

CAT/77

(27)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No.
T.A. No.

1462/92

199

21.10.97

DATE OF DECISION

Shri M.K.Sharma	Petitioner
Shri G.D.Gupta	Advocate for the Petitioner(s)
Versus	
Union of India & Ors	Respondent
Shri K.R.Sachdeva	Advocate for the Respondent(s)

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, M(J)

The Hon'ble Shri S.P.Biswas, Member(A)

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

IN THE CENTAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.1462/92

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New Delhi this the 21st day of October, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Hon'ble Shri S.P. Biswas, Member(A)

Shri M.K. Sharma,
S/O Sh. Kulwant Swaroop Sharma,
Resident of H-168, Nanakpura,
New Delhi.

(By Advocate Sh. G.D. Gupta)

..Applicant

Vs

1. Union of India,
through the Secretary to the
Government of India,
Ministry of Defence, South Block,
New Delhi-110011
2. The Joint Secretary (Administration) /
The Chief Administrative Officer (P-II),
Ministry of Defence, C-II Hutments,
New Delhi.
3. The Secretary,
Ministry of Personnel,
Personnel Grievances & Pensions
(SCT Cell),
(Department of Personnel & Training),
North Block, New Delhi
4. Shri Zile Singh,
Supervisor,
Security Office, M/O Defence,
H-Block, New Delhi-110011
5. Shri H.K. Sharma,
Senior Reception Officer,
Security Office, M/O Defence
H-Block, New Delhi.

..Respondents

(By Advocate Shri K.R. Sachdeva)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The applicant is aggrieved by the action
of the respondents in filling up the post of Supervisor

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Class-II Gazetted by Respondent 4 who is a Scheduled Caste(SC) candidate by treating the post as reserved vacancy. According to the applicant, the said vacancy should have been treated as unreserved and be filled not by him, but by ^{and he is} a general candidate and thereafter he would have got his term for promotion.

2. The brief facts of the case are that the applicant who was appointed as Junior Reception Officer(JRO) in October, 1966 was promoted as Senior Reception Officer(SRO) in July, 1977. From SRO, the next promotion post is that of Supervisor Class II Gazetted. Under the Recruitment Rules, the eligibility for consideration for filling up the post of Supervisor is on selection basis from amongst the SROs with 5 years regular service. The applicant as well as the respondents state that initially there were 3 posts of Supervisors created in September/October, 1976. Hence, the DPC for the said post of Supervisor was held in October, 1976. Out of these three vacancies one was reserved for the SC candidate(Point No.1) and the remaining two vacancies were treated as unreserved. 3 SROs including one belonging to the SC community were recommended for promotion. One of the individuals included in the panel for promotion as Supervisor, namely, Sh. N.C.Chatterjee, who belonged to the general category, was to retire on superannuation on 30.6.1977. Therefore, that post would fall vacant w.e.f. 1.7.1977. Thus, while preparing the panel for promotion during 1976, the DPC clubbed the vacancies for 1976 ^{and 1977} 1977. According to the applicant, this was a deliberate decision of the DPC and he relies on the DOP&T O.M. dated 15.3.1982. In this O.M., it is provided that in cases where the DPC select list might have been prepared in one year, but appointment

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from it made in the next year, the year where the first appointment is made from the select list will be the recruitment year in so far as that DPC panel is concerned, for purposes of reckoning reservation, carry forward, recruitment year, etc.

3. The 4th point in the roster was admittedly reserved for a ST candidate but none was available and so, that post was filled by the general category candidate. The next vacancy in the grade of Supervisor became available in 1980, thereafter one vacancy in 1987 (points 5 and 6) which were also filled by the candidates belonging to the general category. The 7th point vacancy arose in November, 1991. The issue in the present case is whether the 7th point vacancy against which Respondent 4, a SC candidate, has been selected should or should not have been considered as a reserved vacancy.

