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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA 219/94 : Date of order : 19-5-95.

Raj Narain Sharma : Applicant

v/s

Union of India & Others : Respondents

For the applicant : Mr. P.V. Calla

For the respondents : Mr. U.D. Sharma

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Hon'ble Mr. Gopal Krishna, Vice Chairman.

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

PER HON'BLE MR. O.P. SHARMA, MEMBER (ADMINISTRATIVE).

In this application u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed that the Tribunal may declare that filling up of the two posts of Superintendent in the grade Rs. 1600-2660 in the Geological Survey of India, Western Region, Jaipur, by appointing candidates belonging to Scheduled Castes/Scheduled Tribes in excess of the prescribed reservation of 22.5% on the basis of 40 Point Roster is illegal and unconstitutional. A further prayer of the applicant is that the respondents may be directed to consider his case for promotion to the post of Superintendent as & when post is available, with all consequential benefits.

2. The applicant had also prayed for interim relief seeking suspension of the operation of the 40 Point Roster and a direction to the respondents not to exceed 22.5% reservation for Scheduled Castes/Scheduled Tribes in the matter of filling up of the vacancies in the cadre of Superintendent. On 16.5.94, the Tribunal had issued an interim direction that the respondents should not make excess appointments by exceeding the reservation quota fixed for the Scheduled Caste/Scheduled Tribe candidates. Though the interim direction was not continued beyond 3.2.95, it appeared from the arguments of the parties during the hearing that two posts of Superintendents have still not been filled up.

3. The facts of the case, as stated by the applicant, are that he was initially appointed as LDC in the Geological Survey

of India, Jaipur, on 22.12.62. He got promotions from time to time and was appointed as Assistant on a regular basis by order dated 29.11.84 (Annexure A-2). The next promotion to the post of Superintendent is made from amongst Assistants to the extent of 90%, and from amongst Stenographers Grade II to the extent of 10%. The minimum experience prescribed for promotion from these posts is four years. After excluding the names of the persons in the seniority list of Assistants who have already been promoted as Superintendents, the applicant's name is at serial no. 3 for the purpose of future promotion to the post of Superintendent. The cadre strength of the post of Superintendent is 13. Out of the 13 posts, three are occupied by Scheduled Caste candidates, one by a Scheduled Tribe candidate and the remaining nine by general ^{category}/candidates. As per the reservation provided for Scheduled Caste/Scheduled Tribe candidates, two posts of Superintendent should be filled up by Scheduled Caste candidates (15%) and one should be filled up by Scheduled Tribe candidate (7½%). The rest of the ten posts should be filled up by general category candidates. Thus already one post of Superintendent is occupied by a reserved category candidate, in excess of the prescribed quota for reserved category candidates. All the four reserved category candidates working on the post of Superintendent occupy these posts by virtue of reservation and not on the basis of their own seniority/merit.

4. Further, according to the applicant, two vacancies of Superintendent are likely to arise because the incumbents will retire on superannuation on 30.4.94 and 30.9.94 respectively. (The application was filed on 9.5.94) The applicant apprehends that these posts which are likely to fall vacant will be filled up by promoting one Scheduled Caste and one general category candidate by operating the 40 Point Roster. With these promotions,

the reserved category candidates would be occupying two posts in excess of their reservation quota. Since the quota for the reserved category candidates has already been exceeded even before making of promotions against two vacancies arising in 1994, appointment of another reserved category candidate against one of the posts falling vacant in 1994 would mean that four posts would be filled up by SC candidates, one by an ST candidate and the remaining eight by general category candidates. The applicant submitted a representation dated 23.2.95 to the respondents stating therein that the prescribed quota for Scheduled Caste candidates has already been exceeded and, therefore, no candidate belonging to SC should be given promotion but this representation was rejected by the respondents by letter dated 31.3.94 (Annexure A-1). According to the applicant, reservation is to be applied to posts and not to vacancies. Reservation should not exceed 22.5% of the total posts in a particular cadre. The Western Region of Geological Survey of India with Head-quarters at Jaipur has a separate roster now. Operation of the separate roster would result in further promotion to the reserved category candidates. The applicant has made a reference ^{to} _{an} interim order of Hyderabad Bench of the Tribunal in OA no. 326/89 filed by one L. Pramod Kumar by which the Tribunal had directed sometime in 1989 that while filling up of posts of Superintendent in Geological Survey of India, Southern Region, Hyderabad, it should be assured that the posts held by the members of SCs and STs should not exceed 15% and 7½% at any time provided that if a person belonging to these categories is promoted on his own merit and not against a reserved category, he should not be treated as falling within the reserved quota of 22.5% of these categories.

