

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 21 of 1999

ALLAHABAD THIS THE 7th DAY OF July JULY 2006

HON'BLE MR. JUSTICE KHEM KARAN, V.C.

HON'BLE MR. A.K. SINGH, MEMBER (A)

K.C. Agrawal, Son of Sri Ram Gopal Agrawal, Aged about 58 years, Sr. Supervisor (SBCO) Head Post Office, Shamli, District Muzaffarnagar.

..Applicant

By Advocate Shri K.P. Srivastava

Versus

1. Union of India through the Secretary (Posts), Ministry of Communication, Govt. of India, New Delhi.
2. The Chief Postmaster General, U.P. Circle, Lucknow.
3. The Postmaster General, Dehradun Region, Dehradun.
4. Sri R.D. Vidyarthi, HSG-I, S.B.C.O. Head Post Office, Barabanki.

.....Respondents

By Advocate Shri Saumitra Singh

O R D E R

Hon'ble Mr. A.K. Singh, Member (A)

This O.A. has been filed by the applicant-K.C. Agrawal (of the address given in the O.A.) against seniority list in the grade of LSG (SBCO) by Respondents in March 1984 as well as in the grade of HSGI (SBCO) dated 24.07.1995, which was duly circulated by Respondent no.2 namely the Chief Post Master General, U.P., Lucknow.

2. Brief facts of the case are that the applicant was initially appointed as L.D.C. in the Savings Bank Control Organization (herein to be referred to as 'SBCO') on

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01.03.1968. He was subsequently promoted to the post of U.D.C. on 20.02.1974 as per memo no.STA/32-X S/10 dated 27.02.1974, issued by Circle Office, Lucknow and was placed at Sl.No.51 in the seniority list in the UDC's cadre.

3. According to the applicant, as he was sufficiently senior in the U.D.C.'s Cadre, he was entitled to be considered for promotion to Lower Selection Grade (herein to be referred to as L.S.G.) in the 20% promotional Scheme. But to his utter dismay the Chief Post Master General promoted employees who were junior to the applicant in the order of seniority. While the applicant was placed at serial 51 in seniority list in the cadre of UDC, persons at serial numbers 60, 65, 80, 84, 93, 101 and 105 were promoted on regular basis vide Chief P.M.G's Memo dated 18.10.1979, ignoring his just claim. As such impugned order of promotion of junior employees in the cadre of Upper Division Clerks, superceding him without any good and sufficient reasons, according to the applicant, was clearly in violation of Article 14 and 16 (1) of the Constitution of India.

4. The applicant further submits that the office of the Chief Post Master General neither maintained any Roster for reserved category nor acted according to the roster point. The promotions were accorded to candidates in the reserved category arbitrarily, over and above the quota prescribed for Scheduled Caste candidates ignoring the just claim of the applicant. Even though the applicant successfully cleared the Departmental Examinations against 1/3rd vacancies for the year 1977-78 and the results were declared by D.G. Posts & Telegraphs vide letter dated 12.05.1979 well in time but the respondent no.2 [namely i.e. the Chief Post Master General, U.P., Lucknow] promoted the applicant only on 18.10.1979 and that, too, on a temporary basis and issued seniority list only in March 1984 i.e. after a lapse of 5 years, in which the applicant was shown junior to those who were junior to him in the cadre of U.D.C. The respondents according to applicant had also acted illegally in promoting these juniors into Higher

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Selection Grade (SBCO) from Lower Selection Grade of SBCO even without deciding seniority list of Lower Selection Grade officials of SBCO and without implementation of the result of 1/3rd quota which was pending in the Circle Office since 12.05.1979.