4. The main contention of the learned counsel for the applicant is based on the DOP&T O.M. dated 15th March, 1982. He submits that since the vacancy arising in 1977 was taken into account by the DPC held in October, 1976 and a panel was prepared, that vacancy can be considered only as the vacancy in the recruitment year of 1976 for purposes of carry forward, as the first appointment from the panel had been made in 1976. The respondents on the other hand have submitted that these instructions are not applicable to the facts of this case. According to them, the vacancy that became available after 1.7.1977 could not have been clubbed with the vacancy that arose during 1976 as they belonged to two different recruitment years. Further, the vacancy that became available in 1977 had to be treated as unreserved during that

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of the candidates for selection and promotion on yearwise basis. In the facts and circumstances of the case, the vacancy arising on 1.7.1977 in the grade of Supervisor cannot be treated as a vacancy arising in 1976 recruitment year, as contended by the applicant, as the vacancies fall in two different recruitment years. Since the vacancies arising in 1976 and the vacancy falling on 1.7.1977 are of different years, we are unable to agree with the contentions of Shri G.D. Gupta, learned counsel for the applicant that based on the DOP&T O.M. dated 15.3.1982, the vacancy arising on 1.7.1977 should also be treated as a vacancy of 1976 merely because ^{one} of the promotees in the panel was promoted in 1976. The respondents have also contended that DOP&T O.M. dated 15.3.1982 has no application to this case and we are of the view that this O.M. cannot override the settled principle of law.

6. Therefore, the vacancy arising in 1977 cannot be clubbed with the vacancies arising in 1976 as vacancies of a single year. This means that there was only one vacancy arising in 1977 (Point No.4 of the roster) which fell on a reserved point.

Being a single vacancy belonging to the reserved point for the ST candidate, it had to be treated as an unreserved vacancy and in accordance with the DOP&T O.M. dated 3.2.1975 the reservation so due against the reserved point had to be carried forward to three subsequent recruitment years. In this case, these three recruitment years were 1980, 1987 and 1991. In November, 1991, Respondent 4, Shri Zile Singh, who belongs to the SC community,

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year, being a single vacancy falling on the reserved point for ST, as it related to a separate year. The applicant also does not dispute that as per the DOP&T O.M. dated 20.7.1974, a vacancy reserved for the SC candidate is interchangeable with that of a candidate belonging to ST or vice-versa, in case, the other community candidate is not available. In accordance with the DOP&T O.M. dated 3.2.1975 when a vacancy falls on a reserved point in the roster and is treated as unreserved due to its being the single vacancy during the year of promotion, the reservation so due against the reserved point has to be carried forward to subsequent three recruitment years.

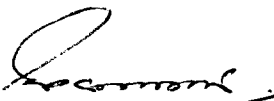
5. The main issue in this case is whether the vacancy arising on 1.7.1977 on the retirement of Shri N. Chatterjee, a general candidate, at Point No. 4, which was originally reserved for a ST candidate, can be clubbed with the three existing vacancies of 1976; or it has to be treated as a single vacancy for 1977 falling on the reserved point for the ST candidate and hence required to be carried forward for three subsequent recruitment years. In the facts of this case, it is noted that for the three vacancies arising initially in 1976, the DPC was held in October, 1976. No doubt, the DPC had also considered the vacancy which was to fall vacant w.e.f. 1.7.1977, but it is settled law that the DPC has to consider the eligibility

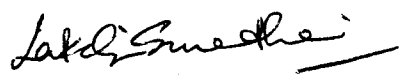
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was promoted as Supervisor against the vacancy which became available on 1.11.1991, as it was a carried forward reserved vacancy originally reserved for a ST candidate which was exchangeable with the SC category. It is also relevant to keep in mind that the reservation provisions meant for SC/ST candidates are beneficial provisions for these categories of persons and should be strictly complied with so as not to negate the accepted government policy. We are, therefore, not inclined to accept the contentions of the learned counsel for the applicant that the promotion given to Respondent 4, a SC candidate, by the respondents is contrary to the rules or instructions.

7. In the result, for the reasons given above, we find no good grounds to interfere in the matter. The application fails and it is accordingly dismissed. No order as to costs.


(S.P. Biswas)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'