

(13)

10
CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 11 OF 1996 & 556/98
Cuttack, this the 22nd day of May, 2000

In both the O.As.

Anil Kumar Dey Applicant

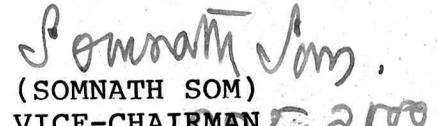
Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No


(J.S.DHALIWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
dd.5.2.00

14

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS.11/96 & 556/98
Cuttack, this the 22nd day of May, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI J.S.DHALIWAL, MEMBER(JUDICIAL)

.....

In both the OAs:

Anil Kumar Dey, aged about 39 years, son of Laxman Chandra Dey, village Januganj, P.O-Madhab Nagar, Dist.Bhadrak at present working as Stenographer, Grade III in the office of the Asst. Commissioner of Income Tax, Circle-I, Bhubaneswar-4, Dist.Khurda ...Applicant

Vrs.

In OA No.11/96

1. Union of India, represented by the Chairman, Central Board of Direct Taxes, Department of Revenue, Government of India, New Delhi.
2. Chief Commissioner of Income-tax, Central Revenue Building, Patna, Dist.Patna (BIHAR).
3. Commissioner of Income Tax, Orissa, At-15 Forest Park, Bhubaneswar-751 001, Dist.Khurda.
4. M.Gandha
5. B.D.Samantray
6. J.Sathua
7. R.C.Dash
8. Harihar Sahoo
9. S.N.Sahu
10. N.N.Nayak

S Jm
Respondent nos.4 to 10 are Inspectors of Income-tax, C/o Commissioner of Income Tax, Orissa, At-15 Forest Park, Bhubaneswar-1, Dist-Khurda ... Respondents

In OA No. 556/98

1. Union of India, represented by the Chairman, Central Board of Direct Taxes, Department of Revenue, Government of India, New Delhi.
2. Chief Commissioner of Income Tax, Central Revenue Building, Patna, Dist.Patna(Bihar).
3. Commissioner of Income Tax, Orissa, C.R.Building, Rajaswa Vihar, Bhubaneswar-4, Dist.Khurda.

4. Susanta Kumar Mishra, Grade-II Stenographer, working in the office of Commissioner of Income Tax, Appeal-II, 4th Floor, Ib., CR Building, Rajaswa Vihar, Bhubaneswar-4, Dist.Khurda.

5. M.Srinivas Rao, Grade-II Stenographer, working in the office of Income TAX, Bhubaneswar Circle-I, 3rd Floor, CR Building, Rajaswa Vihar, Bhubaneswar-4, Dist.Khurda

.....

Respondents

Advocates for applicant-M/s R.B.Mohapatra
N.R.Routray
M.M.Satapathy

Advocate for respondnets-Mr.U.B.Mohapatra
ACGSC. (in OA 11/96)
Mr.S.B.Jena,ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

(in OA 556/98)

The petitioner in these two Applications has asked for promotiononto the rank of Income Tax Inspector in OA OA .11 of 1996 and to the post of Stenographer Grade-II in OA No.556 of 1998 on the basis of almost same facts. Even though the cases have been heard separately, one order will cover both these cases.

2. The applicant's case is that he was originally appointed as LDC in 1982. He was later on selected by Staff Selection Commission for appointment to the post of Stenographer Grade-III. He was confirmed in the post of Stenographer Grade-III on 11.12.1990. The applicant passed the Departmental Examination for Income Tax Inspectors (ITI) which commenced on 25.6.1992 and was over on 30.7.1992 the result of which was declared on 25/27.1.1993. He thus became qualified to be appointed as ITI. On 2.4.1991 the applicant met with an accident and ultimately became an orthopaedically handicapped person. In the order dated 23.2.1995 at Annexure-A/6 he was declared as orthopaedically handicapped and was also given a conveyance allowance at the rate of 5% of his basic pay subject to a maximum of Rs.100/- per month with effect from 18.2.1995.. The applicant has stated that he filed several

