

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1142 of 1996.

Dated this Monday the 5th day of November, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

S. M. Sundaram,
Asstt. Audit Officer,
O/o. the Principal Director of Audit,
New Administrative Building,
Central Railway, 4th floor,
Mumbai - 400 001.

...

Applicant.

(By Advocate Shri S. Natrajan)

VERSUS

1. Union of India through
The Comptroller & Auditor General
Of India,
10, Bahadur Shah Zafar Marg,
New Delhi.
2. Principal Director of Audit,
New Administrative Building,
4th floor, Central Railway,
Mumbai - 400 001.
3. Shri Maheshgauri,
Audit Officer,
New Administrative Building,
4th floor, Central Railway,
Mumbai - 400 001.

... Respondents.

(By Advocate Shri S.S. Karkera for
Shri P. M. Pradhan).

.....2/-

ORDER

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case comes up to this Tribunal seeking the relief for the setting aside and quashing of the letter dated 11.07.1996 (wrongly written as 1986) and for holding that the Applicant is entitled to be promoted to the post of Audit Officer w.e.f. the date of promotion of Respondent No. 3, who is his junior. Consequential benefits are also sought.

2. The facts of the case are that the Applicant who was originally appointed in Government service in February, 1962, in the office of the Respondent No. 2, was promoted as Section Officer in May, 1984, further promoted as Assistant Audit Officer Grade 'B' on 01.01.1988 in the scale of Rs. 2000-3200 and states that he is due for promotion on 28.06.1996 (being senior most) to the post of Audit Officer, Group 'B' in the scale of Rs.2375-3500. The Applicant avers that the post of Audit Officer belongs to Group 'B' Non-ministerial category and is governed by the relevant recruitment rules of 1989, according to which, one-third of the post are selection posts and the remaining are non-selection posts. Further, that after two promotions on non-selection basis, one promotion is granted on a selection basis.



3. The Applicant then goes on to describe in para 7 of his pleadings, the aspect relating to reservation of post for S/C and S/T officials, which he states, is to the extent of 15% and 7.5% respectively. It is his contention that the sanctioned strength of post of Audit Officer is 7. He also draws our attention to the seniority list of Audit Officers(Exhibit A-3). The Applicant is aggrieved by the promotion of Shri Maheshgauri, Respondent No. 3, who he states was promoted as Audit Officer w.e.f. 28.06.1996. He contends that the said Maheshgauri is junior to him, and that the roster point for reservation should be operated only if there is a short fall in the number of S/T candidates in the higher post. In short, therefore, the Applicant is aggrieved that the promotion was against a reserved point/carried forward vacancy in as much as it was neither a reserved point nor was there any carried forward vacancy. The vacancy could not have been filled up on the basis of reservation in as much as entitled representation existed in the higher category. It is with this grievance that the Applicant is before the Tribunal. In the further part of the application, details of officers holding the post seniority wise and the law on the subject have been set out.



4. The official Respondents in the case have filed a Written Statement of Reply resisting the claims of the Applicant and stating that the promotion provided to Respondent No. 3 was granted as per procedure and guidance for the grant of benefits to SC/ST officials. It is stated that there is a 40 point roster maintained by the Respondents, as prescribed by Government for selection and non-selection categories separately. Carrying forward of vacancies are allowed only in the case of non-selection method and the panel size was fixed as 5 for the year 1996. Out of the said five vacancies, two were filled under selection quota and the remaining three vacancies under non-selection quota. By applying 50% restriction on reservation, one vacancy was to be filled in by reserved category candidate under non-selection method and there was a carry forward point of Scheduled Caste (Point No. 28 of 95 under the non-selection method). The Respondents further state that Shri Maheshgauri, Respondent No. 3, was promoted against this carry forward Point 28 of 1995. Therefore, it is not correct that Maheshgauri was wrongly promoted, as alleged.

5. In the further part of the Written Statement, the Respondents have attempted to meet the points raised in the O.A. parawise. It is stated, inter-alia, that the Railway Board letter dated 16.06.1992 and the letter of Department of Telecom



....5/-

of 07.04.1989 are not applicable to the Respondents, since no representation of reservation orders have been issued by the Government of India. This point is further stressed in para 21 of the Written Statement with reference to the averments made by Applicant in para 4.20 regarding the applicability of the judgement in the case of R. K. Sabarwal V/s. State of Punjab (CITATION)

6. We have seen all papers in the case and have heard the Learned Counsel on both sides, namely - Shri S. Natrajan for the Applicant and Shri S. S. Karkera for Shri P.M. Pradhan for the Respondents.

7. Learned Counsel for the Applicant took us through the facts of the case in detail and made the point that the Applicant was due for promotion on 28.06.1996 being the senior most officer. This promotion was due as Audit Officer Group 'B' in the scale of Rs. 2375-3500. It was contended that the Respondent No. 3 appeared at Sl. No. 12 in the seniority list (appended at exhibit A-4) and was promoted as a Scheduled Caste candidate considering the vacancy as a reserved point. The total number of posts as Audit Officer being 7, the reservation at 15% comes to one post, this means it was contended that only one post could be held by a Scheduled Caste candidate. One S/C candidate was



already in the higher post at sl.no. 5 i.e. Mr. Ram Lakhan. Learned Counsel stated that this fact has been mentioned at para 13 of the O.A. Hence, as per the ratio decided by the Hon'ble Supreme Court in the matter of R. K. Sabharwal & Others V/s. State of Punjab & Others [1995 SCC (L&S) 548] the promotion of Respondent No. 3, Mahesh Gauri, by order dated 28.6.1996 (A-5) is contrary to the law settled by the Hon'ble Supreme Court. The operation of the Roster should have been stopped according to the argument made before us by the Learned Counsel for Applicant. The case of Ajit Singh Januja & Others V/s. State of Punjab & Others [AIR 1996 SC 1189] was also cited in support. It was pointed out that the Applicant had retired on 30.11.1996, although he had filed the case on 27.08.1996 i.e. prior to his retirement.

