

(2) (1)
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...
O.A. No. 555 of 1993

New Delhi, this 10th day of March, 1999.

HON'BLE MR. JUSTICE S. VENKATRAMAN, VICE CHAIRMAN(J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER(A)

Manjit Singh Ahluwalia
S/o Late Shri P.S. Ahluwalia,
R/o Qtr. No. 2, Type-II, MES Centre,
Probyn Road,
Delhi-54.

... Applicant

By Advocate: Shri G.D. Bhandari

versus

1. Union of India through the
Secretary
Ministry of Defence
Government of India
New Delhi.
2. The Garrison Engineer (R&D)
Lucknow Road
Delhi-54.
3. The Chief Engineer
Western Command Headquarters
Engineers Branch
Chandi Mandir
Haryana.
4. The Commander Works Engineer (P)
Delhi Cantt.-10.
5. Shri Ram Narain
Senior Mechanic Refrigeration
AC HS-I
Supdt. E&M-II (MES Service Centre)
Institute of Nuclear Medicines &
Allied Services (INMASS)
Lucknow Road
Delhi.

... Respondents

By Advocate: Shri Harvir Singh, proxy
counsel for Mrs P.K. Gupta

O R D E R (ORAL)

HON'BLE MR. JUSTICE S. VENKATRAMAN, VC(J)

The applicant has filed this application for
quashing Annexure A-3 order dated 4.5.1992 and for a

(2)

direction to the respondents to promote the applicant to the post of Senior Refrigeration Mechanic HS-I from the date his junior was promoted i.e., from 15.10.1984 or alternatively from 15.10.1985.

2. It is not disputed that the applicant is senior to the 5th respondent viz., Shri Ram Narain in the grade of Mechanic Refrigeration HS-II. The 5th respondent was first promoted to HS-I by order dated 8.10.1991 as per Annexure A-1, though one Shri Amarjit Singh and the applicant were senior to him. When these persons raised objections to the promotion on the ground that 5th respondent was not at all eligible for promotion and that they being senior ought to have been considered for promotion, the respondents cancelled that order of promotion. A Review DPC is stated to have been convened for filling up two vacancies in HS-I grade. Though the applicant has alleged that actually there was only one vacancy, the respondents have asserted that there were two vacancies in that cadre. The respondents, in pursuance of the Review DPC's recommendation, have issued an order as per Annexure A-3 dated 4.5.1992 promoting Shri Amarjit Singh the seniormost in the HS-II as well as Shri Ram Narain. The applicant gave several representations contending that Shri Ram Narain was junior to him and that by purporting to promote Shri Ram Narain who is a Scheduled Caste candidate the respondents were increasing the percentage of HS-I post from 15% to 18%. The respondents not having replied to his

(3)

representations, the applicant has now filed this application challenging the promotion of the 5th respondent to HS-I and seeking promotion from the date he became eligible for that promotion.

3. The only plea taken by the respondents is that out of two vacancies in HS-I which were available the DPC has filled up one vacancy by promoting Shri Amarjit Singh who was seniormost and the other vacancy which was meant for Scheduled Caste candidate has been given to the 5th respondent who was the seniormost among the Scheduled Caste candidates.

4. The applicant, in his rejoinder, has contended that the 40 Point Roster has not been observed by the respondents, that the vacancy did not fall for Scheduled Caste employee as per the Roster and that one Shri Rohtas Singh, Refrigeration Mechanic was promoted under Scheduled Caste reserved quota by notification dated 13.4.1981 which is produced as Annexure P to the rejoinder. In the rejoinder he has given the chart of promotion showing as to who are occupying five posts of HS-I.

5. It is not disputed by the respondents that the applicant is senior to Shri Ram Narain and that after Shri Amarjit Singh the applicant is the next seniormost in HS-II. The only controversy in this case is with regard to the question as to whether the vacancy to which the 5th respondent was promoted, was reserved for Scheduled Caste candidate as per the 40 Point Roster. The material on the

V

basis of which this point could be answered is with the respondents and if the respondents had produced the relevant 40 Point Roster that would have disclosed whether the vacancy which was given to the 5th respondent was reserved for Scheduled Caste or not. It is seen that even in the rejoinder filed by the applicant as long back as 1.11.1993, the applicant has specifically alleged that one Shri Rohtas Singh, Refrigeration Mechanic was promoted under Scheduled Caste reserved quota and the respondents would have to produce the Roster at the time of final hearing.

6. When the matter was heard on 8.3.99, we specifically directed the respondents to produce the Roster so that we could find out whether the vacancy to which the 5th respondent was promoted, was reserved for Scheduled Caste or not. But the respondents have not produced that Roster even today. It is not as if the respondents would not have known that the production of the Roster was essential to rebut the claim of the applicant. The only inference that we can draw from the non production of the Roster is that if produced, the same would not support the plea taken by the respondents. It is a case where the applicant has been alleging that the Department has gone out of the way to promote the 5th respondent, as he is a Union Leader. Further, we have also pointed out that the respondents had first promoted 5th respondent without considering the case of Shri Amarjit Singh who was the seniormost and when Shri Amarjit Singh and the applicant raised objections, they have cancelled that promotion and after conducting the Review DPC they had promoted Shri

2

(5)

Amarjit Singh and again promoted the 5th respondent. These circumstances indicate that everything is not well in the matter of promotion of 5th respondent. On the material on record, we are unable to hold that the vacancy to which the 5th respondent was promoted was reserved for Scheduled Caste as contended by the respondents. The total number of HS-I posts available even according to the respondents is only five. The applicant has asserted that Shri Rohtas Singh who was promoted as Charge Regrigeration Mechanic which post is counted as HS-I, was promoted against the Scheduled Caste category and he is holding one of those five posts. If that is so, it is unintelligible as to how there could again be another Scheduled Caste vacancy in the Roster which could have been made available to 5th respondent. On the material on record, we are of the opinion that the applicant who was the seniormost had to be considered for promotion to HS-I for the vacancy which was given to 5th respondent. We may mention here that 5th respondent himself has not appeared and contested this application.

7. Though the applicant has claimed promotion from 1984 when he became eligible, that claim is untenable. He is entitled to be considered for promotion from the date the 5th respondent was promoted as he was junior to the applicant.

8. For the above reasons, this application is allowed in part and the promotion of 5th respondent to HS-I

2

16

is quashed and the respondents are directed to consider the applicant for promotion to that vacancy of HS-I from the date the 5th respondent was promoted and if he is found fit and eligible, to promote him from that date with consequential benefits.

9. However, we make it clear that if the 5th respondent is to be reverted in pursuance of this order, there should be no recovery from him with regard to the higher emoluments which he might have drawn in that post.

No costs.


(K. Muthukumar)

Member (A)

dbc


(S. Venkatraman)
Vice Chairman (J)