

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 217/95 & 358/95

Date of Decision : 8th March 2002

D.C.Nager & Anr. Applicant

Shri R.D.Deharia Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri R.K.Shetty Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt.Shanta Shastry, Member (A)

- (i) To be referred to the reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library

No

(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBSI BENCH, MUMBAI

ORIGINAL APPLICATION NO: 217/95 and 358/95

the 8th day of ^{March 2002} ~~NOVEMBER 2001~~ *h*

CORAM: Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt. Shanta Shastry, Member (A)

Dewan Chand Nager
R/o C/5/143, D.G.Q.A.
Colony, Rifle Range Road,
Ghatkopar (West)
Bombay.

...Applicant in
OA 217/95

Diwakar Suryabhanji Bambal
R/o DGQA Residential Quarters
C/S/131, Rifle Range Road,
Ghatkopar (West), Bombay.

...Applicant in
OA 358/95

By Advocate Shri R.D. Deharia.

V/s

1. Union of India through
The Director General
Quality Assurance,
Ministry of Defence
Department of Defence
Production, DGQ Post Office,
New Delhi.
2. The Director
Directorate of Quality
Assurance (Vehicle)
DGQA / Vehicle Discipline
Department of Defence
Production, DHQ Post office,
New Delhi.
3. Shri G.K. Gupta,
Asstt. Foreman,
C/o Senior Quality Assurance
Officer SQA Estt.(Vehicle)
Ministry of Defence, Red Fort,
Delhi.
4. Shri K.R. Agarwal,
Asstt. Foreman,
C/o Senior Quality Assurance
Officer, SQA Estt.(Vehicle),
Ministry of Defence, Red Fort,
Delhi.

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5. Shri R.S. Shankarlingam,
Asstt. Foreman,
C/o Controller,
Control Quality Assurance
(Spl. Vehicle) Dehu Road, Pune.

6. Shri S.K. Namdeo,
Asstt. Foreman
C/o Controller,
Control Quality Assurance,
(Ordnance Factory Vehicle)
Post Office - Vehicle
Factory Jabalpur (MP)

...Respondents in
OA 217/95.

1. Union of India through
The Director General,
Quality Assurance,
Ministry of Defence,
Deptt. of Defence Production
DGQ Post Office - New Delhi.

2. The Director
Directorate of Quality Assurance
(Electronics)
DGQA / Electronics Discipline
Ministry of Defence
Department of Defence Production
DHQ Post Office, New Delhi.

3. Shri P.K. Goudra
Sr. Quality Assurance Estt.
(Electronics) 19/13,
National Stadium,
New Delhi.

4. Kum. S.s. Radha
Controllerate of Quality
Assurance (Radar)
J.C. Nagar P.O.
Bangalore.

5. Shri Satpal Sharma
Sr. Quality Assurance Estt.
(Electronics & Systems)
R.No. 1549, Sector 38 - B
Chandi Garh.

6. Shri K. Jayaram
Controllerate of Quality Assurance
(Electronics), J.C. Nagar P.O.
Bangalore.

...Respondents in
OA 358/95

By Advocate Shri R.K. Shetty.

J.S.

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O R D E R

{Per : Shri S.L.Jain, Member (J)}

These are applications under Section 19 of the Administrative Tribunals Act, 1985 for the direction to the Respondent No.1 to hold DPC considering the applicants for promotion as Foreman (Vehicle) Grade Rs.2375-3500 and include their names at the appropriate place, i.e. where the post vacancy has been dereserved with all consequential benefits, i.e. seniority, fixation of pay and arrears of difference of pay due to fixation of pay etc. with a declaration that the applicants would deemed to have been promoted from the date the selected candidates vide Panel dated 3.3.1994 have been promoted as Foreman Grade Rs.2375-3500.

Facts of OA.NO.217/95

2. The applicant was appointed as Technical Supervisor Gr.III on 1.4.1981, promoted to the grade of Rs.1600-2660 and as Assistant Foreman in the pay scale of Rs.2000-3200 w.e.f. 29.4.1998 by selection. The applicant is at present holding the post of Assistant Foreman Gr.Rs.2000-3200 at D.G.O.A. Complex (Vehicle) Vikhroli. As per channel of promotion in Group 'C' from the post of Assistant Foreman Gr.Rs.2000-3200, the next post is Foreman in the Grade of Rs.2375-3500, which is a selection post and filled by Departmental Promotion Committee. The

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Ministry of Defence have to nominate the DPC which is to meet at regular annual interval to draw panels which could be utilised on making promotions against the vacancies occurring during the course of a year. Accordingly, panels for the post of Foreman Gr.Rs.2375-3500 are formed annually by the Departmental Promotion Committee of the Ministry of Defence.

3. For the year 1993, the panel formed by the DPC on 10.3.1993 was circulated for making known to all in which 3 posts reserved for SC & ST Community were allotted to General Community candidates. The applicant states that he represented vide his representation dated 29.3.1993 to Respondent No. 1 which was replied vide letter No.C/85564/DGQA/ADM-10, dated 26.4.1993 (Exhibit-'A-7').

