

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 178 of 2012

Wednesday this the 2nd day of March, 2016

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

Vinod K, aged 49 years
 S/o late KN Kannan Nambiar,
 Skilled Supprting Staff
 Central Plantation Crops Regional Station Vittal,
 Post Vittal, residing CPCRI Quarters,
 Vittal-574 243.

...Applicants

(By Advocate Mr. P.V. Mohanan)

Versus

- 1 The Secretary,
 Indian Council of Agriculture Research,
 Krishi Bhawan,
 New Delhi-110114.

- 2 The Director
 Central Planatation Crops Research Institute,
 Kasaragod, Post Kudlu-671124.

- 3 Vimala M, Junior Technical Assistant (T1)
 Central Planatation Crops Research Institute,
 Kasaragod, Post Kudlu-671124.

- 4 N. Udayakumar, Lower Division Clerk,
 Central Planatation Crops Research Centre, Kidu
 Post Kidu,Karnataka State-574 243.

- 5 Mohammed Haneefa PK
 Lower Division Clerk,
 Central Planatation Crops Research Centre, Kidu
 Post Kidu,Karnataka State-574 243.

.....Respondents

(By Advocate Mr. P. Santhoshkumar R1&2)

This application having been finally heard on 23.2.2016, Tribunal on 02.03.2016 delivered the following

ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

The applicant has approached this Tribunal complaining of denial of promotion to him to the post of Junior Technical Assistant (T-1) in Category I in Technical Service Rules (TSR for short) with reference to the third respondent. There is another prayer to give direction to the respondents 1&2 to promote the applicant to the post of Lower Division Clerk with reference to the 4th respondent.

2. The gist of the case pleaded by the applicant is stated as under:

The applicant commenced service as Skilled Supporting Staff Grade I on 1.8.1990. He is qualified to be promoted as LDC and to the post of Junior Technical Assistant (T-1) Category I of TSR. A post of Jr. Technical Assistant (T-1) arose on 30.4.2011 consequent upon the retirement of one Mangeh K Morajkar. According to the applicant the post should have been filled up promoting the applicant who was a Skilled Supporting Staff Grade I against promotion quota but instead of that, that post is treated as reserved for Scheduled Caste (SC) community. The applicant contends that it was done in violation of the roster point reservation. It is also contended that by order dated 25.5.2011 the third respondent, who is junior to the applicant in Skilled Supporting Staff Grade

I was promoted and thereby the reserved category exceeded by two.

3. Since it is seen that there is multiplicity of prayers the pleadings regarding the promotion to the post of LDC will be adverted to later.

4. The 2nd respondent resisted the application contending as follows.

The applicant has been working as Supporting Staff Grade I (T-1) w.e.f. 1.8.1990. His designation was subsequently changed as Skilled Supporting Staff (SSS). At the time of joining the post, the applicant's qualification was SSLC (failed). He acquired the tenth standard equivalency A level examination (liberalized scheme) certificate from the Government of Kerala during September, 2009. That certificate was produced in the office of the 2nd respondent on 28.10.2009. Consequent on acquiring the minimum educational qualification, separate seniority list of those who acquired SSLC qualification was prepared considering the cases of eligible skilled supporting staff for promotion to the administrative post of LDC and Technical Staff (T-1) Junior Technical Assistant. Though the applicant has completed 21 years of ICAR service as on the date of filing the O.A he became eligible for consideration for promotion w.e.f. 19.9.2009 ie., the date of publishing the result of equivalency examination of SSLC. As per the Seniority List the applicant figures at Sl.No.4 as on 1.6.2010. As per the modified Technical Service Rules, the mode of recruitment of T-I Junior Technical Assistant under Category I is: 66 2/3 percent by direct

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recruitment and $33 \frac{1}{3}$ percent by promotion amongst Skilled Supporting Staff with matriculation, with at least one year certificate in the relevant field or Matriculation with 5 years experience of working in the respective field. Separate, category-wise post based roster is also maintained at the Institute. While drawing the post based roster all the promotees including SC/ST were shown in the roster as per their date of joining and not as per the mode of promotion, whether own merit or under SC/ST quota. The representatives of SC/ST category have made written request to implement the DOP&T OM dated 10.8.2010 (Annexure R.2(c)). It was found that SC/ST incumbents who were promoted under their own merit in the order of seniority were also shown in the post based roster against SC/ST quota.

