

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A. No.114/93

Date of order: 2.2.1996

S.D.Bante : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.K.S.Sharma : Counsel for applicant

Mr.U.D.Sharma : Counsel for respondent Nos.1 & 2

Mr.S.Kumar : Counsel for respondent No.3

CORAM:

Hon'blr Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Administrative Member

PER HON'BLE MR.O.P.SHAERMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri S.D.Bante has prayed that the order dated 30.9.91 (Annx.A1) passed by respondent No.2 appointing Shri G.D.Rathi as Manager, RLO/HSG-II be quashed and promotion order for the post of Manager, RLO/HSG-II, may be passed in favour of the applicant. He has further prayed that the applicant may be declared senior to respondent No.3, Shri G.D.Rathi, HSG-II/ Manager, RLO, Jaipur. There is a still <sup>furter</sup> prayer that respondent No.2, the Chief Post Master General, Rajasthan Circle, Jaipur may be directed to issue order of appointment of the applicant to the post of HSG-II from 30.1.91 with all consequential benefits.

2. We have heard the learned counsel for the parties and have perused the records which include the application, the replies to the application by the official respondents and the private respondent, affidavit filed by the applicant, additional affidavit filed by the official respondents and the applicant's reply to the aforesaid additional affidavit, as also the annexures thereof.

3. The applicant's case is that the Returned Letter Office (RLO) was started in Jaipur w.e.f. 1.7.1970 and the

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first incumbent on this post was Shri Madan Mohan who came on transfer to Jaipur alongwith the post from Nagpur in the capacity of LSG and thereafter got promotion as HSG-II while posted at Jaipur. While posted at Jaipur and holding the post of HSG-II and incharge of FLO, Jaipur, Shri Madan Mohan retired on superannuation on 30.6.73. The post of Manager of FLO in the grade of HSG-II is a single post and there cannot be any reservation against the single post. On this post falling vacant on 1.7.73 it was filledup by appointing Shri V.G.Ingolikar, who was a general candidate. It again fell vacant on 1.8.83 on retirement of the previous incumbent and was filledup by Shri M.P. Gade, who was again a general candidate. It again fell vacant subsequently on retirement of the incumbent and was filledup by Shri B.P.Rao on 3.7.86 who was again a general candidate. It again fell vacant subsequently and was filledup on 1.10.91 by appointment of Shri G.D.Fathi, who was an SC candidate. The applicant's case is that Shri G.D.Fathi is junior to the applicant. As per the judgment of the Hon'ble Supreme Court in the case of Dr. Chakradhar Paswan Vs. State of Bihar, AIR 1988 SC 959, if there is only one post in the cadre there can be no reservation with regard to that post either for recruitment at the initial stage or for filling up a future vacancy in respect of that post. Therefore, according to the applicant, this being a single post, it should have been filledup by appointment of general candidate and in any case Shri G.D.Fathi being a SC candidate was not entitled to be appointed on the said post on 1.10.91, also for the reason that he was junior to the applicant in LSG.

4. The applicant made a representation dated 24.2.94 (Annx.A6) and sent several subsequent reminders but neither was he granted any promotion to the said post nor did he hear anything from the respondents in response to his representation

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and reminders.

5. The respondents in their reply have stated that for maintaining reservation of SC/ST candidates, a 40 point roster is being maintained as per the existing government orders and as per the said roster, point No.1 is reserved for an SC candidate. Since no SC candidate had been available, this post had been carried forward since 1973 and the vacancy against this point was required to be filledup in accordance with the instructions contained in the Department of Personnel & Administrative Reforms OM dated 29.4.75. Thus the vacancy which had arisen on account of retirement of Shri B.R.Rao w.e.f. 1.10.91 was required to be filledup by promoting an SC candidate and accordingly on the recommendations of the DFC, Shri G.D. Pathi, an SC candidate and respondent No.3 in this application was promoted vide order dated 30.9.91. The representation submitted by the applicant was duly considered and was rejected vide letter dated 2.2.93 (Annx.R1). The respondents have accepted that the applicant is senior to respondent No.3 but as stated above the post of HSG-II was required to be filledup from amongst the eligible SC candidates against carried forward roster point since 1973. The applicant was, therefore, not entitled to be appointed on the said post.

