CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. ~~1000/97~~ 83/99

Date of Decision: 13.11.2002

B.C. Sontake.	Applicant(s)
S.P. Inamdar.	Advocate for Applicants
Versus	
Union of India & others	Respondents
Shri R.R. Shetty.	Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. .. MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

1. To be referred to the reporter or not? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal? ✗
3. Library. ✓

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(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.83/1999

THIS THE 13th DAY OF NOVEMBER, 2002

CORAM: HON'BLE SHRI S.L. JAIN. .. MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

Shri B.C. Sontake, aged 54 years,
Senior Accounts Clerk/
Upper Division Clerk,
Under Directorate of Purchase & Stores,
Bhabha Atomic Energy, Mumbai,
Maharashtra State. ... Applicant

By Advocate Shri S.P. Inamdar.

Versus

1. Union of India, through
The Director, Department
of Purchase & Stores,
Department of Atomic Energy,
V.S. Bhavan, Mumbai-400 094.

2. The Joint Secretary,
Department of Atomic Energy,
Anushakti Bhavan, C S M Marg,
Mumbai-400 039.

3. The Administrative Officer-III
Department of Atomic Energy,
V.S. Bhawan, Mumbai-400 094.

4. Smt. Shanta N Iyer,
Temporary Assistant Accountant,
Diretorate of Purchase & Stores,
Vikram Sarabai Bhavan, Anushakti
Nagar, Mumbai-400 094. .. Respondents

By Advocate Shri R.R. Shetty.

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

The applicant has filed the present OA seeking the following relief:

8.1 The Honourable Tribunal may kindly be pleased to direct the respondents for promoting the applicant as Assistant Accountant as requested per Exh. A-4 and that too from the S.C. quota.

8.2 The respondents be directed to not fill the vacancy of the post which is likely to be vacant due to the voluntary retirement of Smt. V.N. Shanbhag, Assistant Account till the decision of this case by the Honourable Central Administrative Tribunal, Mumbai Bench.

8.3 The respondents be saddled with the cost of this application.

8.4 The respondents be directed to produce the result of examination of S/Shri G. Dasharathan and D.K. Shine.

8.5 Any other relief as due the Honourable Tribunal may found/deem fit and proper in the circumstances of the case to meet the ends of justice.

The applicant has also prayed for interim relief to restrain the respondents from filling the post of Assistant Accountant falling vacant due to voluntary retirement of Smt. V.N. Shanbhag on or before 10.02.1999. No interim relief was granted, however, it was directed that any promotion made to the post of Assistant Accountant in Directorate of Purchase and Stores, DAE, hereafter shall be subject to further order or final order that may be passed in the OA.

2. The case was heard finally on 24.10.2002. The applicant submits that the applicant belongs to SC and is working in the Directorate of Purchase and Stores, Atomic Energy. He was appointed as LDC with effect from 06.5.1966 and was further promoted as UDC on 24.8.1977 and Senior Accounts Clerk with effect from 20.11.1989. He had completed eight years of qualifying service in the post of Senior Accounts Clerk. His name appears at Sl. No.6 in the seniority list and No.2 in the roster of SC candidates. According to the applicant Shri

Kamble at Sl. No.5 expired on 31.8.1998 and the applicant being the senior most SC is entitled for promotion to the post of Assistant Accountant. The applicant represented for promotion on 14.9.1998. He was given a reply on 04.02.1999 stating that his case shall be considered at the appropriate time.

3. According to the applicant there are 18 posts of Assistant Accountant and considering the reservation of 15% for SC, 2.7 posts i.e. rounded off to three posts should go to the SC. There were already two persons namely S. Dasharathan and Shri D.K. Shinde at Sl. No.1 and 8. According to the applicant, these two SC candidates had passed the departmental examination on merit. Therefore, they ought to have been treated as general candidate and they should not be shown against SC quota. Thus, two vacancies would have become available for SC and the applicant would have got a chance for being considered for promotion against the reserved quota. The applicant has relied on Swamy'S News in the April issue of 1998. The applicant submits further that Smt. V.N. Shanbhag at Sl. No.4 had given notice of voluntary retirement to be relieved on February, 1999. Therefore, a vacancy has occurred, but the respondents did not apply the roster properly.

4. The applicant submits further that according to the OM dated 08.8.1975, a UDC who had worked in the

...4.

accounts branch for minimum period of 10 years and attained the age of 48 years is exempted from appearing in the departmental examination. Since the applicant is above 48 years and has been UDC for more than 10 years he is eligible for being exempted from appearing in the departmental examination. The applicant says that no departmental examination has been conducted since 1994 and in the examination held in 1993 one Smt. Shanta N. Iyer was empanelled but her name could be in the panel only for a period of 1 1/2 years, she cannot be posted to the post of Assistant Accountant falling vacant in 1995. The life of the panel was over. Though she was granted temporary promotion, it has a smell of favouritism. The applicant therefore, has taken the ground that there are in fact three posts to be reserved for SC in the total strength of 18 posts of Assistant Accountant. Appointment of Shri S. Dasharathan and Shri Shinde against the SC quota is illegal, bad in law and against the reservation norms. They have to be shown only against general quota as they have passed on their own merits. Nine candidates on the general category were recruited from 1973 till date, but no SC was promoted or appointed against the reserved quota. There is complete departure from applying the reservation roster. At least the vacancy caused by voluntary retirement of Smt. Shanbhag must have been filled by SC, instead the vacancy was carried forward for two years i.e. from 27.02.1996 to 30.9.1997.

