

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 397/92.

Date of Decision: 16.09.1997.

S. S. Sonawane, Applicant.

Shri D. V. Gangal, Advocate for
Applicant.

Versus

Union Of India & Others, Respondent(s)

Shri R. K. Shetty, Advocate for
Respondent(s)

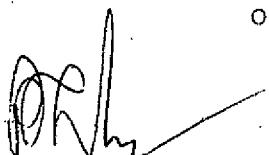
CORAM:

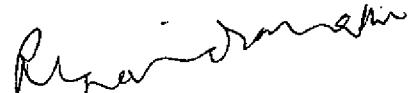
Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri. P. P. Srivastava, Member (A).

(1) To be referred to the Reporter or not? *no*

(2) Whether it needs to be circulated to *no*
other Benches of the Tribunal?


(P.P. SRIVASTAVA)
MEMBER (A).


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 397/92.

Dated this Tuesday, the 16th day of September, 1997.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

S. S. Sonawane,
Carpenter (Skilled),
Ordnance Factory.
Residing at Bhusawal.

.. Applicant.

(By Advocate Shri D.V. Gangal)

VERSUS

1. Union Of India through
The Chairman,
Ordnance Factory Board,
10, Auckland Road,
Calcutta - 700 001.

2. The General Manager,
Ordnance Factory,
Bhusawal.

.. Respondents.

3. W. N. Sonawane,
T.No. 409/BM,
Carpenter, Highly Skilled,
Grade-II,
Ordnance Factory,
Bhusawal.

(By Advocate Shri R.K. Shetty)

: ORAL ORDER :

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

This is an application under Section 19 of the
Administrative Tribunals Act, 1985. The Respondent Nos. 1 & 2

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have filed a reply opposing the application. The respondent no. 3 has remained unrepresented. We have heard the learned counsel for the applicant and the Learned Counsel for respondents 1 and 2. The facts which are necessary for the disposal of this application are as follows :

The applicant belongs to Scheduled Tribe community. The Respondent no. 3 belongs to Scheduled Caste community. Both the applicant and the respondent no. 3 were working in the same cadre. Promotion to the post of Carpenter (Highly Skilled) Grade-II arose in the year 1989. It had to be filled up by an eligible Scheduled Tribe candidate. Since the applicant had not completed the eligibility period of three years, he could not be considered for promotion. However, the respondent nos. 1 & 2 appointed the 3rd respondent to that vacancy though he belonged to Scheduled Caste community and did not belong to Scheduled Tribe community, to which the post was reserved. Hence, it is alleged, that the promotion of Respondent No. 3 was not lawful. The applicant has since completed three years in 1991. His representation seeking promotion has not been considered by the Respondent Nos. 1 & 2. According to the applicant, the post should have been reserved for the applicant and it could not be

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filled up by promoting the respondent no. 3. On these allegations, the applicant has approached this Tribunal for a declaration that he is entitled to be considered for promotion, for a declaration that the promotion of Respondent No. 3 is illegal and that the applicant should be granted promotion from the date he completed three years in the semi-skilled cadre.

2. The Respondents 1 & 2 have filed a reply denying many of the allegations in the application. It is stated that the application is barred by limitation. The applicant was not eligible for promotion in the year 1989, since he had not completed three years of service. It is stated that the post was vacant right from 1982 till 1989, since no suitable candidate was available. The post was kept vacant for a continuous period of more than 7 years. However, in the exigencies of service and to cope up with the production workload, the said post was filled up by promoting the respondent no. 3, who is a Scheduled Caste candidate by exchanging reservation of Scheduled Caste for Scheduled Tribe candidate. Since the applicant was not qualified for promotion in the year 1989, he could not be considered for promotion. The promotion of Respondent No. 3 has been done as per available Government rules and circulars.

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It is further stated that no vacancy arose in 1991 and hence the applicant could not be considered for promotion in 1991. The respondents have, therefore, stated that there is no merit in the application and that the applicant is not entitled to any of the reliefs.