6. Subsequently during the hearings before us the learned counsel for the applicant cited the instructions dated 24.4.70 issued by the Ministry of Home Affairs providing for reservations for SC and ST candidates for fillingup posts. These instructions have also been presented by the official respondents as Annx.P3 to their additional affidavit. According to the learned counsel for the applicant, even if it was assumed that the post was to be filledup on the basis of the roster the respondents had erred in fillingup the vacancy arising on 1.10.91 by appointing an SC candidate. According to

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him reservations were provided in accordance with the instructions contained in the aforesaid OM dated 22.4.70 and thus reservations were effective from 1970. The post for the first time was filledup in 1970 and therefore, the determination of a carried forward vacancy should have been made with reference to the filling up of the post in 1970 and not with reference to the filling up of the post subsequent to that date. On this calculation, therefore, the vacancy arising on 1.10.91 should have been filledup by a non-SC candidate and since the applicant was senior to Shri G.D.Pathi, he should have been appointed as HSG-II/Manager, FLO, Jaipur. The official respondents have drawn attention to Annx.E1 dated 11.7.68 which is an OM issued by the Ministry of Home Affairs on the subject of reservation for SC/ST candidates in posts to be filledup by promotion. In para 2.C thereof it has been provided that there will be no reservation for SC and ST candidates in appointments made by promotion on the basis of seniority subject to fitness. (The subsequent provisions in the said para are not relevant for our purpose). They have then drawn to Annx.E2 which is the O.M dated 27.11.72 issued by the Department of Personnel, Cabinet Secretariat, Govt. of India, in which in para 2 it has been stated that the policy in regard to reservations for SC/ST candidates in posts filled by promotion on the basis of seniority subject to fitness <sup>has</sup> ~~have~~ been reviewed and it has been decided in supersession of the instructions contained in para 2.C of the O.M dated 11.7.68 that there will be reservations at 15% for SC and 7.5% for ST candidates in promotions made on the basis of seniority subject to fitness in appointments to all Class I, Class II, Class III and Class IV posts in which the element of direct recruitment, if any, does not exceed 50%. (Since appointments to the post of HSG-II are wholly by promotion, this latter provision is not

91

relevant for our purpose). Thus, according to the official respondents the provisions in para 2.C of the O.M dated 11.7.68 (Annx.F1) constituted an exception to the general rule of reservation of 15% and 7.5% vacancies for SC and ST candidates respectively. But this exception had been done away by the OM dated 27.11.72 (Annx.F2). Thus the post was required to be filledup in accordance with the roster point from 1972 onwards and not from 1970 onwards. After 1972, the vacancy for the first time arose on 1.7.73 but since no SC candidate was available, it was filledup by appointing a general candidate Shri V.G.Ingolikar but the vacancy was carried forward for 3 recruitment years in accordance with the extant instructions. The post again fell vacant in 1983 and that time also no SC candidate was available and therefore, a general candidate Shri M.P.Gade was appointed but once again the vacancy was carried forward for 3 recruitment years. The post again fell vacant in 1984 and at that time also no SC candidate was available, therefore, the post was filledup by appointing one Shri B.P.Pao on ad hoc basis on 1.12.84 and after receiving sanction of the competent authority for dereservation of the said post on 22.5.86 Shri Pao was promoted to the said post on 3.7.86 on a regular basis. The dereservation was allowed subject to the condition that the reservation would be carried forward for subsequent 3 recruitment years. The post again fell vacant in Sept.1991. At that time an SC candidate, Shri G.D.Pathi, LSG, though junior to the applicant was available for fillingup the post and therefore he was appointed to the said post w.e.f. 1.10.91. The post was actually required to be filledup by an ST candidate but it was exchanged with an SC post and accordingly an SC candidate was appointed to the said post. Thus, according to the respondents Shri G.D.Pathi had been rightly appointed to the said post w.e.f. 1.10.91 on the basis of the roster point

92

and carry forward of the vacancy to be filledup by SC/St candidates.