5. The respondents in their reply have stated that vacancies in the grade of Superintendent are being filled up on the basis

of 40 Point Roster prescribed by the Ministry of Home Affairs vide their OM dated 22.4.70 by which the reservations of SC/ST candidates have been prescribed at 15% and 7½% respectively. It is not appropriate to link the said reservations to the number of posts. The reservation is against the vacancies, and the roster is operated on the basis of the vacancies and it has no relationship with the posts. The respondents have not exceeded the reservation in the vacancies beyond the limit prescribed by the Ministry of Home Affairs, OM dated 22.4.70. The promotion of three SC candidates and one ST candidate against the vacancies in the grade of Superintendent is in accordance with the aforesaid 40 Point Roster. In this reply which was filed on 22.8.94, the respondents have further stated that in the current year, there are two vacancies of Superintendent, one clear and one anticipated. These will be filled up by operating the 40 Point Roster as mentioned above. One of these vacancies will be filled up by appointing an ST candidate and the other by appointing a general category candidate. They have denied that the quota for the SC candidates has already been exceeded, as reservation is applied to vacancies and not to posts, and the percentage of reservations is required is to be worked out with reference to the vacancies. They have added that all the vacancies arising after 1.8.84 are to be filled up in accordance with the new register for maintaining the roster, opened after regionalisation of the offices of Geological Survey of India w.e.f. 1.8.84.

6. We have heard the learned counsel for the parties and have gone through the records.

7. The learned counsel for the parties agree that the matter is now squarely covered by the judgment of the Hon'ble Supreme Court in R.K. Sabharwal & Others Vs. State of Punjab and others, 1995(1)SLR 791 and that the matter involved in this OA now can be decided in the light of this judgment. The learned counsel

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for the respondents stated that two vacancies have already arisen in the grade of Superintendent after filing of the OA. These posts have not been filled up in view of the interim direction of the Tribunal. The fact that out of 13 posts, three have already been filled up by appointing SC candidates, and one by appointing an ST candidate is not disputed. In the case of R.K. Sabharwal, the Hon'ble Supreme Court has held that reservation is against posts and not against vacancies arising in a particular cadre. The total numbers of posts in a cadre have to be considered for the purpose of determining reservations, to be made from the reserved category candidates and the reservation should not exceed the prescribed percentage of posts. In other words, the SC and ST candidates cannot be appointed in excess of 15% and 7½% respectively of the total number of posts in a cadre. In view of this dictum laid down by the Supreme Court, it would appear that the appointments of SCs candidate are already in excess of the prescribed quota in the cadre of Superintendent. Any further appointment of a reserved category candidate against any of the two posts which have now fallen vacant would mean that the appointments of the reserved category candidates will be still further in excess of the prescribed quota. The two persons who retired during 1994 were S/Shri V.S. Rattan and Lal Singh, both general category candidates. As held by Hon'ble Supreme Court in their judgment in R.K. Sabharwal's case, once posts have been filled up in a cadre after following the prescribed percentage of reservations, any vacancy arising thereafter should be filled up by appointing candidate of the same category to which the incumbent who vacated the post by retirement or otherwise belonged. In the instant case, the initial appointments were themselves in excess of the prescribed quota for SC & ST candidates as one SC candidate has been appointed in excess of the prescribed

percentage of reservations for the posts of Superintendent. In any case in so far as the present OA is concerned, the two are posts which/now vacant have fallen vacant on account of retirement etc. of two general category candidates, and therefore, only general category candidates shall be appointed against these posts. The respondents are directed to take necessary action accordingly.

8. The learned counsel for the respondents stated that the Hon'ble Supreme Court has further held in the said judgment that the interpretation given by them in regard to the above matter shall be operative prospectively. Therefore, according to him, ^{since} vacancies had ~~been~~ arisen before the Hon'ble Supreme Court delivered its judgment on 10.2.95, these have to be filled up in accordance with the rule operating at the relevant time during 1994 and, therefore, these vacancies should be allowed to be filled up on the basis of reservations against vacancies and not against posts. We are unable to agree with the learned counsel for the respondents. Regardless of the reasons why these vacancies have not been filled up so far, the fact remains that these two vacancies are yet to be filled up. Since these vacancies are to be filled up now, the interpretation given by the Hon'ble Supreme Court on this point shall have to be applied while filling up these posts. The respondents are, therefore, directed to fill up these posts by appointing general category candidates against these. It is not necessary to issue any direction at this stage with regard to the prayer of the applicant for his own promotion.

9. The OA is allowed accordingly, with no order as to costs.

(O.P. SHARMA)
MEMBER (A)

G.K. KRISHNA
(GOPAL KRISHNA)
VICE CHAIRMAN