

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 561 of 2002

Gwalior, this the 13th day of October, 2004

Hon'ble Mr. M.P.Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

K.P.Ahirwar, (SC),
Aged 52 years,
Son of Shri Imrat Lal Ahirwar,
Supervisor (Non-Tech),
Grey Iron Foundry, Jabalpur M.P.
Resident of House No. 303, Karondi,
Post Gokalpur, Jabalpur,
District Jabalpur M.P.
(By Advocate - Shri M.M.Jaiswal)

APPLICANT

VERSUS

1. Union of India, through the Secretary,
Ministry of Defence,
Government of India, New Delhi.
2. Chairman,
Ordnance Factories Board,
10A Subhash Chandra Bose Road,
Kolkatta, (W.B)
3. General Manager,
Grey Iron Foundry, Jabalpur,
District Jabalpur M.P.
4. Dy General Manager
P.I Liaison Office for S.C./ST
Grey Iron Foundry, Jabalpur.
District Jabalpur M.P.
5. Shri Praveen Kumar,
Administrative Officer,
Grey Iron Foundry, Jabalpur
District Jabalpur M.P.
6. Shri C.R. Rai,
Aged 59 years, Chargeman Gr.I
Store Section, G.I.F.
Jabalpur, District Jabalpur M.P.
7. Shri M.L. Agnihotri,
Chargeman Gr.I Security Office,
G.I.F. Jabalpur, District Jabalpur M.P.
8. Shri A.K. Chaturvedi,
Aged 52 years, Chargeman Gr.II,
P.V. Section, G.I.F.
Jabalpur, District Jabalpur M.P.

RESPONDENTS

(By Advocate - Shri P.Shankaran for official respondents
None for private respondents)

ORDER

By M.P.Singh, Vice Chairman -

By filing this OA, the applicant has sought the
following main reliefs :-

" (ii) to command the respondents authorities by
issuing appropriate writ or order directing respondents

to promote applicant as Chargeman Gr.II with effect from 26.7.1997/12.3.1998 as may be deemed fit under the policy and as per rules and to further promote him to the post of Chargeman Gr.I with effect from 12.11.1999 above Shri M.L. Agnihotri(respondent 7).

(iii) to direct respondents to give all consequential service benefits in favour of applicant flowing from promotions as stated in clause(ii) above, like seniority, pay fixation arrears of pay, increments etc. as per rules.

2. The brief facts of the case are that the applicant has been working as Supervisor (Non-Technical) in Grey Iron Foundry, Jabalpur since 1.4.1981. He belongs to Scheduled Caste community. ~~xxxxxxxxxx~~Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) issued Office Memorandum dated 2.7.1997 bringing in force post based reservation roster. These instructions were issued in pursuance of the decision of the Hon'ble Supreme Court in the case of R.K.Sabharwal Vs. State of Punjab. As per channel of promotion, Supervisor (NT) can be promoted to the post of Chargeman Gr.II and thereafter as Chargeman Gr.I. There are total 13 posts of Chargeman Grade-II. The applicant has alleged that in order to deprive him the promotion to the post of Chargeman Grade-II, the respondent-authorities showed Shri C.R.Rai at serial no.7 of the list of Chargeman Grade-II much below Shri M.L.Agnihotri who was junior to Shri C.R.Rai and was promoted in 1986. In this way one post of SC candidate was taken away. He has submitted that Shri C.R.Rai was promoted in the year 1986 and could not have been brought down to serial no.7 in the year 1997. ~~xxxxxxxxxx~~ Shri A.D.Swamny (SC) was promoted as Chargeman grade-II on merit basis. Therefore, he finds place at serial no.8. Thus the post at serial no.7 ought to have been filled in by promoting the applicant i.e. by a SC candidate. This was not done and Shri C.R.Rai was wrongly shown at serial no.7 (though promoted in 1986) in order to show that he has occupied the post of SC. Thus, the chance of promotion of the applicant to the post of Chargeman Grade-II was taken away by the administration depriving the applicant of his legal right.

ignoring the roster point and rules and regulations on the subject. Hence this OA.

