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**Central Administrative Tribunal
Principal Bench**

OA No. 1625/2004

New Delhi, this the 8th day of September 2005

**Hon'ble Mr. Justice B.Panigrahi, Chairman
Hon'ble Mr. M.K. Misra, Member (A)**

R.C. Upadhyay,
S/o Shri L.D. Upadhyay,
R/o 5 Park Lane,
New Delhi-110 001

.....Applicant

(By Advocate: Ms.Arati Mahajan)

Versus

1. Union of India,
Through Secretary to the President,
Rashtrapati Bhawan,
New Delhi-4
2. Secretary to the Government of India,
Department of Personnel and Training,
North Block, New Delhi-1
3. The Under Secretary (Admn.),
President's Secretariat,
Rashtrapati Bhawan,
New Delhi-4
4. Shri Raj Kumar,
Under Secretary (DDO),
Rashtrapati Bhawan,
New Delhi-4
5. Shri B.R. Angaria,
A-130, Palam Extension,
Near Sector 7, Dwarka,
New Delhi-45
6. Shri Devendra Narayan,
C-211, Poojari Apptt.,
Shiv Vihar, Rohtak Road,
New Delhi

.....Respondents

(By Advocate: Shri V.S.R. Krishna, for respondents 1-3
Shri S.N. Anand, for respondent no.4
Shri D.S. Jagotra, for respondents 5 and 6)

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ORDER**Justice B. Panigrahi, Chairman**

In this case, the applicant has challenged the legality, validity and propriety of the order of promotion to the post of Under Secretary in the President's Secretariat.

2. The applicant has claimed to have occupied third position in the seniority list of Section Officers of the President's Secretariat. The next higher post in the cadre is of Under Secretary. However, he has stated in the application that the official respondents in total violation of the roster point as well as recruitment rules and in utter disregard to the DoP&T guidelines, promoted respondent no. 4 to the post of Under Secretary, initially on ad hoc basis vide order dated 06.02.2003 with effect from the same date and then on regular basis w.e.f. 10.02.2004 vide order dated 13.02.2004. It is inter-alia stated that respondent no. 4 although did not fulfil the eligibility criteria as stipulated in the recruitment rules, the official respondents in supersession of the claim of ten Section Officers in the seniority list, promoted respondent no. 4. The applicant submitted representation to the respondents. The respondents disposed of the said representation stating that respondent no. 4 was promoted on ad hoc basis against the vacancy falling in the SC quota. Only a suitable SC candidate could be appointed against the said post. The applicant reiterated the same points alleging that such promotion of respondent no. 4 was legally not maintainable and had been made arbitrarily on the basis of illogical reasons. It is further stated that the norms prescribed by the DoP&T vide OM No.36012/2/96-Estt. (Res.) dated 02.07.1997 were not followed.

3. It appears that the applicant once again submitted a representation to the President of India on 06.01.2004 stating that the

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respondent no. 4 should not have been allowed to continue on ad hoc basis for more than a year without obtaining the necessary approval of the DoP&T. The official respondents instead of reverting private respondent no. 4, promoted him on regular basis with effect from 10.02.2004 vide order dated 13.02.2004 by relaxing the provisions of recruitment rules. The applicant and two other general category Section Officers, senior to respondent no. 4, were ignored while giving him such promotion. It is stated that promotion of respondent no. 4 was not only illegal but was also in utter violation of the model roster as well as recruitment rules. The President could relax the rules only in the case of a category or class of officers. Individually such type of relaxation should not have been granted while giving promotion to respondent no. 4. Therefore, the applicant made a detailed representation on 23.02.2004, which was unreasonably rejected without passing a speaking order on 11.03.2004. Thus, the applicant being aggrieved by such unlawful and arbitrary action of the respondents filed this case for the following reliefs:-

- i) quash the Office Memorandum No.37011/10/01-ADMN. dated 11.3.2004 rejecting the representation dated 23.2.2004 of the applicant.
- ii) quash the Office order No.A.34011/4/01-ADMN. dated 13.2.2004 appointing Respondent No.4 as Under Secretary on regular basis w.e.f. 10.2.04.
- iii) quash the Office Memorandum No.37011/10/01-ADMN. dated 25.4.2004 rejecting the applicant's representation dated 16.3.03.
- iv) quash the Office Order No.A.34011/2/01-Adm. Dated 6.2.2003 appointing Respondent No.4 as Under Secretary on adhoc basis w.e.f. 6.2.2003.
- v) quash the Notification No.A.34011/2/01 Adm. dated 6.2.2003 regarding appointment of respondent No.4 as Under Secretary on adhoc basis w.e.f. 6.2.2003.
- vi) Quash the DPC held in February 2004 for promoting respondent No.4 as Under Secretary.