4. Panel for the year 1994 was published vide letter No.C/85564/DGQA/ADM-10, dated 3.3.1994, in which only one employee belonging to SC community was considered and it was stated that 5 candidates belonging to General Category have been declared suitable against the posts reserved for reserved community candidates, i.e. 3 for SC & 2 for ST. The said posts are said to be dereserved. The applicant submitted representation dated 13.4.1994 (Exhibit-'A-9'), which was replied vide reply dated 5.5.1994 (Exhibit-'A-1'). The copy of representation dated 13.4.1994 was also sent to the Commissioner National Commission for Scheduled Castes and Scheduled Tribe, Govt. of India, New Delhi. The aforesaid Commission after examining the matter replied vide Exhibit-'A-10' dated 11.7.1968. The applicant further represented the matter vide Exhibit-'A-3' dated 29.12.1994 which was not replied.

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Facts of OA.NO.358/95

5. The applicant was appointed as Technical Supervisor Gr.III on 19.9.1983, promoted as Chargeman II by Departmental Examination w.e.f. 27.12.1984, further promoted as Assistant Foreman in the pay scale of Rs.2000-3200 w.e.f. 10.7.1989 by selection. The applicant is holding the post of Assistant Foreman Gr.Rs.2000-3200 at DGQA Complex (Electronics) Vikhroli. As per channel of promotion in Group 'C' category from the post of Asstt. Foreman Gr. Rs.2000-3200 the next post is Foreman Grade Rs.2375-3500 which is a selection post and is filled by selection to be done by Departmental Promotion Committee.

6. For the year 1993, the panel formed for the post of Foreman by the D.P.C. on 5.3.1993 was circulated for noting of the concerned staff (Exhibit-'A-10') in which 3 posts reserved for S.T.Community were allotted to General Community candidates. The applicant represented the matter vide his representation dated 17.3.1993 to Respondent No.3 (Exhibit-'A-11'). He was advised vide respondents' letter No.C/85205/1/93/DGQA/ADM-10 dated 8.4.1993 (Exhibit-'A-12'). He further represented to the respondents vide his representation dated 29.6.1993 (Exhibit-'A-13').

7. Vide order No.C 85205/L/93/DGQA/ADM-10 dated 16.3.1994 the Respondent No.1 published and circulated a panel for promotion to the post of Foreman (Exhibit-'A-14'). In the said

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panel none belonging to ST Community candidate's name figured and 4 posts were suggested to be dereserved and the names of General candidates were considered. The applicant submitted his representation dated 18.4.1994 (Exhibit-'A-15') which is replied vide letter No.C/85205/94/DGQA(ADM-10) dated 14.6.1994 (Exhibit-'A-1'). The applicant further submitted the representation dated 19.9.1994 (Exhibit-'A-16') which is replied by letter No.C/85205/L/94/DGQA/ADM-10 dated 13.12.1994/3.1.1995 (Exhibit-'A-2').

8. In both the OAs. the applicants claim that the zone of consideration applied for SC/ST candidates is not in accordance with the instructions issued by the Government of India and the respondents while dereserving the posts failed to adopt the correct procedure. As such their cases of empanelment have been prejudiced. Hence, these OAs. for the above said reliefs.

9. OA.NOs. 217/95 and 358/95 are being filed on 10.2.1995 and 10.3.1995 respectively.

10. The claim of the applicants is being resisted by the respondents by stating the facts that in the year 1994, there were in all 12 vacancies, 2 vacancies for ST and 4 vacancies for SC, the extended zone of consideration for SC/ST was upto 60 only. Reserve point was 6 while applicant was at Sr.No.165. 2 vacancies for ST and 4 vacancies for SC ^{were} ~~was~~ available. The

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person who has 3 years regular service was eligible for consideration subject to the condition that he falls within the zone of consideration. It is stated that DPC is not nominated by the Ministry of Defence. Composition of DPC has been prescribed in the Recruitment Rules for the post of Foreman. DPC consists of Technical Director concerned, as Chairman, Joint Director (Administration), Joint Director of concerned discipline, Joint Director of R&D/DTD&P Air and Assistant Director DGQA/Adm-10 are the members thereof. DPC for promotion is held regularly in accordance with the instructions relating to DPC issued by DOP&T vide their O.M.No. 22011/5/86/Estt/(D), dated 10.4.1989 and subsequent clarifications issued vide OM.No.22011/1/90/Estt(D) dated 22.4.1992. DOP&T is the nodal agency for issuing these instructions.

11. A meeting of DPC was held in February 1993 to draw a select list for promotion to 8 vacancies in the grade of Foreman, out of which 3 vacancies fell on points reserved for SC/ST and 5 for General candidates. The vacancies reserved for SC and ST community could not be filled by the persons belonging to these communities as no eligible candidate was available within the normal as well as extended zone of consideration, i.e. 5 times the number of vacancies. Accordingly, it was recommended by the DPC to fill these vacancies by General Community candidates subject to the condition that approval of the competent authority is obtained for de-reservation and the reservation is carried forward as per rules. The representation of the applicant was duly considered and replied.

