

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 04.02.2000

OA No.488/94

Nand Kishore Meena S/o Shri Jeewan Ram Meena, at present working on the post of Chief Clerk, C&W, Kota.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Chief Personnel Officer, Western Railway, Churchgate, Mumbai.
3. Shri P.D.Bhushan at present working on the post of Sr.TRI Churchgate, through the Chief Personnel Officer, Western Railway, Mumbai.

.. Respondents

Mr.Shiv Kumar, counsel for the applicant

Mr. S.S.Hasan, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

The applicant seeks following reliefs in this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985:

- (i) By an appropriate order or direction the impugned order dated 28.9.1994 (Ann.A/1) may kindly be declared to be illegal and unconstitutional to the extent it contains more names of general community than vacancies meant for them vide Annexure-

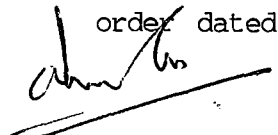
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A/3 and it does not contain the applicant's name against the vacancy of ST reserved for the applicant on qualifying the written examination, and hence the impugned order dated 28.9.1994 (Ann.A/1) be kindly quashed and set aside.

(ii) That by an appropriate order or direction the respondents be directed to consider the candidature of applicant for empanelment in the impugned order against the vacancy reserved for Scheduled Tribe since he is the only candidate belonging to this community and who has qualified the written examination also.

(iii) That by an appropriate order or direction the respondents No.1 and 2 be prohibited from making appointment of the employees contained in the impugned order till the applicant's candidature is considered and he is empanelled and given appointment on the post of A.C.M.

2. The facts, as stated by the applicant, are that the respondents had issued a letter dated 23.8.1993 (Ann.A2) notifying selection for promotion to the Class-II post of A.C.M. through the Limited Departmental Competitive Examination (for short, LDCE) enclosing therewith a copy of letter dated 6/17.8.1993 issued by respondent No.1 (Ann.A3) which stated that the LDCE was against 30% of vacancies notified vide letters dated 17.11.1992 and 7.1.1993. The assessed vacancies were 5, out of which 1 each were reserved for SC and ST as per roster point and thus only 3 vacancies were for general candidates. The applicant working as Head Clerk at that time in the pay scale of Rs. 1400-2300 (RPS) was eligible and applied on the proforma prescribed as Ann.A2. The result of the examination was declared and the applicant was placed at Sl.No.7 in the list of successful candidates in the written test and he also happened to be the only ST candidate in the entire list (Ann.A4). The applicant was then called up for viva-voce test and the result of the said test was declared vide impugned order dated 28.9.1994 (Ann.A1). Against this order, the applicant made a



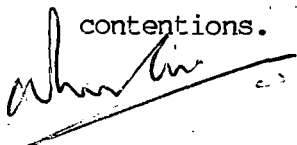
representation (Ann.A5) that he was the only candidate belonging to ST and the vacancy reserved for ST was given to a general candidate in a capricious and malafide manner but of no avail; in fact respondents were going to give effect to the aforesaid panel. This Tribunal had, vide its order dated 5.10.1994 provided that "if any appointment is given in violation of the roster system, it will be subject to the decision of this case and the person, to whom appointment is given, shall be informed accordingly by mentioning this fact in the very order."

3. A reply was filed by the respondents to which a rejoinder has been filed on behalf of the applicant. It has been stated by the respondents that the vacancies assessed were actually 6 and the figure of 5 mentioned in the notification dated 6.8.1993 was due to a typographical error and the same has been corrected by issuing corrigendum dated 24.8.1993 (Ann.R1). It has also been stated that in the notification dated 6.8.1993 (Ann.A3), it was clearly indicated in para 2 that placement on the panel and promotion will be done on the basis of judgment dated 17.11.1987 from the Bombay Bench of CAT. It has further been stated that there were no deficiencies of SC & ST in the cadre of ACM (LDCE) in terms of the said judgment of CAT, Bombay, in which respondents were restrained from making promotion of SC and ST in excess of 15% and 7½ % post respectively. The applicant who belongs to ST, can appear as a general candidate and if he secures required grade within the size of panel of 6, his name could have found place in the panel like other candidates who got appropriate grades as per their performance and merit obtained. The respondents have not disputed that the applicant belongs to ST community but he could not be placed in the panel because the quota for ST had no deficiency and he could not ^{come in} in merit vis-a-vis general candidates. It has been emphasised that the panel of 6 candidates was declared strictly in order of merit secured by them in the LDCE examination.

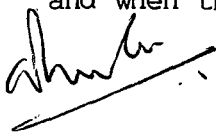
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4. We have heard the learned counsel for the parties and have carefully perused the records.

