

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 26th day of April 2007

Original Application No. 227 of 1998

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Vidyanand, S/o Late Shri Laxmi Prasad, working as Asstt. Panman in the office of General Manager/Government Opium & Alkaloid Works, Ghazipur.

... Applicant

By Adv: Sri S. Ram, Sri C.P. Gupta and Sri A. Kumar

V E R S U S

1. Union of India, through Chief Controller, Government Opium and alkaloid Works, 11/77, Mallmurar, Gwalior (MP).
2. General Manager, Government Opium and Alkaloid Works, Ghazipur.
3. Shri Prithwi Shankar Chaubey
4. Sri Jaipal Prasad
5. Sri Mangla Prasad

Respondents No. 3 to 5 are working as Panman under General Manager, Government Opium and Alkaloid Works, Ghazipur.

... Respondents

By Adv: Sri S. Singh

ORDER

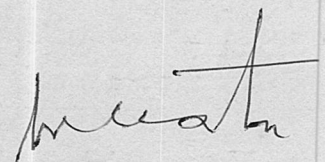
By Hon'ble Mr. P.K. Chatterji, Member (A)

The applicant is aggrieved by the denial of promotion in the post of Panman. Initially appointed on 30.09.1968 as cleaner, he was promoted on 11/2.05.90 to the post of Assistant Panman on adhoc basis in the pay scale of Rs. 975-1540. Although adhoc promotion should not have lasted for more than 6 months, in his case it continued, inspite of several representations, for about 6 years. Finally the respondents vide their order dated 10.01.1996

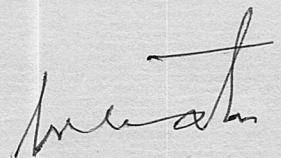
regularized him as Assistant Panman w.e.f. 12.0-5.1990 i.e. from the date he took over as Assistant Panman on adhoc basis.

2. During these 6 years DPC was held for the promotion to the post of Panman. However, he was not considered for such promotion as he was yet to be regularized in the post of Assistant Panman. Incidentally for promotion as Panman the requisite length of service in the grade of Assistant Panman is 2 years.

3. A DPC was held on 30.07.1997 for promotion to the post of Panman after three vacancies arose. When the results of the DPC was out the applicant found that while his juniors namely Sri PC. Chaubey and Sri Jai Pal Ram were promoted, he was not given promotion. Not only that against the third vacancy, which the respondents irregularly declared to be SC vacancy, one Sri Mangla Prasad was promoted, although Sri Prasad was initially appointed only in the year 1990. The applicant made a representation to respondent no. 2 who replied vide letter dated 11.09.1997 that the name of the applicant was considered for the post of Panman, but the DPC did not recommend the name of the applicant. It was further stated that Sri Chaubey and Sri Ram were at Sl. No. 1 and 2 respectively in the select list for unreserved category. The applicant was at Sl. No. 3. As there was no more vacancy for unreserved category, the applicant could not be promoted. It was further stated that the third vacancy was reserved for SC category as per the roster and, therefore, Sri Mangala Prasad being the senior most eligible candidates from SC community was promoted. It is this letter dated 11.09.1997 which has been challenged by the applicant. The grounds for challenging the letter are the following:



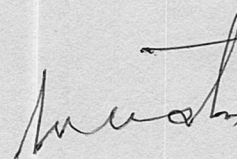
- a. The applicant was for no fault of his, kept on adhoc promotion as Assistant Panman for six years. If he was regularized earlier he would have got his promotion as Panman much earlier. It has also been stated by the applicant that he was already made to work as Panman as there was none so qualified for the job in the Section where he was working.
- b. Sri Chaubey and Sri Ram were working as Fitter Grade I and Electrical-cum-mechanic respectively, both in the pay scale of Rs. 950-1540. Therefore, being senior most of all the candidates, the applicant should not have been superseded by his juniors. The applicant has further claimed that after the DPC selected the candidates for promotion the name of the qualified candidates should have been placed in the select list as per their inter-se-seniority before promotion. He should have been placed at Sl No. 1 of the list. In that case he would have been promoted before Sri Chaubey and Sri Ram.
- c. It has also been stated by the applicant that while experience of only 2 years is prescribed for Assistant Panman for promotion as Panman, for Fitter and electrician cum mechanic the prescribed experience is for 5 years. This would show that as Asstt Panman the applicant was senior to Sri Chaubey and Sri Ram and since all the three candidates were considered suitable for promotion by the DPC, the respondents should not have altered the inter-se-seniority.
- d. It has further been alleged by the applicant that the respondents made a mistake in promoting Sri Mangala Prasad against the third vacancy considering that it was to be reserved for SC category. The DPC was held on 30.07.1997. Already on 2.7.97 the relevant orders for introduction of post based rosters were issued by the DOPT. According to this circular the model roster for promotion for cadre strength of upto 13 posts has the first vacancy for SC only at the fourth place. The cadre strength for Panman is only three. Therefore, under no circumstances the third post should have been reserved for SC category. The learned counsel for the applicant has further stated that by the date DPC was held i.e. 30.07.1997 the post based roster was already introduced and became effective. In para 9 of the circular it was stated that the orders will take effect from the date of their issue.



