

OA 954/93

Central Administrative Tribunal
Principal Bench, New Delhi.

OA No. 1188/91

OA No. 954/93

New Delhi, the 9th of November, 1995.

Hon'ble Shri A.V. Haridasan, Vice-Chairman(J)

Hon'ble Shri R.K. Ahooja, Member (A)

Shri Bhika Ram
Junior Engineer (Mech)
SDO (M-II),
Irrigation & Flood,
'C' Wing, IInd Floor,
ISBT Delhi.

Applicant

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(By Advocate : Shri K.P. Dohara).

Versus

OA No. 1188/91

1. Delhi Administration - through
its Chief Secretary,
Old Secretariat,
5 Alipur Road,
Sham Nath Marg, Delhi.
2. The Chief Engineer (I&F),
IV Floor, ISBT Building,
Kashmere Gate,
Delhi-6.
3. The Joint Secretary(I&F)
Delhi Administration,
1st Floor, Room No. 144,
Tis Hazari Courts Building,
Delhi.

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4. Lt. Governor,
Delhi, Raj Niwas,
Delhi.
 5. Shri Jagadvir Singh
Asstt. Engineer
MWS Division
Irrigation and Flood Control Deptt.
Delhi Admn, Delhi.

OA No.954/93

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through its Chief Secretary,
Old Secretariat, 5 Alipur Road,
Sham Nath Marg, Delhi.
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IV Floor, ISBT Building,
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4. Lt. Governor,
Delhi, Raj Niwas, Delhi.
5. Shri Jagadvir Singh,
Asstt. Engineer (Mech.)
Delhi Administration, Delhi.
6. Shri H.D. Singh,
Asstt. Engineer (Mech)
Delhi Administration, Delhi.

ORDER

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

The applicant in this case belongs to the Scheduled caste. He joined the Irrigation and Flood Control Deptt. of the Delhi Administration as a Junior Engineer on 14.12.79 after being sponsored through the Employment Exchange. The selection was

later approved by the Staff Selection Commission. He has since been working in the same capacity and has filed this application on the ground that he has been denied promotion to the next higher post of Asstt. Engineer, to which he was eligible having seven years of service as Junior Engineer, possessing the necessary educational qualification of Diploma in Mechanical Engineering and having the right to be considered in terms of the 40 point Roster as he belongs to the scheduled caste.

2. The case of the applicant is that according to the seniority list circulated by the respondents on 20.8.83 (Annexure-A) he is shown at serial No.22. In 1987 a vacancy became available falling at point no.14 of the Roster and was thus a reserved vacancy. The applicant claims that he was the next and the only available scheduled caste candidate at that point of time. His representation was however not accepted on the ground that this being a single vacancy it could not be treated as 'Reserved'. It is alleged that the respondents filled up the vacancy on ad-hoc basis by promoting one Shri Har Das Singh, a general candidate. Subsequently another vacancy of Asstt. Engineer (Mech) was also filled up on ad-hoc basis by promoting one Shri Jagadveer Singh. The applicant claims that the reserved vacancy at serial No.14 was required to be carried forward for three successive years, as per the relevant rules and therefore the next vacancy at serial no.15 was required to be filled in by an officer belonging to the reserved category.

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3. After OA-1188/91 was admitted, the applicant also filed another OA No.954/93 pertaining to his seniority. In the latter OA, the applicant alleges that though the seniority list notified on 20.8.83 continued in force for over one decade, the respondents, with a view to deny his claim, revised the said seniority list vide Order dated 19.3.93 in which he has been downgraded from serial No.22 to serial No.32. This, it is alleged, has been done so that the applicant does not come within the zone of consideration. The change has also been allegedly made without giving the applicant any notice or an opportunity of representation or hearing thereby violating the Govt. rules as well as the rules of natural justice. Since the issues in OA No.1188/91 regarding his non-promotion against the reserved point in the roster as also OA No.954/93 regarding the downgraded seniority were inter-connected, both the OAs have been taken up together for disposal.

4. The contentions of the applicant have been contested by the official respondents No.1 to 4, as well as by the private respondents no. 5 and 6 Shri Jagadveer Singh and H.D. Singh who were allowed to be impleaded in OA No.1188/91 as they were directly affected parties. The respondents have stated that the reservation did not extend to the case of the first single vacancy which had therefore to be treated as 'unreserved'. Since the applicant was not within the zone of consideration as per the seniority list he was therefore not considered. According to the respondents the said vacancy in any case arose on 27.2.1987 and therefore the case of the applicant in respect of the said vacancy now stands time barred. It has been further explained that