5. The case of the applicant basically rests on the ground that whether the vacancies for ACM (LDCE) were 5 or 6, there was a vacancy reserved for the ST against the roster point and since the applicant was not declared failed and, therefore, the only ST candidate who qualified, he ought to have been kept on the panel against the vacancy reserved for the ST candidates. It has also been contended on behalf of the applicant that no where respondents have clarified that quota is in excess or there is any deficiency. Contesting this the respondents have produced a letter dated 11.9.1997 in response to the order dated 25.4.1997 of this Tribunal which shows that the total cadre strength in 1993-94 was 40 of which only 3 posts are required to be filled up by ST candidates, being $7\frac{1}{2}\%$ and there being 3 ST employees already available, there was no shortfall. This squarely meets the assertion of the applicant. It was, therefore, argued that there was no question of the applicant being kept in the panel against a reserved vacancy for ST candidates in the circumstances. It has also been stated that the respondents could not have exceeded the prescribed percentage of ST and SC quota in terms of the interim order dated 24.4.1987 passed by the CAT, Bombay. It has also been denied by the official respondents that respondent No.3 has been given promotion on reservation point reserved for ST and this is clear from Ann.A1. The learned counsel for the applicant, in turn, opposed the contentions made on behalf of the respondents and stated that one of the 6 vacancies had been made available due to the retirement of an official belonging to ST community and, therefore, only a ST candidate could have been empanelled against that roster point meant for ST candidates. He also cited the case of Suresh Chandra Vs. J.B.Agarwal and Ors. reported in 1997 SCC (L&S) 1146 and R.K.Sabharwal and Ors. Vs. State of Punjab and Ors., reported in 1995 SCC (L&S) 548 in support of his contentions.

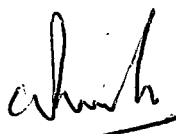


6. We have carefully considered the contentions put forward by the rival parties. From the letter No.E/G/1024/4/1 (ACM-LDCE)/court/NKM dated 11.9.1997 produced before us by the official respondents, it is quite clear that at the relevant time of selection during 1993-94, there were 3 posts reserved for ST candidates against ACM (LDCE) and actual availability was also 3 and thus there was no shortfall. The applicant could not have, therefore, a claim to be considered as a ST candidate and given the post notwithstanding the fact that he occupied position number 7 in the panel (Ann.A4) while there were only 6 vacancies. The position was that all 3 reserved posts for ST were occupied by the ST employees as per the aforementioned letter of the respondents although against ST a figure of 1 has been shown against Item No.3) with heading "As per roster point". The applicant has, however, not been able to substantiate his assertion that this one of the three roster points for ST was occupied by a general candidate. There being three reserved points for ST and all three being occupied with no shortfall, in the normal course it is only in future that a reserved vacancy for ST would become available for one of the ST employee. We have also considered the case law cited by the learned counsel for the applicant and find that it is of no help to the applicant. In the case of Suresh Chandra (supra), the Apex Court had a case of applicability of roster to a single isolated post, whereas in the present case, there is no such controversy. In the case of R.K.Sabharwal (supra), it was held by Hon'ble the Supreme Court that the posts shown at the reserved points are to be filled from amongst the member of the reserved categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. In this case, the Apex Court had also, however, observed that the roster is implemented in the form of a running account from year to year and the running account is to operate only till the quota provided is reached and not thereafter. The vacancies arising in the cadre, after the initial posts are filled will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular

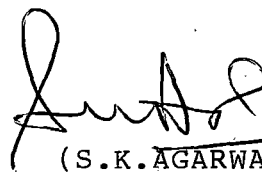


post, the same will be filled from amongst the category to which the post belonged in the roster. In Bhup Singh v. State of Haryana reported in 1999 SCC (L&S) 328, the Apex Court referring to R.K.Sabharwal's case again held that "roster is meant only for providing guidelines for filling up reserved quota vis-a-vis general category candidates and it ceases to operate when prescribed quota is achieved. In 1999(3) SCC 129, Babu Ram v. C.C.Jacob and Ors., Hon'ble the Supreme Court yet again held that reservation is in relation to number of posts comprising in cadre and not in relation to vacancies as laid down by Sabharwal's case. On a perusal of the letter dated 11.9.1997 produced before us after a direction issued in this regard, it is apparent that there were only three posts reserved for ST employees and all three stood filled up with no deficiencies. Although against ST a figure of 1 has been shown against Item No.3) with heading "As per roster point". In normal course if any vacancy occurs in future due to reitirement etc. against any of these three roster points, the vacancy will have to be filled up by an employee belonging to ST community.

7. In view of the above legal position and the facts and circumstances of the case, this Original Application is disposed of with a direction to respondent No.2 to reconfirm that all the 3 roster points reserved for Scheduled ^{Tribe} ~~Caste~~ officials were actually filled up by the candidates from that community at the relevant time and if not, the case of the applicant for promotion to the post of ACM (LDCE) may be considered afresh. Further, it may also be confirmed that if any of those officials belonging to ST community occupying reserved points for ST have subsequently retired etc. thereby making available a vacancy, the same has been filled up by the eligible officials of the ST community. This direction may be complied with within four months from the date of receipt of a copy of this order. No order as to costs.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)

Judl. Member