

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT NAINITAL

THIS THE 19TH DAY OF APRIL, 2001

Original Application No.823 of 1998

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V

HON.MAJ.GEN:K.K.SRIVASTAVA, MEMBER(A)

Gursharan Dass, a/a 55 years
Son of Shri Sita Ram, resident
of 23, Dilaram Bazar, Dehradun

.. Applicant

(By Adv: Shri K.C.Sinha)

Versus

1. Union of India through Secretary
Ministry of Environment & Forest
Government of India, Paryavaran Bhawan,
C.G.O.Complex, New Delhi.
2. Director, Forest Survey of India
P.O., I.P.E Kaulagarh Road,
Dehradun-248195
3. Chairman, Union Public Service
Commission, Shahjahanpur Road,
Dhoulpur House, New Delhi.

.. Respondents

(By Adv: Ms.Sadhna Srivastava)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this application u/s 19 of A.T.Act 1985 applicant has
prayed that the order dated 26.6.1998 may be quashed and the order
dated 25.6.1997 may be treated as giving him regular promotion to
the post of Assistant Director instead of adhoc promotion. It has
also been prayed that the petitioner may be given all benefits and
privileges of selected candidates for promotion to the post of
Assistant Director against two vacancies which had arisen on
account of resignation of Sri S.K.Saxena and Shri Tajender Singh.
It has also been prayed ^{That} ^{be given} for a direction to the respondents to
convene a supplementary D.P.C for the post of Assistant Director to
fill up the post according to old rules.

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The facts in short giving rise to this dispute are that applicant Gurusharan Dass was appointed as Junior Technical Assistant under Forest Survey of India on 1.9.1973. he was promoted as Senior Technical Assistant on adhoc basis w.e.f. 8.9.1978. He got regular promotion as Senior Technical Assistant on 4.12.1982. From Senior technical Assistant the next promotional post is of Assistant Director. The government created total 8 posts of Assistant Directors. As stated in the counter there were 8 ~~posts~~ of Assistant Director which were ~~allocated~~ in the following manner.

I.	i) Assistant Director (Forest Inventory/P&M/ Training & Consultancy) (Now known as A.D. (VM))	- 1
	ii) Assistant Director (Programmer)	- 2
	iii) Assistant Director	- 5
		<hr/>
	Total	8
II	i) Deputy Director (Industries)	- 1
	ii) Deputy Director (System Manager)	- 1
		<hr/>
	Total	2

The two posts of Assistant Director (Programmer) were filled by Direct Recruitment. The incumbents were Sri S.K.Saxena and Sri tajender Singh. One existing post was already occupied by Sri M.S.Bist. For remaining five posts D.P.C considered the candidates and recommended five following names for promotion on 22.11.1996.

- 1) Prahlad Singh
- 2) D.P.Singh ^u ~~R.L.Gandhi~~ ^u
- 3) R. L. Gandhi ^u
- 4) Pyara Singh - SC

- 5) P.K.Sarkar -SC

Meanwhile S.K.Saxena and Tajender Singh who were recruited directly resigned from their posts w.e.f. 23.1.1997 and their resignations

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were accepted on 22.1.1997 and 26.2.1997. Against these two vacancies Shri O.P.Gaba and applicant Gurusharan Dass (SC) were promoted on adhoc basis by order dated 25.6.1997(Annexure A7). it may be mentioned at this place that Hon'ble Supreme Court vide its judgement in^u case of 'R.K.Sabarwal Vs.State of Punjab AIR 1995 SC 137 and J.C.Mallik Vs. Union of India and Ors 1978(1)SLR 844 held that:

"reservation of jobs for the backward classes SC/ST/OBC should apply to posts and not to vacancies. The court further held that the roster can operate only till such time as the representations of persons belonging to the reserve category in a cadre reaches the prescribed percentage of reservation. There after the roster cannot operate and vacancies released by retirement, reservation,promotion etc of the persons belonging to the general and reserve category ought to be filled by appointment of persons from respective category so that the percentage of reservation is maintained." In pursuance of the judgement of Hon'ble Supreme court the Department of Personnel and Training issued O.M.No.36012/2/96-Estt(Res) dated 2.7.1997 and prescribed new roster of reservation with reference to posts. in order to demonstrate the difference in the earlier roster which was vacancy based and subsequent roster which is post based may be appreciated by the following chart applicable to the 8 posts.

