

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 183/2002

MONDAY THIS THE 14th DAY OF FEBRUARY, 2005.

C O R A M

HON'BLE MR. K.V. SACHIDANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

P.J. Raju S/o Sri Paulose John
Gramin Dak Sevak Mail Man (EDMM)
Officiating as Group-D, Sub Record Office
RMS TV Dn., Thiruvalla
residing at Padappattu Puthenparambil
P.O.Kuttapuzha.

Applicant

By Advocate Mr. O.V. Radhakrishnan

Vs.

1. Senior Superintendent
RMS TV Division
Thiruvananthapuram.
2. Union of India
represented by its Secretary
Ministry of Communications
New Delhi.
3. Thomson
Group-D SRO, Kottayam
4. A.M. Baby
Group-D
SRO, Thiruvalla.
5. G. Vikraman,
Group-D
SRO, Thiruvalla
6. V.D. Anithamma
Group-D
SRO, RMS, TV Dn
Kottayam.

Respondents

By Advocate Mr. K. Kesavan Kutty for R 1-2
Mr. Siby J. Monippally for R3 & 6

O R D E R

HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

The applicant P.J. Raju while working as officiating
Group-D at Sub Record Office, RMS TV Division, Thiruvalla
filed this Application seeking the following reliefs:

th

- i) to declare that the applicant is entitled to be considered for promotion to Group-D under OBC quota on the basis of his running seniority along with respondents 3 to 6 and his non-promotion to Group-D under OBC quota on provisional basis subject to production caste certificate certifying that he does not belong to the category of 'Creamy Layer' in terms of Annexure A2 Office Memorandum is illegal, arbitrary and unconstitutional
- ii) to call for the records relating to the selection and appointment of respondents 3 to 6 to the cadre of Group-D and to set aside the same to the extent of non-consideration of the applicant taking him as not belonging to OBC on the basis of Annexure A-5 seniority list which was corrected later in Annexure A-12 and denial of appointment to Group-D and to set aside Annexures A-15 and A-17.
- iii) to issue appropriate direction or order directing the 1st respondent to arrange convening of a review Departmental Promotion Committee and to consider the applicant for promotion to Group-D along with respondents 3 to 6 and to appoint him to Group-D with effect from the date of his entitlement on the basis of his running seniority over respondents 3 to 6 and to grant him full service benefits like seniority, fixation of pay, increments, including arrears of pay and allowances.
- iv) to grant him such other reliefs which this Hon'ble Tribunal may deem fit proper and just in the circumstances of the case such other and
- v) to award costs to the applicant.

2. The case of the applicant in short is that he belongs to the Christian-Cheramar Caste included in OBC category in the State of Kerala, that he had submitted a Caste certificate from the Village Officer declaring his caste status dated 11.5.1998, that it was not accepted as not issued by the specified authority, he submitted the required certificate dated 3.11.2000 which was accepted on 17.11.2000, that he should not have been superceded by his juniors (party respondents 3 to 6) in the OBC category for promotion to

H

Group-D by A6 orders dated 10.10.2000. The respondents contend that consequent upon introduction of reservation for OBC in 1993, the Government of India by Annexure R-2(a) dated 15.11.1993) stipulated that the OBC certificate should be obtained from a specified authority, the respondents accordingly directed all ED officials belonging to OBC to submit the required certificate by 31.11.1994, the applicant failed to comply while the respondents 3 and 4 complied leading to the grant of promotion to the respondents against OBC reservation points and maintaining the applicant in the UR category. When the required certificate dated 3.11.2000 was produced it was immediately accepted (17.11.2000) and necessary changes were made in the seniority list as on 1.1.2001. A6 orders dated 10.10.2000 were based on R2(f) seniority list as corrected upto 31.7.2000. By that time the valid community certificate of the applicant had not been received and hence he continued to be shown under the UR category. In the seniority list as on 1.1.2001 the applicant was shown as belonging to OBC at the appropriate place, but he could not be promoted by R-2(i) dated 4.10.2001 as he had a senior in the OBC category in the zone of consideration. When his turn came, the applicant was promoted by R-2(j) dated 17.12.2002.

3. The issues for adjudication are (i) whether the applicant could have been promoted along with respondents 3 to 6 by A6 order dated 10.10.2000 as an OBC candidate on the strength of his community/caste certificate obtained from a non-specified source, at least provisionally, pending

H

submission of a valid certificate. (ii) Whether it would be right to constitute a Review Selection Committee to assign to the applicant his place as a member of OBC prior to 17.11.2000 on the basis of a valid certificate accepted on that date.