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12. In the year 1994, the select list was issued for 12 vacancies in the grade of Foreman. Out of these, 6 vacancies fell on reserved point (4 SC and 2 ST). Only one SC candidate was available in the extended zone of consideration. Accordingly, it was recommended by the DPC to fill 5 vacancies by General Community candidates subject to the condition that approval of the competent authority is obtained and reservation is carried forward as per rules. The post of Foreman is a selection post. As per instructions, zone of consideration is applicable as mentioned below :-

No. of vacancies	Normal Zone	Zone for consideration for SC/ST
1	5	5
2	8	10
3	10	15
4	12	20*
5 and above	Twice the number of vacancies + 4	five times the number of vacancies

Normal zone of consideration is $2x + 4$ where x is the number of vacancies. In case adequate/eligible SC/ST candidates are not available for consideration against the reserved vacancies, the zone is extended 5 times the number of vacancies.

O.M.No.22011/1/90-Estt(D) dated 22.4.1992 is as under :-

" It is hereby clarified that the intention is to have an extended zone of five times the number of vacancies in all cases where adequate number of SC/ST candidates are not available in the normal zone of a smaller size."

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13. In the year 1994 select list was drawn for 12 vacancies in the grade of Foreman. As no Sc/ST was available in the normal zone of consideration, it was extended to 60 (12 x 5) for SC/ST candidate. Only one SC candidate was available in the extended zone. The remaining vacancies earmarked for SC/ST were therefore recommended for filling up by general candidates subject to approval of competent authority for de-reservation and carrying forward of the reservation for 3 recruitment years as per rule. As the applicant is at Sr.No.165, he was beyond the extended zone of consideration, as such he was not considered. Besides fulfilling the other conditions of relevant recruitment rules, the applicant must be within the zone of consideration.

14. The National Commission for SC/ST was replied vide Exhibit-'R-3'. The applicant personally visited HQ DGQA, discussed the matter with the authorities for two hours, the facts and the instructions were clarified to him, proper procedure was followed for de-reservation of vacancies. Thereafter, Respondent No.3 to 6 were included in the select list at Sr.No. 7 to 10 subject to de-reservation stand at Sr.No.8 to 11 of the seniority list and are therefore within the normal zone of consideration besides fulfilling the requisite service of 3 years in the grade of Asstt.Foreman as prescribed in the Recruitment Rules. The respondents claimed that their action is correct and well within the frame work of rules/instructions on the subject. Vacancies are de-reserved and panel is updated.

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15. The applicants submitted the rejoinder by reiterating the facts stated in the OA. Thereafter, the respondents filed the sur-rejoinder reiterating the facts already stated. The applicant in his rejoinder also stated that one Member SC/ST was not nominated during the said DPC and the respondents failed to follow the proper procedure for de-reservation as the vacancies were not kept for 3 years regularly. The respondents in their sur-rejoinder stated that instructions dated 22.4.1992 applies to gazetted posts while post of Foreman Grade 'C' is non-gazetted technical. The applicant claims that instructions dated 11.7.1968 have not been superseded.

16. The learned counsel for the applicant relied on O.M.No. 1/12/67-Est(C) dated 11.7.1968 (A-3 and R-7) issued by Ministry of Home Affairs para 2 (b) Class III and IV appointments which is as under :-

"(b) Class III and IV appointments :

There will be reservation at 12 1/2% and 5% of the vacancies for Scheduled Castes and Scheduled Tribes respectively in promotions made by selection in or to Class III and IV posts, in grades or services in which the element of direct recruitment, if any, does not exceed 50%."

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Select lists of Scheduled Castes / Scheduled Tribes officers should be drawn up separately to fill the reserved vacancies as at present; officers belonging to these classes will be adjusted separately and not along with other officers; and if they are fit for promotion, they should be included in the list irrespective of their merits as compared to other officers. Promotions against reserved vacancies will continue to be subject to the candidates satisfying the prescribed minimum standards.

C. Promotions on the basis of seniority subject to fitness:

There will be no reservation for Scheduled Castes and Scheduled Tribes in appointments made by promotion on the basis of seniority subject to fitness but cases involving supersession of Scheduled Castes and Scheduled Tribes officer, in Class I and II appointments will as at present, be submitted for prior approval to the Ministry of Deputy Minister concerned. Cases involving supersession of Scheduled Casts and Scheduled Tribes officers in Class III and IV appointments will as at present be reported within a month to the Minister or Deputy Minister concerned for information.

(Emphasis Supplied by us)

17. On perusal of the said O.M. we find that the said O.M. is issued in supersession of the orders vide Memorandum dated 8.11.1963.

18. The said O.M. dated 11.7.1968 (A-3 and R-7) is not superseded vide O.M. No. 22011/3/76-Estt (D) dated 24.12.1980 issued by Department of Personnel and A.R.

