

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

OA No. 1079/1998

Mumbai, this the 10th March, 2003

Hon'ble Shri Govindan S. Tampi, Member(A)

Hon'ble Shri K.V.Sachidanandan, Member(J)

Narendra Manohar Pol

21/1, Ranatepur Darshan

Alandi Road, Yerawada, Pune-411006 .. Applicant

(Shri S.P.Saxena, Advocate)

versus

Union of India, through

1. Secretary

Ministry of Water Resources

Rafi Marg, New Delhi

2. Director

Central Water & Power Research Centre

Khadakwasla, Pune

.. Respondents

(Shri V.G.Rege, Advocate)

ORDER(oral)

Shri Govindan S. Tampi, MEMBER(A)

This OA challenges the inaction of the respondents in not promoting the applicant as UDC.

2. S/Shri S.P.Saxena and V.G. Rege appeared for the applicant and the respondents, respectively.

3. The applicant, a commerce graduate, belonging to Scheduled Caste category, was selected as LDC by the Staff Selection Commission and is working in the said capacity since 23.12.88 in Central Water and Power Research Centre, Khadakwasla. The organisation has 44 posts of UDCs out of which 6 will have to be filled up by promoting LDCs belonging to SC category. However, only 4 SC LDCs are in position, showing two posts lying vacant in that category, which have to be filled up on post

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based reservation. The applicant had been empanelled at Sl.No. 2 but has not been promoted, while the ST candidate placed at Sl.No.1 has already been promoted long back. The applicant, who satisfies the conditions of eligibility for promotion and in fact empanelled for promotion is made to languish. His representation dated 29.10.97 in this context is yet to be answered. Hence this OA.

4. Grounds raised in the OA and reiterated by the learned counsel for the applicant during the oral submissions are that:-

- i) the applicant is qualified and eligible for promotion;
- ii) two posts of UDCs from SC category are lying vacant for long;
- iii) applicant has been duly empanelled for promotion by DPC;
- iv) applicant is at Sl.No.1 for promotion as UDC against SC category;
- v) applicant's non promotion is illegal and arbitrary;
- vi) applicant apprehends the repatriation of two UDCs on deputation to fill up the above two vacancies; and
- vii) applicant is suffering inspite of the definitive finding of the Hon'ble Supreme Court in R.K. Sabharwal's case.

The applicant therefore calls for the immediate intervention of the Tribunal to do him justice.

5. Reply filed by the respondents and presented through Shri V.G. Rege, learned counsel, describes the OA to be misconceived and motivated. Moreover, it has become infructuous as the applicant has ^{already} been promoted as UDC by

Office Order No.604/22/99-Admn. dated 6.1.99.

Respondents point out that as against 44 posts of UDCs, 46 were promoted by a mistake keeping in mind two deputationists, who were to be repatriated. DPC convened in September did empanel two reserved category candidates for promotion and the ST candidate who was at Sl.No.1 was promoted in October, 97 while the applicant ^{at Sl.No. 24} was promoted in January, 99 as soon as a clear vacancy arose. There was no inaction on the part of the respondents and all allegations to the contrary are baseless and motivated. Hon'ble Supreme Court's decision in the case of R.K.Sabharwal & Ors. Vs. State of Punjab & Ors. issued on 10.2.98 is being given effect to prospectively. The applicant was considered for promotion as soon as he became eligible and following his empanelment, he was appointed immediately after a clear vacancy emerged. Nothing further could have been done. Post based reservation following Sabharwal's case could be done after the backlog of reserved vacancies could be cleared and the applicant has not at all suffered. Delay if any ~~occurred~~ ^{occurred} in filling up the post ^{clearly} only as the eligible candidates were not available and thereafter the issue of reservation of 3% for physically handicapped posts arose which had to be settled keeping in view the decision of the Hon'ble apex court in the case of Indira Sawhney Vs. UOI {AIR 1993 SC 477}, limiting all reservations together at 50%. The applicant was considered and empanelled for promotion and actually promoted at the first opportunity and he had also been orally apprised of the position from time to time. The applicant has been promoted w.e.f. 6.1.99 when a clear vacancy arose with all the benefits. OA therefore has become infructuous pleads Shri Rege.

6. In his reply the applicant's counsel Shri Saxena pleads that the respondents had given him the promotion only in January, 99 whereas he should have got it in 1997. Besides they had given all benefit of reservation to ST candidate and physically handicapped candidates which was not correct.

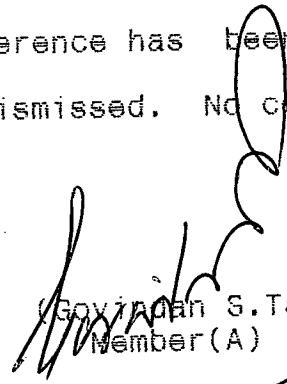
7. On carefully considering in depth the facts and circumstances of the case and perusing the documents we are fully convinced that applicant has no case. The applicant's entitlement for promotion to the post of UDC, against SC quota was never in dispute. Respondents were also aware that once he became eligible for promotion he has to be considered. They did it too and he was duly empanelled by the DPC of September, 97 but were awaiting a clear vacancy which arose towards end of 1998 and he was immediately promoted as UDC thereafter. The respondents in the meantime had to determine and settle the issue concerning the reservation for physically handicapped persons. The same however did not come in the way of the applicant as is being sought to be projected in the rejoinder. It is also not correct to state that the ST candidate was preferred to the applicant. As the latter was senior, he was placed at Sl.No.1 and was accordingly promoted earlier. He had not taken away the post meant for the applicant. The applicant has also not been able to prove that any other SC candidate junior to him has been promoted ahead of him or that any SC post, which fell vacant after R.K.Sabharwal's decision has been given to any general category candidate. Facts brought on record clearly show

that the applicant was considered for promotion as soon as he became eligible and was promoted immediately after a clear vacancy arose. Respondents had acted correctly and the applicant can have no grievance.

8. No case for Tribunal's interference has been made out. OA fails and is accordingly dismissed. No costs.



(K.V. Sachidanandan)
Member(J)



(Govindan S. Tampi)
Member(A)

/gtv/

