

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.58/95.

Dated: 29.10.1999.

P.T.Temburne & Two ors. Applicant.

Mr. V.S.Masurkar Advocate for
-----Applicant.

Versus

Union of India & Ors. Respondent(s)

Mr.R.K.Shetty. 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? *yes*
(2) Whether it needs to be circulated to other Benches of the Tribunal? *no*
(3) Library? - *yes*

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.58 /95.

this the 29th day of *Oct* 1999.

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

1. P.T.Temburne,
2. R.J.Ingle,
3. R.M.Bhinge,
C/o. Advocate
Mrs. N.V.Masurkar,
CAT Bar Room,
Bombay.

(By Advocate Mr.V.S.Masurkar)

... Applicant.s

Vs.

1. Union of India through
the Secretary and Chairman,
Department of Atomic Energy,
Chhatrapati Shivaji Maharaj Road,
Bombay - 400 003.
2. Director,
Department of Purchase and Stores,
Department of Atomic Energy,
Vikram Sarabhai Bhavan,
1st Floor, Anushaktinagar,
Bombay - 400 094.
3. The Secretary,
Department of Personnel and Training,
Ministry of Personnel, Training and
Pension, Central Secretariat,
North Block,
New Delhi - 110 001.

(By Advocate Mr.R.K.Shetty)

... Respondents.

: ORDER :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed their reply. We have heard Mr.V.S.Masurkar, the learned counsel for the applicants and Mr.R.R.Shetty for Mr.R.K.Shetty, the learned counsel for the respondents.

2. The applicants are Scheduled Caste employees working as

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Store Keepers in the Bhaba Atomic Research Centre (for short BARC) at Bombay. They are in the feeder cadre of the promotion to the post of Assistant Stores Officer. Earlier, only Store Keeper with minimum 5 years service was the only feeder cadre to the post of Assistant Stores Officer. But, now the respondents have modified the norms by adding one more feeder cadre of Junior Store Keeper with 8 years regular service. According to the applicants inclusion of ^{another} the feeder cadre is illegal and liable to be struck down. The respondents issued a Circular dt. 9.8.1994 inviting applications from the two feeder cadres for appearing in the competitive examination scheduled to be held on 12.11.1994 for the purpose of selection for promotion. The applicants responded to the Notification and applied and then they appeared in the written examination held on 12.11.1994. But the applicants are not called for viva voce. Another grievance of the applicants is that in the Circular dt. 9.8.1994, the respondents have not disclosed the total number of promotional posts and number of posts reserved for SC/ST candidates. It is also further grievance of the applicants that in the circular or Notification does not mention as to whether SC/ST candidates are entitled to lower qualifying marks or entitled to grace marks. The applicants being SC candidates are entitled to relaxation standards and/or entitled to grace marks in terms of the Government Circular dt. 4.5.1981. The respondents have now issued a fresh notification for direct recruitment of Assistant Stores Officer on 12.10.1994, by which 20% of the promotional post naturally comes in the way of applicants chance of promotion being reduced to that extent. The respondents have not framed any statutory rules governing the promotion to different posts in

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the Stores Department. The respondents framed norms for promotion by issuing an Office Memorandum dt. 25.5.1977. The said O.M. has not been circulated nor published. Earlier, it was 100% promotion for the post of Assistant Stores Officer, but now the respondents have provided 20% of the posts for direct recruitment, which affects the promotional prospects of the applicants and therefore it is bad in law. That the respondents are not following the reservation policy inspite of government orders. The applicants have not been able to get promotion even after 20 years. If the respondents had followed the reservation policy properly, the applicants would have got promotion long back. The Respondents are bound to implement the 40 point roster while making promotions. The respondents have not at all maintained the 40 point roster. There are no sufficient number of SC/ST candidates in the cadre of Assistant Stores Officer. It is also alleged that the results of the examination are not published. Therefore, the applicants have filed this application praying that the impugned circular dt. 9.4.1994 calling for applications for promotion to the cadre of Assistant Stores Officer be quashed, a direction to the respondents to apply relaxed standards for SC/ST candidates and promote the applicants to the post of Assistant Stores Officer, respondents be restrained from making direct recruitment in pursuance of the Advertisement dt. 12.12.1994, ^{and be directed} to maintain and implement 40 point roster.