5. The respondents have filed detailed reply as well as sur-rejoinder explaining the position. According to the respondents there are 18 posts of Assistant Accountants. As per the recruitment rules / norms for the post of Assistant Accountant as per the OM of 08.8.1975 of the Department of Atomic Energy there is a provision for filling up of 12 1/2% of vacancies from amongst UDC attaining the age of 48 years and having worked for 10 years without passing departmental examination. However, these norms were reviewed subsequently in 1989. It was decided to abolish the percentage of quota of 12 1/2% and to enhance the same on seniority cum fitness to 20% of vacancies in the grade of Assistant Accountant. Those UDC with six years of service in accounts wing were to be considered for promotion against the said 20% vacancies on seniority cum fitness basis as reflected in the OM dated 12.9.1989.

6. According to the respondents there is number of UDCs who are senior to the applicant, so he cannot be considered against 20% quota. The applicant also did not appear for the Limited Departmental examination and therefore, he was not considered against the merit quota. Even going by the earlier rules, the applicant had not attained the age of 48 years upto 12.9.1989 when the rules were amended. Therefore, he could not be exempted from passing the limited departmental examination as was the provision prior to 12.9.1989.

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7. Consequent upon the decision of the Supreme Court in the case of R.K. Sabharwal Vs. State of Punjab (1995 (1) SLJ 370 SC) the DOP&T issued OM dated 02.7.1997 giving detailed instructions regarding reservation and maintenance of post based roster. Separate roster for SC/ST, OBC within the over all ceiling of 50% of the cadre strength are to be maintained. In the cadre strength of 18 no such reservation post was available in terms of OM dated 02.7.1997. According to this roster, the new roster point are on No. 7 and 15 for SC. According to the respondents, there is no scope for appointment of three SC since two SC were already appointed in 1986 and 1991.

8. The respondents have further submitted that according to the C & AG circular dated 23.01.1998 the clarification given states that promotion of reserved category candidate based on their own merit has to be counted against reserved points only and the same proposition has been applied in para 5 of the OM of 02.7.1997 and therefore also there being no scope the applicant could not be considered for promotion to the post of Assistant Accountant. Further, there is no provision to round off the number of posts because the roster points are fixed. Accordingly, the next third vacancy will have to be filled only on the basis of merit/ written examination under 80% quota. The applicant has not qualified in the limited departmental examination. The respondents have also clarified that

Shri S. Dasharathan had passed by relaxed standard and not on merit. The respondents have also contended that the life of the promotion panel is valid until it is exhausted. They have relied on the DOP&T OM dated 08.12.1992 and guidelines of 23.6.1984. Therefore, on Smt. Shanbhag's retirement on 10.02.1999 the next candidate in the panel, who qualified in the written examination of 1994 was given promotion, as Smt. Iyer had been empanelled on 27.5.1994. The respondents have further stated that it does not mean that the applicant shall not be considered for promotion, but he shall be considered at the appropriate time. He is the senior most SC, but there are three more UDCs who are above him in seniority and who have not passed the limited departmental examination. According to the model roster, the post at Sl. No.18 is to be filled by unreserved candidate. Further, the applicant has become senior most SC only after the death of Shri Kamble on 31.8.1998.

9. According to the respondents, therefore, the applicant shall get his right for promotion to the post of Assistant Accountant at the appropriate time only.

10. We have heard the learned counsel for the applicant as well as the respondents. We have also seen the Roster Register. We note that there are 18 posts. 80% of the posts are to be filled by limited

departmental examination quota and the 20% of posts are to be filled on seniority cum fitness. It is true that both Shri Dasharathan and Shri Shinde are SC candidates. As already explained Shri Dasharathan has been shown against SC quota. It is rightly shown as he passed the examination by relaxed standard. According to us Shri Shinde having passed on merit ought to have been shown against the general quota though according to the respondents, the principle of treating the SC candidate coming up on their own merit as general category applies only to direct recruits and not for promotion. Even assuming that Shri Shinde could not be shown against SC quota, the applicant would not be benefitted by the same as he has not passed the departmental examination. The respondents have also submitted that it is not correct to say that no departmental examination was held after 1994. In fact such examinations were held in 1994, 1996 and 1998 and two panels have been drawn up and the applicant did not appear in any of the examinations. Coming to the 20% quota also, since the available vacancies are at roster point which are meant for unreserved category, the applicant has to wait for his turn and there are some UDCs who are senior to the applicant. Thus, the applicant has no case for promotion against the 80% quota as he has failed to appear in the departmental examination. Even for 20% quota there is no roster point available for SC immediately. He has to wait for his turn. In the facts and circumstances of the case, we are satisfied that the action of the respondents is in order and the applicant's case is devoid of any merit. Accordingly, the OA is dismissed. No costs.

(SMT. SHANTA SHASTRY)
MEMBER (A)

(S.L. JAIN)
MEMBER (J)

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