

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.438/95.

Dated: *6th January 2000*

Smt.Suvarnalata Shivaji Kamble Applicant.

Mr. *R*.P.Saxena Advocate for
-----Applicant.

Versus

Union of India & Anr. Respondent(s)

Mr.R.K.Shetty with Mr.R.R.Shetty Advocate for
-----Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, 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.438/95.

Pronounced , this the 6th day of JANUARY 1999. 2000

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member(A).

Smt.Suvarnalata Shivaji Kamble,
Piramal Nagar,
Sanju Apartments,
Block No. 3 & 4,
Goregaon (West),
Bombay - 400 062.
(By Advocate Mr.R.P.Saxena)

...Applicant.

Vs.

1. Union of India, through
the General Manager,
Canteen Stores Department,
ADELPHI 119, M.K.Road,
Bombay - 400 020.

2. Joint General Manager,
(Chairman of D.P.C.),
Canteen Stores Department,
ADELPHI 119, M.K.Road,
Bombay - 400 020.

(By Advocate Mr.R.K.Shetty with
Mr.R.R.Shetty).

...Respondents.

: ORDER :

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

The applicant is seeking retrospective promotion as Selection Grade Clerk. Respondents have filed reply opposing the application. We have heard Mr.R.P.Saxena, the learned counsel for the applicant and Mr.R.K.Shetty with Mr.R.R.Shetty, the learned counsel for the respondents.

2. The applicant belongs to Scheduled Caste. She was promoted as an U.D.C. w.e.f. 1.1.1986. She has put in more than the required 5 years for the next promotion to the post of Selection Grade Clerk. A DPC was held in July, 1994 for filling up the vacancies of Selection Grade Clerk. There were many SC

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vacancies in the post of Selection Grade Clerk. But, however, the DPC has not considered the case of the applicant for promotion. A select panel was published promoting about 11 candidates, but applicant's name is missing from that panel. The respondents are bound to fill up SC/ST vacancies as per 40 point roster. Even if SC/ST candidates do not come within the normal field of choice, then the Administration is bound to extend the field of choice till they get the required number of candidates for SC/ST vacancies. Therefore, the action of the Administration in not promoting the applicant is illegal. Hence the application is filed seeking retrospective promotion from 8.9.1994 to the post of Selection Grade Clerk with all consequential benefits including monetary benefits seniority etc.

3. The defence of the respondents is that there were total 15 vacancies of Selection Grade Clerks, 11 for the General candidates, 3 for SC candidates, and 1 for ST candidate. In such a case, the normal zone of consideration is three times the total number of vacancies which means 45. In the eligibility list, no SC/ST candidates appear in the normal zone of consideration of 45 persons. Then, the rule is that the zone of consideration should be extended up to 5 times. The Administration has exercised that option and took into consideration 75 eligible candidates, but still there was no single SC/ST candidates available even in the extended zone also. It is also stated that the applicant's name is at Sl.No.113 in the eligibility list and since no SC/ST candidates were available within the extended zone of consideration of 75 persons of the eligible candidates, the applicant could not be promoted. This is the sum and substance of the defence of respondents.

Subsequently, in the Sur-Rejoinder the respondents have brought out that at the time of DPC there were 22 vacancies and therefore, the zone of consideration was taken up to 110, but still there was no SC/ST candidates and hence no such candidate including the applicant could be promoted against SC/ST vacancies. It is also stated that SC/ST vacancies were carried forward. It is also stated that the applicant has since been promoted as Selection Grade Clerk w.e.f. 28.9.1997.

4. In the light of the pleadings and the arguments addressed at the bar, the point for consideration is whether the applicant being an SC candidate was entitled to be promoted to Selection Grade Clerk from 8.9.1994 as claimed by her or not.

5. There is some dispute or confusion as to when exactly the applicant got promotion as a Selection Grade Clerk. According to the sur-rejoinder filed by the respondents applicant has since been promoted as Selection Grade Clerk w.e.f. 28.9.1997. But, the applicant's counsel has now filed an additional statement on 13.12.1999 where it is pointed out that applicant was promoted to Selection Grade w.e.f. 4.5.1995. Anyhow, this dispute regarding the subsequent promotion of the applicant to Selection Grade is not relevant for our present purpose.

6. 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:

| No. of vacancies | Normal zone | Extended zone for SC/ST |
|------------------|--------------------------------|----------------------------------|
| 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 pages 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 provide 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

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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 110 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 up to 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

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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."

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

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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 Vs. Union of India & Ors. (1995 (2) ATJ 208), before a Division Bench of Chandigarh Bench of this 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 Rules provide 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 Judgment 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 & Ors. Vs. Union of India & Ors. (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 Judgment 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.

12. In the result, the application fails and is hereby dismissed. No orders as to costs.

B. Bahadur
(B.N. BAHADUR)

MEMBER(A)

R. G. Vaidyanatha
6.1.2000
(R.G. VAIDYANATHA)

VICE-CHAIRMAN

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