

(22)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

22.10.2007

OA 275/2003

Mr.C.B.Sharma, counsel for applicant.
None present for respondents.

At the request of learned counsel for the applicant, let the matter be listed on 28.11.2007.

It is however made clear that no further adjournment will be granted on that date being a 2003 matter.


(J.P. SHUKLA)
MEMBER (A)



(M.L. CHAUHAN)
MEMBER (J)

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OA No.275/2003 with MA No.254/2007.

28.11.2007.

Mr. C. B. Sharma counsel for the applicant.
Mr. Kunal Rawat counsel for the respondents.

Heard the Learned Counsel for the parties.
For the reasons dictated separately, the OA as well as MA stands disposed of.


(J.P. SHUKLA)
ADMINISTRATIVE MEMBER


(M.L. CHAUHAN)
JUDICIAL MEMBER

P.C./

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 28th day of November, 2007

ORIGINAL APPLICATION No. 275/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

S.S.Jhajharia
s/o shri Bhana Ram,
aged about 39 years,
r/o C-20, Customs and Central Excise Colony,
Sector-7,
Vidyadhar Nagar, Jaipur,
working as Inspector, Central Excise
Div.I Sector-10,
Vidyadhar Nagar, Jaipur

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through the Secretary
to the Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. The Secretary, DOPT,
Ministry of Personnel,
Public Grievances and Pensions,
North Block,
Central Secretariat,
New Delhi.
3. The Chief Commissioner,
Central Excise,
NCR Building,
Statue Circle,
Jaipur

4. The Commissioner,
Central Excise-I,
NCR Building,
Statue Circle,
Jaipur.
5. Shri Yashwant Raj Nawal,
Presently posted as Superintendent,
Office of the Dy. Commissioner,
Central Excise Division, Bhiwadi.
6. Sh. B.L.Kalsuwa,
Superintendent,
Office of the Dy. Commissioner,
Central Excise Division Alwar,
Alwar.
7. Sh. Pool Chand,
Superintendent,
Office of the Assistant Commissioner,
Central Excise, Division Udaipur,
Udaipur.

.. Respondents

(By Advocate: Shri Kunal Rawat)

O R D E R

Per M.L.Chauhan, M(J)

The applicant has filed this OA thereby challenging the order dated 23.9.2002 (Ann.A1) and subsequent order dated 29.1.2003 (Ann.A2) whereby the respondents have applied reservation while making promotion to the upgraded post of Superintendent Group-B and seeking direction that respondents may be directed to promote the applicant on the post of Superintendent Group-B w.e.f. 29.1.2003.

2. In sum and substance, case of the applicant is that all persons promoted vide order dated 29.9.2002 (Ann.A1) and subsequent order dated 29.1.2003 (Ann.A2) are junior to the applicant, yet they have been given promotion as they belongs to reserved category whereas no reservation can be provided in case of upgradation of posts. According to the applicant, upgradation is nothing but creation of higher posts due to abolition of equal number of lowers posts, therefore, providing reservation in upgradation is contrary to the judgments of the Apex Court.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that DPC and Review DPC were held on 18/19.7.2002 and 28.1.2003 respectively for promotions to the grade of Superintendent Group 'B', pay scale of Rs. 6500-10500 from amongst Inspectors for filling up total 124 regular vacant posts of Superintendent, Central Excise Group 'B' and while giving promotion on the vacant posts of Superintendent Group 'B' reservation of 15% for SC and 7.5 % for ST category was correctly determined in terms of DOPT OM dated 2.7.1997 and clarification issued vide OM dated 11.7.2002. It is further stated that the aforesaid OM was issued in the light of the judgment of the Hon'ble Supreme Court in the case of R.K.Sabarwal vs. State of Punjab as well

as J.C.Mallick vs. Ministry of Railways. Accordingly, SC/ST officers were promoted as Superintendent Group-B vide order dated 23.9.2002 and 29.1.2003! The fact that on account of restructuring the Customs and Central Excise Department, 198 posts of Inspectors have been upgraded to the post of Superintendents reducing the cadre strength of Inspectors from 508 to 390 and increasing the cadre strength of Superintendent from 128 to 246 has not been disputed.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. The sole question which requires our consideration is whether upgradation of cadre as a result of restructuring and adjustment of existing staff will attract the reservation in favour of SC/ST candidates. The matter on this point is no longer res-integra. The Apex Court in the case of Union of India vs. V.K.Sirothia, 1999 SCC (L&S) 938 in para 2 had made the following observations:-