the aforesaid vacancy arose as one Shri A.C. Singhal proceeded on a deputation vacancy as Asstt. Engineer in the Delhi Energy Development Agency w.e.f. 29.12.86 and Shri H.D. Singh who was at serial No.17 of the final seniority list was considered and promoted on ad-hoc basis w.e.f. 27.2.87. Shri Singhal ^{and} came back from deputation on 1.4.89^{and} Shri H.D. Singh who had already been promoted was continued against a vacancy which was in the Direct Recruitment quota. As far as Shri Jagadveer Singh is concerned he was promoted on 2.7.80 against a vacancy which was newly created and for which Recruitment Rules were then awaiting approval of the UPSC. The respondents have also clarified that since 1983, 8 posts became available and as per the Recruitment Rules 75% of these i.e. 6 posts were meant for Departmental promotion and 2 posts for Direct Recruit. The Schedule Castes Candidates were thus entitled to only 15% of the said six posts, i.e. one post which was filled in by the promotion of scheduled caste candidate Shri Jaswant Singh who figured at serial no.10 of the seniority list.

5. In regard to OA of 954/93 no counter-reply has been filed by the respondents 1 to 4. However, respondents no.5 and 6 Shri Jagadveer Singh and Shri H.D. Singh respectively after being impleaded contested the claim of the applicant. As regards ^{the} change of seniority list they have contended that, as the covering letter of the Department with the revised seniority list made it abundantly clear, the revision had been made "after taking into consideration the objections and the order of merit decided by the Staff Selection Board". They have pointed out that the relevant instructions issued by DOPT dt. 13.7.86

stipulate that relevant seniority is determined by the Order of merit in which the candidates are placed on the recommendations of the Selecting Authority, persons appointed as a result of an earlier Selection being senior to those appointed as a result of a subsequent selection. The respondents No.5 and 6 also support the claim of the respondents 1 to 4 that the vacancy which arose in 1987 being single, could not be treated as reserved and the vacancy which arose in 1993, though reserved could not go to the applicant as he was outside the zone of consideration on account of the revised seniority list. The respondents No.5 and 6 have in addition raised another objection to the claim of the applicant to be considered as a scheduled caste candidate, their contention being that he does not belong to the scheduled caste category in relation to the Union Territory of Delhi. According to the said respondents, the applicant belongs to a category declared as scheduled caste in the state of U.P. and not that of Delhi and as per various judgements of the Supreme Court, scheduled caste candidates of a particular state are entitled to avail of the concessions and facilities available in that state only and not in the state to which they migrate.

7. When the case came up for hearing detailed and extensive arguments were advanced by the learned counsel on both sides in regard to the constitutional provisions and the interpretations of various pronouncements of the Supreme Court relating to the reservations for scheduled castes in appointment to the various posts under the Central and State Governments. The statements made in the pleadings regarding the no. and sequences of the vacancies arising in the Department and the points at which these fell the 40 point roster

did not tally in the two versions put-forth by the applicant and the respondents. It became necessary therefore to have a clearer idea of the number of vacancies and the order in which they became available and the learned counsel on both sides agreed to submit written statements clarifying their versions which have been taken on record.

8. The issues which arise for consideration in our view, are the following:

1. Firstly whether the 40 point roster is operative even when the representation of the scheduled castes at 15% is already available in the concerned cadre;
2. Whether the 40 point roster would be effective even in the case of ad-hoc appointments as opposed to regular appointments in the cadre;
3. Whether their being two modes of appointments, namely, promotion and Direct recruitment, the reservation would apply even when promotees are adjusted against direct recruitment quota on a temporary and adhoc basis;
4. Whether an officer belonging to the scheduled castes of UP would be entitled to the benefits of reservation in respect of a post under the Delhi Admn.;

9. Before we proceed to look at the aforementioned four issues we have to be clear about the number of vacancies which became available and to which the applicant could be considered. According to the chart provided by the counsel for the respondents the first vacancy became available in 1987 when Shri A.C. Singhal, Asstt. Engineer was sent on deputation and the resultant vacancy was filled up by promoting Shri H.D. Singh, a general candidate at serial No.17 in the seniority list. The next vacancy arose in 1989 but since Shri Singhal had been repatriated, Shri H.D. Singh was allowed to continue against the new vacancy. This was followed by a vacancy in 1990, due to be filled in by direct recruitment. Shri Jagadveer Singh, J.E. at serial No.15 who had been also sent on deputation as AE in 1987 was repatriated in 1990. Since he was senior to Shri H.D. Singh who had been accommodated in 1989 vacancy, the 1990 vacancy was filled in by appointing Shri Jagadveer Singh. Finally, a vacancy arose in 1993 due to the demise of one Shri R.K. Jain. This has to be filled in by persons available in the prescribed zone of consideration.

