

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 795/90
T.A. No.

198

DATE OF DECISION 31.3.1992

Shri V.D.Potkule Petitioner

Mr.S.Natarajan Advocate for the Petitioners)

Versus

Financial Advisor & chief Respondent
Accounts Officer, WR. Churchgate, Bombay-20

Mr.A.L.Kasture Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. JUSTICE U.C.SHRIVASTAVA, Vice-Chairman

The Hon'ble Mr. M.Y.PRIOLKAR, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? 4
2. To be referred to the Reporter or not? 9
3. Whether their Lordships wish to see the fair copy of the Judgement? 2
4. Whether it needs to be circulated to other Benches of the Tribunal? 2

(U.C.SHRIVASTAVA)
Vice-Chairman

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH; "GULESTAN" BUILDING NO.6
PRESCOT ROAD; BOMBAY-1

OA No. 795/90

V D Potkule
Confidential Asstt/Steno
Office of the Financial Advisor
and Chief Accounts Officer
Western Railway; Churchgate
Bombay 400020

..Applicant

V/s.

1. Financial Advisor &
Chief Accounts Officer
Western Railway; Churchgate
Bombay 20

2. Union of India
through General Manager
Western Railway; Churchgate
Bombay 400020

..Respondents

Coram: Hon. Shri Justice U C Srivastava, V.C.

Hon. Shri M Y Priolkar, Member (A)

APPEARANCE:

Mr. S. Natarajan
Advocate for the
applicant

Mr. A L Kasture
Advocate for the
respondents

ORAL JUDGMENT

(PER : U C Srivastava, Vice Chairman)

DATED: 31.3.92

The contention on behalf of the applicant in this case is that the interim order regarding promotion which has been passed by the Division Bench of the Central Administrative Tribunal is subject matter for interpretation in this case. As the same is not properly and correctly interpreted and that is why he has approached this Tribunal. Applicant claims that he was appointed as Typist on 10.9.61 and was promoted to the Sr. Steno scale 1400-2300 w.e.f. 20.7.1977. Subsequently he was promoted to the Senior Steno scale Rs.2000-3200 w.e.f. 15.5.1989 purely on ad hoc basis

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initially for a period of three months which is continued till now. He is a member of Schedule Tribe community. The grievance of the applicant is that the interim order of this Tribunal on which the respondents are denying the applicant's right. The interim order, a reference to which has been made, was passed in a group of cases by this Tribunal on 24.4.1987. The relevant portion of the said order is as under:

We, therefore, pass the following interim order in all the above cases pending before us. We will however clarify how the interim order should be implemented in each case.

INTERIM ORDER

- 1) The promotions which may be made hereafter by the respondents will be strictly in accordance with the judgment of the Allahabad High Court in Civil Misc. Writ No.1809 of 1972 in C-Mallik & Ors V. Union of India and ors. reported in 1978, SLJ 401 and their promotions will be subject to the final result of the cases. If any promotions have been so far made otherwise than in accordance with the judgment of the Allahabad High Court, such promotions shall be adjusted against the future vacancies.
- 2) It is hereby clarified that if any Scheduled Caste/Scheduled Tribe candidate is appointed or promoted in his present cadre on the basis of his overall merit and/or seniority and not on the basis of reservation alone, the respondents are not prevented from promoting him to the higher cadre if he is found otherwise suitable for

promotion, even if the reservation quota fixed for Scheduled Caste/Scheduled Tribe candidates has been already achieved in the higher cadre.

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The contention of the learned counsel for the applicant is that the entire cadre of Steno in the scale of Rs.2000-3200 consists of five posts and all the five posts are vacant for which selection has been made and none of the posts are held by members of Scheduled Castes and Scheduled Tribe candidates and the representation of SC/ST being in excess of the prescribed 22.5% does not arise as there is no candidate holding the said post.

According to the applicant the interim order extracted ^{not} ~~to~~ above is not applicable as the cadre to which selection is sought to be made is saturated by SC/ST candidates in excess of the prescribed limit even if and the applicant who is already a promotee to the feeder cadre at serial no.1 in the seniority list is promoted the representation of SC/ST candidates in the higher cadre would be less than the percentage prescribed and would not exceed 22.5%. It was further contended that no SC/ST candidates were selected into the category since about 1979 when one Shri Jagiasi was promoted resulting in carry forward vacancy existing in the category, and as such the post is interchangeable.

So far as the facts are concerned the respondents have stated that the facts have not been quite correctly stated by the applicant. It has been stated that the applicant was promoted to the post of officiating CA/Steno scale Rs.1600-2660 against reserved roster point being S.T. Candidate w.e.f. 31.10.1986 superseding 7 senior General Community employees. On completion of 2 years officiating in the scale of Rs.1600-2660, the applicant was promoted as CA/Steno