5. The applicant made several representations to the authorities at every level but his requests to restore justice to him were turned to deaf ears. Being aggrieved by the aforesaid Seniority List drawn by the respondents in March 1984 wherein the applicant was assigned a seniority even below his juniors in the U.D.C.'s' cadre, the applicant filed the present O.A. on the following main grounds: -

- (i) That the applicant has been brought down in the seniority list issued in March, 1984, to a level whereby he became junior to his juniors in the cadre of Upper Division Clerk, which was wholly unjustified.
- (ii) That employees in the reserved categories i.e. SC/ST were promoted much in excess of their quota. This could be possible only because the office of respondent no.2, did not maintain any roster system as prescribed under the Rules.
- (iii) That seniority list in question was deliberately and intentionally issued after a lapse of 5 years.
- (iv) That respondents illegally promoted employees in the reserved categories during the year 1982 & 1983 since no seniority list in the cadre of lower selection grade, had been prepared and notified till that date.
- (v) That the applicant's representations were turned to deaf ears and his grievances were not redressed.
- (vi) That Hon'ble Supreme Court of India in the case of State of Andhra Pradesh Vs. Dr. N. Ramcharan and others and M. Panduranga Raju and others ([C.A.3131-32/85 decided on 03.05.1990 and reported

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in 1990 (2) S.L.J. 349]] has held that the juniors who got accelerated promotion on account of forticious circumstances depending upon their speciality, should not be allowed to march over their seniors for appointment to administrative post.

- (vii) That Hon'ble Supreme Court of India in the case of Union of India Vs. Virpal Singh Chauhan [reported in JT 1995 (7) SC 231] has further held that "Even if a SC/ST candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted. The earlier promotion of the SC/ST candidate in such situation does not confer upon him seniority over general candidate even though the general candidate is promoted later to that category."

6. On the basis of the above, the applicant submits that it was incumbent on the respondents to consider his promotion earlier to his juniors in the UDC's cadre as he had only cleared the departmental examinations against 1/3rd vacancies for the year 1977-78.

7. The applicant has sought the following reliefs in the O.A.

- "(1) To quash the seniority list of Lower Selection Grade [SBCO] dated 24.07.1995 circulated by Respondent no.2 namely the Chief Post Master General, U.P., Lucknow;
- [2] To direct the respondents to consider promotion of the applicant in Higher Selection Grade I [SBCO] w.e.f. the date his juniors Hari Ram and R.D. Vidyarthi were promoted i.e. in 1991, will all consequential benefits;
- [3] To quash Order of promotion dated 23.04.1997 in the cadre of H.S.G.-I (SBCO) on temporary and ad hoc basis with immediate effect;
- [4] To direct respondents to pay the cost of the O.A.
- [5] To order grant of any other relief which may be deemed proper and just under the circumstances of the case."

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8. Respondents, on their part, have opposed the O.A. on the following grounds: -

[i] That Savings Bank Control Organisation exercises check over monetary transactions of Savings Bank branches of Head Post Offices in the Circle. It is manned by clerical (operative) and Supervisory staff, both. The clerical staff is recruited at Circle level and has Circle transfer liability. Clerical Staff consists of Lower Division Clerk and Upper Division Clerk, now designated as Postal Assistant (SBCO) and Supervisory Staff has been designated as Supervisor (LSG) and Senior Supervisor (HSG II) and Chief Supervisor (HSG-I). The applicant was appointed as Lower Division Clerk vide Order dated 03.08.1962. He was also confirmed as Lower Division Clerk w.e.f. 01.03.1968 vide Order dated 13.02.1974. He was promoted to the post of Upper Division Clerk (SBCO) vide Order dated 12.07.1968 and was confirmed in the grade of U.D.C. vide Order dated 27.02.1974. On being declared successful in higher grade examination of 1/3rd quota of vacancies for 1979 and 1980, he was further promoted to the Higher Selection Grade II (SBCO) cadre vide Memo dated 30.11.1983. The applicant had no grievance regarding his position in above promotions at the relevant point of time. The applicant was promoted to Higher Selection Grade I cadre on purely temporary and ad hoc basis vide Order dated 23.04.1957 and he was allotted to Lucknow region in Higher Selection Grade I cadre vide Order dated 23.04.1997 but he refused promotion to Higher Selection Grade I cadre vide his application dated 08.05.1997. On acceptance of refusal of promotion by the applicant, the next person in the select list namely Shri J.A. Siddiqui was, promoted to Higher Selection Grade I cadre on purely temporary and on ad hoc basis vide Memo dated 11.07.1997.

