

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUROriginal Application No. 523 of 1998Jabalpur, this the 7<sup>th</sup> day of May 2003

Hon'ble Shri R.K. Upadhyaya - Administrative Member.  
 Hon'ble Shri J.K. Kaushik - Judicial Member.

Chhagan Lal, Lab(ss), Age : about  
 44 years, S/o. Late Gendalal,  
 Jaiprakash Nagar, House No. 269,  
 Ward No. 1, Tawa Colony Ke Pass,  
 Old Itarsi (MP).

... Applicant

(By Advocate - Shri S.K. Nagpal)

V e r s u s

1. Union of India, Through :  
 Directorate General of Quality  
 Assurance Department of Defence  
 Production, Ministry of Defence,  
 DHQ PO, New Delhi - 110 011.
2. The Commandant, Central Proof  
 Establishment (CPE), Itarsi (M.P.).
3. Shri Mahesh Kumar, T. No.  
 CPE/353, Carpenter (SK), CPE,  
 Itarsi (MP).

... Respondents

(By Advocate - Shri B. Dasilva for the official respondents)

O R D E RBy J.K. Kaushik, Judicial Member :-

Shri Chhagan Lal has assailed the impugned order dated 13th May 1998 (Annexure A/1) by which one Shri Mahesh Kumar a general candidate has been promoted against the Scheduled Caste vacancy and has sought further relief of direction to the respondents to promote the applicant as Carpenter (SK) in place of Shri Mahesh Kumar and allow him all consequential benefits.

2. The factual score of this case is at a very narrow compass. The applicant belongs to Scheduled Caste community and he was initially appointed as Labourer on 10/12/1980. Thereafter he was promoted as Labourer (Semi Skilled) in

1984. On November 1997, a notification was issued inviting application for filling up one post of Carpenter (Skilled) from Scheduled Caste candidate failing which from unreserved candidate from semi-skilled employees with 3 years service in the grade. The applicant applied for the same and was imparted training. A trade test was also conducted for the same in which he was declared successful. But the post of Carpenter (Skilled) has been filled in by Shri Mahesh Kumar who belongs to General category ignoring the claim of the applicant against the vacancy reserved for Scheduled Caste category. It was only the applicant who qualified as Scheduled Caste candidate for promotion.

3. The original application has been filed on multiple grounds mentioned in the original application, out of which we shall deal with the grounds which are pressed during the arguments.

4. A detailed counter reply has been filed. It has been submitted that the vacancy in question was in fact a general vacancy and the same has been filled in through DPC held on 02/05/1998 and the question of promotion of the applicant does not arise. The factual aspect of the matter is generally not at dispute. The further grounds of defence of the respondents as set out in the reply is that the Government of India has issued a memorandum dated 2nd July 1997 for implementing the Hon'ble Supreme Court order, whereby the posts based roster was to be adopted. It has been submitted that the vacancy was declared vide Annexure A/2 as per existing 40 point reservation roster. But during the DPC, IV Level Meeting, one of the member brought a point to the notice of other members regarding change in reservation roster by Government. A clarification was asked from the headquarter and the headquarter informed that vacancy based

roster has been replaced by Post Based Roster. Accordingly an amendment was issued on 29/04/1998 and as per the roster the vacancy of Carpenter (Skilled) falls on unreserved point. Therefore the applicant was not considered for promotion and respondent No. 3 who qualified the test and was senior to the applicant was considered. <sup>Since</sup> it was not a scheduled caste vacancy, the allegation of depriving the applicant of his benefit/entitlement under the Service Rule is not correct. The grounds raised in the original application are generally denied.

5. A short rejoinder has been filed to the reply to the original application, wherein it has been stated that the respondents have made wrong interpretation of the order contained vide OM dated 02/07/1997. The vacancy existed prior to 02/07/1997 and the same ought to have been filled in from a Scheduled Caste candidate, and infact the benefit of reservation has been denied to the applicant.

6. We have heard the learned counsel for the parties at some length with full patience and have bestowed our earnest consideration to the arguments, pleadings and the records of the case.

