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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 500 of 1987

Abdul Hakim	Applicant.
Versus		
Union of India & others	Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

This is an application received under Section 19 of the Administrative Tribunals Act XIII of 1985. The applicant's case is that right from the date of his appointment as a Clerk with the respondents his work has been satisfactory and he was promoted to the post of Head Clerk on his due turn. 12 vacancies of Assistant Superintendents and 6 vacancies of Office Superintendents were sanctioned by the respondents and out of these 12 vacancies only 9 posts were being maned and the remaining were lying vacant for the last three years. In regard to 6 vacancies of Office Superintendents (OS) only 3 were operated by the respondents and the remaining 3 are also lying vacant since 1983. The respondents have not ~~prepared~~ prepared any seniority list for further promotion of Head Clerks. As a matter of fact, according to the applicant, the seniority list for the original cadre of Office Clerk (OC) also did not exist. He has further said that the post of Assistant Superintendent (AS) is a selection grade post and the selection is done by way of departmental examination and interview. Since no selection was held for a long time and staff were representing as the posts were lying vacant, the respondents held an examination. The applicant appeared and qualified and ultimately vide their letter of 6.10.1986 the results were declared. The applicant made further representations for the promotion to the post of OS as he was already acting as AS since

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since 1.1.1984. He has claimed arrears of salary for the period from 1.1.1984 to 31.1.1985 during which, according to him, he had worked as AS but he has not been allowed the pay of AS. According to him another list for promotion was prepared on 31.1.1985 on the basis of seniority-cum-suitability but it was not published. He has claimed that since the respondents allowed him to hold the post of AS w.e.f. 1.1.1984 he should be entitled for the salary for the post. He has, therefore, prayed that a direction be issued that he is entitled for promotion and promotion to the post of OS w.e.f. 7.10.1986 and the arrears of pay of the post for AS w.e.f. 1.1.1984 and the respondents be directed to fill up the vacant post of ASs and Superintendents.

2. In their reply the respondents have said that the post of AS is a selection post and a Head Clerk is eligible for consideration for the post. The applicant was a Head Clerk and he was allowed to officiate as a stop-gap measure on the post of AS w.e.f. 10.9.1984. The applicant had been regularised as a Head Clerk w.e.f. 1.1.1984. So he became eligible for being considered for regular promotion to the post of AS. Due to a stay order passed by the High Court of Judicature at Allahabad in the case of M.A. Siddiqui v. Union of India, the selection for appointment to the post of AS could only be held in the year 1986, the results of which were declared on 6.10.1986. The petitioner found his position at Sl.No. 2 and he was regularly appointed as AS on 5.2.1987. The post of OS is filled on seniority-cum-suitability basis but a person who is not selected as AS has no claim for appointment to the post of OS. The respondents have further averred that the applicant was promoted as AS for the first time on ad hoc basis on 19.4.1985. The applicant has already been paid his salary for the period he officiated as AS. He was not due for promotion from 1.1.1984.

3. We have heard the learned counsel for the parties. The submissions made on behalf of the applicant were that when the applicant was regularly selected as AS on 6.10.1986 he was already

the post of OS has not been filled regularly on account

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working as CS but the post have not been filled regularly on account of some dispute in regard to reservation of post. In Civil Misc. Writ Petition No.16905 of 1984, M.A. Siddique v. Union of India, the Allahabad High Court vide their order dated 13.12.1984 had issued orders that the respondents were restrained from granting any promotion from amongst Schedule Caste and Schedule Tribe candidates to the post of Superintendent and Assistant Superintendent in excess of the quota of promotions reserved for Scheduled Caste and Scheduled Tribe candidates, as prescribed in the applicable circulars issued by the Railway Board and this was only till the learned counsel for the respondents files the counter affidavit. It was ³¹pleaded on behalf of the applicant that since the restraint³¹ was not against promotions of general candidates the respondents should have promoted the applicant, but they deliberately did not do so, and therefore, the plea of delayed promotion was wholly misleading and misconceived. It was further contended that the applicant was, as a matter of fact, officiating on the post of Superintendent with effect from 6.10.1986 and, therefore, he is entitled to be paid the salary of the post of Superintendent. On behalf of the respondents no special submission was made except that the High Court had granted a stay in the promotions against ~~SC/ST~~ ^{SC/ST} quota and, therefore, the promotions could not be made.