(ii) That as regards the allegation of the applicant that there was no response to his successive representations, respondents submit that a representation dated 18.03.1998 for posting him in Higher Selection Grade I cadre on promotion at SBCO Saharanpur was, infact, received from the applicant in the Circle Office which was duly considered by the authorities and the applicant was duly intimated through Senior Superintendent of Post Offices, Muzaffarnagar that since he had refused promotion to Higher Selection Grade I Cadre offered to him vide Order dated 23.04.1997, his case for posting in Higher Selection Grade I cadre will be considered only on completion of one year from the date of refusal or when a next vacancy arises whichever is later, as provided under the Rules.

(iii) That respondents also reject the averment of the applicant on the point that due to inclusion of six Scheduled Caste employees who were junior to him in the cadre of U.D.C., his case could not be considered for promotion. According to them, six Junior Scheduled Caste employees in the UDC's cadre were included in the list of promotion as per 40 point Roster presented for lower selection grade cadre in accordance with rules laid down in this regard.



(iv) That the promotion given to S.C. candidates who were junior to applicant due to operation of 40-point roster prescribed for Lower Selection Grade Cadre is, therefore, in accordance with the prescribed rules. Moreover, the promotions given to SC/ST candidates was as per reservation policy enshrined under Article 16, sub article 4 (A) & 4 (B) of the Constitution of India. The Policy operates in accordance with a Roster register in order to eliminate any chances of injustice to the candidate from the reserved category.

(v) That, in the Circle Gradation list of HSG Grade II in SBCO date of continuous service in the grade is clearly mentioned and there is no ambiguity in the matter. Further promotions were also made in accordance with the position of officials in Circle gradation list and hence there is nothing wrong in issuing the Order dated 24.04.1984.

(vi) That it is open to an official to represent against the irregularity in Circle gradation list within one year. No representation of the applicant on the subject is however pending with them.

(vii) That the case of applicant for promotion to Higher Selection grade I was in fact, considered in his turn, and as per his seniority in H.S.G. II cadre.

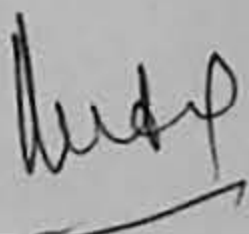
(viii) That the seniority of Junior Scheduled Caste candidates were fixed in Circle gradation list properly and as per roster prescribed for Lower Selection Grade officials in SBCO.

(ix) That applicant has, no where, mentioned in the O.A. whether he had ever represented against his position in the Circle Gradation List within the prescribed period of one year.

(x) Last of all, respondents submit that the case of the applicant for promotion to H.S.G.-I cadre was considered in his turn and he was duly promoted vide Order dated 23.04.1997, but he refused promotion to H.S.G.-I cadre, as per his application dated 08.05.1997. Hence, the question of promoting the applicant w.e.f. the date when the juniors were promoted to H.S.G.-I cadre does not arise at all.

9. On the basis of the above, respondents submit that O.A. in question is devoid of any merit and pray for its dismissal.

10. Opportunity for personal hearing was extended to applicant as well as respondents on 04.05.2006. Both sides were heard on the date. The applicant was represented by Shri K.P. Srivastava, Advocate. The respondents were



represented by Shri Saumitra Singh, Senior Standing Counsel to Central Government.

11. We have given our anxious consideration to the submissions made across the bar on behalf of the applicant as well as respondents and have also perused the records. On appraisal of the relative merits of arguments advanced and the evidences adduced on behalf of both sides, we find that none of the arguments advanced by the applicant in the O.A. as well as in his oral submissions, stand the test of judicial scrutiny.

12. The first, as well as the main argument, advanced by the applicant in support of his case is that the applicant was brought down in the seniority/gradation list of SBCO Staff in U.P. Circle as on 01.03.1984, issued by respondent no.2 i.e. Chief Post Master General, U.P., Lucknow due to non-maintenance and consequently non-application of roster system as in case of SC/ST employees in the grade of UDC as prescribed under the Rules.

