

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A.98 of 1996

Date of order : 1.8.2001

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. V.K. Majotra, Administrative Member

TRIBIKRAM BEHERA

VS.

UNION OF INDIA & ORS.

For the applicant : Mr. Samir Ghosh, counsel

For the respondents : Mr. B. Mukherjee, counsel

O R D E R

V.K. Majotra, A.M.

12 Grade IV officers of Indian Statistical Service (ISS) were promoted to Grade III-STS of service by order dated 24.11.1987. 11 of these 12 officers belonged to SC/ST category who were promoted to Grade III by the said order on the basis of the reservation for these categories. Of these 11 officers, the promotion of 8 to Grade III-STS was challenged in O.A.No.336 of 1988 (T.R. Mohanty Vs. Union of India & Ors.) before this Tribunal on the ground that their promotion on the basis of reservation, overriding his (applicant's) claims was contrary to the then existing provisions of Rule 13 of Indian Statistical Service Rules, 1961 (ISS Rules, 1961) which read as follows:-

"Rule 13- Reservation for SCs & STs etc. :

contd..2

Appointment to the service made otherwise than by promotion will be subject to orders regarding special representation in the service for SC & STs issued by the Government of India from time to time."

2. Vide its judgment dated 28.11.1988 the Tribunal allowed the aforesaid application and ordered applicant's promotion with effect from 24.11.1987 with consequential benefits of seniority and monetary benefits including the arrears of salary. However, the Tribunal observed that the promotion of the reserved category officers was not to be disturbed.

3. The department amended the Rule 13 of ISS Rules, 1961 vide notification dated 20.2.89 giving retrospective effect to the amended provisions from 27.11.72, the date from which the Government of India had introduced reservation ~~for~~ SC/STs in non-selection promotions by O.M. dated 27.11.72 (Annexure 'A'). The amended Rule 13 ^{to} sought/ provide that appointments to the service shall be made subject to the orders relating to reservations for SC/STs issued by the Central Government from time to time. As the method of promotion from Grade-IV (JTS) to Grade-III (STS) in ISS was changed from selection to non-selection w.e.f. 7.7.73, the above referred instructions of Government of India providing for reservation in promotion from 27.11.72 became applicable in ISS from 7.7.73, having regard to the amended provisions of Rule 13 which became effective retrospectively from 27.11.72.

4. The department filed a Special Leave Petition (SLP) against the order of the Tribunal dated 28.11.88 in the Hon'ble Supreme Court which later on converted into Civil Appeal 3844

of 1989 - Union of India & Others Vs. T.R. Mohanty & Others.

5. The Hon'ble Supreme Court by their judgment dated 14.7.94 in O.A.No.336 of 1988(T.R. Mohanty & Others Vs. Union of India & Others) referred to above, dismissed the appeal of the department and held the amended Rule 13 to the extent it was made operative retrospectively to be violative of Articles 14 & 16 of Constitution of India. The Supreme Court observed that the retrospective operation of the amended Rule 13 took away the vested rights of the applicant and other general category candidates senior to private respondents(reserved category officers promoted to Grade-III, amongst others, by order dated 24.11.87). Accordingly, the Supreme Court struck down the retrospective operation of the amended Rule 13 of ISS Rules, 1961.

6. The Supreme Court by their judgment dated 27.3.95 in I.A.No.9 of 1995 in C.A. 3844 of 1989(referred to above) and with reference to the clarification/modification application filed by the Union of India on the same date(i.e.27.3.95) passed the following orders :

"After hearing the learned counsel for the parties we are of the view that the judgment of this Court upholding the judgment of the Tribunal has to be implemented. Appreciating the difficulties highlighted by the Union of India in this application, we are of the view that the Union of India should make all efforts to protect the promotions of Scheduled Caste candidates, if possible. We are further of the view that if in the implementation of the directions given by this Court, it becomes necessary to revert the Scheduled caste candidates from the higher posts to which they have been promoted under the existing rules(unamended) or under the amended rules, that may be done and we modify the Tribunal's judgment to that extent. We, however, make it clear that any financial benefits given to the Scheduled Caste candidates while working in the higher posts, shall not be withdrawn and be protected as personal to them. We further make it clear that Mr. Monhanty shall be entitled to the relief Keeping in view his position in seniority so far as the general category candidates are concerned. If in the

process he is reverted to the lower post, no recovery shall be effected from him in respect of money already paid to him.

I.A. No. /95 is disposed of.

I.A. No.9 for permission to file contempt petition is dismissed."