4. A perusal of the case file as well as the submissions made at the Bar will go to indicate that there is no dispute about the fact that the applicant had been

duly selected as AS in October, 1986. The dates when he was put to work on ad hoc measure pending selection are, however, not clear because according to the applicant he was working as AS from 1.1.1984 and on 7.10.1986 he was put to work as OS, while in their averments made by the respondents it is said that he was allowed to officiate, as a stop-gap measure, on the post of AS w.e.f. 10.9.1984 and on having been regularised as a Head Clerk w.e.f. 1.1.1984 he became due for selection to the post of AS. ^{At a later stage they have said that} ~~to which post~~ he was put to work on an ad hoc basis on 19.4.1985 and on regular basis on 5.2.1987. Another point which comes up for consideration is the effect of the interlocutory order given by the Allahabad High Court in Civil Misc. Writ Petition No.16905 of 1984, M.A. Siddique v. Union of India.

5. As far as the orders of the Allahabad High Court are concerned, an extract of which has been given by the applicant in para 7 of his rejoinder affidavit, it is clear that the respondents were restrained from granting any promotion from amongst S.C. & S.T. candidates to the post of Superintendent and AS in excess of the quota of promotions reserved for S.C. & S.T. This situation has been further clarified in a number of judgments given by the Allahabad High Court and by this Tribunal wherein it has been held that reservation is against the posts ⁱⁿ and not against the vacancies and that the roster ceases to operate once the percentage on the total number of post ⁱⁿ of the cadre is according to the reservation permitted for S.C. & S.T., so if the number of post occupied by S.C. & S.T. in a cadre has reached the

percentage of reservation the roster does not apply any more. The detailed position was considered by this Tribunal in Registration (O.A.) No. 647 of 1986, V.P.S. Chauhan v. Union of India, and in SLP filed in the case of Jai Shri Ram & others v. V.P.S. Chauhan & others in Misc. Petition No. 22384-86/87 in C.A. No. 2261/87 the Hon'ble Supreme Court had refused to grant any stay in execution of the order given in V.P.S. Chauhan's case. A copy of this order of the Hon. Supreme Court has been annexed by the applicant with his rejoinder affida-vit. The order reads as follows :-

"No stay. Any promotion made hereafter will be subject to the result of the appeal/writ petition. CMPs for impleading are allowed."

So the orders and judgment given by this Tribunal in V.P.S. Chauhan's case ~~have~~ ^{which are valid subject to above orders can} be applied by the respondents in the applicant's case as well and if promotion has been denied to him on the plea that the posts are reserved in accordance with the roster which is being applied in terms of the orders of reservation ⁱⁿ ~~and~~ promotions, the applicant will be due his promotion if the number of posts occupied by the reserved community candidates already satisfy ^{the} ~~the~~ the percentage of reservation. In ~~each~~ ^{this} case the roster does not apply any more and the promotions have to be made in accordance with the revised seniority to be determined by the respondents in the feeding cadre given in accordance with the directions given by this Tribunal in V.P.S. Chauhan's case.

6. In each of his promotions as a Head Clerk and thereafter as a AS it seems that the applicant was promoted pending selection and was subsequently regularised. There

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are definite rules in regard to fixation of pay, etc. in respect of persons who are promoted on ad hoc basis pending selection. If a person is not reverted after his ad hoc promotion he naturally ^{or earns} ~~comes~~ his increments and ^{or} ~~problem~~ in there should be no problem in fixation of his pay. It is only if he is not granted his regular increments after having been promoted on ad hoc basis, ^{or that or} a situation will arise of any arrears being paid on his selection, in such cases if the officiation has been continuous the incumbent who was promoted ad hoc pending selection cannot be denied regular increments and if the applicant has been made to suffer on this account he will stand to be given the arrears.

3/ 7. As far as promotion to the grade of OS is concerned, it was the applicant's claim that he was officiating as OS from 7.10.1986 but he has not been able to show any orders giving him ad hoc promotion to the post of OS. In the absence of the same it is difficult to accept his claim. However, we leave it to the respondents to check if they have promoted him on ad hoc basis as a OS and if he was so promoted he would be entitled to the officiating pay in the post of OS from the date he was ordered to be promoted on ad hoc basis. The events of the case, however, show that on account of the confusion in the mind of the respondents regarding reservation in vacancies and not posts they might have not issued any orders. However, ^{or with the observations made by us the} ~~now that the~~ position has been clarified and ^{and} suitable action has to be taken by them immediately. If the applicant has been denied a promotion as AS on the grounds that the posts were reserved when as a matter of fact they

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should not have been reserved in terms of the Allahabad High Court's directions in J.C. Mallick's case and our directions in V.P.S. Chauhan's case, the applicant should be considered for regular promotion from the date when he became due on the basis of his seniority and availability of vacancies and he would evidently be entitled to consequential benefits.

8. The application is disposed of in the above terms. We make no order as to costs.

[Signature]
MEMBER (J).

[Signature]
MEMBER (A).

Dated: July 26, 1988.

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