

(13)

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1074/2004

New Delhi this the 18th day of March, 2005.

Hon'ble Sh. Shanker Raju, Member(J)
Hon'ble Sh. S.K. Malhotra, Member(A)

Sh. Lachhman Ram,
Jr. Technical Assistant,
DAVP, Ministry of I&B,
B-Block, K.G. Marg,
New Delhi-1.

..... Applicant

(through Sh. B.K. Berera, Advocate)
Versus

1. Union of India through
the Secretary,
Ministry of I & B,
Shastri Bhavan,
New Delhi.
2. Director,
Directorate of Advertisement & Visual
Publicity, Ministry of I & B,
3rd Floor, P.T.I. Building,
Sansad Marg, New Delhi.
3. Sh. T.V.S. Nair,
Technical Assistant (Audience
Research), DAVP, Ministry of I & B,
3rd Floor, P.T.I. Building,
Sansad Marg, New Delhi.

..... Respondents

(to be served through Respondent No.2)

(through Mrs. Promila Safaya, advocate with Sh. D.P. Singh, S.O.
DAVP)

O R D E R

Hon'ble Shri Shanker Raju, Member(J)

Applicant seeks consideration for promotion as SC candidate to the
post of Technical Assistant (AR) w.e.f. 1.9.2001 with all consequential
benefits.

2. In the Ministry of Information & Broadcasting vide letter dated 5.7.1980, 4 posts of Technical Assistant (Audience Research) were created in DAVP and were to be filled up as per roster of 1st Point SC, 2nd Point & 3rd Point General and 4th Point was reserved for ST. Three general candidates and one Kishan Chand were promoted against the 4 posts whereas Kishan Chand hold the post meant for SC category. Due to deputation of one Jai Prakash applicant was deputed as Technical Assistant from 3.6.1996 to 10.9.1999 and as Kishan Chand, SC candidate retired on 31.8.2001, Respondent No. 3 TVS Nair was promoted on regular basis on 27.2.2002.

3. Learned counsel of the applicant by resorting to the decision of the Apex Court in R.K. Sabharwal & Ors. Vs. State of Punjab & Ors. (1995(1)SLR 791) contended that when the roster point in cadre are filled up as per regular percentage of the reservation vacancy based roster stops and there is no running account, the promotion is to be made as per replacement as per the retirement of an employee as per the category. In this view of the matter, decision of Bhup Singh Vs. State of Haryana & Ors. (1991(1) SCC 546) has been relied upon to contend that utility of a roster is only a guideline to fill up reserve quota for different groups. Once it is achieved the running account stops and replacement is the rule. By referring to post based roster promulgated vide DoP&T O.M. dated 2.7.1997 in the wake of R.K. Sabharwal's case (supra) it is stated that number of point in the roster shall be equal to the number of posts and the roster is to be operated on the number of replacement but not as a running account. In the above backdrop what has

been stated is that promotion of the applicant on 15.4.1996 was never specified as an ad hoc promotion and 13 point roster and horizontally replacement point would not apply as it is not denied that initial constitution of the cadre containing 4 posts 1 SC was represented after the retirement of Kishan Chand a SC candidate, the senior most reserved candidate has to be promoted which is the applicant.

4. Leamed counsel further stated that Kishan Chand & Jai Prakash did not vacate their posts on regular basis and appointment of applicant and Respondent No.3 as observed by DoP&T not to consume the roster point the stand taken by the respondents is different. Once the post reserved for SC on which Kishan Chand was appointed respondents are estopped from taking a contrary view and promotion of Respondent No.3 as a general candidate on a post meant for SC candidate is on a wrong interpretation of DoP&T O.M. dated 2.7.1997.

5. On the other hand, respondents counsel vehemently opposed the contentions and according to her as per Dop&T O.M. dated 2.7.1997 in small cadre upto 13 posts as per principle of operating post based roster as in the small cadre it is difficult to have the requisite representation on reservation category. Initial recruitment shall be by the cadre for which the post is earmarked, replacement would be in rotation as per 13 point roster and would be horizontally against the cadre strength. As first replacement in the point roster on retirement of Kishan Chand is stated for unreserved category, Respondent No.3 being senior most general candidate has been promoted.

As per DoP&T clarification vide order dated 2.1.2002 first replacement point roster only one post in the grade of TA became vacant. Earlier promotion of the applicant while the incumbent had gone on deputation would not be construed to the effect that the applicant has consumed SC point.

6. We have carefully considered the rival contentions of the parties and perused the material placed on record.

7. It is no more res-integra that vacancy based roster operates till such time the representation of persons belonging to reserve categories in a cadre reaches the prescribed percentage. It is also not denied by the respondents that initial constitution of post based roster Kishan Chand was promoted against SC quota. It is equally settled that number of point in the roster shall be equal to the number of posts in a cadre and replacement would be the criteria for promotion as per reserved roster but an exemption to this is when the cadre is small and if reservation is applied to the categories, the same would not be workable. In that event the principle for making operation of the post based roster in Clause-12 clearly rules that though the post would be earmarked on the same pattern as in the model post based rosters. In small cadres initial recruitment shall be by the category for which the post is earmarked. Replacement of incumbents of posts shall be by rotation as shown horizontally against the cadre strength as applicable. As per model roster for cadre strength upto 13 posts, first replacement point on horizontally falls for an unreserved category. The 3rd point falls for a SC candidate. As the post was occupied earlier by 4 persons, the replacement in the post

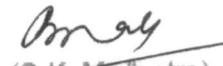


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vacated by Kishan Chand on retirement would be operated not by replacement but by per replacement as a model based roster and in that event Respondent No.3 being senior most general candidate was rightly promoted.

8. As the Instructions of DoP&T dated 2.7.1997 are not challenged and the principles as well as clause 4(e) clearly distinguishes between reservation to be operated in a larger cadre and small cadre upto 13 posts for which the methodology is different. The aforesaid has an intelligible differentia with the object sought to be achieved i.e. the reservation of two categories would not be feasible and would amount to reservation more than 50% model roster upto 13 posts has been duly followed. The decisions cited by the learned counsel of the applicant have no application in such a situation.

9. In the result, the OA is bereft of merit and is accordingly dismissed. No costs.


(S.K. Malhotra)
Member(A)


(Shanker Raju)
Member(J)

Avv/