"2. The finding of the Tribunal that "the so called promotion as a result of redistribution of posts is not promotion attracting reservation" on the facts of the case, appears to be based on good reasoning. On facts, it is seen that it is a case of upgradation on account of restructuring of the cadres, therefore, the question of reservation will not arise. We do not find any ground to interfere with the order of the Tribunal."

Further, the Apex Court in the case of All India non-SC/ST Employees Association (Railway) vs. V.K. Agarwal and ors., 2002 SCC (L&S) 688 has reiterated the view taken by the Apex Court in the case of V.K.Sirothia and has categorically held that reservation will not apply in the case of upgradation of existing posts without creating any additional posts. At this stage, it will be useful to quote para 1 of the judgment, which thus reads:-

"1. It appears from all the decisions so far that if as a result of reclassification or readjustment, there are no additional posts which are created and it is a case of upgradation, then the principle of reservation will not be applicable. IT is on this basis that this Court on 19.11.1998 had held that reservation for SC and ST is not applicable in the upgradation of existing posts and Civil Appeal No.1481 of 1996 and the connected matters were decided against the Union of India. The effect of this is that where the total number of posts remained unaltered, though in different scales of pay, as a result of regrouping and the effect of which may be that some of the employees who were in the scale of Rs. of Rs. 550-700 will go into the higher scales, it would be a case of upgradation of posts and not a case of additional vacancy or post being created to which the reservation principle would apply. It is only if in addition to the total number of existing posts some additional posts are created that in respect of those additional posts the reservation will apply, but with regard to those additional posts the dispute does not arise in the present case. The present case is restricted to all existing employees who were redistributed into different scale of pay as a result of the said upgradation."

Further, the issue regarding providing reservation to the upgraded posts stands concluded by the decision of the Full Bench of this Tribunal

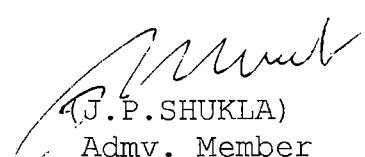
rendered on 10.08.2005 in OA No.933/2004 (P.S.Rajput and two Ors. vs. UOI and Ors.) as well as number of decisions rendered by this Tribunal consistently in number of cases wherein it has been held that "The upgradation of the cadre as a result of the restructuring and adjustment of existing staff will not be termed as promotion attracting the principle of reservation in favour of Schedules Caste/Schedules Tribe."

Thus, in view of the law laid down by the Apex Court and also drawing assistance from the decision rendered by the Full Bench of this Tribunal in the case of P.S.Rajput (supra), we are of the view that the applicant has made out a case for grant of relief. From the material placed on record, it is evident that for filling up 124 posts of Superintendent Group-B a list was prepared consisting of 96 general candidates, 19 SC candidates and 9 SC candidate, which shows that the respondents have applied reservation for promotion to the posts which were upgraded on account of restructuring. The reliance placed by the respondents on DOPT OM dated 2.7.97 and clarification dated 11.7.2002 for the purpose of providing reservation to the upgraded posts is wholly misconceived. These instructions are applicable where additional posts are created or posts fell vacant on account of retirement etc. of a person in regular manner and not in respect of posts which have been upgraded and the employee has

been held eligible for higher pay scale due to reclassification or readjustment as held by the Apex Court in the case of V.K. Agarwal and Ors. (supra).

In view of what has been stated above, we are of the view that the applicant has made out a case for our interference. Accordingly, the respondents are directed to reconsider the case of the applicant for promotion to the upgraded post of Superintendent Group-B by not applying principle of reservation and if found fit he should be given promotion from the due date.

7. The OA is allowed in the aforesaid terms with no order as to costs.



(J.P. SHUKLA)

Admv. Member



(M.L. CHAUHAN)

Judl. Member

R/