

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:929/1998
DATED THE 23rd DAY OF Sept, 2002

CORAM: HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Pandit Punjabi Salve,
Residing at Salve Building,
Near Nalanda Society, Jail Road,
Nasik-Road Pin Code 422 101

... Applicant

By Advocate Shri S.R.Atre

V/s.

1. The Government of India,
to be served on General
Manager, India Security Press,
and Ex.Officio Controller of
Stamps, Nasik-Road 442 101
2. The General Manager,
India Security Press and
Ex Officio Controller of
Stamps, Nasik-Road 422 101
3. The Assistant Works Manager,
and Appointing Authority,
Central Stamp Depot,
India Security Press,
Nasik-Road 422 101
4. Shri R.S.Sardesai,
Central Stamp Depot,
India Security Press,
Nasik-Road - 422 101
5. Shri N.L.Jadhav,
Central Stamp Depot,
India Security Press,
Nasik-Road 422 101

... Respondents

By Advocate Shri V.S.Masurkar

(ORDER)

Per Smt.Shanta Shastri, Member(A)

The applicant in this case is aggrieved that respondent nos.4 and 5 have been appointed as Inspectors vide the impugned order dated 24/4/98 when the applicant as belonging to the Scheduled Caste category ought to have been promoted with effect

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from 23/4/1998 as the vacancy was for the scheduled caste category. He has therefore prayed to quash and set aside the impugned order dated 23/4/1998 and to promote him as Inspector from 23/4/1998 with all monetary benefits.

2. Two vacancies of inspector arose on 1/9/1997 due to voluntary retirement of Shri G.d.Deshpande and 1/10/1997 due to superannuation of Shri V.D.Hagawane. The respondents filled up these two vacancies by treating them as unreserved vacancies by promoting respondents 4 and 5.

3. The contention of the applicant is the reservation policy underwent change after 1995. Prior to 1995, the reservation was based on vacancy wise roster. However, the Supreme Court in case of Shri R.K.Sabharwal and Ors V/s. State of Punjab reported in 1995(2)SCC 745 laid down that the roster should be implemented on the basis of cadre strength and not on vacancies. Thereafter Government of India issued OM dated 2/7/1997 in regard to the reserved post to be filled up based on number of posts. There are seven posts of Inspectors in the cadre. According to the applicant in view of the law laid down in Sabharwal's case supra the first roster point goes to scheduled caste and the applicant being the senior most scheduled caste, he ought to have been promoted against that roster point as Inspector. The applicant further submits that when the vacancies fell vacant there were five persons who were holding the posts as Inspectors. Shri G.W.Joshi, Shri B.A.Kardak, Shri M.V.Bhat, Shri R.M.Agnihotri, Shri S.R.Daithankar. Shri B.A.Kardak belongs to scheduled caste. According to the applicant though Shri Kardak belongs to scheduled caste, he was promoted to the post of

Inspector not on the basis of reservation but on his own merit as a general candidate as he was high in the seniority list and therefore in terms of the OM dated 2/7/1997, one post was available for scheduled caste candidate. The applicant produced a copy of the promotion order of Shri Kardak and tried to demonstrate how Shri Kardak was wrongly shown against scheduled caste post. As per the seniority list of 1/1/1987, shri B.A.Kardak was senior to Shri H.A.Bhamble who belonged to the scheduled tribe. Shri Kardak was promoted as Inspector on 4/5/1988 against Sr.No.21 which was earmarked for unreserved post whereas Shri H.A.Bhamble was promoted as Inspector on 1/7/88 shown against Serial No.22 which point was earmarked for reserved category namely scheduled caste. Since Shri Kardak belonging to scheduled caste category was promoted on 4/5/1988, the post which was available was against point No.21 which was meant for general category. Had he been promoted as scheduled caste candidate, he should have been shown against Sr.No.22 where the vacancy arose later on. Shri Bhamble was promoted by carrying forward the scheduled tribe quota. Thus, the respondents ought not to have shown Shri Kardak as having been promoted against scheduled caste quota when actually he was promoted against an unreserved post. Therefore, had the respondents shown Shri Kardak as having been promoted against the general post, then there would have been one vacancy left for scheduled caste when the subsequent vacancy arose in 1997. Because the respondents showed Shri Kardak as promoted against scheduled caste vacancy, as per the revised roster, even though the first vacancy would have gone to the scheduled caste category, the same has been denied to the

applicant. Thus, the applicant had to suffer because of the actions of the respondents in promoting Shri Kardak against the scheduled caste post instead of promoting him against the unreserved vacancy, he being high in the seniority list and eligible on his own merit to be promoted against the general vacancy.

