

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 2/5/2002

O.A. NO. 509/2001.

R. D. Meena son of Shri Raghuver Dayal Meena, aged around 41 years, resident of Plot No. 19, Roop Nagar II, Tonk Phatak, Jaipur, presently posted as Sub Regional Employment Officer, C.G.C. for S.C./S.T., Jaipur.

.... APPLICANT.

v e r s u s

1. Union of India through Secretary, Ministry of Labour, Government of India, Shram Shakti Bhawan, Rafimarg, New Delhi.
2. Director General, Employment & Training/Joint Secretary, Ministry of Labour, Shram Shakti Bhawan, Rafimarg, New Delhi.
3. Union Public Service Commission through Secretary, Dholpur House, Shahjahan Road, New Delhi.

... RESPONDENTS.


Shri P. V. Kalla, counsel for the applicant.
Shri R. L. Agrawal, Proxy counsel for
Shri Bhanwar Bangri, counsel for the respondents.

CORAM

Hon'ble Mr. Justice O. P. Garg, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.


: O R D E R :
(per Hon'ble Mr. A. P. Nagrath)

The applicant, at the time of filing of this Original Application, was working as Sub Regional Employment Officer (in short, SREO), having been appointed to that post on 08.07.1983. Further advancement is to the post of Assistant Director and still further to the post of Deputy Director. The sanctioned strength of cadre of Assistant Director




is 5 and that of Deputy Director is 11. One post in each of these grades is filled up by officers from Indian Statistical service. Thus, the posts available for promotion of SREO's to these two grades are, four Assistant Directors and ten Deputy Directors. The applicant has filed this Original Application, seeking directions to the respondents to promote him to the post of Deputy Director, Employment Exchange, against the ST quota and also appointment to the post of Assistant Director against the ST quota from retrospective dates.

2. The case of the applicant is that the respondents are not filling up the vacancies of Assistant Director and Deputy Director, Employment Exchange, against the vacancies reserved for ST candidates. The applicant belongs to ST category. The ground raised by him is that in the cadre of Assistant Director, there is not, even one ST candidate. Similarly on the post of Deputy Director, there is no ST candidate. According to the applicant, he could have been considered for promotion even directly to the post of Deputy Director, as the rules provide that for promotion to the post of Deputy Director, Research Officer Grade-I with five years regular service in the grade rendered after appointment thereto on a regular basis failing which Research Officer Grade II or Planning Officer and SREO's with 8 years service in the respective grade are eligible for promotion. The plea of the applicant is that when three vacancies of Deputy Directors were filled up in the



year 1992, he was eligible to be considered as he had the requisite length of qualifying service for promotion to the said post. By ignoring him for the same, respondents have promoted general candidates. He is also aggrieved of the fact that in the subsequent years, too when the occasions came for filling up the vacancies of Deputy Directors, his candidature was not considered.


3. In the reply to this Original Application, the respondents have stated that the occasion to fill up the vacancies of Assistant Director against reserved point for Scheduled Tribe arose in the year 1984. One of the essential conditions for promotion of SREO to Assistant Director's grade is that SREO's should have three years of regular service to his credit. The applicant, who joined as SREO in the year 1983 had obviously not become eligible as he had hardly put in less than one year of service when the vacancy reserved for ST came to be filled up. At the relevant time, no ST officer was available for promotion even in the extended zone of consideration. The rules provide that in such a situation, the vacancy reserved for ST could be exchanged and filled up by promoting a SC Officer. One Shri Babu Lal, belonging to SC category, was available and in accordance with Para 9.2(b)(VI) of the Brochure of reservation for SC/ST, Shri Babu Lal was promoted and the point reserved for ST stood consumed. The rules do not provide for carry over of the vacancies. In so far as promotion to the



post of Deputy Directors, the same are filled up by selection. These posts in the scale of Rs. 3000-4500 are not in the lowest rung of Group 'A' post and therefore reservation does not apply. The zone of eligibility is determined in order of seniority. When the vacancies were filled up in the year 1992 onwards, the applicant did not come within the zone of consideration and thus according to the respondents, the applicant has no cause of action in his favour.

