

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

ORDER DT. 26-2-2001.

Heard Mr. K. C. Kanungo, learned counsel for the applicant and Mr. A. K. Bose, learned Senior Standing Counsel on the MEMO filed by the learned counsel for the applicant praying for early date of hearing. As pleadings in this case are complete adjourned to 21.3.2001 for hearing and final disposal peremptorily. No further time will be allowed.

Vice-Chairman

Member (Judicial)

ORDER DATED 21-3-2001.

We have heard Mr. K. C. Kanungo, learned counsel for the applicant and Mr. A. K. Bose, learned Senior Standing Counsel for the Respondents and have also perused the records.

2. In this Original Application, the applicant has prayed for a direction to the Respondents to consider the promotion of the applicant to the post of Junior Accounts Officer (in short J.A.O) till Narayan Das is exonerated from the charges of the disciplinary proceedings for the vacant post of JAO or till qualified SC/ST candidates are available to be promoted against the reserved posts or till the posts are de-reserved whichever is later. He has also prayed for quashing of the order dated 5-9-2000, at Annexure-6 in which the applicant has been reverted to his substantive post of Section Supervisor from the post of J.A.O held by him on Ad-hoc basis. Third prayer is for modifying the order at Annexure-5 in the light of the first prayer made and as noted above.

For Administrator

Bench

26/3/01

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3. Respondents have filed counter opposing the prayers of the applicant and the applicant has also filed rejoinder.

4. We have perused the pleadings of the parties. For the purpose of considering this petition, it is not necessary to go into too many facts of this case. Applicant joined the postal Department as Lower Division Clerk in 1976 and was appointed as Section Supervisor on 1.4.1993. While he was holding the post of section supervisor, results of JAO Part-II examination came out. These results have been published in order dated 6-1-1994 at Annexure-1. In this order, applicant's name has been placed at Sl.No.3. Applicant's case is that the person whose name is shown against Sl.No.1 has already been promoted to the post of JAO. Shri N.Das, whose name is shown just above the name of applicant has not been promoted because of the pendency of the disciplinary proceedings and subsequently pendency of the punishment against him. It is the admitted position that in the rank of JAO one unreserved vacancy and five vacancies four under SC category and one under ST category are available. Applicant has stated that he should be give Ad-hoc promotion against one of these posts on the grounds mentioned by him in the O.A. which will be referred to while considering the submissions made by learned counsel for the applicant and learned Senior Standing Counsel for the Respondents. So far as the single unreserved category of vacancy is concerned from the pleadings of the parties it appear that the applicant was given adhoc promotion against the unreserved vacancy till 28.2.2001 which

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is the date of expiry of the punishment period of Shri Narayan Das. The intention is that after the punishment period is over, Shri Das will be considered for promotion against the said unreserved vacancy. As this period is already over and Shri Das whose name appeared above the name of applicant in the list of successful candidate at Annexure-1, is due to be considered for promotion against unreserved vacancy, applicant can not claim that he should be given adhoc promotion against the said U.R. vacancy till Shri Narayan Das is promoted to the post. This prayer is accordingly held to be without any merit and is rejected.

5. The second aspect of the prayer of the applicant is that he should be given adhoc promotion against one of the reserved vacancies till the posts are de-reserved or till qualified SC/ST candidates are available. It is the admitted position that at present no qualified SC/ST candidates are available for being appointed to the post of JAO. The question of de-reservation of SC/ST vacancies in the rank of JAO has been subjected <sup>of</sup> ~~to~~ several litigations before this Tribunal in <sup>JK</sup> ~~past~~ <sup>JK</sup>. Applicant himself had approached this Tribunal in earlier OA No.171/94 alongwith three others praying for a direction to the Respondents to appoint him to the post of JAO within a stipulated period. This OA was disposed of by this Tribunal in order dated 24.3.1994. We have gone through this order and the records of this OA. This Tribunal in their above order issued a direction to the Respondents to act in accordance with the circular dated 28.12.93 as expeditiously as possible. It is submitted by learned counsel for the applicant that inspite of the above