7. The learned counsel of the applicant has consistently insisted and vehemently argued and stressed on the point that the vacancy in question was from an earlier date to 02/07/97 was for Scheduled Caste candidate as per roster, thus the same ought to have been filled on the basis of vacancy based roster wherein in a cadre of 6 posts he would have been appointed at point number 1. He has also placed reliance on the judgment of Hon'ble Supreme Court in the case of P. Mahendran and others Versus State of Karnataka and others reported in AIR1990SC405 and have submitted that his case is squarely covered and the

subsequent rule to the date of vacancy cannot be applied to his case. He has submitted that as regards the vacancy position the position could be ascertained from the respondents.

8. On the contrary the learned counsel for the respondents have submitted that the post of the Carpenter infact fall vacant only in September 1997. However there was no change in the recruitment rules and the same had been filled by conducting the trade test. He has also submitted that the reservation roster was made effective from 02/07/97 and L type roster became applicable which is based on post based roster. In the present case since the total cadre was of 6 posts the L type roster was applied and as per the model roster in case of promotion there is no reservation for Scheduled Caste in the initial 6 posts. Thus the posts has not been treated as reserved. As regards the cut off date and the vacancy position, he has submitted that even if the vacancy has arisen <sup>on</sup> /an earlier date than the date of implementation of the new roster it would have made no difference. Since roster is different from the recruitment rules. The case cited by the applicant has no application

9. We have considered the sole argument of the learned counsel for the applicant and also the contention of the learned counsel of the respondents. The position that a fresh roster became effective from 02/07/1997 is not in dispute. It is not in dispute that as per model roster for promotion in case of cadre strength of 6 posts, there is no reservation up to 6 point for Scheduled Caste. In the present case as per the version of the respondents the vacancy fallen vacant only in September 1997. If that be so the contention of the applicant stands repelled and the

applicant has no case to contest.

10. Examining the matter from another angle. Even if it is a case where the vacancy of the Carpenter is assigned earlier to the date of implementation of the new roster i.e. 02/07/1997, any appointment which is made subsequent to this date have to be in conformity with the subsequent instructions. The case cited by the learned counsel for the applicant in P. Mahendran and others Versus State of Karnataka and others supra relates to a case where the vacancies were being filled up and subsequently there were change in the recruitment rules and their lordships has held that the vacancies have to be filled in as per rules of recruitment applicable at the time of the vacancies. Such is not the position in the present case. The present case is regarding applicability of the reservation roster. The roster has to be applied in respect of filling up of all the posts subsequent to the date of the said <sup>new</sup> roster. The instructions contained in the roster are very elaborate and it no where lays down that the posts which were vacant earlier to the said circular would be filled in a particular way i.e. on the basis of vacancy based roster. Rather it prescribes the mode of adjustments in case there is any excess or short fall by adjusting the filled in posts or excess against the point available or shall fall vacant in future. In this view of the matter we do not find any illegality or arbitrariness in the action of the respondents and the contention of the learned counsel for the respondents is well-founded and has our consonance.

11. The upshot of the aforesaid discussion is that the original application has no force and the same deserves to be dismissed. The original application stands dismissed

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accordingly, with no order as to costs.

*JK Kaushik*  
(J.K. KAUSHIK)  
JUDICIAL MEMBER

*R.K. Upadhyaya*  
(R.K. UPADHYAYA)  
ADMINISTRATIVE MEMBER

प्राप्तांकन दरे गो/ल्या..... जललदार, दि.....  
प्राप्तांकन दरे गो/ल्या..... जललदार, दि.....  
(1) सर्वे, दरे गो/ल्या..... जललदार, दि.....  
(2) अम, दरे गो/ल्या..... जललदार, दि.....  
(3) अम, दरे गो/ल्या..... जललदार, दि.....  
(4) अम, दरे गो/ल्या..... जललदार, दि.....

सूचना एवं आवश्यक वार्ताएँ दिये

12/5/03

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