

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application NO.883 of 1999

ALLAHABAD THIS THE 22nd DAY OF
May 2006.

**HON'BLE MR. JUSTICE KHEM KARAN, V.C.
HON'BLE MR. P.K.CHATTERJI, A.M**

Ram Swaroop s/o late Maiku Lal
R/o Q. NO.40/3, Juhi Lal Colony,
Kanpur.....Applicant.

(By Advocate : Sri R.K. Shukla)

Versus.

1. Union of India through the Secretary Ministry of Defence, Govt. of India, New Delhi.
2. The Director General Quality Assurance, Deptt. Of Defence Production (DGQA/Adm-79B), Govt. of India, Ministry of Defence, DHQ PO New Delhi 110 011.
3. The Controller, Controllerate of Quality Assurance (GS), Govt. of India, Ministry of Defence, Post Box NO. 127, Kanpur-208004.
4. Shri A.K. Gupta, Sr. Store Keeper, C/o The Controller, Controllerate of Quality Assurance (GS), Govt, of India, Ministry of Defence, Post Box. 127, Kanpur 208004.

.....Respondents.

(By Advocate : Sri A Mohiley)

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O R D E R**By HON'BLE MR. P.K.CHATTERJI, A.M.**

In this O.A. No.883/99, the applicant has challenged the action of the respondents in not considering the seniority list of Store Keeper for the purpose of applicant's eligibility for promotion to the post of Senior Store Keeper and for not filling up of the post reserved for Scheduled Caste candidates arbitrarily while the applicant a Scheduled Caste candidate, was available for filling up of the post.

2. According to the facts narrated by the applicant, he is presently employed as Store Keeper in the scale of Rs.3050-4590/- in the office of Controller of Quality Assurance, Kanpur w.e.f. 25.8.1988. After he was selected on merit by Board of Selection, his name was at Sl. NO.4 in the Common Seniority list prepared by the respondents. As per provisions of SRO No. 230 of 1984 which lays down the Recruitment Rules of the Department, Store Keepers would become eligible to be promoted as Senior Store Keeper in the scale of Rs.4000-6000 on completion of 8 years of service subject to fitness as assessed by D.P.C. It has also been mentioned in the S.R.O that qualification regarding experience is relaxable by the Competent Authority for the reasons to be recorded in writing in the case of the candidate belonging to the Scheduled Castes or Scheduled Tribes community, if in the opinion of Competent Authority sufficient numbers of



candidate from his communities possessing requisite experiences, are not available to fill up the vacancies.

3. In the year 1997, two posts of Senior Store Keepers fell vacant due to retirement. Department Promotion Committee was constituted to fill up the posts. Out of two vacancies, one was reserved for SC/ST candidates, as per the roster prevalent at that time. An agenda for D.P.C was prepared and sent to the D.P.C for consideration. It has been alleged by the applicant that the D.P.C instead of filling up of two posts earmarked for O.C. and S.C. candidates (one each) arbitrarily empanelled two candidates from General category only and left the vacancy reserved for S.C. unfilled. It has also been alleged by the applicant that in the year 1996 also vacancy arose due to transfer on promotion, that vacancy was also earmarked for S.C. category but the Competent Authority did not constitute any D.P.C. and post was not filled up. While constituting the D.P.C. for 1997 that post should also be taken into account. Not only that it was not done, even the vacancy for S.C. category which arose in 1997 also remained unfilled.

4. Thereafter, as alleged by the applicant, respondent No.1 to 3 arbitrarily promoted one Sri A.K. Gupta (respondent NO.4) for a period of 3 months on adhoc basis against the post which thus remained unfilled and thereafter regularised this promotion, although there was no vacancy

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for General candidates. Against this alleged illegal actions, the applicant submitted his representation on 30.3.1998 through proper channel to the Chairman National Commission for SC/ST New Delhi with copies to the respondents. However, nothing came out of it. The applicant has sought the following relief in this O.A.

- “(a) To issue a mandamus, order or directions to the respondents Nos. 1 to 3 to promote the applicant against the vacancy occurred in the year 1996 due to permanent transfer to Shri Bhim Singh, Sr. Store Keeper.
- (b) To issue a writ or direction in the nature of certiorari quashing the order of respondents No.3 for promotion of adhoc promotion and further regularisation of shri A.K.Gupta (Respondents No.4) on the post of Sr. Store Keeper.
- (c) To issue any other direction as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- (d) To award costs to the applicant”.

