

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 19.4.2004

OA 390/2003

H.K.Saxena s/o Shri S.D.Saxena r/o 102/102, Meera Marg Agrawal Farm, Mansarovar, Jaipur.

... Applicant

Versus

1. Union of India through Under Secretary O/o Registrar General of India, Ministry of Home Affairs, 2/A, Mansingh Road, New Delhi.
2. Director, Census Operations, Rajasthan, 6-B, Jhalana Doongri, Jaipur.
3. Shri S.L.Verma, Sr.Supervisor O/o Director, Census Operations, Rajasthan, 6-B, Jhalana Doongri, Jaipur through its Director.

... Respondents

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (J)

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

For the Applicant

... Mr.Dharmendra Jain, proxy
counsel for Mr.Manish Bhandari

For the Respondents

... Mr.N.C.Goyal

ORDER (ORAL)

PER HON'BLE MR.A.K.BHANDARI

This OA u/s 19 of the Administrative Tribunals Act, 1985 has been filed against order dated 17.7.2003 (Ann.A/1), by which applicant was reverted from the post of Senior Supervisor to that of Junior Supervisor, the exact prayer clause reads as under :

- "i) By an appropriate order or direction the impugned order dated 17.7.2003 (Ann.A/1) may kindly be quashed and set aside.
- ii) By an appropriate order or direction the respondents may further be directed to allow the applicant to work on the post of Senior Supervisor with all consequential benefits."

2. Facts of the case are that the applicant was initially appointed as Data Entry Operator in the pay scale of Rs.330-560 on 10.6.81, though even prior to that he had been in service since 15.5.81. The applicant was later on promoted to the post of Junior Supervisor on temporary basis on 3.6.87. Respondent No.3 was junior to him both in the matter of initial appointment as well as promotion to the rank of Junior Supervisor. The applicant was later on treated as regular on the promoted post on completion of probation from the date of promotion vide order dated 12.4.93. The seniority of the

applicant above respondent No.3 is proved in more than one way. Firstly, provisional seniority list dated 11.10.88 (Ann.A/2), pursuant to which four officers were promoted to the post of Senior Supervisor vide order dated 9/10.9.91 (Ann.A/3), reveals that name of respondents No.3 does not even exist on the seniority list of Junior Supervisors. Perusal of Annexure A/3 reveals that out of four officers promoted, two belong to general category and remaining two were given benefit of reservation according to roster point. The post belonging to SC was occupied by one Shri G.S.Raiger and at the same time one Shri R.L. Meena was given promotion being member of ST, although as per roster points so existing at that time Shri G.S.Raiger should not have been given promotion. The respondents thereafter promoted applicant by order dated 9.4.2003 (Ann.A/4) to the post of Senior Supervisor. This promotion order was issued after a lapse of 12 years, the last order having been issued in 1991. The order dated 9.4.2003 reveals that name of applicant is at S.No.5 and the order of promotion has been issued taking note of seniority on all India basis but the promotions were made only on State level. That during the intervening period from 1991 to 2003 the GOI had issued instructions for implementation of new roster system. Thus, as per instructions issued in year 1997, the SC candidate should get his promotion at 7th point, whereas as per earlier roster system such a candidate was at point-1. Therefore, after issuance of the notification for new roster, the respondents were required to open new roster thereby they were required to ignore earlier roster and promotions. As per new roster, 7th point was to be given to SC, unless a SC candidate was getting promotion on the basis of his own seniority. The respondents have, thus, issued promotion order in favour of the applicant and three others inasmuch as only four promotions were to be made at the State level in the State of Rajasthan, not considering one official just above the applicant because of punishment in a DE. The respondents have, however, now wrongly convened a review DPC and given promotion to respondent No.3 and reverted the applicant from the post of Senior Supervisor in an illegal manner.

3. In the grounds it is stated that the respondents have mixed up two roster systems namely old vacancy based and the new post based rosters while making these promotions, which is wrong. That promotion of respondent No.3, a SC candidate, without considering that they had already promoted an SC officer according to the earlier roster system, is violative of rules. That it was incumbent on part of the respondents to open new account of roster after introduction of new roster system. That having already taken one SC officer on promotion the 7th point should not have been given to SC officer. It is also stated that respondents have violated principles of natural justice by not giving opportunity of hearing to the applicant before passing the impugned order.