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19. The said OM has been amended vide MHA O.M. No. 1/12/67-Est.(C) dated 11.7.1968 as amended by M.H.A Resolution No. 27/25/68 - Est. (SCT), dated 25.3.1970 and O.M. No. 36021/7/75 - Est. dated 25.2.1976 (A -4). He relied on para B of the said O.M. which is as under:

B. Promotion by selection method:

(a) Classes I and II appointments.
Superseded

(b) Classes III and IV appointments:

There will be reservation at 15% and 7 1/2 % of the vacancies for Scheduled Castes and Scheduled Tribes respectively in promotions made by selection in or to Classes III and IV posts, in grades or services in which the element of direct recruitment, if any, does not exceed 66 2/3 %.

Select Lists of Scheduled Castes /Scheduled Tribes officers should be drawn up separately to fill the reserved vacancies as at present; officers belonging to these classes will be adjusted separately and not along with other officers; and if they are fit for promotion, they should be included in the list irrespective of their merit as compared to other officers. Promotions against reserved vacancies will continue to be subject to the candidates satisfying the prescribed minimum standards.
(Emphasis supplied by us)

20. The learned counsel for the applicant relied on O.M. No. F 22011/5/86 - Estt.D dated 10.3.1989 issued by Department of Personnel and Training, Ministry of Personnel Public Grievances and Pension particularly on para 2.1.1 and para 2.3.2 (iii) (R J - 2 OA page 79 and 83) which is as under:

2.1.1 Selection Method.

Where promotions are to be made by selection method as prescribed in the recruitment rules, the DPC shall, for the purpose of determining the number of officers who will be considered from out of those eligible officers in the feeder grade (s) restrict the

field of choice as under with reference to the number of clear regular vacancies proposed to be filled in the year:-

Number of vacancies	Number of officers to be considered.
1	5
2	8
3	10
4	3 times the number of vacancies

2.3.2 (iii)

As regards promotions made by selection in Group 'C' and Group 'D' posts / services, Select Lists of SCs / STs officers should be drawn up separately in addition to the general select list, to fill up the reserved vacancies. SCs / STs officers, who are within the normal zone of consideration, should be considered for promotion along with and adjudged on the same basis as other and those SCs and STs amongst them who are selected on that basis may be included in the general select list in addition to their being considered for inclusion in the separate select lists for SCs and STs respectively. In the separate Select Lists drawn up respectively for SCs and STs officers belonging to the SCs and STs will be adjudged separately amongst themselves and not along with others and, if selected, they should be included in the concerned separate list, irrespective of their merit as compared to other officers, and the bench mark. If candidates from SCs / STs obtain on the basis of their position in the aforesaid general list, lesser number of vacancies than are reserved for them, the difference should be made up by selected candidates of these communities in the separate Select Lists for SCs and STs respectively.

(Emphasis supplied by us)

21. He further relied on para 1 and 2 of O.M. No. 22011/1/90-Estt(D) dated 12.10.1990 issued by Department of Personnel and Training. The subject being Zone of consideration for promotion by selection which is operative since 1.11.1990 which is as under:

Attention of the Ministry of Finance are invited to this Department's OM No. 22011/3/76 -Estt(D) dated

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24.12.1980 in which the zone of consideration of officers for promotion by selection is prescribed as under:

No of vacancies.	No of officers to be considered
1	5
2	8
3	10
4	Three times the number of vacancies.

It is also laid down that where adequate number of SC / ST candidates are not available within the normal field of choice as indicated above, the field of choice may be extended to five times the number of vacancies and the SC/ST (and not to any other) coming within the extended field of choice be considered against the vacancies reserved for them.

The existing zone of consideration for promotion to selection posts has been examined in the light of the concepts of 'bench mark' introduced in the revised DPC guidelines vide O.M. No. 22011/5/86 -Estt.(D) dated 10.3.1989 and dated 10.4.1989 and it has been decided to modify the zone of consideration as under:

Number of vacancies	Number of officers to be included in the zone of consideration
1	5
2	8
3	10
4	10 + twice the number of vacancies in excess of three vacancies.

The existing provision relating to extension of the field of choice to five times the number of vacancies in respect of SC / ST will, however, continue.

22. The perusal of the same makes it clear that existing provisions relating to extension of the field of choice to five times the number of vacancies in respect of SC / ST continues.

23. The learned counsel for the respondents relied on O.M. 22011/1/90 -Estt.(D) dated 22.4.1992 along with clarification dated 8.9.1992 R - 1 (OA page 61) which is as under:

Copy of OM No. 22011/1/90 -Estt(D) dt. 22.4.92 of Department of Personnel and Training regarding Zone of consideration by selection - Clarification Regarding.

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In this Department's OM No. 22011/3/76 -Estt(D), dated 24.12.80 the zone of consideration of officers for promotion by selection as under:

<u>No. of vacancies</u>	<u>No of officers to be considered</u>
1	5
2	8
3	10
4 or more	3 times the number of vacancies

It was also laid down that where adequate number of SC/ST candidates are not available within the normal field of choice as indicated above, the field of choice may be extended to five times the number of vacancies and the SC/ST (and not any other coming within the extended field of choice be considered against the vacancies reserved for them. This provision relating to an extended zone of five times the number of vacancies in respect of SC/ST has been retained in OM No. 22011/5/86-Estt(D) dt. 10.3.89 and 10.4.89 and also in OM No. 22011/1/90-Estt(D) dt. 12.10.90 in which the normal zone of consideration for general category was reduced for vacancies numbering 5 and above.

