

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 200/94

5.8.99  
Date of Decision:

H.N.Poojari & Anr.

Applicant.

Shri G.K.Masand

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.K.Shetty for R-1 to 3

Shri V.S.Masurkar for R-4.

Advocate for  
Respondent(s)

CORAM:

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

Hon'ble Shri. D.S.Baweja, Member (A)

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ✕

*D.S.Baweja*  
(D.S.BAWEJA)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

DA.NO. 200/94

Dated this the 5th day of August 1999

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri D.S.Baweja, Member (A)

1. H.N.Poojari,  
R/o. Kane Nagar,  
119/1083 Sector-I,  
Antop Hill, Bombay.

2. Smt.V.N.Lonandkar,  
R/o 3-B, Jai Datta,  
Shimpoli Road,  
Borivili (West), Bombay.

... Applicants

By Advocate Shri G.K.Masand

V/S.

1. Union of India through the  
Secretary, Ministry of Commerce,  
Department of Supply,  
Nirman Bhawan, New Delhi.

2. Director General, Supplies and  
Disposals, N.I.Bldg.,  
Parliament Street,  
New Delhi.

3. Director of Supplies (Textiles),  
New C.G.O.Building,  
New Marine Lines,  
Bombay.

4. Shri N.B.Dhengle  
working in the office of  
Director, of Supplies  
(Textiles), New C.G.O.  
Building, New Marine Lines,  
Bombay.

... Respondents

By Advocates Shri R.K.Shetty  
for Respondents No. 1 to 3  
and Shri V.S.Masurkar for  
Respondent No. 4.

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O R D E R

(Per: Shri D.S.Baweja, Member (A))

This application has been filed jointly by two applicants challenging the promotion of Respondent No. 4 Shri N.B.Dhengle as Upper Division Clerk (UDC) Incharge with Special Pay of Rs.70/-p.m. as per order dated 3.2.1994 seeking reliefs (a) to set aside the order dated 3.2.1994. (b) to direct the respondents to promote the Applicant No. 1 as <sup>him</sup> UDC Incharge based on his seniority and post/in the Office of Respondent No. 3, i.e. Director of Supplies (Textiles), New C.G.O.Building, New Marine Lines, Bombay.

2. The above reliefs have been prayed for by the applicants citing their case as follows :-  
With the decision to decentralise the purchase of stores and equipments by Director General Supplies and Disposals, Applicant No. 1 was transferred on deputation to the Central Ordnance Depot at Kandivali from 1.2.1993. Applicant No. 2 was sent on deputation to Western Naval Command but was subsequently repatriated to the Office of Respondent No. 3 where she was working at the time of filing the present OA. The applicants submit that as per seniority list of UDC Incharge issued on 31.12.1992, there were 5 posts and all the 5 posts were occupied by the staff belonging to Scheduled Caste (3) and Scheduled Tribe (2) . The post of UDC

Incharge with Special Pay is a non selection post and is to be filled on the basis of seniority-cu-fitness. However, during the period from 31.12.1992 to 31.1.1994 four employees were promoted to the next grade, i.e. two belonging to Scheduled Caste (SC) and two belonging to Scheduled Tribe (ST). As a result, one employee Shri S.M.Sonawane belonging to Scheduled Caste category was left in the cadre. A vacancy arose in 1994. The applicants were the senior most due for promotion as UDC Incharge. However, ignoring the applicant for promotion, Respondent No. 4, i.e. Shri N.B.Dhengle belonging to ST category has been promoted as per the impugned order dated 3.2.1994. Feeling aggrieved by this promotion, the present OA. has been filed by the applicants on 10.2.1994 seeking the above reliefs.

