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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 3073/92
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DATE OF DECISION 15.01.1993

Shri V.P. Chitkara **Petitioner**

Shri Sant Lal **Advocate for the Petitioner(s)**

Versus

Union of India & Others **Respondent s**

Sh. J.C. Madan, proxy counsel for **Advocate for the Respondent(s)**
Sh. P.P. Khurana,

CORAM :

The Hon'ble Mr. P.C. Jain, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? 7e
2. To be referred to the Reporter or not? ye
3. Whether their Lordships wish to see the fair copy of the Judgement? x

Jee
(J.P. SHARMA)
MEMBER (J)

(P.C. JAIN)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

C.A. NO.3073/91

Date of Decision : 15.01.1993

Shri V.P. Chitkara

...Applicant

Vs.

Union of India & Others

...Respondents

CORAM

Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri Sant Lal, counsel

For the Respondents

...Shri J.C.Madan, proxy
counsel for Shri P.P.Khurana
counsel

JUDGMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant is employed as UDC in the office of Chief Post Master General, Delhi Circle and in this application under Section 19 has assailed the Memo dt.25.11.1991 on subject of Departmental Competitive Examination for promotion to the LSG, one third quota of circle and administrative offices announcing the result of the same declaring one Mehar Singh Kataria of general category and Sanjhi Ram(SC) for promotion to the post of LSG, the name of the applicant was omitted on the ground that the applicant obtained second position while there was only one vacancy of general category and the other vacancy was a reserved vacancy which was given to Shri Sanjhi Ram (SC), respondent No.3.

The applicant in this application has claimed the relief for quashing the impugned order dt.25.10.1991 and declaration of result Memo dt.25.11.1991 and a further declaration by considering the case of the applicant and declare him selected according to the merit in the examination held on 27.10.1991 for promotion to LSG against one third quota of the second vacancy.

2. The facts of the case are that the applicant joined as Postal Assistant on regular basis w.e.f. 16.10.1964 and was promoted as UDC w.e.f. March, 1979. According to the Recruitment Rules, 1976, the promotion to the LSG in the circle offices is by promotion from the post of UDC of circle offices with 10 years' regular service in the grade to the extent of $66\frac{2}{3}\%$ on the basis of seniority-cum-fitness and $33\frac{1}{3}\%$ by selection. The selection is made for one third quota on the basis of departmental competitive examination. This selection is also subject to the reservation of posts for SC/ST candidates. The grievance of the applicant is that he successfully passed the selection and was placed in the merit at No.2 while the respondents have promoted a SC candidate, though the vacancy did not fall on a point reserved for SC candidate according to their quota of 15% posts reserved for them. The aforesaid vacancy of 1991 fell on account of point No.5 which is unreserved and cannot be filled up by respondent No.3, who is a SC candidate. It is further stated that sanctioned strength of LSG grade cadre in the postal circle office, New Delhi is 14 posts (8 posts are permanent and 6 are

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temporary). Out of these 14 posts, 9 posts fall in the promotion quota of two-third filled by seniority-cum-fitness and the remaining 5 posts form the one-third quota filled by selection through the departmental competitive examination out of which one post is reserved for SC candidate. According to the applicant, this post is already filled by Shri Ambika Hajari.

3. The respondents contested this application and in the reply stated that there were two vacancies for 1991 of which 1 was declared as reserved. In the departmental promotion, there is also reservation if the direct recruitment does not exceed 66 $\frac{2}{3}$ %. Roster for one third quota started in 1979 and upto 1989, 7 points including 1 for SC was filled up and point No.8 is to be reserved for SC and point No.9 for OC. As such, the vacancies for the year 1991 were declared as 1 for OC and the other for SC according to the Roster points. According to the Roster, 4 Section Supervisors appointed against one third quota have since retired and 3 are effectively working and 2 selected as a result of the examination held on 27.10.1991. It is further stated by the respondents that two separate rosters are being maintained for two-third quota of vacancies in the lower selection grade supervisory cadre in circle office. The roster against one third quota LSG vacancies was started in the year 1978. It was decided by the Department of

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Posts that all vacancies arising upto 31st December, 1974 would be filled on the basis of seniority cum fitness and afterwards two-third of the vacancies were to be filled up on seniority-cum-fitness basis and one third through a qualifying examination subject to the selection by the DPC on the basis of assessment of CRs. However, the department again reviewed the same and it was decided that from 1981 onwards one third quota of LSG examination would be competitive instead of qualifying and the vacancies to be filled up by competitive examination. The competitive examination thereafter was held in 1987 onwards. The roster started from 1978 is continuing. The confusion has been created by the applicant by presuming that Roster has been started from 1987 which is not the fact..

