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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.2214/2004

New Delhi, this the 17th day of May, 2005

**HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)**

D.S. Meena, Assistant
Ministry of External Affairs,
R/o C-9/8, 2nd Floor,
Mianwali Nagar,
Paschim Vihar,
New Delhi-110087.

..... **Applicant.**

(By Advocate Shri S.N. Anand)

Versus

1. Union of India
Through Secretary,
Ministry of External Affairs,
South Block,
New Delhi.
2. The Deputy Secretary (Cadre & Inspection),
Ministry of External Affairs,
South Block,
New Delhi.
3. The Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi. **Respondents.**

(By Advocate: Shri N.S. Mehta)

O R D E R (ORAL)

By this O.A., applicant has sought the following reliefs:

- (a) Set aside and quash the impugned communication dated 22-7-2004;
- (b) Call for post based roster applicable to the applicant as maintained by Respondents to ascertain correct allocation of vacancies to ST candidates;



(c) If claim of the applicant is found to be justified, direct the UPSC to consider case of the applicant for appointment as Section Officer against ST quota; and

(d) Pass such further or other order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case".

2. It is submitted by the applicant that vide letter dated 14.11.2002, respondents notified two vacancies of Scheduled Tribe (ST) to be filled up through Limited Departmental Examination for the year 2002. Applicant appeared in the written examination and qualified the same yet UPSC while declaring the final result of the Limited Departmental Examination (LDE) recommended 19 candidates as against the total 17 vacancies for appointment in Section Officers Grade in the General Cadre of Indian Foreign Service, Branch 'B' and reduced the vacancies of ST from 02 to 01 while recommending only 01 person against ST category.

3. Applicant has stated that since he was the only second candidate belonging to ST category and had qualified the written examination, he had a right to be considered for appointment in the second vacancy of ST category but respondents totally violated the reservation policy. Therefore, being aggrieved, he gave a detailed representation showing therein that there ought to have been 2 vacancies of ST category as per reservation policy in the 2002 examination but his representation was also rejected vide Memorandum dated 22.7.2004 without explaining the position. He, therefore, had no other option but to file the present O.A.

4. Respondents, on the other hand, have submitted that in the circular dated 14.11.2002, it was clarified that the vacancy position was tentative and was subject to change. Therefore, the total number of 17 vacancies or 02 vacancies for ST was not definite for the purpose at that stage. Subsequently, few more vacancies arose in the grade of S.Os due to death/voluntary retirement of officers which could not have been anticipated earlier. Therefore, those vacancies were appropriated between Departmental Promotions and the LDE, that is how the



total vacancies in the quota meant for LDE was enhanced to 19. Moreover, at the time of indenting vacancies to UPSC, it was noticed that there was a shortfall of only 01 ST post and in the circular dated 14.11.2002, 02 vacancies of ST were shown by mistake. Therefore, this mistake was rectified while indenting the position to the UPSC.

5. They have further explained that after the issue of Department of Personnel and Training's instructions on the post based rosters dated 2.7.1997, the reservation for SC/ST in posts to be filled in a particular year is calculated on the basis of their overall strength in that particular mode of recruitment. In the grade of SOs, there are two modes of recruitment, namely, Departmental Promotions and LDE, for which two separate post based rosters are being maintained. As per this roster, there was only shortage of 01 ST vacancy which can be seen from Annexure R-2. There were 02 ST candidates who had qualified in the written examination which included the applicant. It was given due consideration by the UPSC but since the other candidate was placed higher in the order of merit, he was appointed against the ST vacancy. They have thus stated that there is no illegality in the order passed by the respondents. The O.A. may, therefore, be dismissed.

6. Applicant in the rejoinder has submitted that total strength of SOs in 2002-2003 was 347. Therefore, 26 posts have to be filled from ST category whereas only 25 candidates were filled up and 01 post of ST was still required to be filled from ST and since there were 167 officers in position, 13 points should have been given to ST candidates whereas only 12 posts of ST were filled up, including the one recommended in the examination 2002-03.

7. We have heard both the counsel and perused the pleadings as well.

8. The whole case of applicant is that since respondents have notified 02 vacancies of ST and 2 candidates, including the applicant had qualified in the written examination, there is no justification to deny appointment to the applicant but perusal of letter dated 14.11.2002 which was relied upon by the applicant shows that there was a clear noting given therein to state that the number of vacancies detailed above is tentative and is subject to change. It is correct that



in this letter the total number of vacancies for SO Grade examination were shown to be 17 and 2 posts of ST were shown to be vacant but as was stated in the letter itself and has been explained by the respondents that after the issuance of this letter, few more vacancies became available either due to death or voluntary retirement of SOs, naturally such posts could not have been anticipated by the Department but none the less those vacancies became available and they were also included at the time of indenting the same to UPSC, that is how the total number of vacancies got raised from 17 to 19 in LDE quota.

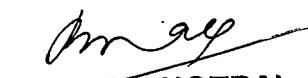
9. As far as reducing the posts of ST from 2 to 1 is concerned, respondents have annexed the post based roster maintained by them for LDE candidates which shows that there are 166 officers in the LDE quota and all the points meant for ST are already filled up after the last person was given appointment pursuant to the examination of 2002, namely, Roshan Lepcha as he was higher in merit than the applicant. Counsel for the applicant strenuously argued that since there were 167 number of officers on the date of examination, the number of ST officers should have been 13 if 7 ½% was to be reserved for ST candidates. However, perusal of the post based roster issued by the DOP&T shows that point 12 of ST falls at Serial No. 160 and the next point of ST falls only at Serial No. 175. Therefore, even if there were 167 total number of officers, it would be relevant to see whether the next point at Serial No. 167 would go to ST or not. Since as per post based roster, Serial No. 167 falls for unreserved category, the 13th point could not have been filled from amongst the ST candidates, as suggested by the applicant. Even otherwise since there were two modes of recruitment, both the modes had to be maintained separately as per the post based roster and since according to the post based roster from amongst 166 officers only 1 post was short for ST, respondents rightly corrected their mistake while indenting the vacancies to UPSC which they could very well do as in the circular dated 14.11.2002, they had already mentioned that the number of vacancies was tentative and was subject to change.

10. In view of the above discussion, we find no illegality in the orders passed by the respondents nor we find any merit in the arguments advanced by the

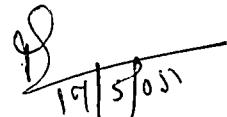


applicant because even as per post based roster the point at Serial No. 167 could not have been given to ST candidate. The O.A. is accordingly dismissed.

No order as to costs.


(S.K. MALHOTRA)

MEMBER(A)


19/5/05
(MRS. MEERA CHHIBBER)
MEMBER (J)

'SRD'