B

representations before the authorities for consideration of his case for promotion to the rank of ITI as an orthopaedically handicapped person but without any result. One such representation dated 31.7.1995 is at Annexure-A/9 in OA No.556 of 1998. He had approached the Tribunal earlier in OA No. 484 of 1995 which was disposed of in order dated 25.8.1995 with a direction to the departmental authorities that his representation dated 31.7.1995 should be examined and a suitable decision taken and communicated to him before the next round of promotion to the rank of ITI is finalised and ordered. His representation was accordingly rejected on 24.11.1995 (Annexure-A/11 of OA No.556/98) on the ground that at that time there was no vacancy in the grade of Inspector reserved for physically handicapped quota. It was stated that his case would be considered at appropriate time when his turn comes. The applicant has stated that because of pendency of OA No. 484 of 1995 his case was also not considered for promotion to the post of Stenographer Grade-II under the quota reserved for physically handicapped and respondent nos. 4 and 5 were promoted to the post of Stenographer Grade II on 17.7.1997 and 13.3.1998. The applicant has stated that respondent nos.4 and 5 are against serial nos. 33 and 34 of the gradation list of Stenographers (OG) as on 1.1.1990 and in this gradation list the petitioner's position is at serial no.38. In both these applications the petitioner has referred to the various circulars issued by Government from time to time regarding benefits given to physically handicapped persons in the matter of appointment and promotion. He has further stated that he has been denied these benefits. He has also stated that the departmental authorities have not maintained roster point for physically handicapped correctly. In the context

✓ Jom.

of the above facts, in OA No.556 of 1998 he has prayed for a direction to the departmental respondents to reconsider his case for promotion to the post of Stenographer Grade-II under the reserved castegory. In OA No.11 of 1996 on the basis of same facts he has prayed that the departmental respondents should be directed to consider his case for promotion to the rank of ITI against the reserved quota meant for physically handicapped.

3. The departmental respondents in their counter in OA No.556 of 1998 in which the applicant has claimed for promotion to the post of StenographerGrade-II have stated that originally there was no reservation quota for physically handicapped persons for promotion. This was introduced in Department of Personnel & Training's circular dated 20.11.1989 and has been duly implemented by theDepartment. According to the Department of Personnel & Training's Office Memorandum dated 29.2.1996 reservation has to be implemented in three blocks, first block from points 1 to 33, second block from points 34 to 67, and third block from points 68 to 100. The departmental respondents have stated that accordingly they have observed the roster point. They have furtherstated that in accordance with the DOPT's circular dated 18.2.1997 at Annexure-R/2 of the counter in this OA, out of 100 roster points, point nos. 33, 67 and 100 will be reserved for physically handicapped persons. In this circular it is also provided that these three roster points will be meant for three types of physically handicapped persons; visually impaired, hearing impaired, and orthopaedically handicapped. The first roster point no.33 can be filled up with a person with any kind of disability depending upon availability in the feeder grade. But it must

W.M.

be ensured that there is proper rotation of reservation amongst the three different categories of disabilities. The departmental respondents have stated that as per paragraph 1 of this OM a separate register was maintained for Stenographer Grade-II and upto the end of 1998, 32 promotions were made. The departmental respondents have furtherstated that the applicant has got promotion after introduction of the reservation policy of promotion in order dated 20.11.1989. They have furtherstated that the circular relied upon by the applicant which is at Annexure-A/7 of this OA has no relevance because this was issued on 1.4.1986 prior to introduction of the reservation for physically handicapped persons in promotional post and thereafter the applicant has been given promotion to the post of Stenographer Grade-II in order dated 24.9.1999. On the above grounds the departmental respondents have opposed the prayer of the aplicant so far as his promotion to the post of Stenographer Grade II under reserved quota is concerned.

J.Som.