3. The applicants have advanced the argument in support of the reliefs prayed for that the quota for SC and ST was already filled with Shri S.M.Sonawane belonging to SC category and therefore no reservation was available for the ST category. The applicants have brought out that the General category staff finding excessive reservation being provided for Scheduled Caste and Scheduled Tribe candidates filed a Writ Petition No. 1716/85 before the Bombay High Court. The Hon'ble High Court granted an interim order directing that the promotions hereafter will be strictly in accordance with the judgement of the

4. The respondents have opposed the application through the written statement. The respondents have brought out that Applicant No. 1 belongs to General category while Applicant No. 2 belongs to SC category and the OA. has been filed jointly only in the interest of Applicant No. 1 as no prayer for any relief has been made in respect of Applicant No. 2. As regards merits, the respondents submit that promotion of Respondent No. 4 as per the impugned order has been done keeping in view the interim order dated 5.10.1993 in OA.NO. 727/93 and other connected OAs. The respondents submit that the reservation percentages are to be applied separately for SC and ST categories and not on combined basis as pleaded by the applicants. It is further added by respondents that promotion of Respondent No. 4 has been done based on the 40 point roster. In the recruitment year of 1991, the roster point of ST was not filled and was carried forward in terms of instructions laid down by the Ministry of Home Affairs as per O.M. dated 9.2.1982. For the vacancy arising in 1994

ST candidate was available and therefore the same was filled by promoting Respondent No. 4. Therefore the promotion order dated 3.2.1994 is in accordance with the rules laid down. The respondents have also stated that Shri S.M.Sonawane who belongs to SC category was promoted to the post of UDC incharge<sup>by</sup> not giving the benefit of reservation but on his own merit and seniority. The respondents deny the allegation of

Applicant No. 1 of victimisation on account of Union activities. In view of these pleadings, the respondents contend that the application is devoid of merits and deserves to be dismissed.

5. The applicants <sup>have</sup> not filed any rejoinder reply.

6. We have heard the arguments of Shri G.K. Masand, learned counsel for the applicants and Shri R.R.Shetty on behalf of Shri R.K.Shetty, learned counsel for Respondents No. 1 to 3 and Shri V.S.Masurkar, learned counsel for Respondent No. 4. The respondents have made available the roster Register as well as the proceedings of the relevant Departmental Promotion Committee (DPC).

7. <sup>in</sup> Before going to merits, we will consider the contention raised by the respondents that there is a mis-joinder of party as Applicant No. 2 has joined with Applicant No. 1 with no common interest. On going through the pleadings in the OA., we find merit in the contention of the respondents. It is noted that nowhere in the OA. any averment has been made with regard to Applicant No. 2. The entire focus of the pleadings is with regard to the case of the applicant who claims that being the senior most UDC, he was entitled to be considered for promotion in place of Respondent No. 4. In fact, the relief prayed for in 8 (b) is only for seeking promotion of Applicant No. 1 and no promotion has been sought

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by Applicant No. 2. No case has been <sup>also</sup> made out by Applicant No. 2 that against the one vacancy the Applicant No. 2 was also entitled to be promoted. If the Applicant No. 2 also claims promotion for the same vacancy, then there will be clash of interest as the Applicant No. 1 is also claiming promotion against the same vacancy. Further, it is also noted that no application has been filed making a prayer for permitting joining together in the same OA. In view of these observations, we are of the considered opinion that the present application suffers from the vice of mis-joinder of the parties. However, we are not inclined to dismiss the OA. on this ground alone and are going into the merits of the reliefs prayed for.

8. For considering the matter on merits, certain admitted facts as emerging from the rival contentions and the material brought on record need to be detail<sup>ed</sup> first as the deliberations on merits in the issue under challenge will have to be made in the background of these admitted facts. The admitted facts are as under :- (a) The applicant has brought out that the promotion to the post of UDC Incharge was to be governed by the interim order dated 5.10.1993 of this Bench of the Tribunal. The applicants have brought out that originally a Writ Petition No. 1716/85 had been filed before the Bombay High Court by the staff

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working in the office of Director of Supplies (Textiles), Bombay, Respondent No. 3. An interim order was passed by the Hon'ble High Court according to which, it was directed that the promotions should be done strictly following the directions of the judgement of Allahabad High Court dated 9.12.1977 in Civil Writ Petition No. 1809/72. As brought out earlier, this writ petition was subsequently transferred to this Bench and was numbered as TA.NO. 280/86. Subsequently, this TA. was grouped with other OAs. filed by the Railway employees and interim order dated 5.10.1993 was passed. As per the order dated 5.10.1993 the reservation quota is to be applied on the cadre and not on the vacancies. The respondents in the written statement have not controverted the submission of the applicants. Further, on going through the DPC proceedings made available by the respondents, it is noted that the DPC has proceeded to consider the names for promotion to the post of UDC Incharge by applying reservation on the cadre and not on vacancies as laid down as per order dated 5.10.1993. With these facts, it is therefore admitted fact that the promotion of UDC Incharge under challenge through this OA. was to be <sup>governed</sup> by the directions in the interim order dated 5.10.1993. (b) The applicants have stated that one Shri S.M. Sonawane belonging to SC category was already available and therefore the quota for Scheduled Caste and Scheduled Tribe



