

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH : JAIPUR

Date of order : 11.10.2001

O.A. No. 39/1996

Mahendra Kumar Sharma son of Shri Sohan Lal Sharma aged 51 years Junior Technical Assistant (Drilling) Geological Survey of India, Western Region, Jhalana Dungari, Jaipur, residing at 350, Kateva Nagar, New Sanganer Road, Jaipur.

... Applicant.

versus

1. Union of India through the Secretary to the Government of India, Ministry of Mines, Department of Mines, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi.
2. The Director General, Geological Survey of India, Central Headquarters, 27, J.L. Nehru Road, Calcutta - 700 016.
3. The Deputy Director General, Geological Survey of India, Western Region, 15-16, Jhalana Dungari, Jaipur - 302 004.
4. Shri Mohan Ram, Senior Technical Assistant (Drilling), Geological Survey of India, Camp Satipura, Post Office Satipura - 335 512, District Hanumangarh, Rajasthan.

... Respondents.

Mr. R.C. Joshi, Adv., Brief holder for Mr. P.V. Calla, Counsel for the applicant.

Mr. T.P. Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed by Shri Mahendra Kumar Sharma for setting aside the order dated 31.10.95 (Annexure A/1), and letter dated 20.12.9

(Annexure A/2) with a further direction not to fill more than three vacancies by way of promotion from amongst SC/ST candidates, and the persons appointed in excess of 22½% quota be reverted to original position.

2. The applicant contended that vide Annexure A/2 dated 20.12.95, applications were called for the post of Senior Technical Assistant (Drilling) reserved for ST, and in pursuance of the said notification, the private respondent No. 4, by name Shri Mohan Ram, has been appointed as Senior Technical Assistant against SC quota. The applicant further contended that vide Annexure A/1 dated 31.10.95, the promotion of Shri Mohan Ram as Senior Technical Assistant is erroneous. He also contended that there is already excess reservation of more than 22½% in favour of reserved candidate, and the promotion of Shri Mohan Ram (respondent No. 4) as Senior Technical Assistant against SC quota vide Annexure A/1 is illegal. The applicant further contended that the said vacancy on which the private respondent No.4 is appointed, should have gone in favour of the applicant as a general candidate. Therefore, the promotion of the respondent No.4 vide Annexure A/1, is liable to be set aside.

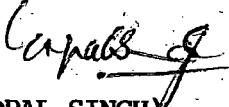
3. By filing reply statement, the respondents have denied the case of the applicant. It is stated that the cadre strength of Senior Technical Assistant (Drilling) in Geological Survey of India (Western Region) is still 24, and out of those 24 posts, 7 posts have been kept in abeyance, and only 2 posts falling under promotion quota. They have not clearly stated as to why those 7 posts have been kept in abeyance. In paragraph 4 (vii), they have stated that out of 4 vacancies in promotion quota, 2 have been kept in abeyance, and out of remaining 2 vacancies, one post pertaining to ST category, which has been diverted for direct recruitment temporarily, and the remaining one vacancy was to be filled

up by way of promotion. Thus, there is only one vacancy in the grade of Senior Technical Assistant (Drilling), to be filled up by promotion quota. It is also averred in the reply statement that the posts are liable to be filled up as per 40 point reservation roster, taking into account 15% quota for SC and 7½% for ST. The applicant by filing Annexure A/5 seniority list contended that there is already excess reservation in favour of SC candidate. He also contended that he is senior to the respondent No. 4, and the post in question falls to the general candidate, and therefore, the same should have gone to the applicant rather in favour of the respondent No. 4. The official respondents by filing written arguments contended that the applicant has taken voluntary retirement.

4. The learned counsel for the applicant though relied upon the judgement of Hon'ble the Supreme Court in R.K. Sabharwal & Ors. vs. State of Punjab and Ors. (1995 (2) SCC 745 = 1995 SCC (L&S) 548), and also the judgement of this Tribunal in OA No. 219/94 (Raj Narain Sharma vs. Union of India and Ors.), decided on 19.05.95, but in view of the judgements in Jitender Pal Singh and Ors. vs. State of Punjab (1999 SCC (L&S) 1280 = JT 1999 (6) SC 638) and Ajit Singh & Ors. vs. The State of Punjab and Ors. (AIR 1999 SC 3471), Hon'ble Supreme Court has issued number of guidelines regarding excess promotion made on the basis of accelerated promotion etc. Hon'ble the Supreme Court also has laid down the law that in case of any person has been given accelerated promotion contrary to reservation rule, the senior person in the base level may catch up with him, and claim seniority over such junior person promoted in excess of quota. Hon'ble the Supreme Court has further made it clear that such roster promotees promoted in excess of quota prior to 10.02.95 contrary to the judgement in Sabharwal's case, and those roster promotees promoted prior to 01.03.96 contrary to Ajit Singh-II also are not required to be reverted, but their promotion shall be taken only as

ad hoc subject to "catching up" principle. Keeping in view of these principles of Hon'ble the Supreme Court, the department has to consider the case of the applicant afresh as against the respondent No. 4 and other person in the department. It is not possible for this Tribunal to undertake an exercise as to whether there is any promotion in excess of quota or not, since it is the duty of the department to consider the same and revise the seniority list etc. In view of these circumstances, we think it appropriate to pass the order as under:-

"The application is disposed of with a direction to the respondents to consider the representations of the applicant vide Annexures A/6 dated 05.05.95, A/7 dated 24.07.95 and A/8 dated 06.11.95 on the basis of the judgements of Hon'ble the Supreme Court in Ajit Singh-II and Jitender Pal's case, referred to above, and accordingly consider the case of the applicant for promotion vis-a-vis respondent No.4, by name Shri Mohan Ram, within a period of three months from the date of receipt of a copy of this order. No costs."


(GOPAL SINGH)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

cvr.