

(19)

CAT/7/11

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 889/92
T.A. No.

199

DATE OF DECISION 5-6-97

Sh. Chand Ram

Petitioner

Sh. S. K. Sawhney

Advocate for the Petitioner(s)

Versus

UOI & Ors.

Respondent

Shri M. M. Sudan

Advocate for the Respondent(s)

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? *X*

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

Central Administrative Tribunal
Principal Bench

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O.A. 889/92

New Delhi this the 5 th day of June, 1997

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

Hon'ble Shri K. Muthukumar, Member(A).

Shri Chand Ram,
S/o Shri Kehar Singh,
Clerk (Hindi Typist),
Defence Institute of Fire Research,
Delhi-54. ... Applicant.

By Advocate Shri S.K. Sawhney.

Versus

1. Union of India through
Scientific Advisor and Director General,
R&D Organisation,
Ministry of Defence,
South Block,
New Delhi.
2. Director,
Defence Institute of Fire Research,
P&D Organisation,
Ministry of Defence,
Probyn Road,
Delhi.
3. Kumari Inder Prabha,
UDC, Defence Institute of Fire Research,
R&D Organisation,
Ministry of Defence,
Probyn Road,
Delhi. ... Respondents.

By Advocate Shri M.M. Sudan.

O R D E R

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

The applicant, who is working as Clerk/Hindi Typist w.e.f. 5.1.1983 is aggrieved by the order passed by the respondents dated 27.7.1990 in which the ad hoc promotion in respect of Respondent 3, Kumari Inder Prabha, to the post of UDC had been approved by the DPC w.e.f. 10.7.1989. It has been further stated that as the post was

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reserved for Scheduled Tribe candidate and the same had been dereserved by the competent authority w.e.f. 14.6.1990, Respondent 3 shall be on probation for a period of two years from that date.

2. The brief facts of the case are that the applicant, who is a Scheduled Caste candidate, claims that he ought to have been considered for promotion as UDC w.e.f. 14.6.1990 in place of Respondent 3. The applicant had been promoted in 1992 as UDC on exchange of the post meant for Scheduled Tribe which was carried forward for three years. The learned counsel for the applicant submits that under the relevant recruitment rules the power to relax the rules was available and, therefore, the same should have been exercised in his favour, although it is an admitted fact that the applicant became eligible only on 5.1.1991 on completion of eight years of service ^{for promotion} as LDC/. The learned counsel relies on the DOP&T O.M. dated 16.4.1979 and Circular No. 126 dated 20.8.1990 and claims that since the applicant, who is a Scheduled Caste candidate, was becoming eligible for promotion within a period of seven months, i.e. in the near future, the reserved vacancy should have been kept unfilled till the time he became eligible instead of directing the vacancy to be filled by dereserving the post. He also relies on the DOP&T O.M. dated 10.7.1990 and submits that the respondents ought to have exercised the power of relaxation of the recruitment rules in his case in order to safeguard the applicant's interest which has been protected by the Constitution and Statute by reserving the post for the Scheduled Caste candidate.

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3. The respondents have filed their reply and we have also heard Shri M.M. Sudan, learned counsel.

4. The respondents have not disputed the fact that due to non-availability of the SC/ST candidate, the vacancy was filled by general candidate. They have submitted that one post of UDC was vacant w.e.f. 19.9.1986. As per the then SRO 275/86, LDCs with eight years regular service in the grade in the unit in which they are serving were to be considered for promotion to the grade of UDC. Since no person was qualified at that time, ad hoc promotion was made of LDCs with three years service in terms of the letter issued by the respondents dated 24.11.1981. As per the seniority roll, neither any Scheduled Tribe candidate was available against the point which falls at No. 6 which was the carried forward point of Scheduled Tribe for the second year, nor was any general category candidate available who had eight years of service in the Institute. Therefore, they have stated that the seniormost general candidate, i.e. Respondent 3, who was enrolled as LDC w.e.f. 10.7.1981 was given an ad hoc promotion with effect from 19.9.1986 initially for a period of one year and thereafter extended by the respondents upto 18.9.89. On completion of eight years service, Respondent 3 was considered for regular promotion. The applicant was at Srl. No. 4 of the seniority list. They have submitted that the vacancy was reserved for Scheduled Tribe candidate and the applicant was not considered as he did not belong to that category ~~category~~ nor he had completed the required length of service for promotion. Later, the competent authority had taken a decision to dereserve the vacancy as according to the general instructions the reserved