Roster of Reservation
with reference to vacancy

- 1 SC
- 2 Un reserved
3. Unreserved
4. S.T.
5. Unreserved
6. Unreserved
- 7 Unreserved
- 8 SC

roster of reservation with
reference to posts

- 1 () UR
- 2 () UR
- 3 () UR
- 4 () Unreserved
- 5 () UR
- 6 () UR
- 7 SC
- 8 Unreserved

The D.P.C held its meeting on 28.7.1998 for regular selection against two posts which had fallen vacant on account of resignation of Sri S.K.Saxena and Sri Tajender Singh. The applicant was already appointed on adhoc basis. He was continuing on the post but he was not selected by D.P.C for the reason that the representation of the SC/ST candidates was already complete and roster will not be applicable. The claim of the applicant as a reserve candidate was not accepted. Aggrieved by non selection for promotion to the post of Assistant Director on regular basis applicant has come before this Tribunal.

We have heard Shri K.C.Sinha learned counsel for the applicant and Ms.Sadhna Srivastava learned counsel for the respondents.

Shri K.C.Sinha learned counsel for the applicant has submitted that as vacancy had arisen on 23.1.1997 and 26.2.1997 the ~~✓ of reservation based on rule regulating~~ vacancy should have been applied in the case of applicant and the subsequent amendment which was brought about by O.M. dated 2.7.1997(Annexure 11) should not have been applied. The submission is that applicant was entitled to be promoted on regular basis on the basis of the earlier roster and ~~by applying~~ subsequent roster with reference to post could not be applied. Learned counsel has relied on judgements of Hon'ble Supreme court in case

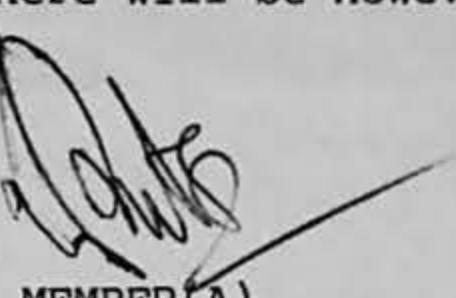
of 'State of Rajasthan Vs. R. Dayal and others 1997 SCC(L&S) 1631 and 'Harish Chand Vs Joint Director of Education and others (2000) (3) E.S.C 2060(All). Learned counsel for the applicant also submitted that the meeting of the DPC ought to have been held by 1.4.1997 and had the DPC held within the time the applicant would not have been deprived of the chance of promotion. For this submission the applicant has placed reliance on judgement of 'Union of India and Others Vs. N.R. Banerjee and Ors 1997(1)SLR 751.

Ms. Sadhna Srivastava learned counsel appearing for the respondents, on the other hand, submitted that the new O.M. dated 2.7.1997 was issued in pursuance of the directions given by the Hon'ble Supreme Court in R.K. Sabarwal's case and J.C. Mallik's case and other subsequent judgements, ^{"wherein"} it has been held that if the representation of the reserve category candidates as prescribed by ^{"is complete"} law, the roster will not apply. It is submitted that out of 8 posts, on the basis of percentage of reservation prescribed only two posts are available for reserve category candidates. Whereas, at present 2 posts are being occupied by reserve candidates hence the roster could not be applied and the applicant could not claim the benefit of ^{"this"} being ^{his} reserve category candidate. A complete chart has been filed as (Annexure 9 to the CA) showing the vacancy position.

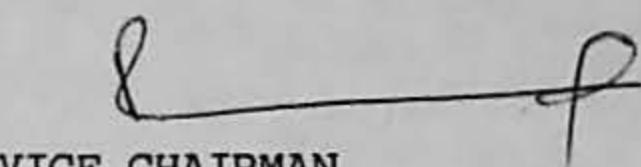
We have carefully considered the submissions made by counsel for the parties. The factual position is not disputed that out of 8 posts 2 posts are being occupied by reserve category candidates of SC on the basis of roster of reservation prepared with reference to vacancies. It is true that if this fact is ignored applicant may have chance to be considered for appointment against the roster point prescribed now. However, the whole object of the policy of reservation is to give adequate representation prescribed by law in a cadre. Hon'ble Supreme Court has specifically held that if the representation has been achieved, the roster will not apply. In the present case, this factual aspect is not disputed. In the

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circumstances, in our opinion applicant is not entitled for the benefit of his being reserve category candidate to the promotional post. The judgements relied on by the learned counsel for the applicant are distinguishable as the view have been taken entirely on different set of facts. The OA has no merit and is accordingly dismissed. There will be however no order as to costs.



MEMBER (A)



VICE CHAIRMAN

April 19, 2001

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