3. The respondents have filed an affidavit in reply. It is stated that the cadre of Assistant Stores Officer has to be filled 80% by departmental promotion and 20% by direct recruitment. Even out of 80% meant for promotion, 20% is for

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promotion on the basis of seniority-cum-fitness and 60% on the basis of a competitive examination. It is stated that reservation policy regarding SC / ST has been always followed scrupulously . The respondents have also admitted that SC / ST candidates are entitled to relaxed standards subject to the Government guidelines in O.M. dt. 19.4.1979. There is no fixed or particular standard of relaxation, but it has to be decided taking all the relevant considerations as mentioned in the O.M. dt. 19.4.1979. The relaxation standards cannot be mentioned while issuing the notification, but it has to be decided after the performance of SC / ST candidates in the examination. It is stated that 40 point roster has already been maintained as per rules. There are some Recruitment Rules regarding certain posts and wherever there are no Recruitment Rules promotions are done on the basis of norms prescribed by the department. In pursuance of the examination held on 12.11.1994 selection has already been made and the panel has been prepared. That the Circular dt. 9.8.1994 is perfectly valid and according to rules. The applicants had appeared in the examination and certain concessions were given to them by relaxing the minimum standard, but still the applicants failed in the examination and they could not be promoted. In the notification for direct recruitment the department has published the number of vacancies for SC/ST candidates. Even regarding promotion in the Stores Department, steps are being taken for finalising the Recruitment Rules. It is admitted that originally Store Keeper was the sole feeder cadre for the post of Assistant Stores Officer, but in order to provide promotional avenues to Junior Store Keepers who have put

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in more than 8 years, the norms have been revised on 16.1.1993. It is a beneficial measure for the employees and nobody has made any complaint or grievance till now. The respondents have not violated the reservation policy. The applicants have failed in the examination inspite of extending the relaxation considered necessary. Since this is a case of selection post there is no provision for carrying forward roster points in case required number of SC/ST candidates are not available. As far as ST candidates are concerned, it is stated that no ST candidate having the minimum requirement of 8 years as Store Keeper is available for being promoted against the seniority-cum-fitness method. The seniority list has been published periodically. It is stated that the circular dt. 9.8.1994 is only an invitation calling for willingness from the candidates who want to appear for the examination for the purpose of promotion. It is therefore, stated that the applicants are not entitled to any of the reliefs and the O.A. is liable to be dismissed.

4. The learned counsel for the applicants urged number of contentions for challenging the selection of Assistant Stores Officer in pursuance of the Circular dt. 9.8.1994. The learned counsel for the respondents refuted all the contentions. We ^{will} have consider~~ed~~ the contentions one by one.

5. The first contention of the learned counsel for the applicant is that no statutory rules are framed by the administration under Article 309 of the Constitution of India. He went on to contend that inspite of 50 years after independence BARC is not aware of the Constitutional provisions and has not cared to frame the Rules under Article 309 of the Constitution of India. In our view, this argument has no merit for more than one

reasons. The learned counsel for the respondents placed before us a printed book published by the Department of Atomic Energy. It contains statutory rules issued by the Department of Atomic Energy under Article 309 of the Constitution of India. It shows number of statutory orders issued in respect of different cadres under the BARC like the post of Controller, the post of Director in the Purchase and Stores Department, Joint Director in the Department of Purchase and Stores, Financial Advisers, Chief Administrative Officer, Legal Adviser, Chief Executive (Administration and Accounts), Deputy Secretary, Under Secretary, Administrative Officer - III, Head of the Publicity Division, Senior Hindi Officer, Public Relation Officer, Assistant Public Relations Officer, Assistant in the Department of Atomic Energy, Personal Assistants, LDCs, Stenographer (Junior) etc. These statutory rules are issued in 1984, 1985, 1988 etc. It may be, in this particular department there is no statutory rules for the post of Assistant Stores Officer with which we are concerned. Even if there is no statutory rules, the law is well settled that recruitment and promotion can be done on the basis of Executive Instructions or administrative instructions. The BARC is being run since many years and wherever there are no statutory rules, recruitments are done on the basis of Executive or Administrative instructions.

The applicants themselves have produced the O.M. dt.25th May, 1977 (page 228 of the paper book) which mentions the norms and guidelines for making number of promotions etc. in different departments pending finalisation of rules under Article 309 of the Constitution of India.

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Therefore, in our view, the argument that there are no statutory rules in respect of this particular department has no merit since even in the absence of statutory rules, the recruitment and promotions can be done on the basis of Executive Instructions and that is being done in the department from the beginning.