3. The respondents in their reply have stated that the applicant was promoted to the post of Supervisor-B (NT/Stores) against the vacancy of SC quota on 23.8.1982 in the 40 points reservation roster. The promotion channel of Supervisor-B(NT/Stores) is Chargeman Grade-II(NT/Stores). The applicant's contention that he should have been promoted to Chargeman Grade-II(NT/Stores) on 12.3.1998 is not based on any rule and does not have any legal merit. According to them, Shri C.R.Roy,Chargeman Grade-II(NT/Stores) and late Shri A.D.Swamy had been appointed against reservation points in the relevant rosters and hence in a cadre having only 5 posts to be filled through the method of promotion, the post vacated by a reserved candidate will be filled by rotation as provided under Annexure.03-Note-2 of Model Roster for promotion for cadre strength up to 13 posts which is reproduced below-

"All the posts of a cadre are to be earmarked for the categories shown under column initial appointment. While initial filling up will be by the earmarked category, the replacement against any of the post, in the cadre shall be by rotation as shown horizontally against the last post of the cadre".

Accordingly, respondent no.3 had promoted Shri K.C.Jaiswal against point no.10 which is meant for unreserved category on 12.3.1998. Subsequently, when another vacancy arose on 14.5.2001, Shri A.K.Chaturvedi was promoted against point no.12 which is also meant for unreserved category. Both Shri K.C.Jaiswal and A.K.Chaturvedi were senior to the applicant and hence the applicant does not have any right for demanding promotion out of turn. The respondents have also submitted that the applicant being a Supervisor cannot have any right for promotion to the post of Chargeman Grade-I when his next line of promotion is Chargeman Grade-II and there were SC candidates already available in the Chargeman Grade-II category to be promoted to the post of Chargeman Grade-I. Therefore, the claim of the applicant for promotion to the post of Chargeman Grade-I is imaginary and based on presumption.



According to the respondents, the reservation rosters are being maintained properly by the administration as per the laid down instructions issued by the Government from time to time and same have been verified by the Liaison Officer for SC & ST of the factory as well as by the Ordnance Factory Board

4. Heard the learned counsel of both the parties. The learned counsel for the applicant has stated that the name of Shri C.R.Rai has been slotted in the reservation roster at two places i.e. at point no.35 in the earlier roster, and again at serial no.7 in the new roster adopted after 1997. Moreover, according to the learned counsel, Shri C.R.Rai has been promoted much earlier in 1986 and thereafter one Shri A.D. Swamy has been promoted. According to the learned counsel only one person, namely, Shri A.D. Swamy belonging to SC community was appointed against the reserved point. Shri C.R.Rai was senior enough and was promoted not against a reserved point but as per his own merit and seniority. According to the learned counsel Shri A.D. Swamy died on 25.9.2001. In spite of promoting the applicant against the said vacancy, the respondents have promoted Shri A.K. Chaturvedi vide order dated 14.5.2001. Shri C.R.Rai has been further promoted to the post of Chargeman Grade-I on 12.3.1998. The learned counsel has contended that against the vacancy released on promotion of Shri C.R.Rai, the applicant ought to have been promoted on the basis of post based roster.