4. The respondents have filed an elaborate reply. While giving brief history of the case it is stated that initial appointment of the applicant as Operator was purely on temporary and ad hoc basis from 15.5.81 to 28.2.82 and the same was extended from time to time and the applicant was declared quasi permanent in that post only w.e.f. 10.9.86. That his promotion as Junior Supervisor was regular but in temporary capacity. That promotion of Shri G.S.Raiger, SC, was not on the basis of reservation but he was promoted to the post of Junior Supervisor on merit and assumed his duty on 3.6.87, whereas the applicant was declared confirmed on the post of Operator from 24.5.90. That four regular posts of Senior Supervisor were sanctioned for the DCO Rajasthan and were held by four officers who in December 2002 were promoted to the post of Assistant Director, as a result of which four posts of Senior Supervisor became vacant w.e.f 18.12.2002. It is clarified that as per RRs, the post of Senior Supervisor is filled 100% by promotion from eligible Junior Supervisors within the DCO only as the cadre of Senior Supervisors is decentralised. While making these promotions reservation policy of the Government is to be followed and after 2.7.97 post based reservation roster system is applicable. In this case post based reservation roster for cadre strength upto 13 posts was to be followed.

Copy of this has been placed as Ann.R/1. Since four officers promoted to the post of Senior Supervisor had been treated as general candidates , the third replacement as per the new roster system is required to be filled by SC candidate. Keeping in view this principle respondent No.3, SC candidate, was promoted as Senior Supervisor. It is further clarified that while conducting the selection a mistake was made in not giving promotion to respondent No.3 but after receipt of representation from him the case was examined carefully and it was found that the contention of respondent No.3 was genuine and he was required to be considered for promotion against the third replacement ignoring the applicant although the applicant was senior to respondent No.3 in the grade of Junior Supervisor in DCO Rajasthan. Therefore, the order dated 17.7.2003 (Ann.A/1) is fully inconfimrity with rules.

5. The same contentions have been elaborated in parawise reply. That while making these promotions respondents had to follow the 'L' shape roster from replacement point-1 to 4 from left to right. Thus, the initial recruitment point-1 to 4 are unreserved and the replacement point-3 is reserved for SC candidate. Erroneously SC candidate was not promoted for the third replacement. This contention of respondent No.3 stated in his representation was considered and review selection was ordered. Not doing so would have been in violation of the reservation policy. It is not disputed that the applicant is senior to respondent No.3. However, four promotions made on 10.9.91 from Junior Supervisor to the post of Senior Supervisor and which included one officer each of SC & ST community were promoted on merit-cum-seniority basis. That promotion order dated 9.4.2003 (Ann.A/4), whereby applicant was promoted as Senior Supervisor w.e.f. 16.4.2003, was on purely temporary basis and since promotion is always subject to availability of vacancy and no vacancy was available for 12 years in DCO Rajasthan, no promotions were made to the post of Senior Supervisor. That promotions to this post are made DCO wise and not on the basis of all India seniority list. It is evident from close look at Ann.A/2, the

provisional seniority list dated 11.10.88, that instant promotion has been made in accordance with post based reservation roster which came into force during year 1997 (Ann.R/1). Contention of applicant that in earlier roster (vacancy based) (annexed as Ann.R/2) SC candidate has already exhausted this point is not correct because on introduction of new roster system earlier system ceased to operate. Thus, the action taken vide Ann.A/1 is strictly as per rules.

6. While replying to the grounds it is submitted that as per post based reservation roster introduced in 1997, the employees in vacancy based reservation roster, which were only four in number, were placed in new post based roster in the same order against point No.1 to 4 of reservation roster. Hence allegation of mixing up two roster systems is misplaced. It is also wrong to state illegality in not counting Shri G.S.Raiger's promotion as reserved because he was promoted on seniority-cum-merit. It is also clarified that a corrective measure was taken while issuing order dated 17.7.2003 because applicant had been promoted against reserved point due to oversight. Thus, reversion of the applicant is justified and as per provisions of rules and regulations.