6. The next contention is that in the Notification dt.9.8.1974 there is no mention of number of vacancies for SC/ST candidates. The applicants themselves have produced the departments public notification regarding direct recruits which is at page 33 of the paper book where to the post of Assistant Stores Officer with which we are now concerned, total vacancies are shown as six of which it is shown that one post is reserved for SC candidate, one for ST etc. Therefore, the department knows that in respect of a public advertisement or notification it is the duty of the department to publish or notify the number of posts reserved for SC/ST candidates. The learned counsel for the applicant also placed reliance on a decision of the Apex Court in 1990 (4) SCC 55 (Dr.Suresh Chandra Verma and Ors. Vs. The Chancellor, Nagpur University and Ors.), where also the Supreme Court has held that number of vacancies for SC/ST candidates must be shown. We must bear in mind that the said judgment also pertains to a case of direct recruitment. Similarly, the advertisement at page 33 of the paper book is also for direct recruitment where number of posts for SC/ST candidates are shown. But, we are concerned in this case about promotion to the post of Assistant Stores Officer. In the case of a promotion there is no question of any advertisement or notification ^{like} ~~regarding~~ direct recruitment.

The impugned notification dt.9.8.1994 is only a circular informing the inservice officers about the proposed written examination for considering officers for promotion and officers who are interested may give their option by signing the proforma application. Therefore, this is not a case of advertisement or notification, but it is only a circular calling for volition or option from inservice candidates where they are entitled to apply for appearing in the examination for the purpose of promotion. Hence there is no necessity of showing SC/ST vacancies in such a circular which is not an advertisement or a public notification.

In the enclosed proforma which is at page 28 of the proforma application, Column No.6 provides whether the candidate is an SC/ST candidate and if so he must produce caste certificate. This clearly shows that the department is conscious of its constitutional duty to provide reservation for SC/ST candidates and that is why a specific column is provided in the application form to mention about SC/ST status with necessary certificate. Since the circular at page 27 of the book is only to call for willingness from inservice candidates there was no necessity to show the number of SC/ST vacancies in the circular and it will not invalidate the Circular.

7. Another contention urged on behalf of the applicants is that the circular should have shown that SC/ST candidates are entitled to relaxation standards in the marks and they should also specify as to how much will be the minimum marks for SC/ST candidates. The respondents have clearly stated that this question of giving relaxation of standard will only arise after the valuation of answer books and if it is found that required

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number of SC/ST candidates have not passed in the examination and then only the Competent Authority will have to decide as to how much relaxation should be given for SC/ST candidates. The respondents have relied on the Official Memorandum dt. 9.4.1979 which fully supports the stand of the respondents. Therefore, non-mentioning of minimum marks for SC/ST candidates in the Circular will not invalidate the circular since it has to be decided only after seeing the performance of SC/ST candidates in the examination as per O.M. dt. 9.4.1979.

The learned counsel for the respondents also placed before us the official file pertaining to this examination. After the examination was over and after seeing the performance of the SC/ST candidates, the office ~~will~~ put up a note stating that for general candidates the qualifying marks in the examination is 50%. Then the Competent Authority viz. the Director of Purchase and Stores Department passed an order in the file as follows :

"Having considered the number of candidates appeared for the examination including SC/ST and their performance in the examination and the minimum standard of fitness required for the post of APO & ASO considering the responsibility of the post and also taking into account of the posts reserved for SC and ST, to be filled up, I decide that a relaxation of 10 marks may be effected in the case of candidates belonging to SC & ST and accordingly the following candidates belonging to SC/ST who have secured marks of 40 and above are also declared as passed in the examinations:

For the post of APO - Roll No.43 & 47

For the post of ASO - Nil. "

Therefore, the Competent Authority has applied his mind

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and has given relaxation of 10 marks and as a result two candidates passed in the examination for Assistant Personnel Officer, but no candidate passed in the examination for Assistant Stores Officer. In view of the 1979 circular, discretion vests with the Competent Authority to fix particular relaxation standard. In this particular case the Competent Authority has reduced the minimum qualifying marks for promotion for SC/ST candidates from 50 to 40. This shows that the department is aware of the government circulars and they have applied relaxation standards, but unfortunately no candidate passed inspite of the relaxation given so far as the post of Assistant Stores Officer is concerned.

In view of the above discussion and in view of the fact that the Department has already allowed 10% relaxation in the marks and still the applicants did not pass, we need not go into the larger question which was agitated before us viz. whether in view of the recent judgment of the Supreme Court in Vinod Kumar's case (1996 SCC (L&S) 1345) no relaxation in standard can be given in the case of promotion, which was controverted by the learned counsel for the applicants by placing reliance on Renuka's case reported in (1997 SCC (L&S) 326). We are not expressing any opinion on that point since in this case even after giving certain relaxation in the marks the applicants have not passed in the examination.

