

Central Administrative Tribunal
Calcutta Bench

OA No. 1012/97

Present : Hon'ble Mr.S.Biswas, Member(A)
Hon'ble Mr.A. Sathath Khan, Member(J)

Biswa Mohan Goswami, Son of Late Braja Mohan Goswami, working as Publication Clerk-cum-Proof Reader in the Printing and Publication Section of Anthropological Survey of India, 2 Ripon Street, Calcutta-700 016

.... Applicant

-Vs-

1) Union of India represented by the Secretary to the Government of India, Ministry of Human Resource Development, Department of Culture, Dr. Rajendra Prasad Road, Shastri Bhavan, New Delhi-1

2) The Director, Anthropological Survey of India, Government of India, 27 Jawaharlal Nehru Road, Calcutta-700 016

... Respondents

For the applicant : In person

For the respondents : Ms.U. Sanyal, Counsel

Date of Judgement : 08.01.2003

ORDER

Mr.S.Biswas, Member(A) :

By this OA 1012/97, under Section 19 of Administrative Tribunal Act, 1985, the applicant has sought the following reliefs :

i) Direction to the respondents for according promotion to the applicant as Publication Assistant with effect from 25-5-95 when his immediate senior, as per the seniority list (as on 1-3-95) was promoted and there was one ^{more} post available. Though his position was next below (S.No.2 in the annexed seniority list at Annexure 'A') he was not promoted and the said promotional post was allowed to go unbilled for long time in order to accommodate an S.T. candidate namely Shri S.R. Barua, who is just immediate junior in the said seniority list. The latter was recruited in 1972 as Copy Holder - as a general candidate, but he later claimed reservation facility as an S.T. after recruitment in 1992 i.e. after about 21 years by producing a Caste (S.T.) Certificate from Additional District Magistrate, South 24 Parganas on 14-6-93 which was an illegal procedure.

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ii) To declare the said unfilled post as unreserved.

iii) Since at the time of recruitment in 1972 and also at the time when promotional vacancy arose in 1994 December, the said Shri S.R. Barua was not a S.T. His conversion as an S.T. was illegal and therefore, the supersession of the applicant and denial of promotion as the second senior most candidate is illegal. He is entitled to be promoted w.e.f. 25-5-95 and not with effect from October 29, 1998 where his position has been shown below Shri S.R. Barua.

2. In other words, the applicant wants promotion to the post of Publication Assistant, On the basis of seniority and vacancy which arose in 1994 December for filling up two posts but only one was filled and he was not promoted being the next below candidate. Hence the applicant claimed promotion as Publication Asstt. in the scale of Rs1400-2300/- prerevised w.e.f. 25-9-95 when his immediate senior one Mr. Ali was promoted and one more available post was not filled.

3. We have considered the submissions of the rival parties. The applicant personally argued his case. We have gone through the case records and the legal points and facts involved.

4. Statedly, the applicant joined as a Publication Clerk cum Proof Reader w.e.f. 26-7-73 in the Printing and Publication Sec. of Anthropological Survey of India, Calcutta.

5. It is an admitted fact that 2 posts of Publication ASstt. in the scale of Rs1400-2300/- (pre-revised) had fallen vacant in December 1994, and steps were taken to fill up these 2 posts by promotion in May 1995. It is clarified by the respondents that of these 2 posts one post was reserved for an S.T. who was 3 in the seniority list of the feeder posts. The next roster point was to go to this S.T. candidate. This has not been disputed by the applicant, who has only objected to the

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post being kept unfilled for S.R. Barua, who was initially recruited in 1972 as a general candidate but "converted" himself as a S.T. by obtaining a Caste Certificate after 20 years of recruitment. The applicant has challenged this ~~consequently~~ [£] subsequent "conversion" as illegal and this has amounted to his denial of getting promotion in 1995 along with his immediate senior colleague.

6. The Department has denied the allegation stating that 2 posts did fall vacant in Dec'94 though, the only one post for unreserved category was available which went to the immediate senior to the applicant. The second post being a reserved post, which as per the 40 point roster was to go to an S.T., whose position was 3 in the seniority list cited by the applicant i.e. just below him and since it was a reserved post, the applicant has no legitimate claim to the post and he was admittedly informed about his position as early as on 27-10-95 in response to his letter dated 6-9-95 (Annexure 'C' to OA).

7. This reserved post however could not be filled immediately, as Shri S.R. Barua who was admittedly recruited as a General Candidate in open competition, claimed to be a S.T. vide a valid certificate of Addl. D.M., South 24 Parganas on 14-8-93. This certificate on further reference to the issuing authority was clarified to be genuine and therefore the claim of Shri Barua, though belated, was true and could not be overlooked. The respondents ^{WP} ~~Taking~~ [£] the matter with the Ministry of Human Resource Development, Department of Culture, Govt. of India immediately as 31-5-96 and a reply was received from the

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Govt. of India as 13th May ¹⁹⁹⁷ which clarified :
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" A person is entitled to the benefits of reservation only from the date of his/her producing Caste Certificate to his/her employer provided the appointing authority after due verification from the District Magistrate is satisfied about the genuineness of the claim ". It has also been made clear that retrospective benefits are not admissible.

8. In this case we find that though the certificate is dated 14-6-93, the said Shri Barua claimed benefit of promotion falling due thereafter. Only prospective benefit was availed by Shri Barua and the same was granted after proper verification.

9. Since the applicant was only an unreserved candidate, having no legitimate right to seek promotion against a reserved post till the Government itself declared it as dereserved, in our considered view this post does not confer any legal right on the applicant, a general candidate. Hence the delay nor the certificate to Addl. D.M. in favour of a S.T. candidate, denied the applicant any of his legitimate right. Roster wise the 2nd post by promotion would and could have gone only to a reserved candidate, whose legitimate claim was under scrutiny causing delay to said Barua. This delay cannot be construed as a delay in the legitimate claim of promotion to the applicant, nor the promotion of Barua, can be treated as an illegal by the applicant being a general candidate. In the facts and circumstances of the case, the applicant has not gained any right or affected by any civil consequences - in as much as his not being promoted against a reserved post is frivolous and his claim of legitimacy is unfounded.

10. We find that the applicant in claiming his promotion against a reserved post which went to one Shri S.R. Barua, failed to make him a respondent though he sought to displace him. The remaining allegations are frivolous and call for no legal consideration.

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