5. We have heard the learned counsel appearing of the parties and we have also gone through the documents on record.

6. In the course of the arguments since certain points had to be clarified with regard to the preparation of the roster and seniority list as directed, a competent officer from the 2nd respondent's office was present to assist the learned counsel for the respondents. Based on the clarificatory statements made before this Tribunal an additional statement was subsequently filed by the 2nd respondent as directed by us. With regard to Technical Category Junior Technical Assistant (T-I) as per the modified Technical Rules the mode of recruitment are as under:

(i) $66 \frac{2}{3}$ (66.66%) - By Direct Recruitment $33 \frac{1}{3}$ (33.33%)

- *By promotion amongst Skilled Support Staff with the minimum qualification of SSLC/equivalent examination passed with five years of experience with seniority cum fitness."*

It is stated that while recruiting/promoting the incumbents to the respective category, reservation roster is taken as an aid to determine the entitlement of the quantum of posts reserved for a particular caste such as SC/ST and Other Backward Classes. It is stated that the said roster does not determine the seniority. The concept of vacancy based roster prescribed for working out the entitlement of SC/ST/OBC was called in question before the Hon'ble Supreme Court in ***R.K. Sabharwal Vs. State of Punjab – 1995 (2) SCC 745*** as well as in the case of ***J.C. Mallik Vs. Ministry of Railways*** where it was held that the reservation in jobs for Backward class should apply to the posts and not to the vacancy and thus according to the respondents, in the light of the said direction issued by the Supreme Court they switched over from vacancy based to post based reservation policy and accordingly Ministry of Personnel, Public Grievances and Pension issued guidelines including model rosters as per their Office Memorandum dated 2.7.1997. It is contended that it was based on that Annexure R2(e) and R2(f) rosters were finalized. The respondents would contend that this order is operated on the principle of replacement and not as a running account. It is stated that based on the direction issued by the DOP&T OM No. 36028/17/2001-

Estt (Res) dated 31.1.2005 separate category-wise Post Based Roster in the case of promotion, direct recruitment and Limited Departmental Competitive Examination were drawn at the 2nd respondent Institute during the year 2006. It is further stated that at the time of drawing the Post Based Roster the office of 2nd respondent, during 2006 the concept of showing the SC/ST candidates selected on seniority-cum-fitness and their own merit basis, against general category/unreserved quota, was not in force. Thus according to the respondents while drawing the Post Based Roster, initially at the 2nd respondent Institute in the year 2006, SC/ST candidates promoted on the basis of merit/seniority-cum-fitness were shown against SC/ST points for satisfying the reserved point. It is further stated that while drawing the Post Based Roster initially following SC/ST candidates promoted on the basis of seniority-cum-fitness and own merit basis were shown against SC/ST point for satisfying the reservation point:

Roster Point	Name of the SC incumbent	Date of promotion	Mode of Promotion	Points shown at the time of drawing the PBR initially during the year 2006
6	CT.Sankarankutty	06/03/89	Own merit and seniority	SC
7	Mangesh K.Morajkar	28/03/1989	SC	SC
8	K.Radhakrishnan	20/08/1991	Own merit and seniority	SC
9	K. Keeran	04/05/92	-do-	SC
11	PKSunilkumkar	11/05/92	-do-	SC

<i>Roster Point</i>	<i>Name of the SC incumbent</i>	<i>Date of promotion</i>	<i>Mode of Promotion</i>	<i>Points shown at the time of drawing the PBR initially during the year 2006</i>
14	M.V.Madhavan	20/01/97	SC	SC
17	A. Sanjeeva	27/12/1999	Own merit and seniority	SC
24	P.K.Krishnankutty	01/04/05	Own merit and seniority	Own merit.