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- vii) Direct the respondent No.3 to rectify the reservation roster of Under Secretary maintained by it so as to bring it in conformity with the model roster as prescribed by DOPT vide its OM No.36012/2/96-Estt. (Res.) dated 2.7.97.
- viii) Direct the respondents to hold a fresh DPC for filling up the said vacancy of Under Secretary after considering the eligible general category candidates for the said vacancy in terms of the Recruitment Rules and the DOPT instructions and model roster."

4. Respondent nos. 1 to 3 have filed a joint counter. It is stated that the application filed by the applicant is misconceived and mischievous. The applicant had, as a Section Officer of the Administrative Branch, misled the President's Secretariat by showing an incorrect picture i.e. by depicting a reserved vacancy as a general vacancy and the general category vacancy as a reserved vacancy. He created the overall confusion in order to give benefit to the general category candidates. It is further stated that though the fourth replacement vacancy was not meant for a Scheduled Caste but since on an earlier occasion a general candidate was promoted, therefore, in order to accommodate a Scheduled Caste candidate, the case of respondent no. 4 was carefully considered and the DPC found him suitable as a sequel of which he was given the promotion to the post of Under Secretary. In any event the applicant having not come within the zone of consideration, had no claim for promotion.

5. In order to resolve the dispute between the parties, we have been taken through the recruitment rules. In the recruitment rules, it is stated that a post can be filled up either by promotion failing which by transfer on deputation from the Central Government. In case of promotion, it is stated that Section Officers with eight years of regular service in the grade are eligible for being considered for promotion to the post of Under Secretary. Ms. Mahajan, the learned counsel appearing for the applicant, has advanced an inexorable plea that the third replacement post should

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go to the SC candidate. The respondents had illegally given promotion to respondent no. 4 against the fourth replacement vacancy as a result of which not only the applicant but two other Section Officers, senior to him, were ignored. In the gradation list the respondent no. 4 was positioned at serial no. 10 and nine other Section Officers had been ignored while giving promotion to him.

6. Another limb of argument advanced by Ms. Mahajan has been that such incident took place even while respondent no. 4 was given promotion on ad hoc basis in the post of Under Secretary. In the event there was no eligible candidate, steps should have been taken by the respondents either to bring some other Officers on transfer on deputation from Central Government but they could not give promotion to an officer who was ineligible to hold such promotional post. Relaxation of recruitment rules is to be resorted to in respect of a class or category of persons. Relaxation should not be resorted to in respect of an individual except in cases where an individual can be treated as a class or category of person. While giving such relaxation, the respondents should have sought clarification from the Department of Personnel & Training. Therefore, even assuming that relaxation had been granted by the President while giving ad-hoc promotion, such ad-hoc promotion could not have been continued beyond one year. In the instant case, the respondent no. 4 was given ad-hoc promotion to the post of Under Secretary on 6.2.2003, which ought to have expired on 6.2.2004. Regular promotion though was given on 13.2.2004 but it was given effect from 10.2.2004. The respondents did not take any decision as to how the period between 06.02.2004 and 10.02.2004 shall be treated. Respondent no. 4 was not within the zone of consideration. Ms. Mahajan has invited our attention to the recruitment rules, which reveal that for

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one vacancy, normal zone is five times in the case of unreserved candidates and so also in the case of SC/ST candidates. Respondent no. 4 was not coming within the aforesaid zone of consideration. Therefore, considering from this angle also, appointment of respondent no. 4 cannot be held to be legal. A faint attempt was made that there was mala fide in giving promotion to respondent no. 4 but when she was asked to establish the grounds of mala fide purported to have been committed by the respondents, she could not satisfactorily answer. Therefore, she rightly abandoned the said plea.

7. Shri V.S.R. Krishna, learned counsel appearing for respondents 1 to 3 while repelling the contentions raised by Ms. Mahajan, has submitted that the applicant in no case could claim the post which was meant for S.C. candidate. It is further highlighted that since the applicant has not challenged the ad-hoc promotion given to respondent no.4, it would be inappropriate to throw challenge on his promotion on ad-hoc basis. The ad-hoc promotion was made in order to meet the administrative exigencies. Therefore, the question of validity of the adhoc promotion or otherwise does not arise at this stage. Shri Krishna has advanced an inexorable plea that the third post was actually meant for SC candidate but either due to some communication gap or proceeding in an inappropriate direction a candidate belonging to unreserved category was given promotion. Therefore, the official respondents 1 to 3 have deeply considered the aforesaid aspect and took a decision that the fourth vacancy should be filled up by a candidate belonging to SC category. It is true that respondent no. 4 did not have eight years of service as Section Officer when his case was considered for regular promotion. It has fallen short of eleven months or so. The President has the discretionary power to relax such conditions stipulated in the

