

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 334/2000
T.A. No.

199

DATE OF DECISION 22.9.02

Ram Prasad Meena Petitioner

Mr. Rajeev Sharma Advocate for the Petitioner (s)

Versus

Union of India and another Respondent

Mr. Sanjay Pareek. Advocate for the Respondent (s)

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CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. A.P.Nagrath, Administrative Member.

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

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH; JAIPUR

Original Application No. 334/2000

Ram Prasad Meena
S/o Shri Kishan Lal Meena
r/o Jagdish Bhawan,
Near Bhimganjmandi
Police Station
Kota Junction
KOTA (Rajasthan)

rep. by Mr. Rajeev Sharma : Counsel for the applicant.

-verses-

1. Union of India through its
Secretary, Ministry of Water
Resources, Shram Shakti Bhawan
Rafi Marg,
New Delhi.
2. Chairman,
Central Water Commission,
Government of India,
Sewa Bhawan,
R.K.Puram,
New Delhi. : Respondents.

rep. by Mr. Sanjay Pareek: Counsel for the respondents.

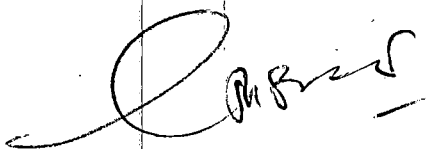
CORAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman
The Hon'ble Mr. A.P. Nagrath, Administrative Member.

Date of the order: 20.09.02

Per Mr. Justice G.L.Gupta,

ORDER

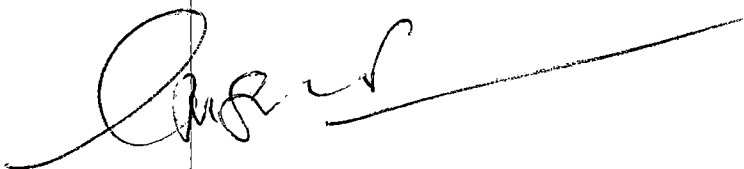
The applicant was appointed as Junior Engineer vide order dated 12.9.86. Being Diploma Holder, he was eligible to be promoted to the post of Assistant Engineer after putting in 7 years of service. He made applications for promotion to the



post of Assistant Engineer in the years 1994, 1997 and 1998. Some promotions were made to the posts of Assistant Engineer vide order dated 20.2.98. The applicant made representation against the said promotion order also. Thereafter vide order dated 14.12.99, 40 Junior Engineers were promoted to the post of Assistant Engineer on adhoc basis (Annex. A-13). As the applicant was not given promotion, he made representation on 8.6.2000 (Annex. A.14). Vide reply dated 22.11.2000 his representation was rejected. Hence this O.A challenging the rejection order.

2. In the reply, it is admitted that the applicant was eligible for promotion to the post of Assistant Engineer after putting in 7 years of service from 1986. It is further stated that in the DPC meeting held on 13.11.97 for regular promotion to the post of Assistant Engineer the applicant was not considered. It is admitted position that the Screening Committee in its meeting held on 22.1.98 for appointment on adhoc basis also did not consider the case for the applicant. It is further not disputed that the Screening Committee in its meeting held on 4.11.99 whereby 37 diploma holders were promoted, also did not consider the case for the applicant.

The respondents' case is that the applicant's name did not come within the zone of consideration and hence he had no right of consideration. It is averred that no person junior to the applicant had been considered and promoted and therefore the applicant cannot succeed in this O.A. It is stated that in the



year 1997, when regular promotions were made, the last person, at Sl. No. 49 in the seniority list was considered and that in the Screening Committee meeting held on 22.1.98, Junior Engineers upto Sl. No. 259 in the seniority list were considered but the name of the applicant appeared at Sl. No. 781. It is also stated that in the meeting of the Screening Committee held on 4.11.99, persons at Sl. No. 95 onwards and upto 5 times of the vacancies were considered and the name of the applicant did not come within the zone of consideration.

3. In the rejoinder, the applicant states that on the basis of reservation for ST community 7.5% vacancies are to be filled from amongst the ST community candidates and the applicant was entitled to be considered even if his name did not fall within the zone of consideration.

