

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, Jaipur

O.A. No. 153/98 & MA No. 567/02
T.A. No. 567/02

DATE OF DECISION 12/12/2003

Rajan Singh

Petitioner

Mr. Prahlad Singh

Advocate for the Petitioner(s)

Versus

Union of India and two others Respondent

Ms Shalini Sheron for
Mr. Bhanwar Bagri

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

A.K.B/
(A.K. Bhandari)
Member (A)

J.K.K/
(J.K. Kaushik)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH; JAIPUR.

FRIDAY the 12th Day of December, two thousand three.

O.A. No. 153/98 and M.A. No. 567/2002.

The Hon'ble Mr. J.K. Kaushik, Judicial Member,

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

Rajan Singh
S/o Shri Bhagawant Singh
R/o 32/510, Pratap Nagar,
Sanganer,
Jaipur.

: Applicant.

Mr. Prahlad Singh: Counsel for the applicant.

VERSUS

1. The Union of India through
the Chairman, Ministry of Water Resources
Central Ground Water Board,
New C.G.O Building, N.H. IV
Faridabad, (Haryana)
2. The Director (Administration)
Government of India,
Ministry of Water Resources,
Central Ground Water Board,
New CGO Building, N.H. IV
Faridabad (Haryana)
3. Ajay Kumar Shrivastava
Hydro meteorologist
Central Ground Water Board,
Northern Region,
B/1-7 Mohit Bhawan,
Mahanagar Extension
Lucknow: ; Respondents.

Ms. Saline Sharon proxy counsel
For Mr. Bhandari Barge : Counsel for the
respondents.



ORDER**Per Mr. J.K. Kaushik, Judicial Member.**

Shri Rajan Singh has filed this O.A. under section 19 of the Administrative Tribunals Act, 1985 and has prayed for the following reliefs:

I) that the respondents be directed to make promotion by providing the benefit of reservation provided for the reserved caste candidates.

ii) the respondents may be further directed to fill up the backlog of the reserved quota which was to be carried forward when the promotions in the year 1988 were made to the post of Scientist B and at the same time the promotion so given to Ajay Kumar Shrivastava be recalled/set aside in as much as the applicant has not been considered or given the benefit of reservation while filling up the post now in the year 1997.

iii) the respondents be further directed to fill up all the vacancies of the post of Scientist B without being treated as abolished, superseded or upgraded by the administrative order which clearly runs counter to the statutory provisions. The case of the applicant be thus considered for promotion to the post of Scientist B for the resultant vacancies as well as the vacancies, which has been filled in the year 1997, and he be awarded all consequential benefits.

2. Skipping the superfluities, the material facts necessary for resolving the controversy involved in this case are that the applicant was initially appointed as Senior Technical Assistant (STA for short) Hydro meteorology (HM for short), vide order dated 22.05.1986. He was confirmed on this post with effect from 03.06.88 on satisfactory completion of probation period and the probation period was required to be reckoned for the purpose of seniority.



3. As per the recruitment rules in force, the next channel of promotion for the post of STA (HM) is the post of Scientist 'B' i.e. Assistant HM, which is required to be filled in by promotion and by direct recruitment in the ratio of 50% each. In the year 1988, 7 STA (HM) were promoted as Assistant HM(Scientist B) in disregard to the reservation rules and all of them belong to general category and the post meant for the reserved category candidate to the extent of one post ought to have been given to SC community. The applicant belongs to SC community.

4. It has been further averred that for the last 10 years no one has been promoted to the post of Scientist B, after the promotion of 7 general candidates in the year 1988. The post meant for the reserved category candidate ought to have been carried forward as per the provisions of the Rules. The applicant has been made to suffer of total stagnation in his service career. Recently an order was passed on 04.02.97 in favour of one Ajay Kumar Shrivastava (respondent No. 3) promoting him as Scientist 'B' (ASST. HM) and the respondents have failed to provide the due benefit of reservation to the eligible candidates.

5. The salient grounds on which the Q.A has been filed are that the action of the respondents in not providing the benefit of reservation to the applicant is absolutely illegal and offends Art. 16 (3) of the Constitution. If no eligible candidate from the reserved category was available in the year 1988, the post meant for the reserved category was required to be carried

forward. In the instant case, rules have been framed under Art. 309 of the Constitution of India and certain posts of H. Ms meant for the reserved category have been taken away by the administrative order and the respondents have failed to maintain the reservation rule in the matter of promotion.

6. The respondents have contested the case and have filed a detailed reply to the OA. It has been averred in the brief history part of the reply that there were four posts of H. Ms now redesignated as Scientist 'B' in the pay scale of Rs. 700-1300 (pre-revised) lying vacant in the Central Ground Water Board. Out of them three posts were of 1983 and one post was earmarked for 1984. As per the reservation policy out of three posts of 1983, one post was reserved for SC and two posts were meant for unreserved category and the post earmarked for 1984 was reserved for ST community and being a single vacancy of 1984 it was treated as general category post as per the existing reservation. It was further stated that the posts were to be filled by promotion failing which by transfer on deputation and failing both by direct recruitment. The eligibility condition provided was that one should have 5 years regular service in STA (HM). Three more posts of Scientist 'B' were created vide letter dated 21.06.85 and were meant for general category as per the reservation roster. The proposal for de-reservation of 2 SCs and 1 ST was also sent to the higher authorities as no reserved category candidate was available in the department for consideration for promotion, from the feeder category.

