

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1056/1996
DATED THE 22ND FEB, 2002**

**CORAM:HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SMT. SHANTA SHAstry, MEMBER(A)**

Shri A.V.Pathak
Court Officer/Section Officer,
CAT, Mumbai Bench (on deputation) ... Applicant

By Advocate Shri S.P.Saxena

V/s.

Union of India
through

1. The Secretary,
Ministry of Communication,
Department of Posts, Dak Bhavan,
New Delhi - 110 001.
2. The Chief Postmaster General,
Maharashtra Circle,
Mumbai - 400 001.
3. Shri K.V.Kamble,
Assistant Post Master General(MAILS),
Office of the Chief Postmaster
General, Maharashtra Circle,
Mumbai - 400 001.
4. The Secretary,
Department of Personnel & Training,
Government of India,
Ministry of Public Grievances and Pension,
New Delhi-110 001. ... Respondents

By Advocate Smt.H.P.Shah

(ORAL)(ORDER)

Per Smt.Shanta Shastry, Member(A)

The main grievance of the applicant in this OA is that he was not considered for adhoc promotion to the Junior Time Scale w.e.f. 24/9/95 but one Shri Kamble belonging to the Scheduled Caste Community was promoted instead on adhoc basis w.e.f. 20/12/95.

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2. The applicant who had joined as a Postal Sorter had passed his examination for Inspectors post in 1973. Shri Kamble according to him passed the same examination in 1974. Shri Kamble being junior should not have been considered for the adhoc promotion as according to the applicant Shri Kamble had secured accelerated promotion on account of reservation quota from time to time. He had been promoted to the post of PS Group 'B' w.e.f. 24/9/92 on account of reservation. Applicant was thereafter promoted on a proforma basis to the Group 'B' PS Group 'B' w.e.f. 2/11/93 vide orders dated 24/5/95. The respondents have promoted a large number of Postal Officers vide order dated 13/10/93 which included a list of 238 persons. The applicant was at No.185 in the list. Thereafter, though the applicant was promoted later, he had not agitated the issue as the scheduled caste candidates got seniority on account of the accelerated promotions. Thereafter, a landmark judgement was given by the Supreme Court in the case of R.K.Sabharwal and others V/s State of Punjab and Ors 1995(2)SCC 745 wherein it was held that reservations cannot be made in excess of quota meant for different reserved categories. Further reservation quota was to be based on the number of posts and not on the number of vacancies as was being done earlier. This judgement became effective prospectively from 10/2/95. Thereafter, there was a further judgement in Union of India and Ors V/s. Virpal Singh Chauhan etc JT 1995(7) SC 231 Virpal Singh Chauhan by the Supreme Court on 10/10/95. In this judgement it was held that even though reserved

candidates got accelerated promotions, there cannot be accelerated seniority. If both reserved and the general candidate get promoted to a particular level before reaching the next level of promotion and if that happens to be after 10/2/95, then the seniority of the general candidate as per the base grade seniority has to be restored. Thus, according to the applicant since the respondent no.3 Shri Kamble was promoted to JTS Group 'A' w.e.f 20/10/95, before considering him for such promotion, the applicant's seniority as per the base grade seniority should have been restored. This was not done by the respondents thus depriving the applicant of his promotion in JTS Group 'A'.

3. The applicant had made a representation to which the respondents replied stating that as per the standing Recruitment Rules three years regular service in PS Group 'B' is the eligibility condition for promotion to JTS or IPS grade. Since the applicant had been promoted to PS Group 'B' w.e.f. 2/11/93 on the basis of proforma promotion granted to him when his immediate junior joined the cadre, he was not eligible for the JTS Group 'B' and therefore his representation was rejected vide letter dated 9/5/96. The learned counsel for the applicant urges that he was already working in a post equivalent to PS Group 'B' while he was on deputation to CAT and therefore his service on the deputation post should also have been counted for purposes of promotion to the post of JTS as he had thus completed three years.

4. The learned counsel for the respondents submits that they had purely gone by the Seniority list of PS Group 'B' according to which the respondent no.3 Shri Kamble was senior to the applicant having been promoted to that grade on

24/9/92 as against the date of promotion of the applicant on 2/11/93 and therefore he was rightly considered for promotion. Further the promotion given to Respondent No.3 was a purely adhoc promotion and therefore the applicant cannot have a claim on that as the applicant was continuing on deputation at the relevant time. On all these grounds, the applicant has no case. The learned counsel for respondents also adds that the applicant is not the senior most person but there were several of the general candidate who were senior to the applicant that who had not been considered for promotion to JTS Group 'A'. The learned counsel further informs that no regular promotion was made till 2001. Thus, the respondent no.3 continued on adhoc basis.