7. In implementation of the Hon'ble Supreme Court's judgment dated 14.7.94 in the light of their clarificatory order dated 27.3.95 the respondents undertook a total review of all the promotions made earlier to Grade-III post by providing reservations to SC/STs made under ^{amended} ~~unamended~~ Rules ^{what was} on the basis of the inter ~~se~~ seniority of the reserved category and the general category officers assigned in Grade-IV seniority list as on 11.2.86 (issued on 8.5.86) or ^{any} other Grade IV seniority list issued thereafter.

8. As a consequence of the above exercise, the department found it necessary to cancel the promotions of the SC/ST officers to Grade-III by way of reservation as also their promotions given to the higher grade(s) post on the upgraded seniority in Grade-III on account of promotion by reservation in supersession of general category officers. On the basis of the revisions effected in the seniority of Grade-III officers as a result of the said review, the promotions to JAG (the next higher grade) were also reviewed (Annexure R-1, R-2, R-3 and R-4). Orders issued by the respondents on the basis of the review and revision effected in the seniorities of Grade-III officers as a result of the said review by Annexure R-1, promotions of SC/ST officers of Grade-III of the service by way of reservation as also their promotions to the higher grades

based on the upgraded seniority in Grade-III on account of promotion by reservation in supersession of general category officers were cancelled retrospectively (i.e. ab initio). By order ^{at} Annexure R-2, promotions made earlier to grade-III (STS) under the unamended/amended Rule 13 of ISS Rules, 1961 (in which reservations were given to SCs/STs) have been reviewed. By order at Annexure R-3, based on the revisions effected in the seniorities of Grade-III (STS) officers as a result of the said review, promotions to JAG (i.e. the next higher grade) were reviewed. By the 4th order at Annexure R-4, the retrospective promotion of Shri T.R. Mohanty to Grade-III (STS) from 24.11.87 and his further promotion to JAG w.e.f. 26.10.92 have been cancelled retrospectively.

9. The applicants have sought direction to the respondents to promote the applicant No.1 to the post of Grade-III of ISS with effect from 24.11.87 and thereafter to the post of JAG level of ISS level from 29.3.93; applicant No.2 to the post of Grade-III ISS w.e.f. 23.6.89 and the applicant No.3 to the post of Grade-III of ISS w.e.f. 2.4.93 as they were enjoying the benefits of promotions before issuance of the impugned orders dated 4.1.96 (Annexure 'G' to the O.A. collectively); they have also sought that their seniority should not be fixed on the basis of orders dated 4.1.96.

10. We have heard the ld. counsel for both sides and considered the materials available on record.

11. Ld. counsel for the respondents contended that the impugned orders of the respondents had been passed in

implementation of the judgment of the Hon'ble Supreme Court
which had been followed by the
referred to above, Mumbai Bench of C.A.T. in O.A.No.42/1997

vide their order dated 2.2.98 (Abhiram Choudhury & Anr. Vs.

Union of India & Ors.) which held as follows:-

"Another ground which was urged on behalf of applicants is that on the date of reversion, namely, 4.1.1996, the Government issued one more order on the same date wherein they have given retrospective promotion to the applicants from different dates and in Para 12 it is mentioned that this order is subject to five O.As. pending in different Benches of this Tribunal including Principal Bench. The learned counsel for the applicants contended that if any judgment is given in those pending O.As. and if it affects the seniority of applicants, then it will cause serious prejudice to them. In our view, this is purely a hypothetical question which cannot be considered at this stage. If any adverse order is passed in any of the pending cases and as a result the applicants' seniority is further affected, it is open to the applicants to challenge the same by filing a fresh O.A. or by approaching higher forum for redressal of their grievance. Therefore, that apprehension is pre-mature and cannot be considered at this stage. We cannot go into the merits of the case or the stand taken by the applicants on merits in the present O.A. since the order of reversion is based on decision of Supreme Court and therefore, the applicants cannot be permitted to urge those grounds here.

In the result, the application is rejected at the admission stage. In this view of the matter, M.P. for permission to file joint application does not survive. No costs."

Although the ld. counsel of the applicant stated that SC and ST category officers must get the benefit of 15% and 7½% reservation at all times, we cannot go along with him in the light of the Hon'ble Supreme Court judgments cited above and following which this Tribunal in the matter of Abhiram Choudhury (Supra) had held that since the order of reversion is based on the decision of Supreme Court, therefore, the applicants cannot be permitted to urge those grounds here.

12. In the result, this O.A. is dismissed. No order as to costs.

MEMBER(A)

MEMBER(J)