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direction, the Respondents have not acted in pursuance of the circular dated 23-12.1993 and for this he has already filed CP No.60/95 which is pending. This circular dated 23.12.1993<sup>is</sup> at Annexure-7 of this OA. In this circular the Director General of posts has noted that in many postal circles reserved category of posts of JAO<sup>are</sup> being filled up on Ad-hoc basis by general community candidates<sup>N.J.M.</sup> without the posts getting de-reserved. It is noted in the circular that adhoc promotion are to be given only in exceptional circumstances and giving adhoc promotion to the post of JAO to the general candidate without getting the post de-reserved is not in accordance with the orders and instructions on the subject. In view of this it has been ordered that in case of non-availability of candidates belonging to SC/ST community, reserved posts should not be filled up by general community candidates either giving him<sup>an</sup> promotion on adhoc basis or regular basis except when de-reserved<sup>also</sup> has been obtained from the competent authority. It has also been provided that wherever necessary posts should be de-reserved as early as possible so that reserved posts are carried forward to the subsequent years. Lastly the Postal Circles were directed to immediately send proposals for de-reservation of posts<sup>for ex-</sup> post facto approval of de-reservation of posts of JAO. Applicant's grievance is that even though the Departmental authorities have been sending de-reservation proposal to the office of the Director General of Posts, New Delhi repeatedly no orders are forthcoming and thereby the posts are lying vacant and the applicant a qualified candidate is not being

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given promotion to the post of J.A.O either on adhoc or regular basis. In this connection learned counsel for the applicant has referred to OA Nos. 267/93 and 420/93 filed by another set of five officers who like the applicant had cleared the JAO Part-II examination for promotion to the post of JAO but who were not being promoted because vacancies available were reserved vacancies. These two OAs have been disposed of by the Tribunal through a common order dated 24-8-1994. The Tribunal directed that keeping in view the entire facts and circumstances adhoc promotions given to the applicants therein before them should continue till the Govt. finds suitable candidate to fill up the reserved vacancies or till de-reservation is made and in the light of the above the Tribunal quashed the reversion order in respect of the applicants before them. It has been submitted by learned counsel for the applicant that the applicants in these two OAs thereby got the benefit of their adhoc promotion and the <sup>said</sup> benefit should be allowed to the applicant in this case. We have considered this submission carefully. We have also taken note of the averments made by Respondents in page-6 of their counter that the first proposal for de-reservation was submitted on 14.11.1994 and again a revised proposal was submitted on 20.2.1996 and after the series of correspondence, dereservation was action was not received till the existing vacancy based roster was replaced by the new based roster. A third proposal was sent on 20.2.1999. Respondents have stated that these proposals are receiving consideration and no orders have been received in respect of dereservation. In view of the above fact that de-reservation

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Proposals have been submitted over the last seven years at least and no orders have been passed, we direct the Respondent No.1 to pass appropriate orders with regard to these de-reservation proposals sent by the C.P.M.G. from time to time within a period of 60 days from the date of receipt of a copy of this order. We make it clear that we are not giving any direction with regard to the merits of the proposal for de-reservation. Our direction is only confined to passing of appropriate orders strictly as per rules with regard to the de-reservation proposals. In ~~any~~ <sup>J.M.</sup> case, any of the posts are de-reserved within a period indicated by us, applicant will get promotion automatically because he is the next man in the list of qualified candidates for the post of JAO.

6. The sole remaining question for consideration is whether pending receipt of final orders on the proposal for dereservation a direction can be issued to the Departmental Authorities to give Ad-hoc promotion to the applicant against any of the reserved posts. Learned counsel for the applicant has very strongly urged that as in the case of applicants in OA No.267/93 and 420/93 adhoc promotions were allowed, the benefits of the judgment should be given to the applicant in the present case. We are unable to accept this contention because in order dated 24.8.1994 what the Tribunal had directed ~~was~~ to quash the reversion order. In these cases the applicants therein had already been promoted and being faced the reversion they had approached the Tribunal. In the instant case the applicant is working as Section Supervisor and it is

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not for the Tribunal to give a direction to the Respondents to give him Ad-hoc promotion. Under the Rules, Ad-hoc promotion is given in the exigency of public service and it is not for the Tribunal to take a view that whether such exigency is required for giving adhoc promotion to the applicant. In any case a Government servant belonging to general category does not have a right to claim that he should be given adhoc promotion against reserved category of post. In view of the above this prayer is held to be without any merit and is rejected.

7. In this case on the date of admission of the Original Application, we had indicated that Respondents are free to consider the case of the applicant for another spell of Adhoc promotion which they seem to be giving to him on different spells from August, 1999. At present the applicant has not been given any Ad-hoc promotion to the post of J.A.O. We make it clear that our above order shall not preclude the Departmental Authorities to give him Ad-hoc promotion in case they so desired.

8. In the result, with the observations and directions made above, this Original Application is disposed of. No costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath*  
(SOMNATH SOM)  
VICE-CHIEF JUSTICE

KNM/CM.

Free copies of final  
order dt. 21.3.2001  
issued to counsel  
for both sides.

*S.O.C.*

26/3/01