Accordingly, the Government had de-reserved both the posts in

the year 1985 and on the basis of the recommendations of the DPC, 7 departmental candidates from general category were promoted as Scientist 'B'(Hydro meteorologist, Group -A)

7. The further defence of the respondents as set out in the reply is that since no SC/ST category candidate was available at that time and the applicant joined only on 22.05.86 both the reserved vacancies of SC and ST were de-reserved. After implementation of the Flexible Complementing Scheme to Group 'A' Scientific posts in 1987, the post of HM was also included in that and recruitment rules which were notified vide letter dated 18.05.87 and further amended vide notification dated 28.06.95. The method of recruitment reads as under:

(i) 50% by promotion failing which by transfer on deputation (including short-term contract)and failing which by direct recruitment.

Promotion

STA (HM) with 5 years regular service in the grade.

(ii) 50% by direct recruitment.'

8. It has been averred in the reply that two posts of Scientist B(HM) in the pre-revised scale of Rs. 2200-4000/- were created for implementation of Hydrology Project with effect from 01.11.1996. Out these two posts one was meant for promotion quota and the second was for direct recruitment quota per the revised recruitment rules. The post was reserved for SC community but being a single vacancy for that particular year

Q the post was treated as un-reserved. It is also stated that carry

forward of reservations from year to year in the event of adequate number of SC/ST candidates being not available in any particular year is not permissible in posts, filled by promotion by selection to Class II within Class II and upto the lowest rung of Class I as per Rule 20 of Swamy's Compilation on Reservations and Concessions. It is also averred that recently three more posts of Scientist 'B' had been created for implementation of Hydrology Project vide letter dated 10.02.98 and as the recruitment rules were further amended in 1998, these three posts were to be filled as per the existing rules and the reservation of posts could be considered on the basis of Post Based Roster. Thus the claim of the applicant is wholly misconceived and the OA deserves to be dismissed. It has been next averred in para 4.4 of the para wise reply to the OA(page 32 of the paper book) the cadre strength has been increased to 12 with the creation of sufficient number of posts and there is no stagnation in the cadre now. The grounds raised in the O.A have been generally denied.

9. An exhaustive rejoinder has been filed on behalf of the applicant controverting the facts and grounds narrated in the reply by the respondents. Along with the rejoinder the applicant has annexed a letter-dated 04.07.97, which is a promotion order in respect of Ajay Kumar Shrivastava (respondent No. 3) to the post of Scientist 'B'. An additional reply has also been filed on behalf of the official respondents, which has been styled as reply to the rejoinder, despite such reply is not contemplated under the Central Administrative Tribunal Procedure Rules. The

respondents have filed M.A. No. 567/02 praying for a document(Note) dated 20/21-11-2002 to be treated as part of the record. We have perused the same and the same is taken as part of the records of this case. M.A. No. 567/02 is allowed.

10. We have heard the learned counsel for the parties at a considerable length and have anxiously considered the pleadings and records of this case.

11. The learned counsel for the applicant has reiterated the pleadings in the O.A and has submitted that for de-reservation of post the reserved post should be carried forward for three recruitment years and if no one is available then the same may be considered for de-reservation. If the vacancy in the instant case had been carried forward, the applicant would have got a chance of consideration. He further stated that restriction of providing reservation for a single post would not be applicable to this case and the respondents have completely neglected the case of the applicant and instead of providing the applicant the benefit of reservation, they had filled the post by a general candidate and by such an illegal act the applicant was deprived of his due benefits for none of his fault. The learned counsel for the applicant has taken us through the various circulars issued by the Government of India from time to time with regard to carried forward vacancies earmarked for reserved communities.

12. Per contra, the learned counsel for the respondents has very elaborately argued and has submitted that the principle of

carried forward of vacancies do not apply to this case and the same is required to be applied in special circumstances. She stated that carried forward vacancy principle from year to year in the event of adequate number of SC/ST candidates are not being available in any particular year, is not permissible in posts filled by promotion by selection to Class II within Class II and upto the lowest rung of Class I. She also invited our attention to Annex. R.7 to the reply. She has further reiterated the stand of the department as narrated in the reply to the O.A.

