

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.377/1998

Date of Decision: 21.06.2002

Shri R.P. Bhoi

Applicant(s)

Shri Suresh Kumar

Advocate for applicants

Versus

Union of India & others

Respondents

Shri V.S. Masurkar

Advocate for Respondents

CORAM: HON'BLE SMT. SHANTA SHAstry .. MEMBER (A)
HON'BLE SHRI SHANKER RAJU .. MEMBER (J)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other ~~X~~ Benches of the Tribunal?
- (3) Library

Shanta S.
(SMT. SHANTA SHAstry)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 377/1998

THIS, THE 21ST DAY OF JUNE, 2002

CORAM: HON'BLE SMT. SHANTA SHAstry. MEMBER (A)
HON'BLE SHRI SHANKER RAJU. MEMBER (J)

Shri R.P. Bhoj,
AFS-15, India Security Press,
Nasik Road-422 101. Applicant

By Advocate Shri Suresh Kumar.

Versus

1. Union of India, through
Secretary, Ministry of
Finance, Department of
Revenue, South Block,
New Delhi-110 001.
2. General Manager,
India Security Press,
Nasik Road-422 101.
3. Shri B.S. Thakare,
AFS-34, at present working
as Sr. Machine Operator
CID-3, India Security Press
Nasik Road 422 101. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R

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

The issue under consideration in this OA is the non-promotion of the applicant as Senior Machine Operator (CID-3) and the promotion of Respondent No.3 belonging to ST category.

2. The applicant is working as Assistant Machine Operator (C-2). The next promotion is to the grade of Senior Machine Operator in the grade of Rs.950-1500.

...2.

The applicant is the senior-most in the seniority list of Assistant Machine Operators while Respondent No.3 is at Sl. No.15 in the list. The promotion to the post of Senior Machine Operator is by way of seniority cum suitability. The applicant belongs to SC community. The applicant contends that he being the senior-most he was entitled for promotion by treating the vacancy as a general vacancy. Respondent No.3 was not even in the zone of consideration. However, the official respondents considered him for promotion and promoted him.

3. According to the applicant even in case of selection post, the respondents cannot go down in the seniority list beyond five times the number of vacancies to be filled up. Even applying that test the Respondent No.3 was not even entitled to be considered for selection. However, the official respondents have promoted him to the exclusion of the applicant.

4. The applicant submits that the DOP&T have issued guidelines in regard to reserved categories on 02nd July, 1997. The guidelines contain a model roster required to be followed by the departments. As per this model roster the ST point is at Sl. No.14, 28, 40 69 onwards. Whereas the ST point is at Sl. No.7, 15, 20, 27, 35 and so on. Since the promotion has been made after the guidelines of 02.7.1997 the respondents were

duty bound to follow these guidelines but have failed to do so. The applicant further submits that there is only one post to be filled up and against that single post the rule of reservation does not apply as it would amount to filling up of post, 100% by reservation. This is against the judgment of the Supreme Court in the case of Indira Sawhney. The applicant has therefore, prayed for quashing and setting aside of the impugned order dated 11.01.1997 and to hold that the applicant is entitled to be promoted to the post of Senior Machine Operator with effect from 25.8.1997 with all consequential reliefs such as pay fixation, back wages and seniority.

5. The respondents do not deny that the applicant was senior-most in the seniority ^{list} and he was entitled to be considered for promotion on the basis of his seniority. However, according to the respondents, the post was reserved for ST and has been filled in accordingly. The ^{reservation} _{post} was carried forward since 1992 and 1994. It has therefore to be filled by ST candidate. The DPC meeting was held on 25.4.1996 and the DPC recommended the name of Respondent No.3. At that time 40 point roster was in vogue. Therefore, the guidelines of 02.7.1997 have no bearing on the decision which has been taken earlier to that date. It is not the question of isolated post, the vacancy was carried forward and had to be treated as a reserved vacancy.

There is no question of zone of consideration as it is a non-selection post.

6. We have heard the learned counsel for both the sides. The only issue is whether it was proper on the part of the respondents to have picked up Respondent No.3 though he was way down in the seniority list and would not have come within the zone of consideration. In our considered view, there is no zone of consideration for non-selection post. When the post is reserved exclusively for ST category, a candidate, who fulfills all the requirements and is otherwise eligible has to be considered even though he may be lowered down in the seniority list compared to the general candidates. We have perused the record of the DPC proceedings. We are satisfied that the post being reserved for ST community has been duly filled by ST candidate. As rightly pointed out by the respondents the guidelines of DOP&T dated 02.7.1997 could not be applied in this case as the DPC decision was taken much before that on 25.4.1996. In the result, we do not find any merit in the OA and ^{it} is dismissed accordingly. No costs.

S. Raju

(SHANAKER RAJU)
MEMBER (J)

Shanta F

(SMT. SHANTA SHAstry)
MEMBER (A)

Gajan