

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

...
OA No. 1671/93

New Delhi, this the 4th day of May, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

Smt. Kiran Bala Saxena,
w/o Shri Sudhir Saxena,
R/o C-10/197, Yamuna Vihar,
Delhi.

...Applicant.

(By Advocate: Shri M.K. Gupta)

Versus

Union of India through

1. Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. The Registrar General of India,
Ministry of Home Affairs,
2/A Man Singh Road,
New Delhi.
3. Shri Mahender Singh,
Data Entry Operator
(To be served through R-2). ..Respondents

(By Advocate: None present)

J U D G M E N T

By Hon'ble Shri T.N.Bhat, Member (J)

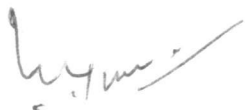
The applicant herein, alongwith seven other officials, was appointed by promotion to the post of Junior Supervisor in the pay scale of Rs. 1400-23000/- (un-revised) vide order dated 15.1.1992 and since then the applicant has been functioning as Junior Supervisor.

2. It, however, appears that one Shri Mohinder Singh, respondent no. 3 herein, had filed a representation

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against his non-promotion. The applicant apprehending reversion on the basis of the said representation had filed OA 1910/92 on 20.7.1992. When notice was issued to the respondents in that OA they appeared and their counsel stated that there was no apprehension of the applicant's reversion nor was there any proposal to revert her. In their reply the respondents also stated that a review departmental promotion committee to consider the representation of R-3 herein, who belongs to the SC category, for his promotion to the post of Junior Supervisor had been held on 23.7.1992 but no further action had been taken thereafter. The applicant's grievance is that the review DPC was illegal, unjust, arbitrary and violative of the principles of natural justice. The applicant further assails an order passed on 13.8.1993 by R-2 by which one Sh. Chandrika Ram belonging to the ST category whose name figured at serial no. 98 in the seniority list, was promoted as Junior Supervisor.

3. The contention of the applicant is that under the relevant recruitment rules a Data Entry Operator (DEO, for short) would be eligible for promotion to the post of Junior Supervisor after completion of five years regular service. Under the rules the post of Junior Supervisor is to be filled up by promotion failing which by transfer on deputation. The applicant was admittedly working as DEO w.e.f. 25.9.1982 without any break in service and on regular basis. The respondents issued a final seniority list of DEO Group 'B' on 31.1.1992 in which the name of the applicant figures at serial no. 22. When the department convened the DPC the applicant was found to be eligible and was also within the zone of consideration. Eventually on



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the recommendations of the DPC the respondent no. 2 issued
the order dated 15.1.1992 by which the applicant and seven
others were promoted as Junior Supervisor.

4. The only ground on the basis of which the representation of respondent no. 3 herein is sought to be favourably considered is that he is a SC candidate. The contention of the applicant is that the DPC had considered all the eligible candidates and there is no reason to disturb the promotion. In this regard it is further submitted by the applicant that one Shri S.N.Sahu, who figured at serial no. 9 in the seniority list also belongs to the SC category.

5. It is also stated that after the order of promotion in relation to the applicant one more post became available due to retirement of one Shri Yogeshwar Prashad and that post was given to the aforesaid Shri Chandrika Ram and that if the respondents were interested in promoting R-3 he could have been promoted against that vacancy.

6. Another plea raised by the applicant is that at the time of the DPC even though the field of choice was extended to five times the number of vacancies, sufficient number of SC/ST officers did not become available and the official respondents thereafter got the posts de-reserved and for that purpose sanction of the competent authority was obtained. In these circumstances, it would not be open to the respondents to consider R- 3 herein against any of the posts which were filled up by the orders issued in the month of January, 1992.



7. The official respondents No. 1 & 2 have filed their counter in which they have sought to raise the plea that out of the eight vacancies that were available in 1991 one vacancy was for SC and two vacancies for ST candidates. It is admitted that sufficient number of SC/ST candidates were not available even after extending the zone of consideration up to five times the number of vacancies. Again, admittedly, the reserved vacancies were got de-reserved whereafter the DPC was convened on 9.1.1992. Subsequently, however, some reserved candidates represented that for considering the candidates belonging to SC/ST there is no provision for zone of consideration nor any provision for extension of the field of choice. According to the respondents a separate list of eligible reserved category candidates was required to be drawn and promotions were required to be given to the candidates belonging to those categories irrespective of what was the prescribed zone of consideration. It was in these circumstances that the official respondents held a review DPC to rectify the mistake.

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8. The applicant has filed her rejoinder in which it is contended that once the posts were de-reserved it was not open to the respondents to convene a review DPC.

9. Learned counsel for the applicant has re-iterated the contentions raised by the applicant in the OA. He has also cited before us a judgement of the Patna Bench reported in AIR 1993 (!) CAT 292 wherein it has been held that a mere irregularity in the selection process is not sufficient to quash the appointment or entire




proceedings of selection particularly when the applicant in pursuance of the order of appointment has joined and has discharged her duties for the same.

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10. After carefully considering the contentions raised by the parties in their pleadings and on perusing the documents annexed by the parties in support of their respective pleadings, we are of the considered view that the applicant cannot legally be reverted after she was regularly promoted by the order dated 15.1.1992 simply on the ground that some person belonging to the reserved category had not been considered even though he was much lower in the seniority list. The reasons are not far to seek:

11. As already stated, sufficient number of reserved category candiadtes were not available which could be considered against the reserved vacancies available in 1991. The respondents admittedly got those vacancies de-reserved after obtaining the requisite sanction from the competent authority. That being so, the respondents did not have the power to once again revert back to the position that obtained in 1991 and to say that a mistake had been committed in getting the vacancies de-reserved. The applicant and seven other persons who had ^{been} appointed on regular basis even against the reserved vacancies could not have been later reverted, particularly so when no show cause notice was given to them. A valuable right had accrued to the applicant to continue on the higher post and she was entitled to promotion, particularly so, in view of the fact that the respondents had got the reserved vacancies de-reserved. Merely because R-3 herein had made a



representation the official respondents could not by one stroke of pen undo all that had been done in the month of January, 1992.

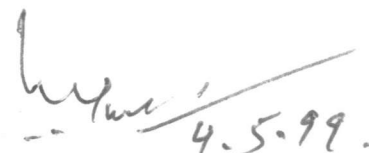
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12. We may also state that R-3 to whom notice was issued has not chosen to appear nor has he filed any counter. In these circumstances it is reasonable to presume that he has nothing to say in this matter.

13. In view of what has been held and discussed above, we allow this OA and restrain the respondents from reverting the applicant from the post of Junior Supervisor to the post of DEO.



(S.P. Biswas)
Member (A)



(T.N. Bhat)
Member (J)

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