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recruitment rules in appropriate cases. The SC post fell vacant on 1.5.2002, which could not be filled up till 13.2.2004. Thus, the respondents deemed it proper that the President should exercise his power to relax such condition. The DPC not only considered the case of respondent no. 4 but also of one Shri Lakhi Ram, who was, after reviewing his ACRs, not found suitable due to adverse entries. The fourth replacement vacancy, on retirement of Shri B.R. Angaria, a general category candidate, was shown as a reserved vacancy, which was subsequently filled by respondent no. 4 firstly on ad hoc basis and thereafter on regular basis. In the event such promotion is reviewed it would result in unsettling the settled position, which would cause not only great injustice but also other administrative inconveniences.

8. The ad hoc promotion could not have been challenged at such a distance point of time. It has also now become academic after the respondent no. 4 has been given regular promotion as Under Secretary. The applicant's case could not have been considered at the time of ad hoc promotion since he was not eligible for that promotion. As the post belonged to SC candidate and the case of two candidates was considered where after respondent no. 4 was selected, it would, therefore, not be open to the applicant to challenge the same by filing a speculative claim.

9. Undisputed facts are that the applicant joined earlier than respondent no. 4 and he belongs to unreserved category whereas respondent no. 4 is from S.C. category. In order to become eligible for the post of Under Secretary, one must have experience as Section Officer for eight years in the grade. By the time, respondent no. 4 was given ad-hoc promotion, it has emerged that the applicant did not acquire eight years' experience in the grade of Section Officer. It is true that respondent no. 4 too did not acquire such experience but since the post had to be filled up

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from out of reserved category persons belonging to S.C. community, therefore, the respondent no.4 was given ad-hoc promotion. From the stand taken by the applicant, it appears that the ad-hoc promotion could not have been continued beyond one year. In this case, the ad-hoc promotion given to respondent no.4 was with effect from 6.2.2003. Ordinarily, it ought to have expired on or before 6.2.2004 but it seems that before the said date, the respondent authorities had taken steps to appoint respondent no.4 on regular basis.

10. The file had to be placed before the President and, therefore, it would take reasonable time to get his approval. In the minutes, it is mentioned that the promotion roster point falls to S.C. category and thus the post was to be filled up by a suitable S.C. candidate only. The replacement post no.3 ought to have been filled by a S.C. candidate but somehow or other, a 'General' candidate was appointed. Therefore, the authorities concerned, in order to meet the social demand, took up the matter for giving promotion to a S.C. candidate. Comparative merit amongst the S.C. candidates was also deeply considered and the respondent no.4 was accepted to have possessed better service career as compared to other S.C. candidate Lakhi Ram. Shri Lakhi Ram had 'Average' ACRs in the preceding five years and was not so very appreciable as compared to respondent no.4. Therefore, the Departmental Promotion Committee recommended to give promotion to respondent no.4. At this stage, the matter was examined and it was noticed that respondent no.4 had not completed eight years' qualifying service as provided in the recruitment rules. Thus the matter was sent to the President for giving relaxation. The President, having unfettered power, was inclined to relax the condition on 10.02.2004. The



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notification was issued on 13.02.2004 by giving effect of promotion from 10.02.2004.

11. Ms. Mahajan, learned counsel for the applicant has advanced a formidable point that the power of relaxation could not have been exercised by the President in an individual case. Had it been a class or category of persons, it could have been understood that he had discreetly exercised his power. She placed reliance on the office memorandum/guidelines for relaxation of recruitment rules. In the said office memorandum, it has been indicated as follows:

“Relaxation in the recruitment rules is to be resorted to in respect of a class or category of persons. Relaxation should not be resorted to in respect of an individual except in cases where an individual can be treated as a class or category of person.”

12. In this case, it is noticed that the third replacement vacancy though belonged to S.C. category, was filled up by an unreserved candidate. Therefore, the subsequent vacancy was rightly set apart for the S.C. candidate. Such relaxation was treated as ‘category of persons’ since respondent no.4 as well as aforesaid Lakhi Rami belonged to S.C. category. Had this relaxation not been granted, only Lakhi Ram would have been left for consideration and he would have been a single candidate and the authorities could not have any occasion to determine the merit of Lakhi Ram as well as other suitable candidates. Therefore, the respondents thought it apposite to take the approval from the President as regards relaxation in the period of service in the grade of Section Officer.