4. As regards the claim of the applicant for promotion to the post of Income Tax Inspector, the departmental respondents have mentioned in their counter that the applicant was not a physically handicapped person initially at the time of his direct recruitment but he became subsequently handicapped. They have stated that there is no vacancy reserved for physically handicapped person against promotion quota in the grade of ITI. But the Central Board of Direct Taxes in their letter dated 24.4.1992 (Annexure-R/1) clarified that there is no separate roster for physically handicapped as in the case of Scheduled Castes and Scheduled Tribes and the appointing

16 authority has to ensure that one reservation for physically handicapped person is given effect to at any time in the block of 33. The departmental respondents have stated that since one physically handicapped person has been promoted in that block, no further reservation is available for promotion of any other physically handicapped person in the grade of Income Tax Inspector. The departmental respondents have stated that a perusal of the roster point register for physically handicapped for the grade of Income Tax Inspector would show that the second block is now in operation and one physically handicapped person has been promoted in that block. They have also stated that twelve officers senior to the applicant are waiting for promotion to the post of Income Tax Inspector and the applicant's case cannot be considered. In their counter in OA No.556 of 1998 the respondents have also dealt with this aspect of promotion to the post of Inspector and have stated that there are some other physically handicapped persons available for consideration for promotion to the post of Inspector who are senior to him on the basis of seniority and the date of passing of the examination and therefore the applicant's case cannot be considered.

5. In both these cases the applicant has filed rejoinder. With regard to his promotion to the post of Stenographer Grade-II he has stated that on the basis of seniority his name is at serial no.38. But he is entitled to be promoted to the post of Senior Stenographer against the first point in view of the Office Memorandum dated 4.7.1997 which has been enclosed at Annexure-A/15 of his rejoinder in which it has been stated that the roster point nos. will now stand changed to roster points 1,34 and 67 in cycle of 100

vacancies. Accordingly, the applicant has stated in his rejoinder in OA No.556/98 that he is entitled to get the benefit of promotion against the first point in the roster point register.

6. In the rejoinder filed by the applicant in OA No.11 of 1996 he has stated that the stand of the departmental respondents that for the post of Inspector there is no roster point but only one vacancy in every block of 33 should be given to a physically handicapped person is not correct. He has referred to the circular dated 4.7.1997 indicating the roster point at 1,34 and 67. The applicant has also stated that the departmental respondents are not maintaining the roster point register correctly. On the above grounds in his rejoinder he has reiterated his prayer in his OA No.11 of 1996.

S. Jena
7. We have heard Shri R.B.Mohapatra, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel for the departmental respondents in OA No.11 of 1996 and Shri S.B.Jena, the learned Additional Standing Counsel for the departmental respondents in OA No.556 of 1998 and have perused the records. The roster point register has been produced by the Government counsel and this has also been perused.

8. From the above recital of pleadings of the parties and on perusal of the different instructions enclosed by both sides regarding benefits to be allowed to physically handicapped persons, the admitted position is that there is 3% reservation for physically handicapped; 1% each for visually impaired, hearing impaired and orthopaedically handicapped persons. The circulars also provide that an orthopaedically handicapped person means a

18 who is suffering from disability of minimum 40% or more. The circulars further provide that before giving reservation to physically handicapped person, the category of posts suitable for a particular type of physically handicapped person will have to be identified. It is further provided that while giving reservation of 3%, care should be taken to ensure that all the three categories are allowed reservation in posts which have been identified as suitable for different types of disabled persons. The submissions made by the learned counsel of both sides will have to be examined in the context of the above admitted positions.

9. In these two applications the petitioner is claiming promotion to the post of Stenographer Grade-II and Income Tax Inspector on the ground of reservation for physically handicapped. None of the sides has mentioned specifically that posts of Stenographer Grade-II and Income Tax Inspector have been found suitable to be manned by orthopaedically handicapped persons. But in view of the pleadings of the departmental respondents that some persons have been given promotion to the post of Income Tax Inspector on the basis of reservation for physically handicapped, it must be held that post of Income Tax Inspector has been considered suitable by the departmental respondents to be manned by an orthopaedically handicapped person. As regards the post of Stenographer Grade-II from the roster point register it is found that the applicant was promoted to the post of Stenographer Grade-II on 24.9.1999. From this it is clear that this post has also been held by the departmental respondents to be one which can be manned by orthopaedically handicapped person.