It is hereby clarified that the intention is to have an extended zone of five times the no. of vacancies in all cases where adequate number of SC/ST candidates are not available in the normal zone of a smaller size. For a single vacancy, since the normal zone itself is five i.e. five times the number of vacancies, there is no intention to extend the zone. The normal zone and the extended zone for vacancies will accordingly be as follows:

<u>No. of vacancies</u>	<u>Normal zone</u>	<u>None for consideration for SC/ST</u>
1	5	5
2	8	10
3	10	15
4	12	20
5 and above	Twice the no. of vacancies	Five times the no. of vacancies

3. All the Ministries/Departments are requested to bring these instructions to the notice of all concerned including their attached and subordinate offices for guidance and compliance.

24. The said OM refers to OM dated 10.3.1989, 10.4.1989 and 12.10.1990 and the provision of extended zone of five times the number of vacancies has been retained.

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25. OM dated 16.5.1957 is superseded vide OM No. 36011/13/83 -Est.(SCT) dated 2.5.1983 and OM No. 22011/3/76-Est.(D) dated 24.12.1980.

26. OM No. 2.11.1979 issued by Department of Personnel and AM and G.I. issued by Department of dated 2.4.1979 respectively relates to 'De reservation' and carry forward of unfilled reservations and exchange of reservations.

27. The learned counsel for the respondents relied on an order passed by this Bench in OA 438/95 dated 6th January 2000 based on Shri Radhey Shyam Gupta and others 1992(2) SLJ (CAT) 555 V/s Union of India and others. 1995 (2) ATJ 98 Suresh Kumar Vs Union of India and others decided by CAT Chandigarh Bench- particularly on para 6, 7, 8, 9, 10 and 11 which are as under:-

It is common ground that the promotion to selection grade clerk is by the method of 'selection'. It is also common ground that the normal zone of consideration in the selection method is three times the total number of vacancies. Both the counsels have referred to some circulars issued by the Government from time to time. Both of them are referring to the original book itself viz. Swamy's Compilation on Seniority and Promotion (1997 Edition). We have Chapter - 4 with the caption 'Reservations and Concessions in Promotions'. Then at page 127 we have the relevant rules regarding "selection" method. The first para in page 127 is relevant for our present purpose and it reads as follows:

(1) Selection against vacancies reserved for SCs and STs will be made only among the SC/ST officials who are within the normal zone of consideration. Where adequate number of SC/ST candidates are not available within the normal field of choice, it may be extended to five times the number of vacancies and the SC/ST candidates alone (and not any other) coming within the extended field of choice should also be considered against the vacancies reserved for them.

The normal Zone and the extended zone will be as follows:

<u>No. of vacancies</u>	<u>Normal zone</u>	<u>Extended zone for SC/ST</u>
1	5	5
2	8	10
3	10	15
4	12	20
5 and above	Twice the No. of vacancies +4	Five times the No. of vacancies

These rules found at page 127 and 128 are based on the Government of India Circular dated 11.7.1968 and subsequent circulars including the last circular dt. 22nd April 1992.

From the above extracted rule, we find that first SC/STs will have to be considered from among the officials coming in the normal zone of consideration. The above table gives what is meant by normal zone of consideration. The rule also provides that in case SC/ST candidates are not available within the normal zone of consideration, then it may be extended to 5 times the number of vacancies. The table itself gives both the normal zone and the extended zone for the purpose of SC/ST candidates. In other words, there is no separate zone of consideration for SC/ST. They have to be picked up from the normal zone of consideration of three times or by extended zone of five times.

7. In the present case, the total number of vacancies at the relevant time was 15, of which 11 is for general candidates, three for SC and one for ST. If we apply the above rule, first we have to go in for the normal zone of consideration which would be 15×3 which comes to 45. Admittedly, no SC/ST candidates are available within 45. Therefore, we have to go in for the extended zone of consideration viz. five times the vacancies i.e. 15×5 comes to 75. We are told that even in the extended zone of 75 there were no SC/ST candidates. It appears, by the time DPC had met the vacancies had gone up to 22. Therefore, for 22 vacancies the extended zone of consideration will be 22×5 , which comes to 110. Unfortunately, even in this extended zone of no, SC/ST candidates were available. The respondents have produced Ex. R-1 to the written statement which contains the list of eligible candidates for this promotion. Applicant is the first SC candidate who is at Sl.No. 113. There were no SC/ST candidates upto Sl. No. 112. The extended zone is only up to 110. Since the applicant was at Sl. No. 113, beyond the extended zone of consideration, she could not be considered for promotion at the relevant time.