Accordingly the tally statement was drawn as follows:

SC position required	: 4
SC shown in position	: 7
Therefore Excess seen	: 3

7. The respondents would also state that the Scheduled Caste incumbent including the promotees under "OWN MERIT" were shown under SC point and so in the abstract of the Roster the total figure shown against SC in position and mentioned as excess in position would be an injustice against the SC community as per DOPT OM dated 10.8.2010. The respondents would also state that SC incumbents including promotees under "own merit" were shown under the SC point and so granting excess in position would do injustice to the SC community. Therefore, according to the respondents the post of Junior Technical Assistant which was vacated by Shri Mangesh K. Morajkar (SC) on 30.4.2011 at point No.7 in the Post Based Roster was filled up by replacement with SC candidate Smt. M. Vimala on 21.6.5.2011. It is further stated that the 2nd respondent has

reopened the case of recasting of the Roster, under promotion quota and showed the SC incumbents according to their mode of promotion. The revised status of SC position required as per revised Annexure R2(f) roster is as under:


<i>Roster point</i>	<i>Name of the SC incumbent</i>	<i>Date of promotion</i>	<i>Mode of Promotion</i>
6	C.T.Sankaankutty	06/03/89	Own merit and seniority
7	Mangesh K Morjekar	28/03/1989	SC
8	K.Radhakrishnan	20/08/1991	Own merit and seniority
9	K Keeran	04/05/92	Own merit and seniority
11	P.K.Sunilkumr	11/05/92	Own merit and seniority
14	M.V Madhavan	20/01/1997	SC
17	A Sanjeeva	27/12/1999	Own merit and seniority
24	P.K.Krishnankutty	01/04/05	Own merit and seniority

It is not disputed that Smt.Vimala belongs to SC category. Therefore her candidature was considered for the vacant post which was vacated by Mangesh K Morjekar against the 7th point reserved for SC as per post based roster. Annexure R.2(g) is the final common seniority list of Supporting Staff as on 1.1.1990. Shri Radhakrishnan who appears at Sl.No.4 and Shri K.Keeran who appears at Sl.No.5 though are SC candidates, were promoted on their own merit. Sl.No. 1 Shri P.Ambu in Annexure A1 Seniority List was not found fit for promotion. Sl.No.2 Shri Radhakrishnan as stated earlier was promoted to Technical Category and Sl.No.3

Mohd.Haneefa was promoted to administrative category.


8. It is stated that the incumbents who were shown at Sl.No. 4 to 7 therein (applicant, CR Babu, V.Chandrahassan and PT Govindan Nair) though are qualified for promotion have not been promoted for want of vacancies. Though Vimala appears at Sl.No.8 she was promoted to the vacancy on retirement of Shri Mangesh K Morjekar, who retired on 30.4.2011, since she was the senior most among the SC incumbents. Therefore, the contention that promotion of Vimala (SC candidate) would exceed 50% of reservation during the recruitment year cannot be sustained. The learned counsel for applicant has referred to the so called mistake of non grant of promotion to the persons, but we are not persuaded to go deep into those aspects. So far as the applicant is concerned, who is at Sl.No.4 who does not belong to SC or ST cannot claim promotion above Sl.No.8 Vimala - SC candidate happened to get promoted replacing the vacancy of Mangesh K. Morajkar. In the light of the clarificatory statement given by the 2nd respondent, the argument vehemently advanced by the applicant that there was excess reservation causing denial of promotion to the applicant to the post of Jr. Technical Assistant (T-1) in category I - cannot be sustained.

9. As stated earlier the other prayer made in the application is that he should be promoted to the post of LDC with reference to the 4th respondent. Since multiplicity of prayers cannot be entertained in one single application, we desist from going into the contentions with regard to



prayer D mentioned in this OA. The question relating to the same is left open to be decided later, in accordance with law, if application for that purpose is separately filed. Hence leaving that question open, we hold that the applicant is not entitled to succeed in this OA.

10. Hence the OA is dismissed. No order as to costs.


(Mks. P. Gopinath)
Administrative Member

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(N.K. Balakrishnan)
Judicial Member