

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 484 of 2000

Jabalpur, this the 7th day of November, 2003

Hon'ble Shri Sarweshwar Jha, Administrative Member
Hon'ble Shri G. Shanthappa, Judicial Member

Ajay Kumar Roy, aged 41 yrs.
S/o Late Shri C.R. Roy,
Resident of 31, Khedapati Colony,
Lashkar, Gwalior (MP).

... Applicant

(By Advocate - Shri Prashant Sharma)

V e r s u s

1. Union of India, through
Secretary, Ministry of Tourism,
New Delhi.
2. Additional Director General
Department of Tourism,
Hotel Management & Catering
Divn. Govt. of India,
1, Sansad Marg, New Delhi.
3. Institute of Hotel Management,
Gwalior/Secretary, Cultural &
Tourism Department, State of
Madhya Pradesh, Vallabh Bhawan,
Bhopal, through - Chairman.
4. Institute of Hotel Management,
Catering Technology and Applied
Nutrition, Khedapati Colony,
Lashkar, Gwalior, through -
Principal.
5. Jagat Krishna Mangraj,
S/o. Shri Joy Krishna Mangraj,
Senior Lecturer, Institute of
Hotel Management, Khedapati,
Lashkar, Gwalior (MP).
6. J.L. Saha, Sr Lecturer,
Institute of Hotel Management,
Khedapati, Lashkar, Gwalior (MP).
7. National Commission for Scheduled
Castes & Scheduled Tribes, 5th
Floor, Lok Nayak Bhawan, New
Delhi, through - Chairman.

... Respondents

(By Advocate - Shri B. Dasilva with Smt. S. Menon)

O R D E R

By Sarweshwar Jha, Admnv. Member -

The applicant has preferred this OA against the

decision of the DPC convened by the respondents on the 26th August, 1996 in which the promotions of respondents Nos. 5 and 6 to the post of Senior Lecturer in the pay scale of Rs. 2200-4000/- were recommended. The applicant has accordingly prayed that the orders of promotion of respondents Nos. 5 and 6 be quashed and also that the recommendations of the DPC at Annexure A-1 be also quashed. He has further prayed that he may be promoted to the said post with effect from 26.08.1996 and that consequential benefits be also granted to him.

2. The applicant, who has been serving in the Institute of Hotel Management, Catering Technology and Applied Nutrition, Khedapati Colony, Lashkar, Gwalior as a Lecturer with effect from 31.07.1995, applied for the post of Senior Lecturer in the said institution against advertisement for the same as published in January, 1995. A copy of the advertisement is placed at Annexure A-6. He has drawn particular attention to the fact as shown in the advertisement that the post was required to be filled from amongst the candidates of the Scheduled Caste.

3. He has further submitted that the respondent No. 5 filed a writ petition in the Hon'ble High Court of Madhya Pradesh, Gwalior Bench as WP No. 416/1995, in which the Hon'ble High Court, among other things, gave the following directions :

"It is made clear that the respondents have to act within the frame work of rules and if they want to make any reservation for Scheduled Caste candidates, then the proper course would be to amend the rules and not to take a decision in contravention of the rules."

A detailed extract from the orders of the Hon'ble High Court are given under paragraph 6.03 of the OA. The purpose of referring to the orders of the Hon'ble High Court on the part



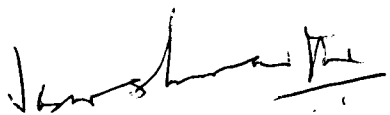
it is also relevant to record that the post of Senior Lecturer is clubbed with the post of Senior Instructor as per the recruitment rules placed at Annexure A-9 and therefore the rules are applicable to both Senior Lecturers as well as to the Senior Instructors.

4. The post of Senior Lecturer/Senior Instructor is required to be filled, as per the recruitment rules, by promotion on the basis of merit from amongst the Lecturers cum Instructors with minimum of 5 years of service in the relevant field, failing which by direct recruitment. The applicant has inferred that there was only one post of Senior Lecturer and the incumbent of the post being Scheduled Caste candidate the vacancy should have been filled by promoting the Scheduled Caste candidate only. To fill the post by appointing a general category candidate, according to the applicant, is in violation of the advertisement^{as} published by the respondents. He has also inferred that there were two vacancies, and not one, in the post of Senior Lecturer and, therefore, one post, according to him, could have been filled by promoting him, being an SC candidate. He has further argued that the action of the DPC recommending respondents Nos. 5 and 6 who are not SC candidates and are infact general category candidates, for promotion to the post of Senior Lecturer, is arbitrary and also contrary to law; infact, in his opinion, the DPC had no jurisdiction to make the selection from the general category candidates. Finally, the applicant has emphasised that he is eligible for promotion to the said post in all respects and fulfills the qualification relating to experience of 5 years' service as a Lecturer cum Instructor in the relevant field. The details of his experience are given under paragraph 6.6 of his OA.