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

5. Mr. Sharma, learned counsel for the applicant, contended that the applicant is a member of ST Community and therefore, he was entitled to be promoted to the post of Assistant Engineer on the basis of his seniority amongst ST candidates. He canvassed that the Office Memorandums of 30.4.83 and 30.9.83 could not be pressed into service as they are not rules and are only executive instructions. Relying on the case of Union of India vs. Vir Pal Singh Chauhan

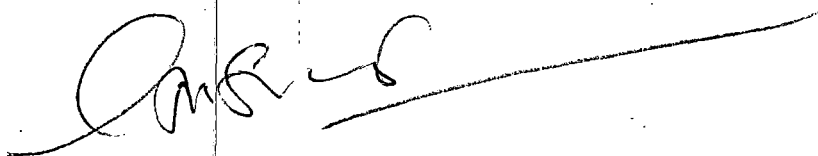


(AIR 1996 SC 448), Mr. Sharma urged that the applicant was entitled to be promoted to the available vacancy meant for STs.

6. On the other hand, the learned counsel for the respondents admitting that roster system apply in the case of adhoc promotions, pointed out that in the OMs 1983, it is clearly laid down that only those reserved candidates whose names fall upto 5 times of vacancies are to be considered at a particular occasion. He canvassed that the instructions laid down in OMs 1983 have the force of law and the applicant did not ~~have any right for~~ consideration if his name did not fall within the zone of consideration. He submitted that the case of Vir Pal Singh Chauhan, is not applicable to the facts of the case on hand.

7. We have given the matter our thoughtful consideration. It is not in dispute that in the seniority list as on 1.1.97, the applicant's name figured at Sl. No. 781. It is further not in dispute that no person junior to the applicant has been given promotion either on regular basis or on adhoc basis right from the year 1997.

8. It may be pointed out that so far as the promotions ordered pursuant to the meeting of the DPC held on 13.11.97, the applicant though has made an averment regarding the promotions ordered vide order dated 20.2.98, but he has not claimed promotion from 1998. It may be pointed out that in his representation the applicant had claimed promotion with



retrospective effect. In any case, that claim is not tenable because the order of the year 1998 has not been challenged within the period of limitation.

9. Promotion to the post of Assistant Engineer on adhoc basis was made vide order dated 14.12.99. It is noticed that 37 Diploma Holder had been given promotion and he could not be considered because the name of the applicant did not fall within even the extended zone of consideration. i.e. five times of the vacancies.

10. The question for consideration is whether the applicant was entitled to promotion on the basis of his eligibility that he had put in 7 years of service as Junior Engineer and that the vacancies meant for STs were available.

11. In the D.Ms dated 30.4.83 and 30.9.83, it is clearly stated that SCs/STs candidates who come in the relevant zone of consideration, as per the total number of vacancies, against which adhoc promotions are to be made, are to be considered in the order of general seniority as per the gradation list on the basis of seniority-cum-fitness. In the clarification dated 30.9.83, it was reiterated that SC/ST candidates who are within the actual number of vacancies are to be considered in accordance with the general seniority on the basis of Seniority-cum-fitness and if the number of SCs/STs candidates found fit within the range of actual vacancies is less than the number of vacancies available to them, the



short-fall may be filled by SC/ST candidates to the extent required by extending the zone of consideration upto 5 times of the number of vacancies, at a particular occasion.