5. On the other hand, the learned counsel for the respondents has contended that there were two posts belonging to SC Community which were carried forward - one in the year 1979 and another in the year 1980. Shri C.R.Rai was promoted against point no.35 in a 40 point roster. Point no. 35 is an unreserved point but since there were two carried forward vacancies for SC candidate, Shri C.R.Rai was adjusted against this point and point no.35 was treated as reserved



point. The other remaining carried forward vacancy of SC for 1979 was carried forward to 1981. The same was utilised by appointing a SC candidate on 1st April, 1981. In pursuance of the judgment of the Hon'ble Supreme Court in the case of R.K. Sabharwal, a new roster was introduced as per the instructions issued by the DOPT vide memo dated 2.7.1997. As per the new post based roster, which was introduced from the year 1997 all the posts of Chargeman are to be earmarked, for [] the categories shown under column Initial Appointment. While initial filling up will be by the earmarked category, the replacement against any of the post in the cadre shall be by rotation as shown horizontally against the last post of the cadre. Since Shri C.R. Rai(SC) was working as Chargeman Grade-II in the year 1997, his name has been plotted in the new roster at serial no.7 which is a point reserved for SC candidate. Shri A.D. Swamy(SC) was promoted as Chargeman Grade-II on 26.7.1997. Therefore, the strength of the SC candidate was already more than their reserved quota. According to the learned counsel, there can be only one post reserved for SC in the cadre of Chargeman Grade-II which consists of 13 posts only. Shri A.D. Swamy(SC) was already promoted in addition to Shri C.R. Rai. Therefore, the SC quota in the grade of Chargeman Grade-II was not only full but was in excess of their prescribed quota. Thus, the applicant is not entitled to get any relief.

6. We have given careful consideration to the rival contentions and arguments advanced on behalf of both the sides. We have also perused the 40 point roster and we find that Shri C.R. Rai(SC) although promoted in his seniority but was plotted against a reserved point and thus consumed the reserved vacancy. The actual carried forward vacancies have been utilised by appointing the candidates belonging to SC community. We also find from the roster submitted by the respondents that Shri C.R. Rai was promoted as



Chargeman Grade-II against point no.35 in 40 point roster, which was an unreserved point. However, since there was a carried forward vacancy, this vacancy although unreserved, was treated as reserved and was utilised by appointing Shri C.R.Rai - a SC candidate. Apart from this, Shri A.D. Swamy-SC candidate was also appointed as Chargeman Grade-II on 26.7.1997. Thus, at one point of time there were two SC candidates in the category of Chargeman Grade-II and therefore, the strength of SC candidates in that grade was in excess of their prescribed quota.

7. There are only 11 sanctioned posts in the category of Chargeman grade-II and only 50% of the same i.e. five ~~vacancies~~^{posts} are required to be filled by promotion. Thus, in the cadre consisting of only 5 posts the, requisite percentage of reservation could be met only by rotation as per rule and when there was excess representation, the same could be adjusted in future by rotation against relevant roster point. We have perused the relevant records submitted by the respondents including the model roster. We find that the respondents have filled up the vacancies in the grade of Chargeman Grade-II as per the rules and instructions issued by the DOPT which were issued in pursuance of the decision of the Hon'ble Supreme Court in the case of R.K. Sabharwal Vs. State of Punjab. The instructions issued by the DOPT vide memo dated 2.7.1997 specifically stipulates that at the stage of initial operation of a roster, it will be necessary to adjust the existing appointments in the roster, which will help in identifying the excess/shortages, if any, in the respective categories in the cadre. Excess if any would be adjusted through future appointments. As regards the post which fell vacant due to the demise of Shri A.D. Swamy, the same was required to be filled up as per rotation of vacancies. The respondents have filled up the same as per instructions issued by Deptt. of Personnel & Training in this regard. In any case, no junior person to the applicant has been promoted to the grade of Chargeman Grade-II and, therefore, the applicant cannot take the plea of discrimination. Thus, the applicant has failed to establish that the respondents have not followed the instructions in true spirit. He has also failed to establish that the respondents have filled the vacancies of Chargeman Grade-II in contravention of the instructions.



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8. In the result, for the reasons recorded above, we do not find any infirmity or irregularity committed by the respondents while filling up the post of Chargeman Grade-II by promotion. Accordingly, the OA is dismissed, however, without any order as to costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

rkv.

Received
On 20-10-09