose of reckoning his seniority in the grade of Office Superintendent and further the applicant shall be deemed to have rendered service as Office Superintendent from 21.4.88 itself for

purposes of further promotion, for computing length of service as Office Superintendent, if that is a criterion for such promotion. A suitable order shall be passed by the respondents in this regard within two months of receipt of a copy of this order.

With these directions, the OA is disposed of.

No costs.

16/7/94
(C. J. ROY)
MEMBER (J)

N.V. Krishnan
(N.V. KRISHNAN)
VICE CHAIRMAN (A)

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