S. Jam

10. The second aspect of the matter is that the applicant is claiming promotion to higher post by way of reservation for orthopaedically handicapped person. Reservation for physically handicapped person for the purpose of promotion was introduced for the first time incircular dated 20.11.1989. It is to be noted that at that time the applicant was not physically handicapped. From the pleadings of the applicant it does not appear as to when he became physically handicapped. He has stated that on 2.4.1991 he met with an accident and ultimately became orthopaedically handicapped. From this it is clear that he became orthopaedically handicapped sometime after 2.4.1991. The applicant has also not mentioned that his physical disability is to the tune of 40% or more. But from Annexure-A/6 in OA No.556 of 1998 issued on 23.2.1995 it is seen that in this order he was certified to be an orthopaedically handicapped person. He was also given conveyance allowance in this order from 18.2.1995. So for the present purpose it must be taken that the applicant became physically handicapped with effect from 18.2.1995. The prayers of the applicant made in these two Applications have to be considered separately in the context of our above finding.

S.Com.

11. In OA No.556 of 1998 the applicant has prayed for quashing the order of promotion of respondent nos.4 and 5 S.K.Mishra and M.S.Rao to the post of Stenographer Grade-II and for a direction to the departmental authorities to reconsider his case for promotion to the post of Stenographer Grade-II. The departmental respondents have stated in their counter that in 100 point roster point nos. 33, 67 and 100 have been reserved for physically handicapped persons. The applicant

20

-10-

has pointed out in his rejoinder that the roster points for physically handicapped persons have been changed to 1,34 and 67 in order dated 4.7.1997 which is at Annexure-A/15 of this OA. The applicant has claimed that because of this change in the roster he is entitled to be promoted against roster point no.1. This contention is without any merit because the benefit for giving reservation to physically handicapped persons in the matter of promotion came in November 1989 when the applicant was not a physically handicapped person. By 4.7.1997 when the roster points were changed to 1,34 and 67, certain promotions had already taken place to the rank of Stenographer Grade-II. On a perusal of the roster point register for Stenographer Grade II which is entirely a promotional post, we find that the roster has been maintained from the year 1990. As at that time the first roster point of reservation for physically handicapped was 34, naturally no physically handicapped person was promoted. It is to be noted that the applicant was also not a physically handicapped person at that time. In view of this, the applicant's case can be considered only against roster point no.34. We find that respondent nos. 4 and 5 have been promoted to the post of Stenographer Grade-II against roster point nos.31 and 32. In view of this, the applicant cannot claim that either of these persons has occupied the roster point no.34 earmarked for physically handicapped person. Even going by the earlier roster point, the first roster point was 33 and respondent nos. 4 and 5 have been promoted against roster point nos.31 and 32. In view of this, the prayer of the applicant to quash the promotion of respondent nos. 4 and 5 is held to be without any merit and is rejected. His prayer that he should be promoted in place of

SLM

respondent nos. 4 and 5 also accordingly stands rejected.

12. In OA No.11 of 1996 the applicant has claimed promotion to the rank of Income Tax Inspector by way of reservation for physically handicapped. The departmental respondents in their counter have stated that according to the circular dated 24.4.1992 at Annexure-R/1 of that OA, the Central Board of Direct Taxes have clarified in consultation with the Department of Personnel & Training that there is no separate roster for physically handicapped as in the case of Scheduled Castes and Scheduled Tribes. However, the appointing authority has to ensure that one reservation for physically handicapped is given effect to in a block of 33. It is not necessary that a physically handicapped person should be promoted only after promoting 33 persons. Subject to availability of a vacancy and taking into account the eligibility of an official for promotion, a physically handicapped person may be promoted at any time while filling up a block of 33. The applicant has placed reliance on Department of Personnel & Training's O.M. dated 4.7.1997 enclosed to his OA at Annexure-A/14 in which it has been mentioned that point nos. 1,34 and 67 in cycle of 100 vacancies in 100 points roster should be earmarked for physically handicapped. In view of this subsequent circular dated 4.7.1997 it cannot be held that after issue of this circular the earlier instructions dated 24.4.1992 that physically handicapped persons can be promoted, one in every block, without any reference to roster point in that block is still in force. The claim of the applicant for promotion to the rank of Income Tax Inspector has to be examined from this standpoint.