8. The learned counsel for the applicant contended that even if there were no SC/ST candidates available within the extended zone of 110, the department should have gone on extending the zone till required number of SC/ST candidates were available even by going to the last

person in the list of eligible candidates. In our view, this argument is not based on any rule. We have gone through the copies of the Government Circulars produced by both the sides and we have gone through Swamy's Seniority and Promotion and another latest book of Swamy's Compilation on Reservations and Concessions (1999 Edition), but we do not find any rule as to what should happen if no SC/ST candidate is available either in the normal zone of consideration or in the extended zone of consideration. There is no provision in the rules that if SC/ST candidates are not available in the extended zone of consideration, then the zone must be further extended by six times, seven times or ten times like that. If the intention of the rule maker was clear that the zone of consideration should be extended indefinitely till SC/ST candidates are available then the rule would have made specific mention about it. On the other hand, rule has made only two provisions, one is the normal zone of consideration viz. three times the vacancies, but if no SC/ST candidate is available then it should go to the extended zone of consideration viz. five times the number of vacancies. The rule stops at that stage only. There is no further provision to extend the zone beyond five times of the vacancies.

9. The learned counsel for the applicant contended that as per rules the select list of SC/ST candidates should be separate and they should be considered for promotion separately and independently of general candidates. There is no doubt about it, but we are only considering the zone of consideration. As per the Rules there are only two zones of consideration one is the normal zone and the other is the extended zone of consideration. The word 'normal' itself means common to all.

10. The argument of the learned counsel for the applicant that the zone of consideration must be only for SC/ST candidates and not the normal zone of consideration which includes both general and SC candidates. This argument has no merit. The fact that the word normal zone is used in the rule shows that it is common zone for both general and SC/ST candidates. Further, the concerned rule itself makes the position very clear. In Swamy's Reservations and Concessions (1999 Edition) we have one O.M. dt. 24.12.1980 amended from time to time including the last O.M. dt. 12.10.1990. This is at page 117 of the said book. We are concerned with Item No.32. It also mentions about the normal zone of consideration and extended zone of consideration etc. Then we have one particular rule which is at page 120 and we are concerned with para (C) which reads as follows:

"(c) Where adequate number of SC/ST candidates are not available within the normal field of choice as above, the field of choice may be extended to 5 times the number of vacancies and the SC/ST candidates (and not any other) coming within the extended field of choice, should also be considered against the vacancies reserved for them.

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After mentioning the extended zone of five times, it says that only SC/ST candidates coming within the extended field of choice should be considered for promotion. For example, in this case the extended zone was 110. In 110 there may be few SC/ST candidates and the balance will be general candidates. But, while considering this zone of consideration of 110, only SC/ST candidates should be considered as per this rule and not general candidates, the reason is that for general candidates the normal zone is 22×3 which means 66. Between 66 and 110, the extended zone, there will be many general candidates and few SC/ST candidates. Even though extended zone of 110 is taken into consideration, only SC/ST candidates coming in the extended zone should be considered and not others. This clearly shows what is meant by normal zone or extended zone means all the officials both general and SC/ST coming in that zone of consideration, but only SC/ST candidates coming beyond the normal zone and within the extended zone should be considered. Therefore, we do not find any merit in the contention of the applicant's counsel that the zone of consideration should be extended indefinitely till sufficient number of SC candidates are secured has no merit and is contrary to the rules.

11. In this connection, we are fortified by two decisions of different Benches of this Tribunal.

In Suresh Kumar V/s Union of India and Ors. (1995 (2) ATJ 98 before a Division Bench of Chandigarh Bench of the Tribunal a similar question arose for consideration. In that case, the applicant was an SC candidate. He had not been promoted. The same argument was addressed in that case that the zone of consideration should be extended indefinitely which was rejected by the Tribunal. The Bench observed that since the Rule, provides a method of picking eligible person, the applicant in that case would not be considered in violation of the rules even though he belongs to reserved category. The Bench has also noted in para 8 of the reported judgement that SC/ST candidates coming within the normal zone or extended zone alone to be considered and not beyond the extended zone of consideration.

Then, we have a decision of a Division Bench of the Principal Bench of this Tribunal in Shri Radhey Shyam Gupta and others. Vs. Union of India and others (1992 (2) SLJ (CAT) 555), where also an identical question arose for consideration. The Division Bench in this case followed Suresh Kumar's case mentioned above and held that SC/ST officials who do not come either within the normal or extended zone of consideration cannot be picked up from lowered down seniority list and beyond the extended zone of consideration. In para 13 of the reported judgement the Tribunal has given a direction that the number of vacancies must be ascertained and promotions can be considered only within the 3 to 5 times the number of vacancies and to find out whether

adequate SC/ST candidates can be considered only if they come within the normal zone of consideration of 3 times the vacancies or at least within the extended zone of consideration of 5 times the vacancies. There is no provision to go beyond the extended zone of consideration indefinitely as contended on behalf of the applicant. Hence, the applicant's contention that she should have been considered for promotion in the DPC held in 1994 cannot be accepted. Hence, the applicant is not entitled to any of the reliefs prayed for.