13. The second argument advanced by the applicant is that respondents illegally promoted SC/ST employees in the reserved categories during the year 1982 and 1983.

14. The above arguments of the applicant cannot be sustained in law, in view of the following: -

- (i) In the first place, the objections raised by the applicant are in the nature of empty allegations. Applicant has not corroborated his say by producing any documentary or another other reliable evidence in support of his say.
- (ii) In the second place, it is an established principle of legal jurisprudence both civil and criminal and is also a settled law that the onus of proving an allegation lies on the person who alleges the same. The applicant has not cited any evidence to substantiate his allegation that roster system as prescribed under the rules was not followed by respondent no.2 in case of SC/ST

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employees, while considering their cases for promotion or while determining their seniority in the relevant grade.

- (iii) In the third place, the arguments of the applicant have been denied by the respondents in para 11 of their counter affidavit dated 02.01.1999 in the following words: -

"... .. It is not admitted that the claim of the petitioner was not considered due to inclusion of six scheduled caste junior Upper Division Clerk official to the petitioner. The six junior officials were included in the list of promotion as per 40-point roster presented for Lower Selection grade cadre. It is not tenable that the petitioner could not get his promotion to lower selection grade Cadre due to inclusion of these six junior officials in the list of promotion to Lower Selection Grade Cadre."

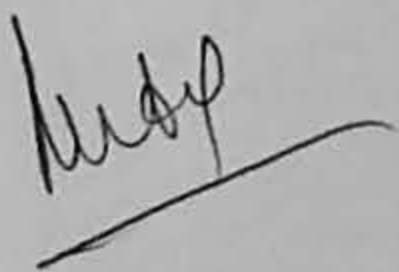
In view of the averments of the respondents, on the basis of a sworn counter affidavit, the allegation of non-application of roster system while considering the promotion of SC/ST employees by the respondents pales into insignificance.

15. The second argument, advanced by the applicant that the respondents promoted Scheduled Caste candidates in excess of the quota reserved for them also does not hold water, in view of the following reasons: -

- "(i) In the first place, this averment of the applicant is not supported by any specific convincing or reliable evidence.
- (ii) In the second place, Respondents have repudiated and rejected this allegation as per para 14 of their counter affidavit dated 02.01.1999 wherein they clearly state the facts as under: -

"... .. It is submitted that the assertion of the petitioner that excess S.C. candidates were promoted to Lower Selection grade is not tenable. The petitioner was promoted against 1/3rd quota of vacancies for 1979-80 vide order dated 24.4.1984. Appropriate number of S.C. candidates were promoted as per 40 points Roster Register prescribed for Lower Selection Grade Cadre in S.B.C.O.

Thus, promotion given to S.C. candidates who were Junior to the applicant in seniority as per reservation policy of the Union of India in respect of SC and SC



candidates which is implemented through the system of roster register."

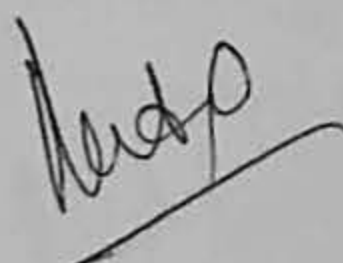
16. Article 16 (4 A) of the Constitution allows the State to follow a separate policy of reservation for SC/ST employees who were not properly represented in the services of the State. As regards the third objection of the applicant relating to promotion of S.C. candidate on the basis of "superfluous and incorrect seniority drawn by the Office of the C.P.M.G.". Respondents submit that;

- (i) In the first place, the applicant has not made any such reference in the O.A. whether he had raised any such objection when Circle gradation list under reference was circulated.

(Para 17 of the Counter Affidavit dated 02.01.1999)

- (ii) In the second place, the Circle gradation list was duly corrected upto 30.06.1984 and was issued in that form accordingly. The promotion of SC junior officials was not based merely on the basis of the aforesaid gradation list but as per reservation policy of the Government, as discussed above.