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vacancy had been carried forward for subsequent three recruitment years and could not be filled either by Scheduled Caste or Scheduled Tribe candidate. The respondents have also filed a copy of the Register of Special Representation Scheduled Tribe/Scheduled Caste from which it is seen that in 1982 point No.4 was reserved for Scheduled Tribe against which one Sham Sunder, ^{general category candidate} was promoted from LDC to UDC. For the recruitment year 1983, again general category candidate had been appointed. For the year 1989, against point No. 6, Respondent 3 had been promoted as UDC, who also belonged to the general category. The respondents have submitted that on occurrence of a vacancy of another post of UDC in 1992 which fell on general point but taking into consideration the fact that the ST point had been carried forward for three years, the same has been mutually exchanged with the SC candidate and the applicant was promoted to the grade of UDC in that year, though junior in the seniority list. They have, therefore, submitted that the application may be dismissed.

5. We have considered the pleadings and the submissions made by the learned counsel for the parties. Admittedly, the vacancy which arose in 1982 against the roster point was reserved for Scheduled Tribe and the applicant does not belong to this category but to Scheduled Caste. He, therefore, does not have an enforceable right to claim appointment against this post. Para 7 of the general instructions (Annexure R-6) reads as follows:

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"7. **Exchange of reservation between SCs and STs**

Vacancies reserved for SCs and STs will continue to be treated as reserved for the respective communities while they are carried forward to the subsequent three recruitment years. When such a vacancy could not be filled by an SC or ST candidate even in the third recruitment year of carry forward, the vacancy can be exchanged between these communities, i.e., an SC candidate can be considered for a vacancy reserved for ST and vice versa".

From chronology of events given in the Special Representation, referred to above, it is also seen that the post reserved for Scheduled Tribe had been carried forward for three years and thereafter the same had been exchanged in favour of the Scheduled Caste candidate and the applicant has been appointed against that reservation. The claim of the applicant that since he was becoming eligible after completion of eight years in the feeder cadre on 5.1.1991, the appointment of Respondent 3 as UDC w.e.f. 14.6.1990 is illegal based on the Circular dated 20.8.1990 cannot be accepted. That circular refers to the case where provision exists in the recruitment/promotion rules to fill up the post both by promotion and direct recruitment and for consideration of filling up the promotion quota due to non-availability of SC/ST in the feeder cadre which may be temporarily diverted to the direct recruitment quota. Under the schedule to the relevant recruitment rules in the DRDO 1996, the posts of UDCs are to be filled up 75% by promotion on the basis of seniority-cum-fitness and 25% by promotion on the basis of the departmental

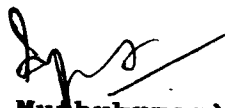
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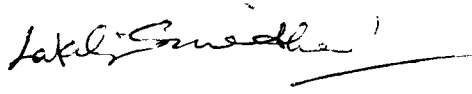
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competitive examination. Therefore, the Circular dated 20.8.1990 and the O.M. dated 10.7.1990 relied upon by the applicant are not relevant to the facts of this case as there is no quota for direct recruitment and promotion in this case.

6. When Respondent 3 was appointed on ad hoc basis as UDC, the applicant did not have three years service for being considered even on an ad hoc basis in accordance with the respondents' instructions dated 24.11.1981. In these instructions, it has been stated that where persons with 8 years service were not available for promotion to the post of UDC, a decision had been taken that LDCs with 3 years service may be considered for promotion as UDCs purely on ad hoc basis without any entitlement of seniority in that grade. The impugned order dated 27.7.1990 states that ad hoc promotion of Respondent 3 has since been approved by the DPC w.e.f. 10.7.1989 and the competent authority has taken a decision to dereserve the post w.e.f. 14.6.1990 i.e. after carrying forward the reserved post which was meant for ST category for three years, i.e. 1982, 1983 and 1989. Since the respondents have taken action in terms of the relevant rules and instructions, the question of relaxation of the rules would also not be relevant in this case.

7. In the facts and circumstances of the case, we find no merit in this application. The O.A. is accordingly dismissed. No order as to costs.


(K. Muthukumar)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'