

Central Administrative Tribunal Lucknow Bench Lucknow

O.A. No. 427/2007

This, the ^{13th} day of January, 2009

Hon'ble Mr. M. Kanthaiah, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)

Anil Chandra aged about 41 years son of Sri Shanker Lal Bhartiya, resident of Type II, 231, Akansha Parisar, Jankupuram, Lucknow (presently working as Lower Division Clerk (Grade VII), in Passport Office, Govt. of India, Ministry of External Affairs, Nav Chetna Kendra, Ashok Marg, Hazratganj, Lucknow -226001.

Applicant

By Advocate: Sri P. Singh for Sri R.C.Singh

Versus

1. Union of India, through the Secretary, Ministry of External Affairs, New Delhi -110001.
2. Joint Secretary (CPV) and Chief Passport Officer, Govt. of India, Ministry of External Affairs, (C.P.V. Division), Patiala House Annexie, Tilak Marg, New Delhi.
3. Deputy Secretary (PV) Govt. of India, Ministry of External Affairs, CPV Division, (Inspection Unit), Patiala House, Annexie, Tilak Marg, New Delhi.
4. Passport Officer, Govt. of India, Ministry of External Affairs, Nav Chetna Kendra, Ashok Marg, Hazratganj, Lucknow-226001.

Respondents.

By Advocate: None

ORDER

By Hon'ble Dr. A. K. Mishra, Member (A)

This application has been made against the decision of the respondents to supersede the applicant in the matter of promotion to the rank of Upper Division Clerk (UDC) in the year 2005 and in not considering his case again in the Departmental Promotion Committee (DPC) meeting held in the year 2006.

2. The applicant was working as LDC and was eligible for promotion to the next higher rank of UDC. The DPC considered his case against the reserved quota meant for Scheduled Caste (SC) candidate ~~SC~~ but found him to be unfit for promotion. He was superseded in the promotion order

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issued on 31.3.2005 when candidates junior to him in the SC category were promoted.

2. The respondents have made a preliminary objection that this application is barred by limitation as it was filed on 28.9.2007 after a lapse of 2 years 3 months when the prescribed limitation period is only one year as provided under Section 21 (a) of the Administrative Tribunal Act 1985. If the plea of pending representation is to be considered then the cause of action should be computed from 6.6.2005 when his representation was rejected. Even allowing for this contingency, the filing of this application still suffers from delay of one year 3 months.

3. The applicant has filed an application for condonation of delay where it has been urged that the applicant submitted another application on 13.7.2005 requesting the respondents to intimate the reasons why his name was not approved for promotion. Though, copies of these applications dated 13.7. 2005 and 14.7.2005 have been annexed as (Annexures 7 and 8) they don't reveal whether they have been received in the offices of the respondents. Neither is there any diary number nor any stamped signature acknowledging receipt of these applications. The justification given for delay in filing this application against the impugned decision in superseding him in 2005 for promotion to the next higher rank of UDC is not sufficient. Therefore, we sustain the preliminary objection that this application is barred by limitation as far as the applicant's supersession in the year 2005 is concerned.

4. However, the impugned decision of the Respondent No. 3 communicated in their letter dated 16.11.2006 that the applicant could



not be considered in the DPC held during 2006 on the ground of non availability of vacancy in the SC category is challenged within time. Therefore, we would confine our consideration to this impugned order only.

5. The applicant has expressed surprise at the statement of the respondents that there was no vacancy meant for SC candidates when 74 vacancies were being filled up by promotion in the impugned order dated 9.10.2006. Except for making bald accusations that the order was illegal, arbitrary and discriminatory in nature and that the statement about non availability of vacancy was not credible, no specific assertion has been made controverting the statement made by the respondents.

6. The respondents have stated that while considering the promotion to UDC rank in 2005 it was noticed that there were 18 candidates already in excess in the SC category, whereas the short fall in Scheduled Tribe (ST) category was 32 in the over all sanctioned posts. Total available vacancies for promotion to the post of UDC were 24, out of which 8 were meant for SC, 6 for ST and 10 for General candidates. Due to non availability of ST candidates, the DPC decided to amalgamate vacancies for SC and ST and recommended promotion of 13 SC candidates and one ST candidate. When the position was reviewed at the time of DPC in 2006, it was seen that there was 19 candidates in excess in the SC category and 36 shortfall s in ST category. Therefore, this time, promotions were given to 17 ST candidates and 72 general candidates and there was no vacancy which could be considered for SC candidates. Such exchange of vacancies between SC and ST are permissible as per Government instructions and the applicant has not specifically challenged it on the ground of infraction of any rule or



government instructions. In the rejoinder application, the following statement has been made " it is not understood as to how there could be no vacancy for SC when admittedly as per post based roaster 94, posts should have been reserved for SC and 47 for ST candidates when the quota for SC candidate is 18% and for ST 3%". From the averment in the counter reply, it is seen that though 94 posts should have been reserved on the basis of roaster points there were already 19 candidates in position in excess of the SC quota. Similarly, as against 47 roaster points meant for ST category, the shortfall was 36. Therefore, an attempt was made to correct the imbalance and promote more of ST candidates to fill up the shortfall and not to promote any more SC candidates in view of the excess number already available.

7. We do not find this decision to be unreasonable. It does not suffer from any infirmity. In the result this application is dismissed as without merit. No costs.

Allegre
(Dr.A.K. Mishra) 18/109
Member (A)

Amma
(M. Kanthaiah)
Member (J)
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