3. The point for consideration is, whether the applicant has made out a case for getting retrospective promotion either from 1989 or 1991, as claimed. If he is entitled to this relief, then we will have to consider other consequential reliefs to follow.

4. The main thrust of argument of the Learned Counsel for the applicant is that the post reserved for Scheduled Tribe community could not have been filled up by promoting a Scheduled Caste candidate in 1989 and, therefore, the promotion of Respondent No. 3 is illegal. He invites our attention to some of the passages in 'Swamy's Complete Manual on Establishment and Administration' Fifth Edition - 1994. We have carefully considered the passages read out to us by the Learned Counsel for the applicant. At page 274 under the heading 'Carry Forward and Exchange of Reservations', it clearly provides that when suitable candidates of Scheduled Caste or Scheduled Tribe are not available, then the Scheduled Caste quota may be exchanged for Scheduled Tribe quota and vice-versa.

After such de-reservation, the post could be filled by other categories but however, the reservation will be carried forward to subsequent three recruitment years.

5. We are not impressed by the argument of the Learned Counsel for the applicant that the Scheduled Tribe vacancies could not have been filled up at all and should have been kept vacant till a suitable Scheduled Tribe candidate becomes available. The requirement of law is that, even though the post can be filled up, but the reservation should be carried forward. Even the Government Circular dated 25.03.1970, which has been relied upon by the Learned Counsel for the Respondent Nos. 1 and 2, provides exchange of Scheduled Caste vacancy with the Scheduled Tribe vacancy or vice-versa. The only requirement is that the reservation should be carried forward for three successive recruitment years.

6. In the case before us, the vacancy arose in the year 1982. For seven years, the post was kept vacant since no suitable Scheduled Tribe candidate was available. Due to workload and for other exigencies of service, the administration promoted a Scheduled Caste candidate, who is Respondent No. 3. The applicant, though belonged to Scheduled Tribe category, was not qualified for promotion on his own admission in 1989. He had not put in the



the required service of three years for being eligible for promotion. Therefore, if in 1989, the post had remained vacant for seven years and no suitable Scheduled Tribe candidate, including the applicant, was available for consideration and if in the exigencies of service and due to workload the Administration promoted Respondent No. 3, it cannot be found fault at the instance of the applicant who had no right to be considered for promotion in 1989.

7. The applicant got qualified service of 3 years only in the year 1991. We have perused the Roster Board produced by the administration and find that there was no vacancy in the year 1991. Two vacancies arose in the year 1993 after the applicant became eligible for promotion and the Administration has promptly promoted the applicant in the year 1993. Therefore, during the pendency of the case, the Administration has promoted the applicant with effect from 22.03.1993 and, therefore, his grievance that he is entitled for promotion, has now been considered by the Administration and he has been duly promoted.

8. The only grievance that remains for consideration is, whether the applicant should be given retrospective promotion from 1989 or 1991. On his own admission, the applicant was not entitled for promotion in the year 1989, since he had no qualifying service. As far as promotion

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in 1991 is concerned, admittedly there was no vacancy in 1991. The vacancies arose in the year 1993 and the applicant has been duly promoted. Therefore, there is no question of the applicant being entitled to any retrospective promotion either from 1991 to 1989.

9. The Learned Counsel for the respondents also argued that the application is barred by limitation. He pointed out that the applicant is challenging the 1989 order of promotion by filing this application in 1992. On the other hand, the Learned Counsel for the applicant submitted that the applicant got the cause of action only in 1991 when he became eligible for promotion. Anyhow, we need not consider the question of limitation, since on merits, the applicant has no merits.

We may also mention that even if we accept the arguments of the Learned Counsel for the applicant that there was some irregularity or illegality in the promotion of Respondent No. 3 in 1989, it will not enure to the benefit of the applicant, since admittedly he was not qualified for promotion in 1989. He became entitled for promotion in 1991 and he has been duly promoted in the year 1993. Hence, we do not find any merit in the application.

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10. In the result, the application is dismissed. No costs.


(P.P. SRIVASTAVA)

MEMBER (A).


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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