4. During the course of the arguments, the respondents have also made available copy of roster for promotion to the cadre of Head Clerk (Section Supervisor) by examination of one third quota of vacancies (Annexure R1) and copies of Roster for promotion to the post of Head Clerk (SS) of two third quota of vacancies of seniority-cum-fitness (Annexure R2). The averments made in the reply according to the respondents are substantiated by both these annexures R1 and R2.

5. We have heard the learned counsel for both the parties at

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length and have gone through the record of the case. The contention of the learned counsel is that the departmental competitive examination commenced from the year 1987. The learned counsel has given a list of the candidates who have qualified in the examination upto 1991. This includes 2 Scheduled Caste candidates, namely S/Shri Ambika Hajara and Sanjhi Ram, respondent No.3. It is stated by the learned counsel that points Nos.1, 8, 14, 22, 28 and 36 are the points reserved for SC and 4, 17 and 31 are the points reserved for ST category. Thus points Nos.1 and 8 fall under SC category. Even considering any back log vacancies, there is no SC point for which the vacancy has been declared in 1991 examination and this has prejudiced the case of the applicant. When one SC candidate, Shri Ambika Hajara has been appointed in 1989, then the SC point cannot go again to a SC vacancy in 1991 examination. The other SC point will come up only after 7 vacancies are filled up by other categories. The learned counsel for the applicant has placed reliance on the judgment of G.R.Katara Vs. Union of India, reported in 1989 (12) AIR p-132 and on the same point, N.K.Patel Vs. Union of India, 1990 (1) AIR p-117. The learned counsel for the applicant has also referred to the decision of Veerpal Singh Chauhan Vs. Union of India, 1987 (1) AIR p-79. Referring to the above authority, the learned counsel argued that there is

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reservation for posts and not vacancies. The department of Tele Communication has also in their letter dt. 7.4.1989 issued necessary orders for enforcing the law for reservation on posts and not the vacancies. The learned counsel for the respondents, however, argued that the reservation orders are applicable to vacancies not to posts. The Government appeal is pending in the Hon'ble Supreme Court against the judgment of the Allahabad High Court. As regards the legal position, the matter has been considered recently in the case of Indira Saini Vs. Union of India, reported in JT 1992 (6) p-273, in which the Hon'ble Supreme Court has considered the matter of reservation for ST categories and observed that the reservation is with respect to the vacancies occurring in that particular year. This matter, therefore, should not detain us ^{any} longer.

6. ^{departmental competitive} Now looking to the ~~Post~~ system which started from 1987, from 1978 to 1990 we find that 8 point of the roster is reached in 1991 examination. In 1979, the reservation was carried forward of SC candidate and the vacancy has gone to Ambika Hajara. Now in the year 1991, 2 vacancies were declared and 1 of them has been reserved for SC candidate. A perusal of the Post and Telegraphs (Selection Grade Posts) Recruitment Rules, 1976 at Sl.No.11 of the Schedule in column 11 goes to show that 66 $\frac{2}{3}$ % is to be filled by promotion on the basis of seniority-cum-fitness and 33 $\frac{1}{3}$ % by selection, but filling up quota by departmental exam. remained in abeyance till 1987.

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7. The learned counsel for the applicant has also referred to the letter dt.21.10.1981 in sub para-4 that one third quota of LSG vacancies arising from 1.1.1981 will be filled up by competitive examination. It was further laid down that qualified, but unabsorbed candidates of earlier examinations would be no more on the list. They have either to appear again for the competitive examination or to wait for their turn of coming within two third quota of promotion on the basis of seniority-cum-fitness. In fact, the stand of the respective parties goes to show that there had been no recruitment/promotion against one-third quota in 1978 and also the one-third quota for the vacancies from 1982 to 1986 had been discontinued and 100% vacancies for LSG of these years were filled by seniority -cum- fitness as ordered by DGP&T, New Delhi in the letter dt.3.9.1987. It is also not disputed that department of Tele Communications has issued the memo dt.7.4.1989 (Annexure A9) which provides for reservation of posts in place of vacancies for SC/ST. However, in 1991, the examination was held for 2 vacancies. If the Roster is taken to have started in 1978, then 7 points of the Roster have been filled up till 1989. So the respondents cannot be said to be at fault in reserving 1 vacancy for SC and point N.9 for OC.

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8. In view of the above facts and circumstances, the present application is, therefore, devoid of merit and is dismissed leaving the parties to bear their own costs.

J. P. Sharma

(J.P. SHARMA) 15.1.93
MEMBER (J)

P. C. Jain 15/1/93
(P.C. JAIN)
MEMBER (A)