

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 450 of 2007

Friday, this the 28th day of March, 2008

C O R A M :

**HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER**

P.M. Vanaja Kumari,
W/o. C.K. Asokan,
Civilian Educational Instructor Grade I
Navigation Direction School,
INS Venduruthy, Cochin - 4,
Residing at Chullickal House,
Ganga Nagar, Edappally,
COCHIN : 682 024

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

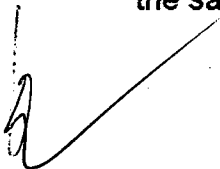
v e r s u s

1. Union of India, represented by
The Secretary to the Government of India,
Ministry of Defence, New Delhi.
2. The Chief of the Naval Staff,
Naval Headquarters, NHQ PO,
New Delhi.
3. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Naval Headquarters, Cochin : 682 024
4. The Director,
Civilian Personnel Integrated Headquarters (Navy),
Ministry of Defence, New Delhi : 110 001
5. Shri N.C. Patnaik,
Civilian Educational Officer,
INS Chilka, Chilka P.O.,
Khurda District, Orissa.

... Respondents.

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC)

Original Application having been heard on 28.3.08, this Tribunal on
the same day delivered the following :



O R D E R
HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER

The applicant, belonging to the reserved category, was initially appointed as a Civilian Instructor on casual basis in 1983 and later his services were regularized w.e.f. April, 1985. She was promoted in the scale of Rs 6,500 – 10,500 during 2005 against an upgraded post of Civilian Educational Instructor Gr. I the post having been so upgraded in the wake of the Fifth Pay Commission Recommendations. Higher to the above post is the Civilian Educational Officer, in the scale of Rs 7,500 – 12,000/-, created in 1993 and the total number of posts are only three. This had to be filled up as per the roster point calculated on vacancy basis. Accordingly, when the vacancy was to be filled up by a reserved candidate in February, 2006, the same was not filled up. The applicant, requested that she be considered at least against the next available vacancy in May 2007. The respondents have, vide Annexure A-4 order dated 19th April, 2007 rejected the claim stating as under:-

"As per Recruitment Rules, 03 years regular service in the grade of CEI-I is required for promotion to the post of CEO. Though you have completed requisite length of service, you are at serial no. 17 of the seniority list of CEI and thus, not covered even under the extended zone of consideration for promotion to the grade of CEO."

2. The applicant has come up in this OA challenging the above decision.
3. Respondents have contested the O.A. They have contended that the applicant cannot be considered as she is out of consideration zone as only 5 eligible candidates can be considered for one vacancy and the applicant is at serial number 16.

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4. Counsel for the applicant submitted that the relevant instructions refer to

seniority list of eligible candidates and as such, when a vacancy is reserved for SC, those in the general category become ineligible and as such, the applicant being the senior most in the category of reserved candidates, she should have been considered, albeit, she may be at serial No. 16 in the combined seniority list.

5. Counsel for the respondents have stuck to their gun.

6. Arguments were heard and documents perused. Admittedly, the applicant fulfils the requisite experience, vide the impugned order. The only question to be decided is whether she is within the zone of consideration. According to the respondents, under the combined seniority list, she is out of the zone of consideration, while as per the applicant the list should be confined to only the reserved candidates, in which event, she is the senior most amongst the SC candidates.

7. The Apex Court had an occasion to consider almost an identical case in respect of ST candidate, who was otherwise eligible but who had been at the lower position in the combined seniority. In the case of *P. Sheshadri v. Union of India*, (1995) 3 SCC 552, the Apex Court has held as under:-

"10. Government of India, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions again issued OM No. F. 22011/5/86-Estt./D dated 10-3-1989 providing the procedure to be observed by Departmental Promotion Committee. Paragraph 2.3.2.(ii) of the said OM dated 10-3-1989 lays down the method of promotion by selection and reads as under:

"In promotion by selection to posts/services from Group 'C' to Group 'B' within Group 'B' and from Group 'B' to the lowest rung in Group 'A', selection against vacancies reserved for SCs and STs will be made only from those SCs/STs officers, who are within the normal zone of consideration prescribed vide the Department of Personnel & AR OM No. 22011/3/76-Estt.(D) dated 24-12-1980. Where

adequate number of SCs/STs candidates are not available within the normal field of choice, it may be extended to five times the number of vacancies and the SCs/STs candidates (and not any other) coming within the extended field of choice, should also be considered against the vacancies reserved for them. If candidates from SCs/STs obtain on the basis of merit with due regard to seniority, on the same basis as others, less number of vacancies than the number reserved for them, the difference should be made up by selecting candidates of these communities, who are in the zone of consideration, irrespective of merit and 'benchmark' but who are considered fit for promotion. Officers belonging to SC/ST selected for promotion against vacancies reserved for them from within the extended field of choice would however be placed en bloc below all the other officers selected from within the normal field of choice."

