

J A I P U R .

O.A. No. 776/92

Date of decision: 23.8.93

JAI RAM MEENA

: Applicant.

VERSUS

UNION OF INDIA & ORS

: Respondents.

Mr. J.K. Kaushik

: Counsel for the applicant.

Mr. Manish Bhandari

: Counsel for the respondents.

CORAM:

Hon'ble Mr. B.B. Mahajan, Administrative Member

Hon'ble Mr. Gopal Krishna, Judicial Member

PER HON'BLE MR. B.B. MAHAJAN, ADMINISTRATIVE MEMBER:

Jai Ram Meena has filed this application U/S 19 of the Administrative Tribunals Act seeking for direction to the respondents to release his promotion to the post of Head Goods Clerk scale 1400-2300 from due date under upgradation scheme. Notice of the O.A. was sent to the respondents who have filed the reply.

2. The applicant belongs to Scheduled Tribes. He was passed over for promotion to the post of Head Goods Clerk Grade Rs. 425-640 vide order dated 12.5.86 (Annexure A-1) as a major penalty case was pending against him. In the major penalty case, penalty of reversion from the post of Sr. Goods Clerk to Assistant Goods Clerk for a period of two years was imposed on him. On appeal, the punishment was reduced to that of stoppage of increments due from 1.1.87 for two years. His increment due on 1.1.90 was also stopped for a period of six months in another case. The applicant represented on 30.8.90 (Annexure A-3) that his punishment of stoppage of increment was also now over on 30.6.90 and he should now, therefore, be promoted as Head Goods Clerk.

3. The respondents have, in their reply, stated that the applicant could not be given promotion to the post of Head Goods Clerk not only because of the imposition of the punishment but also for the reason that the benefit of reservation was not available to the applicant as the

strength of the ST candidates is full on the said post ^{1/2} and as per the direction of the Hon'ble Supreme Court, the benefit of reservation cannot be given effect to in excess to the quota fixed for the post/cadre. They have also stated that the benefit of reservation is not available on the upgradation post.

4. We have heard the learned counsel for the parties.

5. The learned counsel for the applicant has argued that he is not seeking promotion of the applicant against the roster point on the basis of reservation for S.T. but against general seniority. It is settled law that the S.T. candidates cannot be denied promotion on the basis of general seniority merely on the ground that their share in the promotional post/cadre would exceed the prescribed percentage. It is admitted that the punishments of stoppage of increment in both the cases have been completed on 30.6.90 and last order on the subject was passed on 1.1.90.

6. In view of the above, we allow this application partly and direct that the suitability of the applicant for promotion to the post of Head Goods Clerk on the basis of his general seniority may be assessed by the DPC as on 1.1.90 and if he is found suitable, he shall be promoted on that post from 1.7.90, if his case has not already been considered by the DPC. The DPC will, of course, be entitled to take into consideration the punishments imposed on the applicant while assessing the suitability of the applicant in accordance with clarifications/^{re-}produced by the applicant himself in para 4(5) of the application.

7. Parties to bear their own costs.

G. Krishna
(GOPAL KRISHNA)
Judicial Member

B. B. Mahajan
(B.B. MAHAJAN)
Administrative Member