8. Another contention urged before us was about the amendment of rules or norms regarding promotion to the post of Assistant Stores Officer. As per O.M. dt. 25.5.1977, there was 80% by promotion and 20% by direct recruitment. That is why the department has taken separate steps by issuing a public

advertisement for filling up the posts of 20% by direct recruitment. This practise is in vogue from 1977. It is one of the well known methods of recruitment providing for direct recruitment partly partly and promotion partly. In this case 80% is by promotion and 20% is by direct recruitment. It cannot be said that providing 20% for direct recruitment is illegal. No law is brought to our notice which prohibits direct recruitment. It is purely a policy matter which the administration has to decide whether a particular cadre should have 100% by promotion or partly by promotion and partly by direct recruitment and if so to what extent. The Tribunal cannot interfere with such a policy decision unless the policy is contrary to law or the policy is unreasonable or arbitrary. In our view, providing 20% by direct recruitment can by no means said to be either unreasonable or arbitrary. Therefore, the challenge to the filling up of 20% of the post by direct recruitment has no merit and therefore the prayer made in the OA for quashing the advertisement for direct recruitment cannot be granted.

9. Another challenge to the rule is that originally under the 1977 Memorandum for the post of Assistant Stores Officer, there was only one feeder cadre viz. Store Keeper with a minimum of 5 years of service. Now, the department has since amended the rule in 1993 extending the feeder cadre by covering one more feeder cadre viz. Junior Store Keeper with 8 years of regular service. Earlier, there was only one feeder cadre with five years service as Store Keeper and now one more feeder cadre is added viz. 8 years service as a Junior Store Keeper. The learned counsel for the applicants contended that normally there is only one feeder cadre for promotion and extending the feeder cadre to

a lower cadre is something unknown and it is illegal. In our view, the argument has no merit.

It is purely a policy matter for the administration to decide whether a particular promotional post should have one feeder cadre or more and unless the policy decision is arbitrary or illegal it cannot be interfered with by a Tribunal. We are also not impressed by the argument of the learned counsel for the applicant that providing feeder cadre to a lower cadre than the one existing is illegal. No such rule is brought to our notice. In our experience, we have come across many recruitment rules where there is a provision for two or more feeder cadres of different grades being made feeder cadre for a particular post.

Let us illustrate. In our Tribunal we have the post of a Private Secretary for which the feeder cadre could be either 2 years regular service as a Private Secretary or 8 years regular service as a Grade 'C' Stenographer. We may also mention that Grade 'C' Stenographer is lower in rank to Private Secretary. Therefore, two grades on which one is higher and one is lower are both made feeder cadres for the post of Private Secretary, but of course with different years of regular service in the cadre.

Similarly, in the case of Assistant Stores Officer, only Store Keeper with 5 years was eligible and now the feeder cadre is extended to include Junior Store Keeper with 8 years service as also eligible. If by chance the rule had made that an Assistant Store Keeper with 5 years service is eligible, then probably the rule could have been questioned or attacked on the grounds of being arbitrary and unreasonable. But, here the rule is 5 years service as a Store Keeper, 8 years service as a

Assistant Store Keeper. In our view, there is no illegality in having two feeder cadres of which one may be lower than the other for the purpose of promotion to a next higher grade. Hence, the argument on this point urged by the learned counsel for the applicant has no merit and is hereby rejected.

10. We are also not impressed by the argument of the learned counsel for the applicant that holding examination for the purpose of promotion is illegal and arbitrary. We have come across many recruitment rules including Railways where for certain promotions competitive examinations are held and on that basis promotions are given.

We may also notice that in the case of Assistant Stores Officer, 80% by promotion and 20% by direct recruitment. Even in respect of 80% by promotion, only 60% is by competitive examination and the remaining 20% is on the basis of seniority-cum-fitness. Therefore, as a policy decision the department has decided that 60% should be by competitive examination, 20% by seniority-cum-fitness and 20% by direct recruitment. We do not find as to how such a policy decision is illegal or arbitrary.

11. We have already rejected the argument of the learned counsel for the applicants on the question of validity of the circular due to absence of SC/ST vacancies and absence of mentioning relaxation standards for SC / ST candidates. In addition to the reason given above, we must point out that these deficiencies in the notification, even if they have merit, it does not help the applicants in any way since they have responded to the circular and they have participated in the written examination, but ultimately they failed in the examination. It is not ^a ~~the~~ case where the applicants did not volunteer to appear

for the examination for want of SC/ST vacancies or for want of relaxation standards. They have accepted the notification as it is and they have appeared in the examination and took a chance, but unfortunately failed. Therefore, it does not lie in their mouth now to say that the notification is bad for the above deficiencies. The learned counsel for the respondents invited our attention to Madanlal's case (1995 SCC (L&S) 712), where the Apex court has observed that a candidate who takes a chance and participate in the selection process cannot subsequently challenge the same. If the applicants had not appeared in the selection process due to alleged deficiencies, then the matter would have been different.