13. We have considered the rival submissions made on behalf of the parties. It seems that since the hearing of the case took place in the latter part of the day, both the learned counsel were in a confused state of affairs and were hammering out their stand which is enunciated in their respective pleadings. Finally this Bench of the Tribunal had to take stock of the correct position of law and had to ascertain as to on which date the private respondent Shri Ajay Kumar Shrivastava was promoted, it was informed that he was promoted on 04.07.97 and when we made probe about the legal position of reservation on the said date, the learned counsel for the applicant got enlightened and submitted that after 02.07.97, the Post Based Roster, came into existence and as per the Post Based Roster, the complete scheme of reservation got changed. As per the Post Based Roster, the 7th point should go to SC candidate, which admittedly the applicant is and in this way, the applicant ought to have been promoted in place of Shri Ajay Kumar Shrivastava.

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14. To appreciate the issue involved in this instant case it would be expedient to extract the relevant portion of the OM dated 02.07.97, which reads as under:

G.I.Dept. of Per & Trg OM No. 36012/2/96 Estt. (Res.)dt. 02.07.97.

Post-Based rosters instead of vacancy based rosters.

The undersigned is directed to say that under existing instructions, vacancy-based rosters have been prescribed in order to implement the Government's policy relating to reservation of jobs for the Scheduled castes, the Scheduled tribes and the other backward classes. The application of reservation on the basis of these rosters was called into question before Courts. The Constitution Bench of the Supreme Court in the case of **R.K. Sabharwal vs. State of Punjab** as well as **J.C. Mallick vs. Ministry of Railways** has held that the reservation of jobs for the backward classes SC/ST, OBC should apply to posts and not to vacancies. **The Court further held that the vacancy based rosters can operate only till such time as the representation of persons belonging to the reserved categories, in a cadre, reaches the prescribed percentages of reservation.** Thereafter, the rosters cannot operate and vacancies released by retirement, resignation, promotion, etc., of the persons belonging to the general and the reserved categories are to be filled by appointment of persons from the respective category so that the prescribed percentage of reservation is maintained.

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5. At the stage of initial operation of a roster, it will be necessary to adjust the existing appointments in the roster. This will also help in identifying the excess/shortages, if any, in the respective categories in the cadre. This may be done starting from the earliest appointment and making an appropriate remark: - "utilized by SC/ST/OBC/Gen.", as the case may be, against each point in the rosters as explained in the explanatory notes appended to the model rosters. In making these adjustments, appointments of candidates belonging to SCs/STs/OBCs which were made on merit (and not due to reservation) are not to be counted towards reservation so far as direct recruitment is concerned. In other words, they are to be treated as general category appointments.

6. Excess, if any, would be adjusted through future appointments and the existing appointments would not be disturbed.

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Xxxx

Xxxxxx

Xxxxxx

Xxxxxx

Xxxxxx

9. These orders shall take effect from the date of their issue. However, where selections have already been finalised they need not be disturbed and the necessary adjustments in such cases may be made in future. In other cases, recruitment may be withheld till the

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revised rosters are brought into operation and recruitment effected in accordance with these instructions."

Annexure-I

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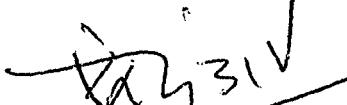
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12. In the case of small cadres (up to 13 posts) all the posts shall be earmarked on the same pattern as in the model post based rosters. Initial recruitment against these posts shall be by the category for which the post is earmarked. Replacement of incumbents of posts shall be by rotation as shown horizontally against the cadre strength as applicable. While operating the relevant roster, care will have to be taken to ensure that on no occasion the percentage of reserved category candidates exceed 50%. If such a situation occurs at any time, the relevant reserved point occurring as a result of rotation will be skipped."

15. Applying the aforesaid provisions to the instant case, as on 02.07.97, 7 persons were on roll and the general candidates occupied all the posts. Thus there was deficiency of one SC candidate at the 7th point. The Post Based Roster, was in existence on 04.07.97, when one post against promotion quota became vacant Shri Ajay Kumar Shrivastava was promoted. Thus the respondents have not followed the Post Based Roster correctly and this has resulted in injustice to the applicant in as much as he has been deprived of the consideration against the SC point, which was not his fault. Thus the contention of the learned counsel for the applicant that the applicant's case has not been considered and he has not been extended the benefit of reservation has merit and the promotion of Respondent No. 3 is not in consonance with specific provisions envisaged in Post Based Roster indicated above. We are of the firm opinion, the 8th replaced point ought to have been given to the applicant i.e. S.C. Candidate against shortage/back log i.e. adjustment against 7th point and thus the O.A has substance.

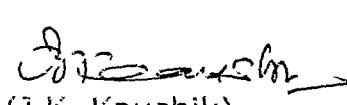


16. In the premise, the O A merits acceptance and the same stands allowed. The respondents are directed to convene a review DPC and consider the case of the applicant for promotion to the post of Scientist 'B' against the shortage/back log of SC point(reserved point) as on 04.07.97. If he is found fit, he should be promoted with effect from 04.07.97 with all consequential benefits. As regards the respondent No. 3 the consequence would follow. The above direction should be complied within a period of three months from the date of receipt of a copy of this order. No costs.


(A.K. Bhandari)

Administrative Member

Jsv.


(J.K. Kaushik)

Judicial Member.