17. Respondents also submit that in all there were 24 permanent posts and 63 temporary posts of Lower Selection grade cadre in SBCO Organisation. The applicant's case was considered for promotion and he was duly promoted to Higher Selection grade II (SBCO) in his turn vide Order/Memo dated 30.11.1983. He was also promoted to Higher Selection grade I cadre on purely temporary and ad hoc basis vide Order dated 23.04.1997 and was allotted to Lucknow region. He was duly posted to Sitapur Head Post Office in Lucknow region in Higher Selection grade I cadre vide the aforesaid Order but he refused his promotion to Higher Selection Grade I as per his application dated 08.05.1997. Respondents have also annexed a copy of the said application of the applicant as annexure CA-2 of their counter affidavit dated 02.01.1999, which is on record. In his application dated 08.05.1997, the applicant has made a request for acceptance of refusal of promotion by him to



the above grade to C.P.M.G., Lucknow in the following words: -

".....Sir,

Respectfully I beg to state that I have been promoted as (Chief Supervisor) HSG.I SBCO Cadre vide your memo cited in the reference.

In this respect I have to state that due to regular illness of my wife, marriage of my daughter's, education of children and other my family circumstances, I am unable to move from Shamli at present.

Hence, I forego my promotion in HSG I Cadre at present.

Your's faithfully

Sd.

K.C. Agarwal
Senior Supervisor
SBCO Shamli
HO."

Dated 08.05.97

18. Respondents also reject the allegation of the applicant, that he had submitted many representations in regard to the aforesaid Gradation list dated 01.03.1984, wherein he had listed out his grievances and that there was no response to the same from the respondents. In para 5 of their counter affidavit, respondents submit that a representation dated 18.03.1998 was received from the applicant for posting in Higher Selection grade I cadre, on promotion at SBCO Saharanpur, from the applicant was received in the Circle Office which was duly considered by the authorities. Applicant was duly informed through the Senior Superintendent of Post Offices, Muzaffarnagar "that since he had refused the promotion to Higher Selection grade I cadre offered to him vide order dated 23.04.1997, his case for posting in Higher Selection Grade I Cadre would be considered on completion of one year from the date of refusal or a next vacancy arises, whichever is later, as provided under Rules." This communication from the respondents to applicant is dated 03.04.1998 and is annexed by them as per annexure CA-3, of their counter affidavit and is available on record.

19. Respondents also submit that in all 340 employees from UDC's cadre were promoted to Lower Selection grade vide order dated 18.10.1979 issued by respondent no.2 namely

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C.P.M.G. Lucknow. The six junior officials belonging to S.C. category were included in the list on application of 40 point roster presented for Lower Selection grade cadre, in accordance with the reservation policy of the Government as enshrined sub article 4 A of Article 16 of the Constitution of India. Hence, there is no illegality involved in the promotion of these employees in the reserved category to the above-mentioned post.

20. In para-19 of their counter affidavit, respondents further clarify that "In the circle gradation list of H.S.G. Grade II in SBCO, date of continuous service in the grade has been shown and no incorrect position exists as has been alleged by the petitioner. Further promotions were also made according to position of officials in Circle gradation list, as such, there is nothing wrong in issuing the order dated 24.04.1984."

21. Respondents have further clarified in paragraph no.21 of their counter affidavit that Circle Office Order dated 07.04.1986 relates to confirmation of officials in the Lower Selection grade in SBCO and has no relevance or connection with the UDC's cadre. The name of officials in the aforesaid order dated 4.7.1986 are of Lower Selection grade officials. This order has no concern with employees in UDC's cadre. The employees mentioned in paragraph no.4(15) of the O.A. are in the Lower Selection grade and are not UDCs. They were duly promoted on the basis of roster of reservation applicable to them, as per policy of reservation adopted by the Government for employees in the S.C. category.

