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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A.No. 141 of 1997

DATE OF DECISION. 30.8.1999.....

Shri R.K. Sarkar

(PETITIONER(S))

Mr J.L. Sarkar, Mr M. Chanda and

Ms N.D. Goswami

ADVOCATE FOR THE  
PETITIONER(S)

-VERSUS-

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.

ADVOCATE FOR THE  
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of newspapers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI-BENCH

Original Application No.141 of 1997

Date of decision: This the 30th day of August 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Rathindra Kumar Sarkar,  
Superintendent (Law),  
Central Excise,  
Guwahati.

.....Applicant

By Advocates Mr J.L. Sarkar, Mr M. Chanda  
and Ms N.D. Goswami.

- versus -

1. The Union of India, represented by the  
Secretary to the Government of India,  
Ministry of Finance,  
Department of Revenue,  
New Delhi.
2. The Chief Commissioner,  
Customs & Central Excise,  
Eastern Zone, Calcutta.
3. The Commissioner,  
Central Excise, Shillong.
4. Shri Biren Saikia,  
Superintendent, Central Excise,  
Guwahati.
5. Shri Aswini Kumar Das,  
Superintendent,  
Central Excise, Nagaon Range,  
Nagaon (Assam).
6. Shri Jagadish Chandra Das,  
Superintendent, Central Excise,  
Lumding Range,  
Lumding, Assam.

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....

O R D E R

BARUAH.J. (V.C.)

The applicant in this application has challenged  
the Annexure 1 Promotion Order dated 11.12.1995 on the  
ground of excess allotment of vacancies of promotional

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post of Group 'B' Superintendent to the Scheduled Tribe candidates, and prays for direction to the respondents to consider his case for promotion.

2. Facts of the case are:

The applicant, at the material time, belonged to Group 'C' post in the Customs and Central Excise Department. Certain posts of Group 'B' Superintendent fell vacant. Those vacancies were to be filled up from eligible candidates belonging to Group 'C' post. According to the applicant he also came within the zone of consideration. The basis of giving promotion was seniority-cum-merit. Normally the applicant ought to have been considered for promotion against one post. However, he was not given the promotion on the ground that ST quota was available for giving promotion. But, in the present case two ST candidates had been given promotion on seniority-cum-merit basis. Thereafter, the authority again promoted the 4th respondent, who belonged to the ST quota.

3. The respondent Nos.1, 2 and 3 have entered appearance and filed written statement. However, respondent Nos.4, 5 and 6 have not entered appearance.

4. We have heard Mr J.L. Sarkar, learned counsel for the applicant and Mr A. Deb Roy, learned Sr. C.G.S.C. Mr Sarkar submits that offering the post of Group 'B' Superintendent to the ST candidates was not in accordance with the rules. According to Mr Sarkar two posts were earmarked for ST candidates and respondent Nos.5 and 6 had already been promoted against the ST quota. He further submits that respondent Nos.4, 5 and 6 are junior to the applicant. Mr Sarkar has also drawn our attention to



Rule 2.3.2 (ii) of the CBEC Digest. We quote the said Rule:

"In promotion by selection to posts/services from Group 'C' to Group 'B' within Group 'B' within Group 'B' and from Group 'B' and from Group 'B' to the lowest rung in Group 'A', selection against vacancies reserved for SCs and STs will be made only from those SCs/STs officers, who are within the normal zone of consideration prescribed vide the Department of Personnel & A.R. O.M. No.22011/3/76-Estt.(D) dated 24th December, 1980. Where adequate number of SCs/STs candidates are not available within the normal field of choice, it may be extended to five times the number of vacancies and the SCs/STs candidates (and not any other) coming within the extended field of choice, should also be considered against the vacancies reserved for them. If candidates from SCs/STs obtain on the basis of merit with the due regard to seniority, on the same basis as others, less number of vacancies than the number reserved for them, the difference should be made up by selecting candidates of these communities, who are in the zone of consideration, irrespective of merit and 'bench mark' but who are considered fit for promotion. Officers belonging to SC/ST selected for promotion against vacancies reserved for them from within the extended field of choice would however be placed en bloc below all the other officers selected from within the normal field of choice."

Mr A. Deb Roy also agrees that the 4th respondent ought not to have been given the promotion in view of the aforesaid rule.

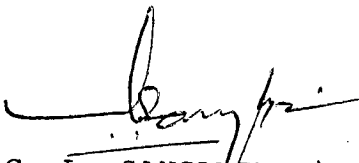
5. We have perused the papers and the rule. On perusal of the papers and the rule, we find sufficient force in the submission of Mr Sarkar. The respondent Nos.5 and 6 had already been promoted against the ST quota. Therefore, it was contrary to the rules to offer the post of Group 'B' Superintendent to the 4th respondent. Mr Sarkar submits that three months thereafter the applicant had also been promoted.

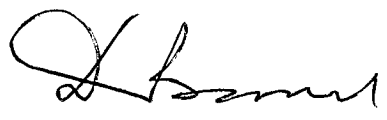
6. As all of them have been promoted the question that now remains is regarding their seniority and date of appointment. Therefore, we direct the respondents to



re-examine the matter in the light of our observations made above and fix the seniority and give all the consequential benefits to the applicant as per law. This must be done as early as possible, at any rate within a period of three months from the date of receipt of the order.

7. The application is accordingly disposed of. No order as to costs.

  
( G. L. SANGLYINE )  
ADMINISTRATIVE MEMBER

  
( D. N. BARUAH )  
VICE-CHAIRMAN