10. On the other hand, according to the chart furnished by the counsel for the applicant 9 vacancies were ^{regularly &} filled in between 1983 to 20.11.89 in which only the post at serial no.10 of the roster was filled up by Shri Jaswant Singh, a scheduled caste candidate against a direct recruitment post. However ^{a temporary} vacancy became available on 29.11.86 when Shri A.C. Singhal went away on deputation and in his place Shri H.D. Singh a general candidate was appointed on an adhoc basis on 27.2.87.

On repatriation of Shri Singhal, Shri H.D. Singh was again promoted on adhoc basis on 1.4.89 against a direct recruitment post of A.E. The applicant also states that Shri Jagadveer Singh has been proposed for appointment on a regular basis against a vacancy of April, 1993. The position which emerges thus, apart from the difference in emphasis is that there was one temporary vacancy in 1987 due to deputation of Shri Singhal one vacancy in 1990 and one vacancy in 1993. Of these three vacancies, one was consumed by the repatriation of Shri A.C. Singhal in 1990. The controversy thus revolves around the vacancies of 1987 and 1993.

11. Coming to the first issue mentioned in para-8 above, it is the contention of the respondents that the representation of scheduled caste at 15% has already been achieved and therefore, further reservation of scheduled caste has to be regulated in terms of the Supreme Court judgement in R.K. Sabharwal and Others vs. State of Punjab and others (JT 1995 (2) SC 351). In that case their lordships held that the reservation is to be operated in accordance with roster to be implemented in the form of running account from year to year and this running account is to operate till quota is reached and the roster does not survive after the quota is filled in. Thus once the quota is filled in then automatically replacement can take place appropriately for the relevant category as and when a general candidate or a reserved category candidate retires from service. The learned counsel for the respondent No.5 and 6 stressed that with the appointment of one scheduled caste

Shri Jaswant Singh against one of the six vacancies filled in since 1983, the SC quota had already been completed and the applicant had no claim since the roster could not operate any further. This in our view is a fallacious argument since the percentage is not to be accounted in respect of vacancies which arose in a specified period of time but relates to the reservation in respect of the total cadre. In other words, it is not the percentage of vacancies but the percentage of total posts which is the relevant criteria in terms of afore-cited judgement of Hon'ble Supreme Court. Nothing has been shown to us by the respondents to establish that the required 15% SC quota had been achieved in respect of the total cadre of AEs. Of course, once that is achieved then the requirement would be met by one to one replacement and the 40 point roster would then become irrelevant. We thus held in respect of issue no.1 that the applicant's case does not suffer by the appointment of 15% scheduled caste candidates in the six vacancies which arose after 1983. Their Lordships of Supreme Court have also laid down that the interpretation given by them in Sabharwal case as to the working of the roster shall be operative prospectively and it is thus of no avail to the respondents in this case.

12. The second issue which has come up is whether the 40 point roster operates even in the case of adhoc appointments. It has been contended before us by the respondent that adhoc appointments by their very nature are a casual and temporary affair, where appointments are made on the basis of seniority and without relevance to the criteria of regular appointment. This point is duly answered by the applicant by reference to the Govt. of India instructions laid down in DOP&AR OM No.36011/14/83-Estt.(SCT) dt. 30.4.83 as well as OM of same No. dated 30.9.83 which prescribe that the claims of the officers belonging to S/C and S/T should also be

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duly considered and where the vacancies are ⁱⁿ excess of 45 days, the 40 point roster has to be applied. Thus in this case no distinction could arise on the basis that the appointment was being made on a regular or adhoc basis provided the vacancy was for a duration of a more than 45 days.

13. The third issue concerning the right of the scheduled castes officers in the promotion zone to an adhoc appointment in the Direct recruitment quota when the appointment to the latter is being made on adhoc basis can also be easily dealt with. The right of the S/c officer arises if the adhoc appointment to a direct recruitment basis is being made by promotion. Once a decision is taken to fill the direct recruitment post by promotion and the adhoc appointment is for more than 45 days, then the S/C candidate has a prior claim in terms of the 40 point Roster provided he is within the extended zone of consideration. No distinction therefore can be made as between a promotion or direct recruit quota when the promotion is being made from amongst officers in the feeder cadre.

14. We now come to the more contentious issue regarding the right of a Scheduled Caste Officer who has migrated from another state. The case of the respondents 4 & 5 is that the applicant belongs to the Dhobi caste of UP which has been declared as a scheduled caste in the state of UP under article 341 and 342 of the Constitution. They have argued that the applicant

caste not being a person belonging to a scheduled/ of Delhi can not have the benefit of reservation in posts under the Delhi Admn. In support of their contention they have relied on the judgement of the Hon'ble Supreme Court in the case of " Action Committee on issue of caste certificates to Scheduled Caste and Scheduled Tribes in the State of Maharashtra and another vs. UOI and Another (JT 1994 (4) SC 423). It has been held by the Supreme Court in that case, decided as late as on 18.7.1994, that the given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or UT for which it is specified. In the course of their judgement their Lordships observed as follows:

"Coincidentally it may be that a caste of tribe bearing the same nomenclature is specified in two states but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State for the purpose of this Constitution. This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution

makers as is evident from the choice of language of Articles 341 and 342 of the Constitution."

