

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:198/1998

Date of Decision:5/9/2002

Shri K.Rajan

Applicant

Shri S.Natarajan

Advocate for the
Applicant

Versus

Union of India & 7 Ors.

Respondents

Shri R.R.Shetty

Advocate for the
Respondents

CORAM:

Hon'ble Shri Justice Birendra Dikshit, Member(A)
Hon'ble Shri B.N.Bahadur, Member(A)

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

B. Dikshit
(BIRENDRA DIKSHIT))
VICE CHAIRMAN

abp

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:198/1998
DATED 5TH DAY OF SEPTEMBER, 2002**

**CORAM:HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT, VICE CHAIRMAN
HON'BLE SHRI B.N.BAHADUR, MEMBER(A)**

K.Rajan,
Security Officer (Gr.B),
BARC, Mumbai.

residing at
42, Alkananda,
Anushaktinagar,
Mumbai - 400 094. ... Applicant

By Advocate Shri S.Natarajan

V/s.

1. Union of India
through The Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
C.S.Marg, Mumbai - 400 039.
2. The Controller,
BARC, Central Complex,
Trombay, Mumbai - 400 085.

and

3. Shri V.B.Kulkarni
4. Shri G.S.Panwar
5. Shri J.K.S.Rao
6. Shri S.R.Tiwari
7. Shri C.G.Mirlekar
8. Shri S.Dayaram

all working as Security Officers under
the control of Respondent No.1 - Service
through Respondent No.1.

... Respondents

By Advocate Shri R.R.Shetty for R-1 and 2.

(ORAL)(ORDER)

Per Shri Birendra Dikshit, Vice Chairman

Feeling aggrieved by declaration of panel for Deputy
Chief Security Officers (Scale of pay Rs.10000 - 15200) at the
B.G.I.

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Department of Atomic Energy (DAE), the applicant has prayed for quashing of the panel drawn by Departmental Promotion Committee (in short DPC) which met on 3/2/1998. The panel has been declared by Under Secretary in the Department of Atomic Energy, Anushakti Bhavan, C.S.M.Marg, Mumbai on 6/2/1998.

2. The facts, in brief, relevant for determining present controversy on the pleading and arguments advanced are that the applicant, who is a Security Officer, has not been included in by the DPC for the post of Deputy Chief Security Officer which contains six names. The claim of applicant is that he belongs to Schedule Caste and as the department did not implement reservation policy of Government of India while empanelling the six respondents namely, Shri V.B.Kulkarni, Shri G.S.Panwar, Shri J.K.S.Rao, Shri S.R.Tiwari, Shri G.G.Mirlekar and Shri S.Dayaram and as apprehension is that he was not empanelled due to non-implementation of said policy, therefore, his name does not appear in the panel declared. It is an admitted case of the parties that there is a ~~the~~ Bench mark which is put in view of "Principles to be observed and preparation of panel", the principles being given in para 6.3.1 of the guidelines by Government of India. According to guideline, the departmental promotion is to be made by considering the eligible candidates on the basis of seniority from amongst the Security Officers of department concerned. The relevant part of the guidelines 6.3.1 is as under:-

"6.3.1 (i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the

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posts a bench-mark grade would be determined for each category of posts for which promotions are to be made by selection method. For all Group 'C', Group 'B' and Group 'A' posts up to (and excluding) the level of Rs.3,700-5,000 excepting promotions for induction to "Group 'A' posts of Services from lower groups, the bench-mark would be 'Good'. All officers whose overall grading is equal to or better than the bench-mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench-mark of 'Good'.

Wherever promotions are made for induction to Group 'A' posts or Services from lower groups, the bench-mark would continue to be 'Good'. However, officers graded as 'Outstanding' would rank en bloc senior to those who are graded as 'Very Good' and officers graded as 'Very Good' would rank en bloc senior to those who are graded as 'Good' and placed in the select panel accordingly up the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder post."

So far applicant is concerned, he being a Security Officer holds a post of Group 'B' and the promotion involved is to a Group 'A' post of Deputy Chief Security Officer and, therefore, for testing the validity of panel, we have to proceed accordingly.

3. The applicant is a Schedule Caste officer and to show that there is a reservation policy for promotion of Schedule Caste/Schedule Tribe for Officers of Group 'B' to Group 'A', the learned counsel for applicant also placed before us O.M. No.1/12/67-Estt.(C). dated 11th July, 1968 issued by the Ministry of Home Affairs for all the Ministries, etc on the subject of reservation for Scheduled Casts and Scheduled Tribes for posts to be filled up by promotion. In said O.M. under the head promotion by selection, the method of selection to appointments to Class-I and II is given which is as under:-

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Promotion by selection method:

(a) Class I and II appointments:

In promotions by selection from Class III to Class II and within Class II and from Class II to the lowest rung or category in Class I, the following procedure will be adopted:-

In promotions made by selection, employees in the zone of consideration numbering 5 or 6 times the estimated number of vacancies are normally considered for inclusion in the select list, vide Ministry of Home Affairs' Office Memorandum No.1/4/55-RPS, dated 16/5/1957. After rejecting those who are unfit for promotion, the Departmental Promotion Committee proceeds to categorise the remaining eligible employees into three categories namely, 'Outstanding', 'Very Good' and 'Good'. Thereafter, the Committee draws up a Select List placing all employees in the 'Outstanding' Category at the top, followed by those categorised as 'Very Good' and then by those categorised as 'Good', the inter se seniority within each category being maintained. As a measure of improving representation of Scheduled Castes/Scheduled Tribes in services it has now been further decided that:-