was full. The respondents, however, have stated in the written statement that Shri S.M.Sonawane was promoted against the general category vacancy based on merits and his seniority and not on account of reservation. However, while going through the DPC proceedings, it is noted that the statement of the respondents is not borne by the facts on record. Though from the roster register we find that Shri S.M.Sonawane has been shown promoted against the general vacancy but DPC has gone with its proceedings based on taking Shri S.M. Sonawane being promoted against SC category quota. Since the DPC while considering the promotion of Respondent No. 4 has proceeded with Shri S.M.Sonawane having been promoted against the SC roster point, we take this as a factual position for considering the reliefs on merits. (c) The applicants have <sup>with</sup> stated that Shri S.M.Sonawane belonging to SC category, the quota of  $22\frac{1}{2}\%$  i.e. 5 for SC category and  $7\frac{1}{2}\%$  for ST category gets filled up and therefore no reservation was to be provided while promoting Respondent No. 4. The respondents have contested this claim stating that the reservation percentage is to be applied for each category separately and not on combined basis. We are inclined to accept the contention of the respondents. The percentage of reservation is to be considered separately for each category and not on combined basis and therefore the matter will be examined on merits keeping this in view.

9. With the above admitted facts, the matter will be now gone into on merits. The cadre of UDC Incharge is five and the vacancies are to<sup>be</sup> filled by applying the reservation percentages on this cadre. The quota for SC category with 15% reservation will be 0.75 and for ST category with 7 $\frac{1}{2}$ % reservation will be 0.37. Against the quota of 0.75 for SC, one post would be admissible in terms of the interim order of the Tribunal dated 5.10.1993 and one SC category UDC Incharge was already available in the cadre and therefore the quota was full. There was short fall in respect of ST category. The respondents have justified their action in promoting the Respondent No. 4 by advancing two lines of defence. The first being that the roster point No. 17 for ST category occurred in 1991 but the same was filled by a general category candidate as no ST candidate was available. This vacancy was therefore carried forward in terms of Ministry of Home Affairs O.M. dated 9.2.1982 to the 3rd recruitment year which fell in 1994. Therefore, as per the respondents the vacancy occurring in 1994 was filled on the availability of ST category candidate to make good the short fall of carried forward vacancy. This submission of the respondents was however countered by the counsel of the applicants during oral submissions stating that since there was only one vacancy arising in 1994, the same could not be filled by reservation as it will amount to 100% reservation and reservation cannot exceed 50% as per the law laid down by the Hon'ble Supreme Court. In support, he cited the

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judgement of the Principal Bench in the case of P.S.Grewal vs. Union of India & Ors. 1991(2) ATJ 270. This contention of the applicant is not very relevant as deliberated subsequently. Further, the filling up of reserved carried forward vacancy to the 3rd recruitment year, even if there is only one vacancy could be done in view of what has been held by the Hon'ble Supreme Court in the case of Arati Ray Choudhury vs. Union of India & Ors., 1974(1) S.L.R.659. The objection raised by the applicants that filling one vacancy if done will result in 100% reservation against the limit of 50% reservation is <sup>thus</sup> not sustainable. In any way, as stated earlier, this is not material to the issue under challenge as the promotion of Respondent No. 4 is to be seen in terms of interim order dated 5.10.1993. We have gone through the roster register made available by the respondents and find that the submission made by the respondents appear to be borne by the facts. It is noted that ST roster point 17 had arisen in 1991. Although a ST candidate Shri R.K.Hawaladar is shown as promoted against this point but with the remark that he has received promotion on merit and seniority. On going through DPC proceedings of 1991 also, it is noted that no promotion was considered based on the reservation quota for ST category. Therefore, the carried forward ST quota could have been rightly filled in by the available ST candidate in 1994 in the 3rd recruitment year even if there was only one vacancy to be filled up in terms of law laid down by the Hon'ble Supreme Court in the case of Arati Ray (supra).