4. The respondents in their reply have countered all these allegations. Firstly, with regard to the allegation that from 12.5.1990 till 10.11.1996 the respondents did not consider his case for regularisation, the respondents have stated that this was held up because some technical employees who were working on adhoc basis from 1985 had filed OA No. 78/90 before the Tribunal at Allahabad for their promotions. Only after conclusion of this case the petitioner was considered by the DPC and was regularized as Asstt Panman from the date of his joining i.e. 12.05.1990.

5. The respondents have also denied that the applicant being in the higher scale of Assistant Panman amongst all the feeder cadres should have been placed at Sl No. 1 of the select list for Panman. They have stated that as per rules there is no such provision. The difference that is made is with regard to the length of qualifying service in the erstwhile grade. While for Assistant Panman it is two years for the rest of the cadres such as fitter, electrician cum mechanic it is 5 years. Once they become eligible according to this criteria no further differentiation has to be made.

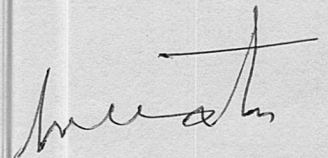
6. Regarding the delay in regularizing the applicant in the post of Assistant Panman the applicant however is not satisfied with the explanation given by the respondents in their counter affidavit. The respondents have stated in the reply that the delay was due to the pendency of OA no. 78/90 which was filed by some technical employees of the workshop for their regularisation. The case of the applicant for regularisation of his adhoc appointment as Assistant Panman could be done only after conclusion of the case, as stated by the respondents. This explanation, however, has not been accepted by the applicant. He says that there was no connection between the two cases and the case of the applicant for regularisation was arbitrarily kept



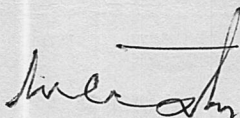
pending for 6 years. In our view it is not required to probe further into the allegation in this matter in the context of the relief sought by the applicant in this OA i.e. for his promotion as Panman on the basis of DPC held on 30.07.1997. In any case the applicant was regularized as Assistant Panman in the year 1996 though with retrospective effect. According to rule it was not possible to allow the applicant to be considered for promotion as Panman before he had completed two years of service as Assistant Panman from the date of regularisation.

7. Having gone thorough the factual matrix of the case, we are of the view that there is no irregularity in the respondents' decision to select Sri Chaubey and Sri Ram in the first two slots of Panman. They were both regularized in the grade of Fitter and Electrician cum Mechanic respective in the year 1989. Considering that the requisite service in the Feeder cadre was 5 years for these two officials they became eligible to be considered for the post of Panman in 1994. From this time no distinction was to be made between them and the applicant only due to the reason that the applicant belonged to a grade carrying higher pay.

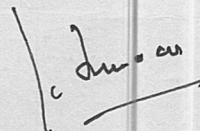
8. We are however, not convinced as to the propriety of the respondents' action in reserving the third slot for SC candidates. The circular regarding post based roster dated 02.07.1997 is supposed to have been within the knowledge of the respondents when the DPC was held on 30.07.1997. For cadre strength of three persons the model roster of upto 13 cadre strength was applicable and in that roster there was no place for SC candidate before the 4th recruitment. The first three vacancies should have been filled up by the officials belonging to unreserved category. The respondents' action in denying the applicant a place in the third vacancy is, therefore, irregular and not in keeping with the instructions in the matter.



9. We are, however, also aware of the consequences of quashing the promotion of Sri Mangla Prasad private respondent No. 5 against the third vacancy of Panman. He has already rendered about 10 years service since his promotion. As it has been pronounced by the Apex Court in more than one occasion a situation which has been created, albeit irregularly, and allowed to exist for a long period so as to create an impression of its legitimacy should not be upset/altered to the detriment of someone who is not responsible for creating such situation. In the case of *Dr. K.U. Nilofer Insaf Vs. State of MP [1991 (4) SCC 279]* the Apex Court has stressed the need to avoid disturbing certain issues which affect the life and career of individuals after the lapse of time or after the interposition of further events as a result of which the individuals has developed a sense of security. We, therefore, do not pass any order to quash the promotion of Sri Mangla Prasad (respondent No. 5). However, we hereby direct that unless it has already been done so by the respondents, the applicant would be given notional promotion from the date on which the 3rd vacancy was filled up by Sri Mangla Prasad, if necessary by creating a 4th vacancy in the post of Panman by upgrading one post of Assistant Panman or otherwise as would be considered suitable by the respondents. The applicant should also be given all consequential benefits of such notional promotion as Panman from the same date. This should be done within three months from the date a copy of this order is available with the respondents. With these orders this OA is disposed of. No cost.



Member (A)



Vice-Chairman

/pc/