(i) If within the zone of consideration, there are any Scheduled Castes and Scheduled Tribes employees, those amongst them who are considered unfit for promotion by the Departmental Promotion Committee will be excluded from consideration. Thereafter, the remaining Scheduled Castes/Scheduled Tribes employees will be given by the Departmental Promotion Committee one grading higher than the grading otherwise assignable to them on the basis of their record of service i.e., if any Scheduled Caste or Scheduled Tribe employee has been categorised by the Committee on the basis of his record of service as 'Good', he should be recategorised by the Committee as 'Very Good'. Likewise, if any Scheduled Tribe employee is graded as 'Very Good' on the basis of his record of service, he will be recategorised by the Committee as 'Outstanding'. Of course if any Scheduled Caste or Scheduled Tribe

employees has already been categorised by the Committee on the basis of his record of service as 'Outstanding', no recategorisation will be needed in his case.

The above concession would be confined to only 25% of the total vacancies in a particular grade or post filled in a year from the Select List. While making promotions from the Select List the appointing authority should, therefore, check up that the Scheduled Castes/Scheduled Tribes, employees promoted in a year on the basis of this concession are limited to 25% of the posts filled in a year from the Select List prepared according to the procedure outlined above; and

(ii) Those Scheduled Castes/Scheduled Tribes employees who are senior enough in the zone of consideration so as to be within the number of vacancies for which the Select List has to be drawn, should be included in the Select List, if they are not considered unfit for promotion and should also be given one grading higher than the grading otherwise assignable to them on the basis of their record of service and their place in the select list determined on the basis of this higher categorisation. This would imply that even where, in some cases, the Select List were to consist of say, only 'Outstanding' non-Scheduled Caste/Scheduled Tribe candidates, adequate number of them being available from the zone of consideration, those Scheduled Caste/Scheduled Tribe candidates who are high up in the zone of consideration and are within the number of estimated vacancies for which the Select List is being prepared will even if they are only 'Good' and after higher categorisation by one degree will be recategorised as 'Very Good', have to be included in the Select List, and such candidates will be placed below the 'Outstanding' candidates in the Select List.

On reading of para-(ii) of said O.M. it is apparent that concession is to be granted to Scheduled Caste and Schedule Tribe Officers while preparing select list as a measure for improving representation of Scheduled Caste and Scheduled Tribe Officer. It provides that if any Scheduled Caste/Scheduled Tribe candidates is within the zone of consideration, the concession is

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to be given to 25% of the total vacancies in a particular grade of posts to be filled. Thus it limits the concession to 25% of the total vacancies for being filled by promotion.

4. On the basis of aforesaid guidelines, the learned counsel for applicant argued that the panel has been prepared ignoring the principles that a Scheduled Caste Officer, while grading, is entitled to one grade higher than what he was. The learned counsel for applicant argued that service record of applicant was to be considered accordingly but applicant reasonably believes that this has not been done. The contention is that as the minimum Bench Mark required for empanelment is 'Good' the minimum bench mark which applicant could get being a scheduled caste is to be 'Good', entitled for being considered one grade higher. He further contended that as the Bench Mark is 'Good' and he is not unfit for being promoted, while two other senior persons namely Shri V.K.Hiramath and Shri R.P.S.Raghuvanshi could not be included in panel due to Bench Mark, therefore, the applicant was to be empanelled being 6th in seniority amongst the candidates who could be appointed. The argument is that admittedly there are four vacancies for which panel has been prepared and as Shri G.S.Panwar is much below applicant in seniority, he could not be empanelled in preference to applicant. Thus, according to him, Shri G.S.Panwar's empanelment is in violation of guidelines of Government of India.

5. The learned counsel for the respondents Shri R.R.Shetty opposed the arguments and contended that the panel has been prepared keeping in view the guidelines. He has pointed

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relevant part of guidelines that for four vacancies only one Schedule Caste/Schedule Tribe could be empanelled under relaxed standard in view of requirement of 25% and as Respondent no.6, Dayaram, who is senior to applicant and happens to be Schedule Caste, stands selected on the basis of that 25%, and therefore he has been empanelled in preference to applicant.

6. We have considered the arguments advanced and have gone through original record of DPC produced by Learned counsel for Official Respondents. Guideline No.6.3.1(i) is about 'Principle to be observed' according to Government of India mentioned above. It provides that wherever promotions are to be made for induction to Group 'A' post it is to be done according to those guidelines.

7. The grievance of applicant is that the principle provided in O.M. is not being followed. We have gone through guidelines. Guideline permits empanelment on only 25% vacancies by Schedule Castes/Schedule Tribes by relaxed standard. From record it is apparent that Shri S.Dayaram, Respondent No.8, who is a Scheduled Caste candidate, could not have been selected had relaxed standard been not applied in accordance with guidelines mentioned above. The record shows that another Scheduled Caste candidate, Shri V.K.Thriboovan, had better Bench Mark under zone of consideration could not be selected but S.Dayaram selected on application of rule of seniority having minimum Bench Mark, being

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senior to Shri V.K.Thriboovan. Thus, the argument of the learned counsel for applicant that the guidelines has not been followed is untenable. No other point has been pressed.

8. For aforesaid reasons, the application fails and OA is dismissed. No costs.

B.N.Bahadur

(B.N.BAHADUR)
MEMBER(A)

B.Dikshit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

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