4. The learned counsel for the applicant further argued and tried to demonstrate that there cannot be any exchange of posts. The exchange can be only between post of scheduled caste/scheduled tribe. The action of the respondents was therefore wrong in converting unreserved vacancy into that of scheduled tribe carried forward from the previous years. Applicant has been thus denied his due promotion. Shri Kardak could not have been shown against a later vacancy when he was promoted earlier from 4/5/88 and that vacancy definitely was meant for unreserved category.

5. The respondents submit that in accordance with the OM dated 2/7/1997, the reservation was provided to the extent of 15% for scheduled caste and 71/2% for scheduled tribe keeping in view the total sanctioned posts in each category. Prior to 2/7/1997, the Reservation Roster was vacancy based and was being operated on running account, on year to year basis. In the OM, it has been laid down that the number of posts in the roster shall be equal to the number of posts in the cadre. In case there is any increase or decrease in the cadre strength in future the rosters shall be expanded/contracted correspondingly. Separate annexure-III is given to show how a roster is to be maintained in a small cadre up to 13 posts, the roster is to be maintained as

per details given in Appendix to Annexure-III. At the stage of initial operation of the roster, it will be necessary to adjust the existing appointments in the roster. Excess if any would be adjusted through future vacancies and existing appointments would not be disturbed. The orders were to come into effect from the date of their issue i.e. 2/7/1997 only and not with retrospective effect as stated by the applicant from 1995.

6. According to the respondents there were seven sanctioned posts of inspectors and as on 2/7/1997, all the posts were filled in. This included the post held by Shri Kardak who belonged to the scheduled caste. The respondents have given a chart at page-5 of their reply showing the category for which the post was to be earmarked and how the post was filled. It is shown that Shri Kardak was promoted against scheduled caste reservation. So out of seven posts, one post is reserved for scheduled caste and that had already been filled in by a scheduled caste by virtue of reservation and therefore as on the date the fresh vacancies which arose on 1/9/1997 and 1/10/1997 there was no slot available for scheduled caste. The applicant had submitted his representations on 29/9/1997 and 3/10/1997. At that time, the proposals to fill up two posts were yet to be considered by DPC and no recommendations had been recorded. The representation was premature. The respondents have produced a copy of the note dated 4/5/1988 indicating the promotion of Shri B.A.Kardak against a post then reserved for scheduled caste (point no.22). Since the vacancies which arose on 1/9/1997 and 1/10/1997 were posts vacated by two officials who belonged to the unreserved category and the reservation for the scheduled caste category was

already satisfied by promoting Shri B.A.Khardak, scheduled caste against a reserved post, it was necessary to fill up the two vacancies by general candidates and not by scheduled caste candidate as alleged by applicant and therefore on the recommendations of DPC, the respondents promoted respondent nos.4 and 5 to the vacant posts of Inspector. According to the respondents there is no wrong committed by them and the applicant's claim does not exist. The respondents also have explained how the unreserved vacancy was converted into a vacancy for the scheduled tribe because the scheduled tribe vacancy was carried forward from the previous years.

7. The respondents submit that the applicant has not submitted any representation after the impugned order was issued on 23/4/1998. Therefore, it can be construed that the applicant has not availed of any opportunity of his grievance being settled by the competent authority and rushed to the Tribunal. It is clearly in violation of the provisions of Section 20 of the Administrative Tribunals Act and is premature.

8. We have heard the learned counsel for the applicant as well as the respondents. It is seen that prior to 1995, when reservation was provided on the basis of vacancies, respondents had filled up all the seven posts of inspectors in the cadre and Shri Kardak was promoted against scheduled caste vacancy in 1988. If at all any cause of action arose then it was in 1988. If the applicant felt that Shri Kardak was wrongly promoted against scheduled caste quota, he ought to have raised the objection at that time. He cannot now come up in 1998 to say that the promotion granted to Shri Kardak was against the

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unreserved vacancy and not a reserved vacancy and therefore now in 1997, it is for the applicant to be considered and the post is meant for the scheduled caste as per the roster. The settled position cannot be unsettled after a long lapse of time. The applicant argued that there was no cause of action for him until the post based roster was introduced in 1997 and therefore he had not approached the Tribunal in the past. But what the applicant is now trying to do is to link up the promotion of Shri Kardak in 1988 with the promotion in 1997.

9. In our considered view, the application is not maintainable at all. We also do not find any substance in the submission of the applicant that Shri Kardak should have been promoted against point no.21 where vacancy arose in 1988 and not point no.22 where the vacancy arose on a later date. We are satisfied with the position explained by the respondents and do not see any merit in the OA. Accordingly, the OA is dismissed on the ground of limitation as well as on merits. No costs.


(SMT. SHANTA SHASTRY)
MEMBER (A)


(S. L. JAIN)
MEMBER (J)

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