The decisions relied on by the learned counsel for the applicant viz. 1994 SCC (L&S) 901 (Vishwas Anna Sawant and Ors Vs. Municipal Corporation of Greater Bombay and Ors.) 1995 SCC (L&S) 747 (P.Seshadri Vs Union of India and another), and 1995 SCC (L&S) 730 (National Federation of S.B.I. and ors. Vs. Union of India and Ors. are not at all relevant for our present purpose, since these decisions do not touch the question of zone of consideration for SC/ST candidates, which is the main point for consideration in this case.

28. The learned counsel for the applicants argued that the said decisions do not lay down correct proposition of law and is against the OMs referred above on the subject.

29. We are apparently of the view that in case of vacancies in group 'C' Selection post for the zone of consideration i.e. the original zone of consideration - the number of candidates to be considered are as under under a separate list.

Vacancy	Number of candidates
1	5
2	10
3	15
4	20
5 and above	Five times the number of vacancies

Dem

Thereafter, if the vacancies are not filled or the competent candidate /candidates are not available then for the remaining vacancies, the extended zone of consideration comes into operation and it shall be again as per the instructions above subject to the condition that the person to be considered is eligible for the said post.

The judicial discipline requires that in such cases, the matter deserves to be placed before the Larger Bench with the approval of Hon'ble Chairman for such consideration as he deems fit. The point to be referred to the Larger Bench is as under :-

"What is the zone of consideration and extended zone of consideration in case of SC/ST employees in respect of a post to be filled by selection and how it is to be acted upon?"

The Registry is directed to take needful action.


(S.L.JAIN)

MEMBER (J)

ns/mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 217/95 & 358/95

Date of Decision : 27-02-04

D.C.Nagar & Anr.

Applicant

Shri R.D.Deharia

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents


Shri R.K.Shetty

Advocate for the
Respondents

CORAM :

The Hon'ble Shri A.K.Agarwal, Vice Chairman

- (i) To be referred to the reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library


(A.K.AGARWAL)
VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.217/95 & 358/95

Dated this the 27th day of Feb 2004.

CORAM : Hon'ble Shri A.K.Agarwal, Vice Chairman

OA.NO.217/95

Dewan Chand Nagar,
R/o C/5/143, D.G.Q.A.
Colony, Rifle Range Road,
Ghatkopar (W), Bombay.

...Applicant

By Advocate Shri R.D.Decharia

vs.

Union of India through
The Director General
Quality Assurance,
Ministry of Defence,
Department of Defence Production,
DGO Post Office, New Delhi & Ors.

...Respondents

By Advocate Shri R.K.Shetty

OA.NO.358/95

Diwakar Suryabhanji Bambal,
R/o.DGQA Residential Quarters,
C/5/131, Rifle Range Road,
Ghatkopar (W), Bombay.

...Applicant

By Advocate Shri R.D.Decharia

vs.

Union of India through
The Director General
Quality Assurance,
Ministry of Defence,
Department of Defence Production,
DGO Post Office, New Delhi & Ors.

...Respondents

By Advocate Shri R.K.Shetty

O R D E R

{Per : Shri A.K.Agarwal, Vice Chairman}

This case has been referred under Section 26 of the Administrative Tribunals Act, 1985 for consideration by the Third Member of the Tribunal, since different views were expressed by the Members of a Division Bench while disposing of OA.Nos. 217/95 and 358/95. Each Member gave a separate order on the same date, i.e. 8.3.2002 for both the OAs. One of the Hon'ble Member

Smt. Shanta Shastri held that the existing instructions regarding the extended zone of consideration for the promotion of SC/ST when adequate number is not available within the normal zone of consideration, are very clear and there is no ambiguity and hence she disposed of both the OAs. accordingly. On the other hand, the other Hon'ble Member Shri S.L.Jain held that it would be more appropriate to refer the point to a Larger Bench on the following issue :-

"What is the zone of consideration and extended zone of consideration in case of SC/ST employees in respect of a post to be filled by selection and how it is to be acted upon?"

2. The instructions issued by the Government of India from time to time regarding the zone of consideration for promotion of SC/ST have been discussed in both the orders in fair detail. However, for better appreciation of the case, I consider it necessary to mention them in brief here as well. The D.O.P.T. O.M. dated 12.10.1990 contains modified instructions in this regard. As far as the zone of consideration for general candidate is concerned, it is $(2n + 4)$ where 'n' is the number of vacancies. However, if adequate number of SC/ST employees are not available, then the zone can be extended upto 5 times exclusively for SC/ST. To give an example, if the vacancies are 10, then the normal zone of consideration will be $(2 \times 10 + 4 = 24)$. It means that as per the seniority list, first 24 employees will be considered for promotion. If the number of posts reserved for SC/ST is two and officers of requisite experience and qualification are not available within first 24 then the zone can be extended upto 50 (5×10) . However, from the persons listed between 25 and 50 only SC/ST candidates will be considered. If the SC/ST candidates are not available even after extending the zone of consideration five times, then the vacancies remain unfilled. Such vacancies are filled-up later on sometimes by

taking recourse to a selection made exclusively for SC/ST. The idea of not going beyond 5 times was that the persons promoted should have atleast some matching experience vis-a-vis other colleagues. It may also be seen from the example given above that by increasing the zone from $(2n+4)$ to $(5n)$, the zone of consideration is increased by 26 positions for the sake of 2 SC/ST employees only. In other words, for taking two employees, one is allowed to go below by 26 positions. This is because the multiple is taken from the total number of vacancies and not for SC/ST vacancies; though from the extended zone only the cases of SC/ST will be considered. One member of the D.B., Smt. Shanta Shastri, held that persons beyond the zone of consideration of 5 times of vacancies cannot be considered for promotion as the existing DOPT Circular is very clear on this issue. In view of this, the demand of the applicants was rejected and the O.As. were dismissed.

