

In the Central Administrative Tribunal

Principal Bench: New Delhi

OA No.2284/91

Date of decision: 5-1-1993

Shri Subhash Chander

...Petitioner

Versus

Director of Central Translation

Bureau & Others

...Respondents

Coram:-

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner

Shri Vinay Garg, Counsel.

For the respondents

Mrs. C.M. Chopra, Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. I.K. Rasgotra, Member (A))

The petitioner was appointed in Central Translation Bureau, an subordinate office of the Ministry of Home Affairs as class-IV employee in 1973. He was appointed as Lower Division Clerk (LDC) in an ad hoc capacity on the basis of a simple interview but without the written examination w.e.f. 25.9.1973. He was later regularised as L.D.C. w.e.f. 1.6.1974. He was confirmed against a permanent vacancy on 13.3.1979. These facts are not in dispute. The grievance of the petitioner is that the vacancies of Upper Division Clerk (UDC) have not been filled by the respondents in accordance with the recruitment rules notified on 10.4.1972 (1972 rules for short). The 1972 rules provide that vacancies in the grade of UDC should be filled 100% by promotion, i.e., 75% by promotion on the basis of seniority-cum-fitness and 25% by promotion by selection on the basis of the competitive test. These

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rules were not followed by the respondents in the Bureau from the year 1971 to 1975 and during the said period all vacancies were filled on the basis of seniority subject to fitness. No competitive examination was also held during the said period. He further submits that the respondents corrected the mistake from the year 1976. His immediate grievance is that in the year 1991 one vacancy has arisen for promotion in the grade of UDC and that the same is required to be filled on the basis of seniority-cum-fitness but the respondents have decided to fill up the said vacancy through competitive examination. He further maintains that the said vacancy falls on the roster for the reserved candidates and the petitioner being a scheduled caste (SC) candidate should be considered along with other SC candidates only. He further submits that he is the seniormost SC candidate and if the rules are applied correctly he has no reason to doubt that he would get the post.

2. The respondents in their counter-affidavit have submitted that a common roster was being maintained by the Bureau for different modes of promotion. The Bureau, however, started maintaining separate roster after a clarification was received from the competent authority. The respective rosters have since been recast and the existing anomalies removed. The modes of promotion are now being identified and made strictly in accordance with the respective rosters. They further state that at its inception the Bureau was manned by the staff who were transferred along with their work from C.H.D. The recruitment rules, however, were framed for the posts of UDC only in 1972 which came into force from 29th April of that year. As sufficient number of sanctioned posts of UDC remained

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unfilled pending finalisation of the recruitment rules, 5 LDCs who had come on transfer from C.H.D. were promoted as U.D.C, as they had rendered three years' service in the feeder grade prior to the date of enforcement of the 1972 rules. Even the case of these 5 persons listed at page 33 of the paper book were considered by the DPC held subsequently under the rules and they were regularised on seniority-cum-fitness basis against the 1st, 2nd, 3rd, 5th and 6th vacancy which fell under the 75% quota earmarked for promotion on seniority-cum-fitness basis. As there was no eligible candidate available from SC category who could be considered for the 1st roster point, the same had to be carried forward to the next recruitment year. There was no need to hold the limited departmental competitive examination either as all the LDCs with three years service in the grade were promoted on the basis of seniority-cum-fitness and there was none left among the eligible candidates who could be promoted against the 4th vacancy which fell in the 25% quota of LDCE. The respondents further admit that the rules of promotion were not observed from 1971 to 1975. But the non-observance was neither due to any administrative lapse nor on account of any deliberate action. The non-observance was due to the fact that the number of vacancies exceeded the number of eligible candidates. The need for holding the LDCE thus arose only in 1976 when eligible candidates became available for promotion by LDCE. They also confirm that the ST roster for such candidate was also observed in the year 1974 when a SC candidate Shri Ashok Kumar became available for promotion against the carry forward first point SC roster vacancy. While the 4th roster point and the 8th roster point of SC were carried forward to the following

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years of recruitment. In 1976 there was only a single vacancy and, therefore, the same could not be reserved for SC and it was declared open for the LDCE as adverted to earlier and the general candidate who was declared successful was promoted. It is further averred that the petitioner never made any representation till 1988-89 against the maintenance of common roster for both modes of promotion. In paragraphs 26-27 of the counter-affidavit the respondents have explained the complete details as to how each of the vacancy was filled in accordance with the separate roster for promotion and roster maintained for the SC/ST. They further submit that so far in all 16 vacancies have been filled under both the modes. According to the quota 12 vacancies are required to be filled in accordance with seniority-cum-fitness basis. Against this so far 13 vacancies have been filled by this method whereas three have been filled by LDCE. The next vacancy shall also fall under the LDCE. So far as 18 and 19 vacancies are concerned, they will fall, when created, under the method of promotion by selection through LDCE. Since the 18th vacancy under this mode will be the 14th such vacancy which had fallen under the roster point for reservation for SC category, the petitioner will be eligible for consideration for promotion under this mode.

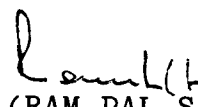
3. The learned counsel, Smt. C.M. Chopra who appeared for the respondents also confirmed that there was no confusion about the maintenance of the roster after clarification was obtained for promotion by two modes and the vacancies are being filled in accordance with the separate roster by the two modes of promotion and roster for SC/ST. The petitioner will be considered for promotion when he comes within the zone.

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4. In the above view of the matter we have no reason to disbelieve the respondents are following the procedure in accordance with the rules after the rules were promulgated barring the exceptional circumstances where the eligible candidates were not available upto the year 1976. Further the petitioner cannot make a grievance regarding the filling up of the vacancies during 1971-76 at this stage, as he never agitated this matter in proper time in the appropriate forum to seek redress of his grievance. It is too late now to go with the manner of filling up the vacancies relating to 1971-76 period. This is barred by limitation under Section 21 of the Administrative Tribunals Act. We are satisfied that in 1976 correct procedure has been followed by the respondents. Accordingly the case of the petitioner does not merit our interference. The O.A. therefore, fails and is dismissed. No costs.


(I.K. RANGOTRA)
MEMBER (A) 5/11/1993


(RAM PAL SINGH)
VICE-CHAIRMAN