22. On the basis of the averments of the respondents, the O.A. does not also appear to be maintainable for the following additional reasons: -

- (i) It was open to the applicant to represent against irregularity, if any, noticed by him in the Circle gradation list within one year, as prescribed under the Rules. Respondents submit that no representation of the

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petitioner on the subject is pending with them as on the date of filing their counter affidavit i.e. 02.01.1999.

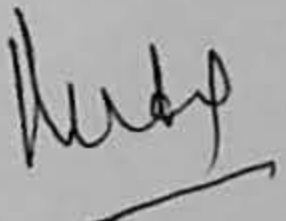
- (ii) The case of the applicant for promotion to all grades including Higher Selection grade was duly considered in his turn. The seniority of Junior Scheduled Caste candidates were fixed in Circle gradation list of Lower Selection grade properly as per roster prescribed for LSG officials in SBCO.

23. As averred by the respondents in paragraph no.22 of their counter affidavit, there is no specific mention by the applicant in the O.A. that he had represented against any irregularity noticed by him in the Circle gradation list within the prescribed period of one year. If he had not done so, he cannot now raise a fresh point in this regard before us at this stage, as this Tribunal cannot substitute its decision for that of authority unless the same was arbitrary or hit by any malafide or was not in accordance with the provisions of law.

24. Respondents have also contradicted the say of the applicant regarding any excess promotion of S.C. candidates in HSG-I cadre of SBCO. As per roster register 26 points were filled in from general candidates and only 5 candidates were promoted from amongst SC employees against their quota of reservation and are working in the said cadre, which is clearly in accordance with law.

25. In the case of Jagdish Lal and others Vs. State of Haryana and others [Reported in AIR 1997 SC 2366], the Apex Court has held as under: -

"On promotion to the higher cadre, the reserved candidate steals a march over general candidates and becomes a member of the service in the higher cadre or grade earlier to the general candidate. Continuous length of service gives him the seniority. Therefore, seniority cannot get re opened, after the general candidate is promoted to the higher cadre/grade, though he was erstwhile senior in the feeder cadre/grade. Neither in Ajit Singh's case {1996 AIR SCW

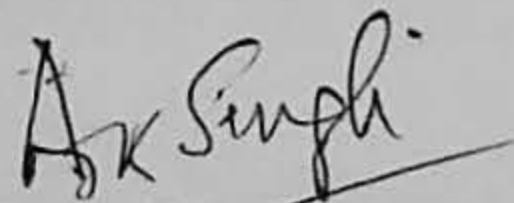


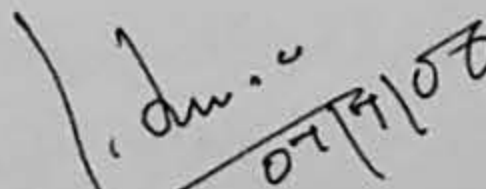
1196} nor in Virpal Singh Chauhan's case {1995 AIR SCW 4309}, the Supreme Court did intend to depart from the normal Service Jurisprudence of continuous officiation in a post/cadre or intended to lay down any separate rule of interpretation in determining inter-se seniority of the reserved candidates and the general candidates and their fusion into common seniority in the higher echelons yielding placement of seniority to the general candidates over the erstwhile Junior reserved candidates. Therefore, it is simplistic euphoria to think that at all events, the earlier promotions had put back in the vanguard or the erstwhile seniority position in the feeder cadre/grade."

26. As per principles enunciated by the Apex Court in the above case, the seniority gained to SC/ST candidates over a general candidate due to his accelerated promotion does not in all events get wiped out on promotion of general candidates later on.

28. In the case of Ashok Kumar Gupta and another Vs. State of U.P. and others [1997(5) SCC 201], the Apex Court has further held that protective discrimination followed in regard to promotion of SC/ST is a part of the constitutional scheme for social and economic justice.

29. On the basis of the above, we come to the conclusion that none of the arguments advanced by the applicant bear the test of judicial scrutiny. The O.A. in question consequently merits dismissal, being devoid of merits. Accordingly, we dismiss the same.


Member (A)


Vice Chairman

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