13. Another limb of the argument has been advanced by Ms. Mahajan that in the event respondent no.4 was found ineligible, the respondents should have explored all possibilities by bringing a candidate from another department for filling up the said post. While examining the said contention, we have noticed that on previous



occasion the post meant for reserved category, was occupied by an unreserved category candidate. Respondent no.4 was also given ad-hoc promotion. Therefore, the department possibly felt that there was no necessity to bring an outsider on deputation. Moreover, the respondent no.4 had acquired experience by working on ad-hoc basis for a period of one year.

14. In this case, the applicant has also questioned the propriety of the promotion given to B.R. Angaria in 2002. Shri Krihsna, learned counsel appearing for the respondents has rightly indicated that if such promotion is now examined, then the settled position will become unsettled and there will be complete chaos in the administrative set up. It has been further highlighted that respondent no.4 in the meantime has attained eligibility. Therefore, once he has attained eligibility, the issue that he was not eligible at the time of ad-hoc promotion, appears to be redundant and irrelevant.

15. Ms. Mahajan has relied upon the decision of Ernakulam Bench in the case of **Jayakumar v. Commissioner of Central Excise and Customs, Cochin and another** (O.A.No.776/1999) decided on 14.9.2001. After careful reading of the judgment, we find that the O.M. dated 24.12.1980 can be resorted to while giving promotion to SC/ST candidates. In the aforesaid judgment, nothing is spelt out about the relaxation given by the President in suitable cases whereas in the instant case, the power of the President is so abundantly clear that he does possess unabridged power to relax in deserving cases. Considering the case of the applicant from any angle, we are not satisfied that he was eligible at the time of selection of private respondent no.4 to the post of Under Secretary. Above him, there were two other senior Section Officers who did not have any grievance about the promotion of respondent no.4.

In the event, respondent no.4 would not have been promoted, the case of other two senior officers who were above the applicant, could not have been considered and one of them could not have been promoted. That does not in any manner benefit the applicant. We are at a loss to understand in what manner the applicant was jeopardized in the event respondent no.4 was given promotion.

16. The learned counsel appearing for the applicant has strongly urged on the ratio decided by the Hon'ble Supreme Court in the case of Scheduled Castes and Scheduled Tribes Officers' Welfare Council vs. State of U.P. & Anr., reported in (1997) 1 SCC 701. Since in the aforesaid decision in order to deprive the rights of the SC/ST candidates, the authorities by relaxing the eligibility criteria of the general candidates promoted them, therefore, it was held to be colourable exercise of power but in this case the post actually belonged to SC/ST category and no other SC/ST category except two candidates were available for consideration. Therefore, the facts of the aforesaid case are quite distinguishable from the present case. The other decisions cited by the learned counsel appearing for the applicant appear to be irrelevant for the purpose of deciding this case.

17. In the case of R.K. Sabharwal v. State of Punjab and others, (1995) 2 SCC 745, in paragraph 10 the Hon'ble Supreme Court has delineated the sphere as to how the roster points meant for reserved category candidates are to be considered:

"We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100-point roster, 14 posts at various roster points are filled from amongst the Scheduled

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Caste/Scheduled Tribe candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by 31-12-1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Castes and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the event of non-availability of a reserve candidate at the roster point it would be open to the State Government to carry forward the point in a just and fair manner."

18. On careful reading of the judgment, we find that there is little scope for the applicant to contend that the zone of consideration should be 1 : 5 in the case of reserved category candidates. If Ms. Mahajan's contention is accepted, then at no point of time the posts meant for SC/ST category candidates would be filled up. While filling up such posts, the case of the candidates under the aforesaid category shall have to be considered.

19. Since the post belonged to reserved category, no other candidate could be considered for appointment against that post. The Hon'ble Supreme Court in the case of **Suresh Chandra v. J.B. Agarwal and others**, AIR 1997 SC 2487, relying upon the decision in the case of **Union of India v. Madhav**, (1996) 9 JT (SC) 320, held that even in case of solitary isolated post on the basis of the rule of rotation, the benefits and facilities should be extended to the reserved candidates, namely, Schedules Castes and Scheduled Tribes for appointment by promotion to the single post and, therefore, the candidates belonging to other categories cannot claim the aforesaid.

20. Thus from the above conspectus of the case, the only logical conclusion that could be drawn would be that it was private respondent no.4 who alone was entitled to hold the post. As in the preceding

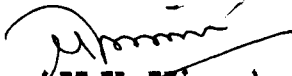
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paragraphs, it is observed that the President has the power to relax the recruitment rules and once the power had been so exercised, we do not find any infirmity in his promotion.

21. Considering the applicant's case from any angle, we do not find that there is merit in this case. Accordingly, it is dismissed.


(M.K. Misra)
Member (A)


(B. Panigrahi)
Chairman

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