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But this is not the situation in the present case as in terms of the interim order dated 5.10.1993, the roster point comes into play only when there is short-fall in the quota based on the reservation applied on the cadre. This line of the defence of respondents is tenable only in case the promotions were to be done by applying reservation on vacancies. But in view of the interim order dated 5.10.1993, this argument of the respondents does not hold good.

10. The second line of defence put forward by the respondents in para 1 of the written statement is that there was a shortfall of one ST candidate on 2.8.93 against the reservation quota of 7½% when the vacancy arose. It is further stated by the respondents that this vacancy was filled by a general category and the short fall was carried forward to the next year. In view of this, the respondents contend that the next vacancy arising in 1994 was allowed for ST category to fill up the short fall of reservation quota of one post and the Respondent No. 4 was accordingly promoted as per the recommendations of the DPC. This line of defence of the respondents fits in with the directions contained in interim order dated 5.10.1993. But the interpretation with regard to the reservation quota of one post out of the cadre of 5 for ST category as made by the respondents cannot be upheld. As indicated earlier, the quota for ST category for the cadre 5 comes to 0.37. The respondents

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have not explained as to how the quota of one post for ST category has been arrived at. However, from the DPC proceedings file, it is noted, that DPC has recorded that by rounding, the quota of ST category comes to one. The DPC has also not indicated as to on what basis rounding of to one post has been done. We find a note on the file put up by one Assistant Director who was also a member of DPC wherein he has stated that there was quota 0.4 for the ST category in 1993 and this quota was carried forward to 1994 and cumulative shortfall in 1994 was 0.8 and rounding of will result in quota of one post for ST category. No rules have been cited in support of this method of arriving at one post as reservation quota. We find it difficult to comprehend as to how the reservation quota based on cadre can be carried forward on accumulating basis. If by applying percentage, the quota comes to 0.375(say 0.4), then quota continues to be 0.4 and will not get accumulated on year to year basis in case the same is not filled up. It appears that DPC has recorded the quota of one post for ST category based on the note put up by Mr. Patel. The respondents have not brought out this position in the written statement and only vague averments have been made with regard to carrying forward of the quota for ST category from 1993 onwards. The respondents have also not cited any rules under which the accumulation of quota from year to year is to be considered to arrive at shortfall of reservation based on the cadre. With

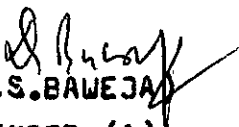
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quota of one post for SC category, then if one post is allowed for reservation for ST on rounding, then total reservation posts are two out of cadre of 5 which will mean 40% of reservation and far in excess of 22½%. As per interim order dated 5.10.1993 referred to by the respondents in para 7 of the written statement, the reservation for SC/ST category was not to exceed 15% and 7½% respectively at any given time. In the present case as brought out earlier, by rounding of quota of SC of 0.4, the respondents have provided reservation of one post which means that the reservation for the ST category reaches 20%. This was in violation of the interim order dated 5.10.1993. In this view of the matter, the action taken by the respondents to promote Respondent No. 4 against ST quota as per the impugned order cannot therefore be legally sustained.

11. In view of our above finding, the order of promotion of Respondent No. 4 must be set aside and in his place the applicant should be considered for promotion. But, however, we must take notice of subsequent events. It was stated at the Bar that the first applicant has since been promoted and now his grievance is only about getting seniority from 3.2.1994 when the 4th respondent came to be promoted. Therefore, in the interest of justice, we feel that instead of setting aside or disturbing the order of promotion of

Respondent No. 4, in view of the fact that the first applicant has since been promoted, we feel that a direction should be given that the first applicant should get seniority and retrospective promotion from 3.2.1994 with all consequential monetary benefits. He must be placed above Respondent No. 4 in the seniority list of UDC in-charge.

12. In the result of the above, we find merit in the OA, and the same is allowed. Keeping in view the observations made in para 11 above, it is directed that Applicant No. 1 shall be allowed retrospective promotion and seniority from 3.2.1994 by treating him promoted in place of Respondent No. 4 with all consequential monetary benefits. Compliance of the order to be done within three months from date of receipt of the order. No order as to costs.

  
(D.S. BAWEJIA)  
MEMBER (A)

  
(R.G. VAIDYANATHA) 578199  
VICE CHAIRMAN

mrj.