in the scale of Rs.2000-3200 with effect from 15.5.89 purely on ad hoc basis pending selection as he was the only person who had completed 2 years service in lower grade. There were only 2 posts in the scale of Rs.1600-2660 of which one post has gone to the applicant and the other post was filled by one Smt. S V Mani only on 5.5.89 upon the retirement of the previous incumbent. For the first time regular promotions are being ordered to the cadre of CA grade Rs.2000-3200 the filling of 5 posts would involve operation of roster point from 1 to 5. This covers point no. for SC and point no. 4 for ST. As per extant orders, however, the 40 point roster is not to be operated if such operation would result in representation in the cadre exceeding 15% and 7½% for SC/ST respectively. As providing one reservation in the cadre of 5 results in reservation to the extent of 20% no reservation either for SC or ST was possible. The figure of 22½% is merely the total of 15% and 7½% and is not the prescribed maximum figure. The cadre of CA grade Rs.2000-3200 has been in existence only since 23.1.1987 and the present selection is the first selection held for promoting persons to the said grade. The provision for inter changing SC/ST points when either points remains unfilled for 3 years, in any case, is not applicable. It has been pointed out that as the applicant was promoted purely on ad hoc basis on account of anticipated delay in finalising regular selection, such ad hoc promotion confers upon him neither the prescriptive right for higher

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In J C Mallik's case, a reference to which has been made in the interim order dated 24.4.87, it was held that the power to reserve posts for Scheduled Castes and Scheduled Tribes cannot be exercised in a manner to make the reservation so excessive practically denying a reasonable opportunity of employment to members of other communities, which will not be in consonance of Article 16(4) of the Constitution of India. Regarding the Railway Board's circular dated 20.4.1970 it has been held that 15% of reservation is in respect of appointment to the posts and not to the vacancies which may occur in the cadre of posts and selection made on the basis of vacancies in excess of 15% quota of posts is not in accordance with law and the same was accordingly quashed. The order of J C Mallik still holds good and in view of the interim order granted by the Supreme Court the matter is still pending.

In the instant ~~case~~ as has been pointed out in the reply to the application filed by the respondents so far as the quota is concerned the quota was full and the applicant was not promoted and the applicant was being at no. 1 ~~in the list~~ was given ad hoc promotion. This promotion was not against any regular post neither it was a regular promotion nor it was promotion because of roaster point. Reference in this connection may be made to the case of KARAM CHAND V. HARYANA STATE ELECTRICITY BOARD AND ORS. AIR 1989 SC 261 where Rule 9 of Punjab PWD (Electricity Branch) Provincial Service Class III (Subordinate Posts) Rules (1952) came up for consideration. Under the said rule exception clause was also provided prior confirmation has to be given to the person who is serving on probation or officiating capacity in the order of the dates of their appointment. The exception provided was that ^{if} a member of the service

promotions nor any claim for being placed on panel of CA scale Rs.2000-3200. The selection will have to be conducted out of candidates in the field of consideration in terms of extant orders/Court directives including those which deny the applicant the benefit of having officiated in the grade of Rs.1600-2660 from a date earlier than his seniors purely through operation of roster point purely through operation of roster point at the time when he was promoted to the grade of Rs.1600-2660.

Admittedly the panel was declared on 30.10.1990 and the one who was selected as regular CA/Steno in the Panel was promoted in the scale of Rs.2000-3200 demoting the applicant who was officiating on ad hoc basis as CA/Steno to the grade of Steno in the grade of Rs.1600-2660 which reversion is challenged by the applicant in this application. The promotee Mr. T K V Nair earlier requested for postponement of his promotion and resultant transfer for six months on account of domestic difficulties explained by him in his application dated 19.11.1990 and the same was agreed to being permissible under Railway Board's orders dated 21.1.1965. Even then the applicant is not entitled to be placed on the panel of CA/Steno scale Rs.2000-3200 as per his seniority assigned to him as per CAT's interim order dated 24.4.87. After the Tribunal's interim order the seniority position was decided and the applicant was not placed at the top.

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is promoted temporarily to a post earlier than his senior for reasons other than inefficiency of the senior person they will take rank inter se according to their relative seniority in the class from which they were promoted and the junior person so promoted shall not be confirmed from the date earlier than the date of confirmation of the senior. The applicant in that case before the Supreme Court was a Scheduled Caste candidate working as Assistant promoted to the post of Deputy Superintendent, and he was junior superseding other respondents. The promotion which was made was on a regular basis and not on temporary basis. Though the respondents were also promoted subsequently as Deputy Superintendent in the question of inter se seniority it was held that the appellant's seniority will be reckoned in his promotional post and not his seniority in original post of Assistant.


The facts of the case are quite distinguishable as in that case it was a case of promotion. It was a regular promotion and was not made against a roster point temporarily. In the instant case the applicant's promotion is only an ad hoc promotion pending the selection. In the earlier promotion, a feeder channel, the applicant because of roster point was given promotion. He was earlier given higher grade being a member of the ST community. When the quota was full obviously the respondents are not obliged to give him promotion more so when ofcourse in the roster point his number was at no.4. Accordingly the contention which was raised on behalf of the respondents so far as the seniority is concerned the seniority would be covered in the instant case, the original grade and not the grade in which the applicant was subsequently placed on ad hoc basis pending selection cannot be rejected and has got to be accepted.

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Accordingly the reversion order of the applicant was perfectly in order and was perfectly in conformity with the interim order passed by this Tribunal referred to above and the application deserves to be dismissed. The application is accordingly dismissed. However, it would be open for the applicant to agitate the matter in case the judgment in Mallik's case is reversed by the Supreme Court.

No order as to ~~xxx~~ costs.


(M Y PRIOLKAR)
MEMBER (A)


(U C SRIVASTAVA)
VICE CHAIRMAN