8. Arguing the case on behalf of Respondents, the Learned Counsel depended on para 7 and 21 of the Written Statement where it is stated that as per Recruitment Rules for the post of Audit Officer, 5 years regular services in the combined cadre of Section Officer/Assistant Audit Officer is required. Also that 33.33% post are on selection basis and the remaining 66.66% on non-selection post. It was argued that the vacancies are ear-marked for SC/ST on a 40 point roster maintained for selection and non-selection category separately. It was argued that carry forward is permitted only in case of non-selection

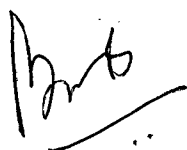


....7/-

11. We have considered all the points made in the written pleadings and the argument made before us by the Learned Counsel on both sides. It is not disputed that the reservation for the post of Audit Officer was limited to one. This is not the disputed point. It is also stated that the selection of Respondent No. 3 was made with reference to a particular point of the Roster i.e. as a result of the roster. This means that the roster was undisputably operated upon as per the instructions then in force.

12. We must also mention here that we were provided by the respondents with the register of roster and a copy of the DPC proceedings held to prepare a panel^m for promotion to the post of Audit Officer for 1996.

13. Now the first point that we see is that from the facts that are available, it would seem that the ratio in the case of R. K. Sabharwal V/s. State of Punjab [1995 (2) SCC 745] would apply to the present case. The decision in Sabharwal's case was declared to be prospective w.e.f. 10.02.1995, which condition is also satisfied here. The only substantial defence taken in not filling up the post by open category and for following the judgement in R.K. Sabharwal's case is that no instructions had been received by the Respondents from Government pursuant to the decision in R.K. Sabharwal's case. Now when a challenge comes in



a judicial forum, this argument cannot hold the ground and it will be the ratio of the Supreme Court judgement that will hold the ground.

14. The point to be considered is as to what relief can be provided. It has been asserted in one place by the Applicant that he was the senior most eligible person for promotion. We have therefore carefully gone into the seniority list of Assistant Audit Officers available at page 15 and 15 (A) of the Paper Book and the minutes of the DPC meeting dated 29.12.1992 referred to. We note from the letter that the DPC has considered the matter comprehensively. A well drafted three page note first giving the factual position and then the conclusions drawn is evident. Importantly it is first stated as to how rotation of selection and non-selection posts is to be done and then indicated that "the panel to be prepared for 1996 Panel Year would therefore consist of X, Y1, Y2, X and Y1 " points. In other words, the panel would consist of two persons as selection panel and three on non-selection panel. Accordingly panels are prepared separately for selection and non-selection and then a combined panel indicated. The combined panel is as follows:-



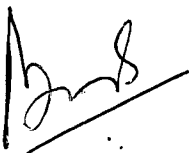
....10/-

6. Combined panel would be as follows:

	Name	Category
	S/Shri	
1.	R.D.Rajan	X
2.	V.A.Gari	Y-I
3.	K.P.Shetty	Y-2
4.	R.K.Bajaj	X-I
5.	C.B.Maheshgauri	Y-I"

Now it is seen from a combined reading of the Audit Officers' seniority list on page 14 and the Assistant Audit Officers List at page 15 that all persons on the combined panel (except of course respondent no.3) are senior to the applicant. In that case vis-a-vis the others, the applicant can have no grouse. We are also handicapped in that we have not been provided with the full facts in respect open category candidates or as to what happened in the intervening years by way of promotions, if any. The whole argument has rested on the aspect of reservation etc.

15. Under the circumstances, it is clear that the deeming of the vacancy as reserved vacancy was wrong and hence the promotion of respondent no.3 at that stage was wrong in terms of settled law of the Hon'ble Supreme Court. Thus the impugned order dated 28.6.1996 will therefore need to be quashed. We, however, add



that respondent no.3 need not be demoted till further action is completed. The further action would be the examination of the process of promotion afresh as if in December, 1995. The gradings made by the DPC at that time are not in question per se (Very Good, Good etc.). Therefore, maintaining the very gradations of individual officers given, the competent authority in the department may then look at the position of seniority vis-a-vis the rotation of 'X' and 'Y' as per rules and then find out who is eligible for promotion from that date. In case the applicant is eligible for promotion, he should be provided the promotion on notional basis and his pay should also be fixed on notional basis. Formal orders of promotion should be made; however the ~~second~~ ^{Bnd} eligibility and so on depending on the facts of retirement etc. should be decided and promotion granted. Only when such orders are issued, may the respondent no.3 be demoted, unless his turn has otherwise come. Written order would need to be made by the respondents in this regard giving, in brief, reasons for the decision taken.

16. The OA is therefore allowed and the impugned order is hereby quashed. The further orders and directions shall be as contained in paragraph 15, above.

17. There shall be no order as to costs.

S. L. Jain
(S.L. Jain)
Member (J)

B. N. Bahadur
(B. N. Bahadur)
Member (A)