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5. The respondents, however, have maintained their arguments

that the applicant was considered by the Departmental Promotion Committee for promotion to the post of Senior Lecturer, but he was not found fit under the eligibility criteria envisaged under the recruitment rules as framed by the Institute of Hotel Management Society. They have further stated that the respondents Nos. 5 and 6 were found eligible under the said recruitment rules and accordingly they were recommended and promoted. Referring to the recruitment rules they have further stated that the appointment of the applicant as a Lecturer was also against the rules, as the said post should have been filled by departmental candidates and further that the departmental candidates were available at the relevant time. They have alleged that the applicant happened to be managing the affairs of IHM Society at the relevant point of time when he got undue advantage of appointment as Lecturer against the rules. They have also raised the question of limitation under Section 21 of the Administrative Tribunals Act, 1985, and have said that the DPC, which considered the applicant as well as the respondents Nos. 5 and 6, was convened on 26.08.1996 and the applicant was aware of the fact that his candidature had been rejected for want of requisite qualifications. A reference has been made to the complaint lodged by the applicant before the National Commission for SC/ST in which respondents Nos. 5 and 6 were not impleaded as necessary parties. The respondents have ^{that} concluded ~~by~~ non-impleading of respondents Nos. 5 and 6 by the applicant, he had no grudge against the said respondents at the said time. It has been further pointed out by the respondents that the Hon'ble High Court in WP No. 416/1995, which has also been referred to by the applicant, as mentioned above, had directed the concerned authorities to go by the rules and accordingly the respondent No. 4, on the orders of the Government of India, vide letter No. 39(4)/95-HMC, dated



14.02.1996, promoted the respondents Nos. 5 and 6. The learned counsel for the respondents in her oral submissions has further submitted that they could not have gone against the directions of the Hon'ble High Court and accordingly they did not strictly go by the advertisement which they had published reserving one post of Senior Lecturer. They have also clarified in their written reply in paragraph 6 of their reply that there was one post of Senior Lecturer in the Food Production Department which could not be treated as reserved. They have further clarified that, earlier, respondent No. 5 had challenged the action of respondent No. 4 not following the recruitment rules while filling up the posts in order to seek promotion for himself. That was the compulsion which seems to have emanated from the directions of the Hon'ble High Court referred to hereinabove by the respondents and also earlier by the applicant. The respondents have also taken a view that the selection for appointment to the post of Senior Lecturer has been made strictly on merit and further that the departmental candidates who were eligible for promotion to the said post, in this case respondents Nos. 5 and 6, were considered for the said promotions keeping in view their merit and seniority as contemplated under the recruitment rules. It has also been submitted by the respondents that they restricted their exercise to the zone of consideration and that the applicant being a probationer when the DPC^{was} convened he did not stand at par with the regular appointees such as respondents Nos. 5 and 6. They have also further contended that even if the applicant were to be treated as a departmental candidate he was not found satisfying in the requirement of qualifications as the experience which he claims to have possessed was not confirmed by the successor of the employers who did not have the relevant papers in regard to the period of service that

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he claimed to have rendered in their organisation.

6. On the question of the applicant having ~~lodged~~ a complaint in the National Commission for SC/ST, the respondents have taken a position that in the light of the orders of the Hon'ble Supreme Court passed in All India Indian Overseas Bank SC and ST Welfare Association & Others Versus Union of India and Others reported in (1996) 6 SCC 606, the Commission could not have passed mandatory injunctions to the respondent No. 4. It would be relevant to mention here that the Commission had, ~~among~~ other things, passed an order to the effect that the applicant was eligible to be promoted and the DPC had erred in not holding him eligible for promotion.

7. It is observed that the applicant is relying on the advertisement for filling the post of Senior Lecturer in ~~which~~ case the post had been reserved for SC. It is also observed that he is citing his having worked in some hotels as ~~his~~ possessing the requisite experience of 5 years including the experience which he has gained in working with the respondents. Unfortunately, the experience which he has gained by working at the hotels as mentioned by him, has not been corroborated by the said organisation for want of relevant papers. In the absence ^{of} that it is very difficult to say whether the applicant has the necessary experience and, if so, for what length and in which field. Another factor which is not supportive of the contentions of the applicant is that he was a probationer at the time of the meeting of the DPC, and law is that the probationer is normally not considered for another promotion until he completes his probation and until he fulfills the requisite qualifications. In the meantime, his case gets further weakened by the fact that the respondent No. 5 brings a complaint against him.


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Sanjay Kumar

8. Under these circumstances, after hearing the learned counsel for the applicant as well as the respondents and after perusing the records, we are of the considered opinion that there is no merit in the case of the applicant and, therefore, we are constrained to dismiss it. No costs.


(Sarveshwar Jha)
Administrative Member

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