

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR.

T.A.No.1548/86

Dt. of order: 13.7.93

Rameshwar Lal Dayma

: Applicant/petitioner

Vs..

Union of India & Ors.

: Respondents.

Mr.M.S.Gupta

: Counsel for the applicant

Mr.S.P.Bhargava

: Counsel for the respondents.

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Hon'ble Mr.B.B.Mahajan, Member (Adm.)

Hon'ble Mr.Gopal Krishna, Member(Judl.)

PER HON'BLE MR.B.B.MAHAJAN, MEMBER(ADM.).

Rameshwar Lal Dayma, had filed a civil suit in the Court of Additional Munsif West, Jaipur against his order of reversion dated 6.3.85. In the suit he has sought declaration that he was entitled to promotion on regular basis to the post of Chief Typist scale Rs.550-750 w.e.f. 1.8.84 with all consequential benefits. The suit has been transferred to this Tribunal under Sec.29 of the A.Ts Act and registered as T.A. 2.

The applicant was appointed as Typist and subsequently promoted as Sr.Typist on 4.7.78. In 1980, a post of Chief Typist Scale Rs.550-750 was created by upgradation. Since this was a single post, it was not reserved for SC/ST although it fell on roster point and the roster point was carried forward. L.N. Saxena, an unreserved community official was promoted against this post vide order dated 22.8.80 (Annx.R-4). Subsequently a post of Typist in the scale of Rs.260-400 was upgraded to that of Chief Typist scale 700-900 w.e.f. 1.8.82. Shri L.N.Saxena, Head Typist scale Rs.550-750 was promoted as Chief Typist scale Rs.700-900 against this post and the applicant was promoted in the resultant vacancy as Head Typist scale Rs.550-750 vide order dated 15th Nov. 1983 (Annexure:R-1). The Western

Railway Headquarter, Bombay informed the DRM that one post of Chief Typist scale Rs.700-900 was not admissible according to the percentage laid down by the Board (Annx.R-6). Thereupon a revised order was issued by the DRM vide order dated 30.10.84 (Annx.R-5) by which the post of Typist scale 260-400, which was previously upgraded to the post of Chief Typist scale 700-900, was now upgraded to Head Typist scale Rs.550-750. By that time Shri L.N.Saxena was retired on superannuation on 31.7.84. The DRM, vide order dated 21.2.85 (Annx.R-2) stated that the promotion of the applicant to the post of Head Typist scale Rs.550-750 was on ad hoc basis. Vide order dated 30.3.85 (Annx.R8) Mahabir Prasad Sharma, Head Typist scale 425-700 was promoted to officiate as Chief Typist scale Rs.550-750 and vide order dated 6.3.85 (Annx.R-7) the applicant was reverted to the post of Head Typist scale Rs.425-700. The contention of the applicant is that he had been promoted vide order dated 15.11.83 (Annx.R-1) to the post of Head Typist scale Rs.550-750 on regular basis against the vacancy reserved for SC and he could not therefore be reverted by the impugned order dated 6.3.85. The respondents have in their reply stated that the applicant had only been promoted on ad hoc basis by order dated 15.11.83. Subsequently Shri Mahabir Prasad Sharma had been promoted as Chief Typist on the basis of his seniority and the applicant was therefore reverted. They have referred to the order of the Hon'ble Rajasthan High Court dated 28.1.85 (a copy of which though stated to be enclosed with the reply as Annx.R-9 has not been enclosed or produced at any stage), that promotion of SC/ST employees should not be made in excess of 15% and 7.5% of the total number of post.

3. We have heard the counsel for the parties. There is no mention in the promotion order dated 15.11.83 (Annx.R-1) that the order of promotion of the applicant as Head Typist was on ad hoc basis. The order dated 21.2.85 issued after more than a year treating this promotion as ad hoc is clearly ~~enough~~ an after thought. No reason has been given in this order dt. 21.2.85 or in the reply filed by the respondents as to why the promotion of the applicant should be treated as ad hoc. Mere mention by the respondents in their order, which in this case was done after more than a year, that the promotion was ad hoc is not sufficient to make it ad hoc. The respondents have not denied that the vacancy was reserved for SC according to roster and that the applicant was the senior most SC official due ^{for} consideration against this vacancy. They have not even taken the plea that the record of the applicant was not satisfactory so as to disentitle him for promotion. They have taken the plea ^{that} according to the order of the Hon'ble Rajasthan High Court dated 28.1.85 ~~that~~ the promotion of SCs/STs should not exceed 15% and 7.5% of the total number of post. A copy of that order has not been produced. However, Hon'ble Allahabad High Court had in J.C.Malik Vs. UOI 1978(1) SLR 844 held that Railway Board's circular dated 20.4.70 made reservation to the extent of 15% in favour of SC candidates in respect of appointments ^{ad} on the post. The Hon'ble Supreme Court also in their interim order dated 21.12.84 in the SLP filed against the judgment directed that in future the promotion of SCs and STs against reservation post should be limited to 15% and 7.5% of the total number of posts. Those orders have however only prospective effect and did not affect the promotions already made. In this case,

the promotion of the applicant had already been ordered vide order dated 15.11.83 and had come into force. The interim order of the Hon'ble Supreme Court could not thus have the effect of nullifying that promotion.

4. The learned counsel for the respondents has taken the preliminary objection that Shri M.P.Sharma, who had been promoted in place of the respondent has not been made a party to this T.A and no order adversely affecting him can therefore be passed. The applicant had at one stage filed an application for impleading Shri M.P.Sharma as a party and for making some other amendments in the T.A, but subsequently on 22.3.91, the learned counsel for the applicant did not press the M.P, and the same was accordingly dismissed as not pressed. In the circumstances, no order adverse to Shri M.P.Sharma can be passed. However, so far as the applicant is concerned his main grievance is not against the promotion of Shri M.P.Sharma but against his reversion when he had already been promoted as Head Typist on 15.11.83. His reversion order was clearly illegal in view of what has been discussed above. The contention of the learned counsel for the applicant is that with the upgradation of the post of Typist to that of Head Typist by the order dated 30.10.84 (Anx.R-5) one additional post of Chief Typist scale Rs.550-750 became available and thus there was another vacancy apart from the post held by Sh.L.N.Saxena before his promotion to the scale Rs.700-900. The factual position in that regard is not clear from the record. In case the contention of the learned counsel for the application is correct, the applicant could be adjusted against that vacancy from 1.8.1984 when Sh.L.N.Saxena, retired.

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5. In view of the above discussions, we allow this petition partly and direct that the applicant shall be deemed to have continued in the post of Chief Typist scale Rs.550-750 from the date of his reversion on 6.3.85 in case a vacancy exists from that date. In case there ^{was} ~~is~~ no vacancy in the post of Chief Typist scale Rs.550-750 on 6.3.85, he may be promoted from the date the vacancy arose. Arrears admissible on this count, if any, shall be paid within 4 months of this order. Parties to bear their own costs.

GKrishna
(Gopal Krishna)
Member (J)

B.B. Mahajan
(B.B. Mahajan)
Member (A).