3. The other Hon'ble Member Shri S.L.Jain has also in his order discussed the implications of extending the zone of consideration. It is mentioned in paras from 7 to 10 of his order that there is no provision to extend the zone beyond 5 times of the vacancies, and the zone cannot be extended indefinitely on the ground that sufficient number of SC/ST candidates are not available. In support of this inference he has cited following two judgements in para 11 of his order :-

(i) Suresh Kumar vs. Union of India & Ors.
1995 (2) ATJ 98.

(ii) Radhey Shyam Gupta & Ors. vs. Union of India & Ors.
1992 (2) SLJ (CAT) 555.

4. However, towards the end of his order, he came to the conclusion that the matter should be referred to a Larger Bench.

5. I have heard both the counsels. The learned counsel for applicant has cited following two judgements of the Supreme Court to support his contention :-

(1) Sub-Inspector Rooplal & Anr. vs. Lt. Governor
through Chief Secretary, Delhi & Ors.
2000 SCC (L&S) 213.

(2) State of Bihar vs. Kalika Kuer & Ors.
AIR 2003 SC 2443.


6. The learned counsel for the applicant stated that Ernakulam Bench of Central Administrative Tribunal in its order dated 14.9.2001 has held that as far as the promotion of SC/ST is concerned, that should be done without recourse to any zone of consideration. It was further stated by the counsel that this judgement has not been challenged in a superior court and has therefore become final. The learned counsel for the applicant has referred to a case decided by the Supreme Court of India - State of Bihar vs. Kalika Kuer & Ors., wherein it was held that to maintain judicial discipline, it is not appropriate for a single judge to take different view than taken in a previous case. However, if he feels it necessary, the case should be referred to a Larger Bench. On this ground, the learned counsel for the applicant reiterated that even if the decision taken by the Ernakulam Bench is considered inappropriate at this stage, it cannot be ignored. The only way available is to refer the matter to a Larger Bench.

7. The learned counsel of respondents also drew my attention towards the provision contained in Section 26 of the Administrative Tribunals Act. He said that while making a reference to the Chairman, the point on which the two Members of the Division Bench have the difference of opinion is to be

specifically indicated. In this case, the Hon'ble Member Shri S.L.Jain although has indicated the point for the consideration of a Larger Bench but both the Members together have not specifically indicated the point of disagreement between them. Moreover, if we see the order of Mr. Jain, then in para 11 he has also confirmed the view that there cannot be unhindered zone of consideration and as per the existing rules the zone of consideration can go up 5 times of the vacancies.

8. The Learned Counsel for the respondents also drew my attention towards the order passed by this Tribunal in O.A. No. 438/95 on 06.01.2000 wherein it was explicitly held that there is no provision to go beyond the extended zone of consideration. The Learned Counsel for the respondents in support of his contention cited two more judgements. One of Chandigarh Bench and the other is of Principal Bench. These are - Shri Suresh Kumar V/s. Union of India & Others (supra) and Shri Radhey Shyam Gupta & Others V/s. Union of India & Others (supra). In these two cases also a similar view has been taken that the zone of consideration cannot be extended indefinitely.

9. On the issue that whether the zone of consideration for SC/ST can be extended indefinitely or not, we have got a different view from the Ernakulam Bench of CAT. This was raised by the applicant and has been discussed in para 6 above. On the other hand, in the other three judgements mentioned in above para, it has been held explicitly that the DOPT instructions on the subject of extended zone are very clear i.e it would be 5 times of the vacancies and cannot be extended indefinitely. If the intention of the Government was to keep unrestricted zone of consideration, they could have done so. I have gone through the order of the Ernakulam Bench. It appears that the latest



clarificatory orders of Government issued on subject of zone of consideration vide O.M. dated 12.10.1990 were not brought to the notice of the Tribunal. As a result, the Bench had to rely on the earlier orders issued by DOPT.

10. After hearing both the counsels and going through the record of the case, I am of the view that the DOPT O.M. dated 12.10.1990 is very clear and unambiguous. The zone of consideration for promotion of SC/ST employees can be extended upto 5 times of the vacancies. Thus, according to me, the size of the zone of consideration cannot be indefinitely large and is circumscribed to 5 times of the number of vacancies. Thus, on this issue I agree with the views expressed by Member, Smt. Shanta Shastry.

11. The case may be placed before the Division Bench for taking further action.


(A.K. AGARWAL)
VICE CHAIRMAN

mrj.