SSJM

(25)

13. On a reference to the roster point register for Income Tax Inspector, we find that the register has been maintained from 1990 after reservation for physically handicapped was introduced for the purpose of promotion in the circular dated 20.11.1989. Prior to 4.7.1997, according to the circular dated 24.4.1992, it would have been adequate if one physically handicapped person was promoted in every block of 33. We find that in the roster point register the blocks have been marked out separately. In the first block upto 33, instead of one, physically handicapped three persons have been promoted, namely, Mrs.M.Fernadez against point no.1, Shri G.Pani against point no.9, and B.D.Mishra against point no. 25. The reservation for physically handicapped under roster point does not preclude a physically handicapped person to get promoted in his own turn and therefore promotion of three persons who were physically handicapped in the first block which ended in middle of 1993 with promotion of Shri S.Malla cannot be said to be irregular. In the second block starting from roster point no.34 against which one P.C.Padhi has been promoted and ending with roster point no.66 showing B.K.patnaik, we find that one M.Sivajee has been promoted in this block as physically handicapped. Therefore, in block no.2 reservation has been provided for physically handicapped. Block no.3 has started in 1996 with Shri S.N.Behera whose name appears against point no.67. In 1996 the roster points were not changed from 33, 67 and 100 to 1,34 and 67 which, as we have earlier noted, came only in the order dated 4.7.1997. Therefore, filling up of roster point no.67 by S.N.Behera is perfectly legal because he was promoted in 1996 before the roster points were changed to 1,34 and 67. The departmental

S.Jom

23

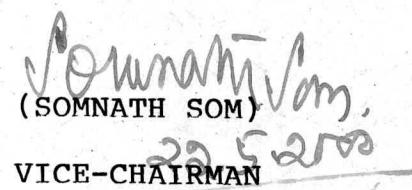
respondents have also mentioned in their counter to OA No.556 of 1998 that there are several other physically handicapped persons who are senior to the applicant both on the basis of seniority and on the basis of date of passing the ITI Examination. They have mentioned the names of B.N.Mohanty and D.N.Roul as senior to the applicant. The applicant has not denied this fact in his rejoinder. In course of hearing it was submitted by the learned counsel for the petitioner that B.N.Mohanty was offered promotion to the post of Income Tax Inspector but he refused promotion and therefore on the refusal of B.N.Mohanty, who is another physically handicapped person to be promoted to the rank of Income Tax Inspector, the applicant's case should be considered. This contention is without any merit because above the applicant there is one more physically handicapped person D.N.Roul who is senior to him and has qualified in the ITI Examination prior to him. In view of this, the applicant cannot claim that he should be promoted to the rank of Inspector on the refusal of Shri B.N.Mohanty to get promotion. Moreover, as point no.67 has already been filled up by the time the roster points were changed in the circular dated 4.7.1997, naturally the departmental respondents have to allow promotion to physically handicapped person against roster point no. 100. Needless to say that in case the applicant's turn comes up for promotion to the rank of Inspector before roster point no.100 becomes due, then naturally he will be considered in his turn. In view of this, the prayer of the applicant in this O.A. that he should be promoted to the rank of Inspector against the quota reserved for physically handicapped against an earlier point is held to be without any merit.

SIJM.

14. The second prayer of the applicant in OA No.11 of 1996 is for quashing Annexure-A/12 which is an order dated 30.11.1995 in which seven persons have been promoted to the rank of Inspector. These seven persons have been styled as private respondent nos. 4 to 10. On a reference to the roster point register we find that these seven persons were promoted in the second block sometime in 1995. We have already noted that one person M.Sivajee was given promotion to the rank of Inspector in this block and therefore there has been no illegality in giving promotion to these seven persons. The prayer of the applicant to quash their promotion is accordingly held to be without any merit and is rejected.

15. In the result, therefore, these two Original Applications are held to be without any merit and are rejected but without any order as to costs.


(J.S.DHALIWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
22.5.2000
VICE-CHAIRMAN