It is profitable to read the relevant pages of the guidelines and the clarification which appears at page 124 and 125 of the Swamy's compilation on Reservations and Concessions in Government services under the heading Adhoc Promotion hereunder:

Guidelines:

1 X X X X X X

2. X X X X X X

3. Since adhoc promotions are made on the basis of seniority-cum-fitness all the Scheduled Castes/Scheduled Tribes candidates covered in the relevant seniority list within the total number of such vacancies against which adhoc promotions are to be made, should be considered in the order of their general seniority as per the gradation list, on the principle of seniority cum-fitness and if they are not adjudged unfit, they should all be promoted on adhoc basis;

4. X X X X X X

5. X X X X X X

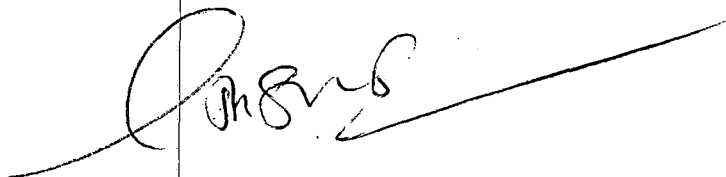
6. X X X X X X

7. X X X X X X

Clarification:

1. X X X X X X

2. It has been decided that the Scheduled Castes/Scheduled Tribes candidates who are within the number of actual vacancies should be considered in accordance with

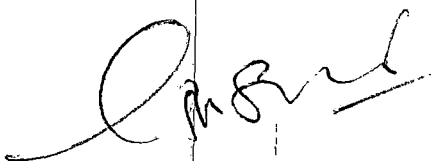


their general seniority on the principle of seniority-cum-fitness and if they are not adjudged unfit, they should all be promoted on adhoc basis. If, however, the number of Scheduled Castes/Scheduled Tribes candidates found fit within the range of actual vacancies is less than the number of vacancies identified as falling to their share, then additional Scheduled Castes/Scheduled Tribes candidates to the extent required should be located by going down the seniority list but within 5 times the number of vacancies being being filled on a particular occasion, subject, of course, to their eligibility and fitness.

12. A reading of the provisions makes it clear that only those candidates belonging to SC/ST are to be considered whose names fall within the zone of consideration according to the actual number of vacancies. In case, sufficient number of vacancies of SCs/STs could not be filled on the basis of general seniority, then the other candidates belonging to SC/ST community those candidates whose names fall within the 5 times of the number of vacancies being filled can be considered.

13. Admittedly, the applicant's name did not find a place within the extended zone of consideration i.e. 5 times of the number of vacancies to be filled. Therefore he was not entitled to be considered for promotion.

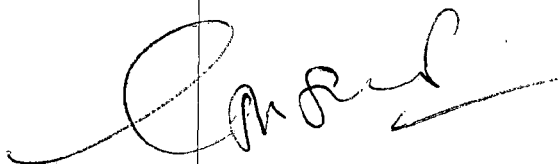
14. There is hardly any merit in this contention of the learned counsel for the applicant that the instructions dated 30.4.83 and the clarification dated 30.9.83 ought not to have been followed by the respondents while considering cases for adhoc promotion.



There is no rule contrary to these instructions was shown to us. As a matter of fact, there are no rules regarding adhoc promotions. In the absence of specific rules, instructions with regard to adhoc promotions for reserved category candidates were to be necessarily followed. The respondents have not erred when they have followed the aforesaid instructions while considering the case for promotion on adhoc basis.

15. It may be that as per the Roster, 7.5% vacancies were to be filled from members of the ST community, but it depends upon the availability of the eligible candidates within the zone of consideration. As already stated the applicant's name did not come within the zone of consideration.

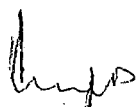
16. One of the contentions of the learned counsel for the applicant was that while considering the candidates in the Screening Committee meeting held on 4.11.99, the candidates who had been rejected in the earlier meetings should not have been considered. There is no merit in this contention. The eligible candidates, who were in the zone of consideration and who could not get promotion in the previous years, were certainly entitled to be considered in the meeting held on 4.11.99. As a matter of fact the superseded candidate always have a right of consideration for promotion each time.




17. As to the case of Vir Pal Singh Chauhan (supra) it is not clear as to how the case helps the applicant. That case is with regard to fixation of seniority of the general candidates and reserved candidates on promotion.

18. Having considered the entire material on record and the contentions raised by the learned counsel for the parties, we do not find any merit in this O.A.

19. Consequently, the instant O.A is dismissed.
No order as to costs.


(A.P. Nagrath)
Administrative Member


(G.L. Gupta)
Vice Chairman.

jsv.