11. A combined reading of the instructions contained in these memoranda will go to show that in the first instance the number of reserved vacancies in a year have to be worked out on the basis of 40 point roster as envisaged in sub-clause (i) of para 3 of OM dated 27-11-1972. Thereafter separate lists are to be drawn up of the eligible Scheduled Castes or Scheduled Tribes officers arranged in the order of their inter se seniority in the main list. Clause (iii) of para 3 enjoins a duty on the Departmental Promotion Committee to adjudge the Scheduled Castes and Scheduled Tribes officers separately in regard to their fitness. Thereafter the select lists of the officers in the general category and those belonging to the Scheduled Castes and Scheduled Tribes are prepared by the Departmental Promotion Committee. The same have to be merged into a combined select list in which the names of all the selected officers, general as well as those belonging to Scheduled Castes and Scheduled Tribes are arranged in the order of their inter-se seniority in the original seniority list of the category/grade from which the promotion is being made and this combined select list is the basis for making promotions in vacancies as and when they arise during the year. Further clause (ii) of para 2.3.2. of OM dated 10-3-1989 contemplates that selection against vacancies reserved for Scheduled Castes and Scheduled Tribes will be made only from those Scheduled Caste/Scheduled Tribe officers who are within the normal zone of consideration prescribed by the Department of Personnel and AR vide OM No. 22011 dated 24-12-1980. It further contemplates that where (sic adequate) number of Scheduled Caste/Scheduled Tribe candidates are not available within the normal field of choice, it may be extended to five times the number of vacancies and Scheduled Caste/Scheduled Tribe candidates (and not any other) coming within the extended field of choice, should also be considered against the vacancies reserved for them. If candidates from Scheduled Castes and Scheduled Tribes obtained on the basis of merit with due regard to seniority, on the same basis as others, are less than the number of vacancies reserved for them, the difference should be made up by selecting candidates of these communities, who are in the zone of consideration, irrespective of

merit and benchmark but who are considered for promotion and officers belonging to Scheduled Castes and Scheduled Tribes selected for promotion against vacancies reserved for them from within the extended field of choice would however be placed en bloc below all the other officers selected from within the normal field of choice. In view of the aforesaid clear instructions with regard to the reservation quota for the Scheduled Tribes as 7 1/2 per cent, it is beyond comprehension to say that not even a single post will go to the member of the Scheduled Tribe out of the 22 posts which were available for promotion to the post of Deputy Director/Executive Engineer on the relevant date i.e. on the date when 22 officers were promoted to that grade. Any other interpretation of the memoranda referred to above will not only frustrate the scheme but it will render the reservation policy nugatory and no effect to the reservation quota can be given.

12. The Tribunal seems to have been misled by the last sentence contained in clause (iv) of para 3 in OM dated 27-11-1972 which reads as follows:

"This combined select list should therefore be followed for making promotions in vacancies as and when they arise during the year."

The aforementioned sentence cannot be read torn out of the context in which it has been used. The preceding clauses of the said memoranda clearly contemplate that there have to be separate select lists of officers in the general category as well as those belonging to the Scheduled Castes and Scheduled Tribes having been prepared by the Departmental Promotion Committee and then all the three have to be merged to form a combined select list. It does not mean that in the case of Scheduled Castes and Scheduled Tribes the promotions have to be made only in accordance with the placement of the members of the Scheduled Castes and Scheduled Tribes in the combined select list. They have to be picked up from the select list of officers belonging to Scheduled Castes and Scheduled Tribes prepared by the Departmental Promotion Committee, according to the availability of reserved vacancies and their turn in the said lists. This intention is also spelt out from clause (ii) of para 2.3.2. of OM dated 10-3-1989 which provides that promotion by selection against vacancies reserved for Scheduled Castes and Scheduled Tribes will be made only from those Scheduled Caste/Scheduled Tribe officers who are within the normal zone of consideration.

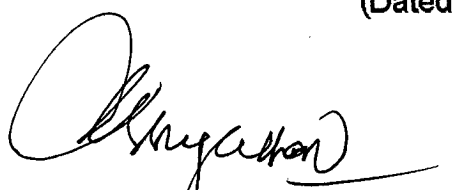
13. Having regard to these facts and circumstances the appellant having been selected by the Departmental Promotion Committee and he being the only eligible officer belonging to the Scheduled Tribe community should have been promoted to the higher post/grade of Deputy Director/Executive Engineer and the respondents committed a serious error and illegality in not doing so. Consequently, the appeal succeeds and is hereby allowed. The impugned order of the Tribunal is set aside and the

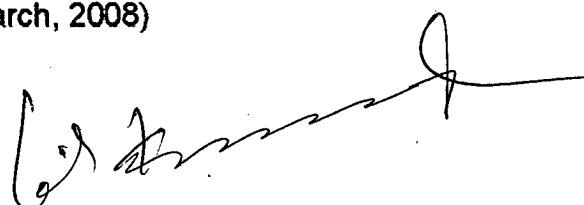
application of the appellant filed before the Tribunal is allowed. According to the counter-affidavit filed in this Court by Shri A.K. Barua on behalf of the respondents, the appellant was also promoted as Deputy Director/Executive Engineer by order dated 7-9-1993 and the appellant had joined as Deputy Director/Executive Engineer on 22-9-1993. Since we find that the appellant was entitled to be promoted on 28-2-1990, it is directed that he will be deemed to have been promoted with effect from 28-2-1990 with all consequential benefits. The respondents are directed to pay a sum of Rs 3000 as costs of this appeal to the appellant." (Emphasis supplied)

8. In view of the above the OA is allowed. The impugned order dated 19th April, 2007 is quashed and set aside. The applicant be considered for promotion to the post of CEO from 01-06-2007 and if found suitable, her promotion would have retrospective effect notionally from the aforesaid date when the vacancy was available as well as the applicant became eligible and the promotion shall be actual from the date the applicant assumes higher responsibilities. This task shall be completed within a period of three months from the date of communication of this order.

9. No costs.

(Dated, this the 28th March, 2008)


(Dr. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER


(Dr. KBS RAJAN)
JUDICIAL MEMBER

CVT.