7. No rejoinder was filed even though opportunity was given and the case was argued at length. While learned counsel for the applicant reiterated his pleadings on record, he stressed the point of natural justice and that reversion of the applicant without giving him an opportunity to explain is bad in law. He also tried to explain on the basis of his interpretation of application of post based roster introduced in 1997 that model roster for promotion for cadre strength of 13 posts has not been correctly applied. The learned counsel for the respondents, on the other hand, gave elaborate explanation about how the third replacement as per model roster for promotion for cadre strength upto 13 posts is meant for SC and the same was earlier wrongly given to the applicant and was subsequently by impugned order awarded to respondent No.3. He also explained that correcting a

mistake is an inherent right of the employer and that this position was known to the applicant who should not have made such an issue over this matter.

8. After taking into consideration the pleadings and contentions put forth during arguments, we are of the view that no illegality has been committed in issuing the impugned order dated 17.7.2003 (Ann.A/1) inasmuch as it is a speaking order which clearly explains the circumstances in which a corrective action was taken for the compliance of the reservation policy of the Government. Following portion of this order is worth quoting :

" On review, it was found that due to oversight the point reserved for SC candidate could not be filled up. Accordingly the case was submitted to review DPC to consider the promotion cases afresh. Since replacement point No.3 in the reservation roster was reserved for SC candidate, DPC promoted Sh.S.L.Verma (SC) against this point. Therefore review DPC recommended the following Junior Supervisors to the posts of Senior Supervisors in the pay scale of Rs.5500-9000 in DCO, Rajasthan :-

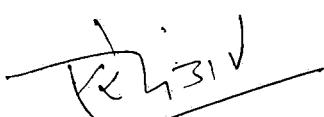
1. Sh.A.K.Pareek
2. Sh.P.N.Mathur
3. Sh.S.L.Verma (SC)
4. Smt.Gyan Batra

This promotion order is in partial modification of this office order dated 9.4.2003. All the above Junior Supervisors will be taken as promoted to the post of Senior Supervisor w.e.f. 16.4.2003 to 29.2.2004. Since Sh.H.K.Saxena has already worked as Senior Supervisor, no recovery shall be made from his salary. Accordingly Sh.S.L.Verma (SC) will not be paid arrears of pay from 16.4.2003 because he has not worked as Senior Supervisor from 16.4.2003. His pay will be fixed notionally w.e.f. 16.4.2003 and will draw salary in the grade of Senior Supervisor from the date of his joining duty as Senior Supervisor."

It is seen that the order leaves no doubt about the circumstances in which review DPC was called to correct an inherent wrong in the earlier promotion order. Since no recovery is ordered to be made from the salary of the applicant for the period for which he has worked on the post of Senior Supervisor, no prejudice has been caused to him and in these circumstances non-issuance of a show-cause notice before reverting him is not found violative of the principles of natural justice. No doubt, learned counsel for the applicant feels that reversion in itself is a prejudice caused to

the applicant but in light of decision of the Apex Court in case of Aligarh Muslim University & Ors. v. Mansoor Ali Khan etc., 2000 (5) SLR 67, in which it was held that; "not mere violation of natural justice but de facto prejudice (other than non-issue of notice) has to be proved" and in case where no notice was given but even the result after giving notice would have been the same, the principle of 'useless formality' could apply. This situation applies to the instant case also inasmuch as even if notice was issued to the applicant before issuing the reversion order, the final result would have been the same because the respondents were bound to make the correction in the mistake committed by them while giving promotion to the applicant, in pursuance of implementation of model roster for promotion for cadre strength upto 13 posts which is a requirement of law. In these circumstances, action of the respondents is fully justified in issuing the impugned order dated 17.7.2003 (Ann.A/1), without issuing a show-cause notice to the applicant before reverting him by the order dated 17.7.2003.

9. Therefore, the OA is found devoid of merit and is dismissed with no order as to costs.



(A.K.BHANDARI)

MEMBER (A)



(M.L.CHAUHAN)

MEMBER (J)