5. The learned counsel for the applicant insists that even though he was on deputation atleast an offer should have been made to him when adhoc promotion was granted to Shri Kamble and there is no rule which says that seniority should be overlooked for adhoc promotion even when a person is on deputation. The person might have returned from deputation.

6. In the present case, the applicant was on deputation as on 20/10/95. Respondent No.3's promotion was purely an adhoc promotion in a regular vacancy initially made for a short period and therefore the applicant could not have been recalled from deputation for this purpose.

7. The learned counsel for applicant submits that adhoc promotions cannot go beyond a period of six months (180 days) and if such promotion is continued indefinitely for a number of years then it cannot be called an adhoc

promotion. Therefore the applicant had every right to be considered in place of Shri Kamble who was otherwise junior to him in the base grade.

8. We have heard the learned counsel for both sides and have given our careful consideration to the arguments advanced. The question is of applicant's adhoc promotion to the post of JTS Group 'A'. We find that at the relevant time when respondent no.3 was selected to the post on adhoc basis the applicant was on deputation. We agree with the applicant that when the a selection was held after 10/2/95, after the judgement in the case of R.K.Sabharwal the seniority of the General candidate should have been restored to their original seniority in the base grade. Accordingly, the respondents should have restored the seniority of the general candidates including that of the applicant at the time of the DPC held in 1995 applicant as well as respondent no.3 had already been promoted to the feeder grade before the selection was held in 1995. We also agree that the respondents could not have promoted the scheduled caste candidate in excess of the quota prescribed. The learned counsel for the respondents has denied that the scheduled case candidates were promoted in excess of the quota. We also agree that even for adhoc promotion, the seniority counts and the senior most person has to be considered fitst. However, we find that the applicant has returned from deputation only in 1998, by then the respondent no.3 was already on adhoc promotion. Even if the respondents were to consider applicant's claim in 1998, for which according the respondents there were several other senior candidates from the

general category who were placed above the applicant even in 1998 so even if the respondent nos.3's adhoc appointment were to be terminated, then the senior most person from amongst the general candidates would have become eligible and not the applicant himself.

9. We have seen the list of promotees as per the order dated 13/10/93. This is the list of all those who were promoted in 1993 batch. In this list there are several persons from the Maharashtra Circle from the General category who appear to be senior to the applicant. Although no seniority list of the Inspectors i.e. base grade has been produced but this list in the letter dated 13/10/93 makes it quite clear that there were sever other persons senior to the applicant even in the general category. The applicant has not challenged their seniority.

10. The applicant says that his service on deputation post should have been counted for the purpose of seniority and therefore he would have been in the 1992 batch and not in 1993 batch. The relevant provision from the DOP&T OM dated 10/4/89 as cited by the applicant in this connection is as follows:

" Very often a certain number of years of service in the lower grade is prescribed as a condition for becoming eligible for consideration for promotion to a higher post/grade. In such cases the period of service rendered by an officer on deputation/foreign service should be treated as comparable service in his parent department for purposes of promotion as well as confirmation. This is subject to the condition that the deputation/foreign service is with the

approval of the competent authority and it is certified by the competent authority that but for deputation/foreign service the officer would have continued to hold the relevant post in his parent department. Such a certificate would not be necessary if he was holding the departmental post in a substantive capacity." It is seen therefrom that the applicant on deputation from 24/9/92 to the post of Court Officer/Section Officer CAT, Mumbai Bench which is equivalent to the post of P.S.Group 'B'. When he went on deputation he was only holding the lower post of Inspector in his parent department and not P.S.Group B post. His service on deputation could be counted for the post of inspector only. He was promoted in his parent department Department to PS Group 'B' only from 2/11/93. Had he not gone on deputation he would have continued as inspector only in his parent department till he got promoted to P.S. Group 'B' the feeder grade for promotion to JTS Group 'A'. Therefore rightly the respondents have counted his service from 2/11/93 for eligibility for promotion to JTS Group 'A'. The OM of 10/4/89 therefore does not help him. He was not thus eligible on 20/10/1995 when the respondent no.3 was promoted on ad hoc basis to JTS Group 'A'. The applicant has also not been able to show any material to us that he is senior to the general category candidates.

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11. In the facts and circumstances of the case, it is difficult for us to consider the claim of the applicant. We do not also want to set aside the promotion of respondent no.3 with retrospective effect. We therefore hold that the application fails and accordingly the OA is dismissed. No costs.

Shanta Shastray

(SMT. SHANTA SHAstry)
MEMBER(A)

ASHOK AGARWAL

(ASHOK AGARWAL)
CHAIRMAN

abp

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Order/Judgement despatched
to Appellant/Respondent(s)

26/3/2

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