6. The learned counsel for the applicant drew attention to para 8 of the additional affidavit filed by the official respondents in which it has been stated that when Shri B.R.Rao was appointed to the said post on a regular basis on 3.7.86 the post was dereserved and therefore, according to him, in any case no subsequent appointment to this post could be made on the basis of reservation. The learned counsel for the official respondents countered this argument by stating that dereservation was for the appointment of Shri B.R.Rao, a general candidate because the post was reserved for an SC candidate and in any case even after dereservation which was specific for appointment of Shri B.R.Rao, the reservation point had to be carried forward for 3 recruitment years.

7. The learned counsel for the private respondent stated that the applicant had made a representation dated 24.2.92 which had been rejected vide order dated 23.2.93 (Annx.R1 annexed to the original reply of the official respondents to the O.A). This rejection had not been challenged by the applicant.

8. The learned counsel for the applicant also challenged the veracity/genuineness of O.Ms at Annxs.R1 & R2 annexed to the additional affidavit of the official respondents.

9. We have considered the matter carefully. Undoubtedly the general principle laid down by the Hon'ble Supreme Court in Dr.Chakradhar Paswan's case has to be observed in filling-up posts on the basis of reservations. However, we also have to take note of the judgment of the Hon'ble Supreme Court in State of Bihar & Ors. Vs. Bageshwari Prasad & Anr, 1995(1)SLJ 178 and Jogendra Sethi Vs. Rabindranath Behura & Ors, (1995) 31 ATC 772 wherein the Hon'ble Supreme Court have discussed the issue of

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carry forward of vacancies, on the SC/ST candidates not being available for fillingup post on the basis of the roster point. In Bhageshwari Prasad's case the Hon'ble Supreme Court had also considered their earlier judgment in Dr. Chakradhar Paswan's case. In both these judgments the Hon'ble Supreme Court held that a vacancy could be filledup by a reserved category candidate on the basis of carry forward and as seen from Bhageshwari Prasad's case, this did not preclude even a single post being filledup by an SC/ ST candidate on the basis of the principle underlying carry forward of vacancies. Now in the instant case the official respondents have explained how on the 3 occasions the post fell vacant after 1972, it was filledup on the basis of appointment of general candidates, since SC candidate was not available. On the last occasion, in 1991, the post was required to be filled up by an ST candidate but since an ST candidate was not available, it was exchanged with an SC candidate and was filledup by Shri G.D.Rathi, who was otherwise junior to the applicant in LSG. We find no merit in the contention of the counsel for the applicant that since the post had been dereserved when Shri E.R.Rao was appointed on a regular basis on 3.7.86, the post could thereafter be filledup only by a general candidate. This dereservation was obviously specific to Shri Rao. We also find no merit in the contention of the learned counsel for the applicant that O.Ms at Annexes.R1 and R2 annexed to the additional affidavit filed by the official respondents are not genuine. These are also reproduced in "Brochure on Reservation for SC & ST in Services" 7th edition published by the Govt. of India, Ministry of Personnel, Public Grievances & Pension, New Delhi, 1987. The instructions contained in para 2.C of Annex.R1 dated 11.7.68 annexed to the additional affidavit of the official respondents provide that there shall be no reservation for SC and ST candidates for

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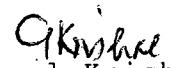


fillingup posts to be filled by on promotion on the basis of seniority subject to fitness. This was apparently an exception provided to the general rule of reservation. This exception was done away with in 1972 by OM dated 27.11.72 (Annx.P2) annexed to the additional affidavit of the official respondents. Thus, reservations for vacancies to be filledup on the basis of seniority subject to fitness would be available only from the date of issue of these instructions. We do not see any conflict between these two instructions relied upon by the official respondents and the instructions contained in O.M dated 22.7.70 relied upon by the learned counsel for the applicant (which have been presented as Annx.P3 to the additional affidavit of the official respondents). We are, therefore of the view that there was no irregularity in appointing Shri G.D.Pathi to the said post w.e.f. 1.10.91. In these circumstances, we do not want to go into the question whether the applicant should have challenged the rejection of the representation by the official respondents.

10. In the circumstances, the O.A. is dismissed. There shall be no order as to costs.

  
(O.P.Sharma)

Member (Adm.)

  
(Gopal Krishna)

Vice Chairman.