12. The next contention is that the respondents have not followed the 40 point roster and they are not adhering to the reservation policy. The respondents have stated in their reply that they have been scrupulously following the reservation policy and they have even maintained the 40 point roster properly. On our direction, the learned counsel for the respondents placed before us the 40 point roster book in respect of Stores Department. Since we are concerned with the post of Assistant Stores Officer, we have examined the roster book carefully and find that the roster book has been maintained properly.

For instance, promotions to the post of Assistant Stores Officer (Merit) starts from page 11 and it ends on page 15. The first entry is of the year 1979. The 40 point roster ends in 1986. SCs are shown at roster point Nos.1, 8, 14, 22, 28 and 36. ST points are shown at Sl.Nos.4, 17 and 31. The names of SC/ST candidates are shown at the relevant slots meant for them. There are 9 SC/ST candidates for 40 posts which is equivalent to 22%,

which is perfectly in order and it accords to the reservation policy of the Government of India. After finishing 40 point in 1986, in the same year again roster starts from point no.1 and goes up to point No.40 in the year 1994. Even here also we find SCs are shown on the relevant slots viz. Nos. 1, 8, 14, 22, 28 and 36 and STs at Points 4, 17 and 31. Here also the percentage is maintained at 22% for SC / ST candidates. Similarly, the fresh 40 point roster starts from 1995 and it has come up to roster point 14 in the year 1998.

It is true that at some of the points meant for SC/ST candidates general candidates are promoted. Then there is endorsement on the last column that the concerned post have been got de-reserved by obtaining the order of the Competent Authority.

At any rate, the book shows that the respondents are aware of the roster system and reservation policy and in many cases they have promoted SC/ST candidates, but in some cases they have got the posts de-reserved, may be due to non-availability of SC / ST candidates.

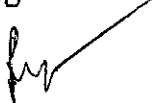
There is no dispute that SC/ST candidates should be given representation in the promotional post as per the reservation policy. The respondents are aware of this policy, but may be some times they have not been able to give promotions to SC/ST candidates since they have not passed in the examination even with relaxed standards or on the ground that they do not conform to the minimum required service in the feeder cadre. In the circumstances, we only wish and observe that respondents should scrupulously follow the reservation policy and see that SC / ST candidates are given proper representation as per the reservation

policy of Government of India even in promotional posts.

13. In this connection, we may refer to the second affidavit of Mr.S.C.Jain dt. 21.2.1995, which is at page 127 of the paper book. He is the Administrative Officer in the Directorate of Purchase and Stores Department of BARC. He says that he is aware of the reservation policy of 15% for SC candidates and 7.5% for ST candidates. He says in para 5 that for the impugned examination held on 12.11.1994 in pursuance of the impugned circular dt. 9.8.1994, 69 candidates applied for the post of Assistant Purchase Officer and 251 candidates for the post of Assistant Stores Officer, these figures includes 11 SC candidates for APOs and 25 SC candidates and 5 ST candidates for the post of ASO. In the present case, we are concerned with the post of Assistant Stores Officer (ASO). But, the actual attendance in the examination was 46 candidates including 8 SC candidates for APOs and 125 candidates including 17 SC candidates and 3 ST candidates appeared for ASOs examination. For the post of APO, 17 candidates including two SC candidates passed after relaxation of standards. As far as the post of ASO is concerned, 18 general candidates passed, but no SC or ST candidates passed inspite of relaxation of standard. Even the mark lists have been produced. The applicants could not pass in the examination as could be seen from the mark list.

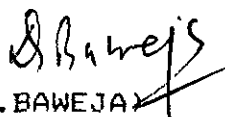
It is therefore, seen that many SC/ST candidates have appeared and only two have passed in the APOs examination and none passed in the ASOs examination inspite of relaxation of standards which we have already pointed out.

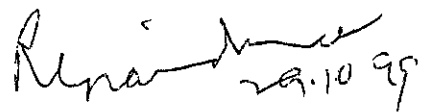
After considering the pleadings and the contentions urged before us we find that for the reasons stated above no



case is made out for interfering with the 1994 selection. Since the applicants have failed in the examination, the ad-interim orders passed in this case from time to time are to be vacated. It is open to the applicants to appear for the next selection and take their chance.

14. In the result, the application fails and is hereby dismissed. Whatever interim orders are granted in this case and extended from time to time are hereby vacated. This order is without prejudice to the rights of the applicants to appear for the next examination as and when held and take their chance according to law. In the circumstances of the case, there will be no order as to costs.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.