

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

199

O.A. No. 2789/92

T.A.No.

DATE OF DECISION: 9.2.99



Hukam Singh

....Petitioner

~~Wm~~ Shri P.L. Mimroth

....Advocate for the
Petitioner(s)

VERSUS

Union of India & Ors.

....Respondent

Shri A.K. Sikri

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)
The Hon'ble Shri K. Muthukumar, 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? No.

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

Central Administrative Tribunal
Principal Bench

O.A. 2789/92

New Delhi this the 9 th day of February, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

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Hukam Singh,
S/o Shri Jas Ram,
R/o B-64, West Nathoo Colony,
Shahdra,
Delhi-110093.

...Applicant.

By Advocate Shri P.L. Mimroth.

Versus

1. Union of India through
Secretary to the
Ministry of Agriculture,
Krishi Bhawan, N.Delhi.
2. The Director General,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.
3. The Director,
Indian Agricultural Statisticals Research
Institute, Library Avenue,
Pusa, New Delhi-110012.
4. Smt. Seeta Malhotra,
Supdt. Indian Agricultural Statistics
Research Institute, Library Avenue,
Pusa, New Delhi-110012.

... Respondents.

By ^{SK}Advocate Shri A.K. Sikri. ~~with~~ Shri V.K. Rao

O R D E R

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

The applicant, who is working as Assistant with Respondent 3 and belongs to the SC category is aggrieved by Annexure A-1 order dated 1.1.1992 promoting certain other persons to the post of Superintendent. His claim is that he should not have been superseded in promotion to the post of Superintendent against the reserved point No. 14. Shri P.L. Mimroth, learned counsel for the applicant has submitted that because of the

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5

faulty and deliberately wrong preparation of the roster which the respondents were required to keep, the applicant has been deprived his just and lawful promotion against Point No. 14.

2. The short question for consideration in this case is whether Point No. 14 is a reserved point or not against which the applicant claims promotion. On this post, Respondent 4 Smt. Seeta Malhotra has been promoted from the general category. In the written submissions given by the learned counsel for the applicant, he has submitted that the official respondents have changed their stand in the additional counter affidavits and has submitted that these are totally irrelevant and misleading so far as the facts are concerned.

3. We had directed the parties to file written submissions which we have perused along with the pleadings in the case. We have also carefully considered the submissions made by the learned counsel for the parties.

4. Though notices had been issued to Respondents 1-4, but no separate reply has been filed by Respondent 4. In the reply filed by them on 7.4.1993, the respondents have submitted that Point No. 14 in the roster was lying vacant and no person has been appointed against this point. They have also submitted that Point No. 13 is a unreserved vacancy against which Respondent 4 has been appointed as Superintendent. They have submitted that they have been following the 40 point roster in accordance with the relevant Rules and instructions. They have submitted that as per the roster the first point is reserved for SC and accordingly one Shri R.B. Kadam, a SC candidate, was appointed to this post in 1975 and shown at Serial No. 1 in the roster. According to them, the applicant could not have been

13

36

promoted to the next higher post against which Respondent 4 was promoted as the quota meant for SC/ST had already been reached. The averments in the additional affidavit have been strongly denied by the applicant in his reply. They have also submitted that in the case of one Shri D.K. Rastogi he has been wrongly shown in the seniority list of Superintendents as on 1.1.1983 in the letter dated 15.3.1983. According to them, as on that date, Shri Rastogi was not the Superintendent and the seniority list had not been prepared as per the roster point. In the table prepared by the applicant in Para 4.11 of the O.A. he has further shown the date of promotion of Shri Rastogi in the general category as on 25.6.1975. Further, in the reply to the additional affidavit filed by the applicant dated 6.10.1998, he has strongly denied the averments of the respondents.

5. The Tribunal by order dated 6.11.1998 had directed the respondents to place on record certain facts which were mentioned during arguments, namely the factual position of the 40 point roster along with the total number of sanctioned posts in the grade of Superintendents as on 22.9.1992 (sic. 29.9.1992) and the incumbents holding those posts on the relevant date. This additional affidavit was filed on behalf of Respondents 2 and 3 on 12.11.1998. They have submitted that as per the rules the post of Superintendent is to be filled by 66 2/3% by promotion and 33 1/3% by Limited Departmental Examination (LDE). They have submitted that there were seven sanctioned posts with Respondent 3 on 29.9.1992. Shri A.K. Sikri, learned counsel, has submitted that since Shri Rastogi is to be included in the roster and sufficient number of SC candidates had already been appointed, 14th point which is under issue had been kept for unreserved candidate against which Respondent 4 had been appointed. In reply to this affidavit the applicant has again submitted that

37

the respondents have totally ignored the instructions contained in DORST O.M. dated 30.5.1977 in regard to correct maintenance of roster register which provides that separate roster should be maintained for each type of recruitment and within it for each grade or a group of posts formed for this purpose. He has also stated that one Mrs. Flora Xess had not been promoted against the reserved point for ST but had been promoted against the general point. Shri P.L. Mimroth, learned counsel has, therefore, contended that there has been no excess SC/ST quota and the respondents are wrongfully denying the applicant's promotion to the post of Superintendent against the reserved SC quota in Point 14.

6. On careful consideration of the pleadings in this case, we find that the respondents have taken somewhat inconsistent stands in the several replies filed by them. On perusal of the replies filed by the official respondents, it is seen that there is some force in the submissions made by the learned counsel for the applicant that they have changed their stand in the additional counter affidavits. While in the reply they say that Rastogi's name had been wrongly shown in the seniority list of Superintendents as on 1.1.1983, on which date according to them he was not a Superintendent, in another affidavit they have submitted that if his name is included then the roster would show Smt. Seeta Malhotra in the 14th point. There is also some confusion in their submission that the roster under normal promotion maintained by the respondents without showing the name of Shri Rastogi starts with Shri R.B. Kadam, (SC) and Respondent 4 is shown at Item No. 13. If as submitted by the respondents Shri Rastogi is not included and the roster point starts from Shri R.B. Kadam (SC) then the 14th point would not be occupied by Respondent 4 which they have shown in the first


38

reply as vacant. In the facts and circumstances of the case, we are unable to accept the stand of the respondents with regard to promotion of general category candidate, namely Respondent 4 against Point No. 14 in the 40 point roster.

7. In the facts and circumstances of the case, therefore, O.A. is disposed of with a direction to Respondents 1-3 to take a final decision in the matter of preparation of 40 point roster strictly in accordance with the relevant Rules and instructions and having regard to the Constitutional provisions for reservations to be provided for SC/ST employees. They shall then consider the case of the applicant for promotion to the post of Superintendent either on ad hoc or regular basis in case Point No.14 falls under the SC reserved category, from the due date subject to the vacancy being available under the Rules. If he is found eligible and suitable for such promotion, he shall be entitled to all consequential benefits on promotion in accordance with law. Necessary action in this regard shall be taken by the respondents within four months from the date of receipt of a copy of this order. No order as to costs.


(K. Muthukumar)
Member(A)

"ORD"


(Smt. Lakshmi Swaminathan)
Member(J)