15. The position is thus clear that the rights and privileges to a Scheduled Caste of one state would not apply to those persons belonging to S/C and S/T category of another State who have migrated to the former State even if those who have migrated belong to a caste of Tribe which bears a similar nomenclature. However, the question which arises in this case is whether the post which is held by the applicant is to be filled in on an All India basis or his recruitment is confined only to these domiciled and residents of Delhi. In the matter of recruitment rules the posts under the Central Government are filled in on all India basis, the benefit of reservation being extended to all the Scheduled Castes and Scheduled Tribe candidates irrespective of the State to which they belong and are notified. The learned counsel for the respondents No. 4 and 5 have contended that the posts under the Irrigation and Flood Control Department of Delhi Admn. are filled in only from the permanent residents of Delhi Union Territory and not on an All India basis. In support it has been pointed out that the post of J.E. is filled in through candidates sponsored by the employment exchanges of Delhi and since only permanent residents of Delhi can be enrolled in the employment exchanges in Delhi, the recruitment is confined only to residents of Delhi.

It is further contended that the question of an all India selection arises only when suitable candidates cannot be sponsored by the employment exchanges in Delhi which is not the case in respect of the applicant. We however do not see our way to agree to this somewhat ingenious argument. In our view it is not how the post is filled in but the provision made for filling it which is relevant. The posts under the Union Govt. are open to all citizens of India. Delhi is a Union Territory and therefore all Departments and posts belong to the Central Government in the ultimate analysis. In other words, the posts of Irrigation and Flood Control, Department in Delhi NCT are to be filled in as if they are under the Govt. of India and there can be no restriction in regard to the domicile or residence if the candidate is a citizen of India. It is a different matter that the concerned authorities would, considering the level of the post, confine their enquiries for candidates only to the local employment exchanges of Delhi. The point is that there is no bar on the Appointing Authority to circulate these posts through means such as Employment News or other Circulars to employment exchanges elsewhere in the country. The posts of similar status/level in Delhi and elsewhere are filled through recruitment of adjoining states of Union Territory of Delhi. We are therefore of the view that the ratio of the Supreme Court judgement in the aforecited case does not apply in the instant case since the circumstances of the case are different.

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16. There is one final question regarding the change of the seniority list of the applicant which he has contested in the OA-954/93. The respondents in this OA have contended that the seniority list had to be revised because of the various representations received as well as in terms of the recommendations of the Staff Selection Commission. The grievance of the applicant is that this revision in the seniority list by which he has been downgraded from serial No.22 to serial No.32 has been done behind his back and without notice to him. This has not been controverted by the respondents. The respondents may have had a good cause for revising of the list but it is an admitted fact that the seniority list published in 1983 was a final seniority list and it remained intact for a period of 10 years before its revision was notified in 1993. If there was any need for revision of seniority list then the respondents could have done so after giving an opportunity to the applicant and other adversely affected persons to show cause as to why such a revision should not be undertaken. Since this was not done, the revision of the seniority list would be against the principles of natural justice and cannot be sustained. We have therefore no hesitation in concluding that the seniority list of 1993 as applicable to the applicant in the present case is void and illegal.

17. In the circumstances and conspectus of the case, we find that the applicant had a right to be considered for the posts reserved for S/C and S/T in the 40 point roster even when appointments were being made on adhoc basis. The posts were admittedly for more than 45 days since the respondents no.4 and 5 continued on adhoc

promotion for a number of years. The vacancy of 1987 being single even though falling on the reserve point in the roster could not be so treated but the reservation had to be carried forward for three consecutive years. The applicant was thus entitled to be considered for the vacancies falling in 1990 and 1993. We therefore direct that the respondents no.1 to ~~4~~² will consider the case of the applicant for promotion against the 1990 and 1993 vacancies in terms of the original seniority list of 1983. In case the applicant is found suitable and qualified for such adhoc promotion, he shall be promoted on adhoc basis but the adhoc promotion will continue till such time the promotion of similar placed general category officers have been continued but not later than the regular appointments to be made in accordance with the rules. The applicant will be entitled to all consequential benefits in terms of the selection for the higher post. The application is accordingly allowed.

(R.K. Ahooja)
 Member (A)

(A.V. Haridasan)
 Vice-Chairman (J)

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Attested
 Placed
 CO. C-3
 14-11-95