5. The points which have been made by the applicant in the O.A. may be sum up for following:-

- (a) The post was earmarked for S.C., therefore, he being the senior-most of the S.C candidates, eligible for consideration should have been selected.

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(b) The Agenda which was prepared by the Senior Administrative Officer clearly stated as follows:

"He Ram Swaroop was appointed as Store Keeper on 25.8.89. He complete 8 years of service on 24.8.97. His name may be considered and empanelled. He may be promoted on completion of 8 years service i.e. 25.8.1997".

(c) The respondents have no authority to select a candidate from General category on Adhoc Basis to the post which was reserved for S.C. category.

5. Counter affidavit was submitted by the respondents wherein the allegations made by the applicant have been denied. Firstly, it has been pointed out by the respondents that Department Promotion Committee was duly constituted, have done their job as per Rules prescribed and therefore, there is no question for reviewing the decision of the Department Promotion Committee. They have also refuted the allegation of the applicant that the vacancy which arose in the year 1996 for the post of Senior Store Keeper was not filled up. It was not that the D.P.C has to be held as soon as a vacancy arises. After the D.P.C is formed, it takes into account the vacancy, which has arisen and which are likely to arise within a short period. The D.P.C which was constituted in 1997 took into account the vacancy according to the Rules prescribed. The point that one post was to be reserved for S.C. has also been countered by the respondents by saying that as per policy of the reservation laid down by the Apex Court, the Department issued instructions that the existing 200 point, 40 point and 120



point vacancy based rosters shall be replaced by the Post Based Roster and these orders should come into effect from 2nd July 1997. According to the new Post Based Roster thus introduced none of the two posts for Senior Store Keeper could be reserved for S.C. candidates. Incidentally, it has been stated by the respondents that the strength of cadre being only 2, a 13 point Post Based Roster would be applicable for appointment to the post of Senior Store Keeper, as per the relevant orders, and according to this roster reservation for SC. Category could not be made before the sixth vacancy.

6. Respondents have defended their action in giving promotion to Sri A.K. Gupta on adhoc basis by saying that after 2nd July 1997 and on the date of giving adhoc promotion to Sri A.K. Gupta, there was no reserved post for S.C. category as far as the Senior Store Keeper was concerned. The respondents further referred to the decision of D.P.C. which was held on 28.7.1997 to affirm that the case of the applicant was considered by the D.P.C. However, the D.P.C did not find him eligible for promotion because as on 1st July, the applicant did not complete 8 years of experience as Store Keeper. In this connection, the respondents have cited the relevant orders from the Ministry of Personnel and Public Grievance No.22011/7/86-Estt. (D) dated 19.7.1989. According to this order the date of eligibility on the basis of experience should be counted:

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- (i) 1st July of the year for candidates.
Where C.R. is written calendar yearwise.
- (ii) 1st Oct. of year for candidates.
Where C.R. is written financial year wise.

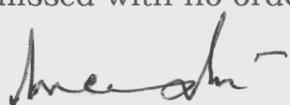
According to this criterion, the applicant had still not completed 8 years of experience as far as the D.P.C constituted for the year 1997 is concerned. It has been pleaded by the learned counsel for the applicant during hearing of the case that the recruitment Rules is very clear that the Competent Authority could relax this eligibility criterion for S.C/ST candidates whenever adequate number of eligible reserve category candidates are not available. However, he has not been able to say who is the Competent Authority and whether in the case of the applicant, the Competent Authority had relaxed this condition by applying their mind.

7. We have heard the point made by the learned counsel for the applicant that on the basis of Delhi Jal Board Vs. Mahendra Singh, (JT) 2000 Volume 10 page 158, the right to be considered by the D.P.C. is fundamental right, if one is eligible and within the zone of consideration. In this case, it is noticed that the applicant had still not attained the eligibility as per the relevant orders of the Ministry of Personnel and Public Grievance, according to which, he should have completed 8 years of experience on 1st July

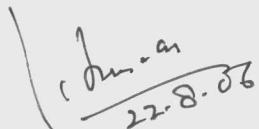
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1997. It is further noticed that D.P.C considered his case but did not find him eligible on the basis of guidelines laid down by the concerned Ministry. However, we have been informed by the learned counsel for both the parties that subsequently the applicant got his promotion and is currently working in the higher grade.

8. After hearing both sides extensively and then considering the abovementioned points, which emerged from the pleadings and hearing, we are of the view that there is not merit in this O.A. which could not be allowed so it is dismissed with no order as to costs.



Member-A


22.8.86

Vice-Chairman

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