4. Heard. The learned counsel for the applicant argues that since the applicant had produced a Caste Certificate at the time of initial appointment as EDMM in 1991 and yet another certificate in 1998, the official respondents were aware of his status, even though the certificates were not valid and they could have appointed him provisionally pending production of a valid certificate under notice. In support of this contention he has cited Annexure A2 OM dated 10.5.1995 which directed the Appointing Authorities to include a clause in the offer of appointment declaring that the appointment was provisional and was subject to the verification of caste certificate. In the case of the applicant also such a provisional appointment order could have been issued. By not following this procedure the official respondents allowed the applicant's right to a bonafide privilege to be jeopardized. The learned counsel further contends that on receipt of a valid certificate the official respondents could have convened a Review DPC to rectify the wrong that was done in not placing the applicant above his immediate OBC junior (respondent No. 3) w.e.f. 10.10.2000. Instead of doing this, the official respondents decided to leave the matter to the next DPC for considering the applicant against future vacancies, thereby compounding the damage done, as that would lead to further supersession

H

and even greater loss of seniority in the promotional post. The learned counsel for the respondents on the other hand argues that the applicant, not only failed in furnishing the community certificate within the stipulated time, he did not object to his non-categorisation as OBC in the seniority list of ED officials of RMS division as on 31.12.1995 and specific categorisation as UR in the seniority list as on 1.7.2000 (corrected upto 31.7.2000). In the absence of a valid community certificate and on the face of the applicant's acceptance of his gradation and community status until then, the obvious course was to consider only those who were validly recognised as belonging to OBC and to continue to treat the applicant under UR category. At a later date when a valid certificate was furnished, the applicant's claim was only to be considered prospectively depending on the roster point's and eligible candidates available. In regard to the possibility of considering the applicant for promotion retrospectively on par with his OBC junior through a review DPC there are no pleadings in the reply statement. The learned counsel, in the course of argument however pointed out that all posts had already been filled up and that serious disadvantage would visit the juniormost OBC promotee included in the A6 orders. No reply statements were filed by the private party respondents in the array.

5. When reservation for OBC came in 1993 and procedures were laid down for granting reservation, the official respondents asked all subordinate units to direct ED officials claiming to belong to OBC category to produce certificates in the prescribed proforma. The applicant

H

failed to act. He even accepted the seniority list of 1995 prepared after the stipulated date for production of certificates evidencing OBC status. Even if the official respondents were aware of the declared status of the applicant, they could not have suo motu without a valid certificate changed the classification from UR to OBC. The certificate of the Village Officer received three and a half years after the stipulated date was also invalid. We wonder why the applicant, if he was so certain of his status, fail to produce the evidence as required. The only fault that the official respondents could have committed was that they did not promptly point out to the applicant that the certificate produced by him was not valid and that the specified authority alone could issue the certificate. They responded on 2.11.2000 (A-9) only when the applicant represented on 11.10.2000. The applicant obtained a valid certificate immediately next day and submitted to the respondents on 9.11.2000 which was promptly accepted on 17.11.2000. An interesting aspect of the situation was that the A9 communication did not acknowledge the fact of having received the community certificate earlier. It only referred to the copy of the certificate received along with the applicant's representation of 11.10.2000. The learned counsel for the respondents categorically stated that no previous certificate was received, excepting the one purported to be a copy, received along with the representation. In this circumstances we feel that the respondents were perhaps in no position to point out the flaw in certificate as they presumably did not receive it. We therefore conclude that it could not have been possible for the official respondents to have issued a provisional promotion order. As a matter of

H

fact all promotees were to be issued with a provisional order only. This was to be issued to all those who produced prima facie valid certificates. The applicant had not produced any certificate prior to 11.10.2000. Incidentally the representation of 11.10.2000 was made the very next day of the issue of A6 orders. By that time the orders had been issued and the invalid certificate helped none.

6. Could the respondents have, on receipt of the valid certificate, convened a review selection committee to consider the promotion of the applicant? We have noted the arguments of the counsel for respondents to the effect that all reserved posts in OBC category had already been filled up by A6 orders and that for the negligence of the applicant, a regularly promoted junior could not be deprived of his promotion. Further, we do not see how a review selection committee could be convened when the applicant himself was to blame for missing the opportunity of consideration. In fact that would seriously jeopardise the functioning of the system. That way, all those who could not comply with the requirements of procedure would comply with it belately at their convenience and demand review of orders issued, thereby destabilising those who rightly and in full faith complied with the procedural requirements. We also do not see any fault on the part of the Department due to which the applicant was prevented from submitting his valid certificate in time. Having submitted his certificate late, he would be entitled to avail the attendant benefit only in his turn. Promotion ordered under Annexure R-2(i) cannot also be faulted as K. Sasi (2) is in any case senior to him in all

H

the lists. By R2(j) dated 17.12.200², the applicant has since been promoted.

7. In the result we dismiss the Application leaving the parties to bear their own costs.

Dated the 14.2.2005.


H.P. DAS
ADMINISTRATIVE MEMBER


K.V. SACHIDANANDAN
JUDICIAL MEMBER

kmn