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

5. Learned counsel for the respondents have also produced before us a copy of the Reservation Roster as applicable to the posts to which the applicant is claiming promotion. We were also informed by the Proxy counsel for the respondents, Shri R. L. Agarwal, that the applicant has since been promoted as Assistant Director on 26.08.1999 and further as Deputy Director on 28.11.2000. In this view of the matter, according to Sh. Agarwal, the cause of action does not survive any more. This contention of Sh. Agarwal was opposed by the learned counsel for the applicant, Shri P. V. Calla, for the reason that the applicant was seeking promotion to the post of Assistant Director against ST point and further promotion to the post of Deputy Director on the basis of having had completed eight years of qualifying service in the year 1992. Shri Calla, forcefully argued that the applicant was not given a fair consideration for promotion to the post of Assistant




Director as also of Deputy Director.

6. We have perused the records and the roster register produced before us.

7. The occasion to fill up ST point in the grade of Assistant Director arose in the year 1984. At the relevant time forty point roster was in force. According to the said roster, the fourth vacancy to be filled up came to the share of ST candidate. Admittedly, at that point of time the applicant was not eligible as he did not have three years of qualifying service as SREO to his credit. Under the given situation, one Shri Babu Lal, SC candidate was promoted against that slot as the rules provide for exchange of the reservation point from SC to ST and vice versa.


8. Learned counsel for the applicant more vigorously argued the case of the applicant for his promotion to the post of Deputy Director. For this purpose he referred to the rule position which provided for filling up the post of Deputy Director to the extent of 60% by promotion, failing which by transfer on deputation and failing both by direct recruitment. The remaining 40% of the vacancies are filled up by direct recruitment. The case of the applicant could be considered only under 60% promotee quota. The qualifying service for this purpose is as follows :-



"Promotion :

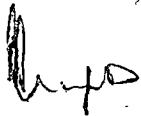
Research Officer Grade I with 5 years' service in the grade rendered after appointment therein on a regular basis failing which Research Officer Grade II or Planning Officer and Sub-Regional Employment Officers with 8 years' service in the respective grade rendered after appointment thereto on a regular basis. "

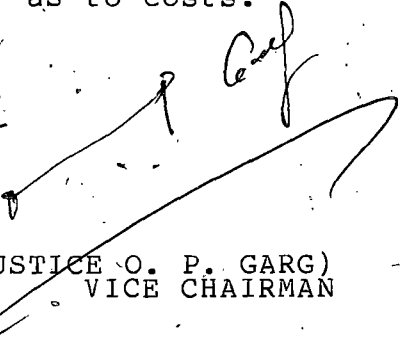
9. If the rules do not provide for any reservation for filling up the vacancies in the grade of Deputy Director, it is obvious that the eligibility would depend on the seniority of the officers in the feeder grade. It is not the case of the applicant that any of his juniors were considered in the year 1992 onwards when the occasion came to fill up the vacancies of Deputy Directors. The question of considering SREOs with eight years service cannot arise in preference to the claim of the seniors when no vacancy is to be treated as reserved. Obviously, in such a situation there is no cause of action in favour of the applicant. He could make a grievance only, if any of his juniors had been considered, ignoring his claim. The respondents have clarified ^{that} in the year 1992 ~~XXXX~~ the vacancies of Deputy Directors were filled up by promotion of four Assistant Directors who were decidedly senior to the applicant, after giving relaxation to their length of qualifying service with the concurrence of the department of Personnel and Training. Since the vacancies were filled up by promotion of seniors, the question of considering the juniors working only as SREO could not have arisen. The learned counsel for the



respondents also stated that the applicant's claim for promotion to the post of Deputy Director in the year 1995 onwards was to be considered under the purview of Revised Recruitment Rules, which came into effect vide the Gazette of India Notification dated 01.09.1994. Under these rules, the posts of Deputy Director of Employment Exchange against 60% of promotee quota were to be filled up by promotion of Assistant Directors of Employment Exchanges with five years regular service in the grade, failing which Assistant Directors with eight years of combined regular service in the grade of Assistant Directors and SREO. In view of the fact that the applicant had not been promoted as Assistant Directors, till the year 1999 he could have no claim for promotion to the post of Deputy Director earlier than 1999. Be that as it may, it is clear that even earlier i.e. prior to coming into effect of the new Recruitment Rules, the applicant has no case for being considered so long as persons senior to him were available for promotion. No preference could have been given to the applicant because of his belonging to ST, as rules do not provide for any reservation in this grade. We are of the considered view that the applicant has failed to make out any case in his favour and this Original Application is liable to be dismissed.

10. We, therefore, dismiss this Original Application on merits with no order as to costs.


(A. P. NAGRATH)
MEMBER (A)


(JUSTICE O. P. GARG)
VICE CHAIRMAN