

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.NO.060/00973/2014 Date of order:- 08.04.2016

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

Baljit Singh s/o S.Gurdev Singh, Junior Assistant, Estate Office, U.T.Chandigarh, r/o # 42-B, Defence Enclave, Zirakpur, Tehsil Derabassi, Distt. SAS Nagar Mohali.

.....Applicant.

(By Advocate: - Mr. J.R.Syal)

Versus

1. Union of India through Secretary, Ministry of Home Affairs, North Block, New Delhi-110 001.
2. Union Territory Chandigarh through Adviser to the Administrator, U.T.Chandigarh.
3. Finance Secretary, Chandigarh Administration, Chandigarh.
4. Deputy Commissioner cum Estate Officer, U.T.Chandigarh.
5. Director Social Welfare, U.T.Chandigarh.

...Respondents

(By Advocate : Mr. Vinay Gupta).

ORDER

Hon'ble Mr.Uday Kumar Varma, Member (A):

Applicant Baljit Singh has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned order dated 24.9.2014 with a further prayer that the respondents be directed to consider his case for his promotion to the post of Sub Inspector (Enforcement) in the department against 15% posts as he fulfills the required

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qualifications/experience in terms of Recruitment Rules, 1976 governing the said post along with all consequential benefits.

2. Facts of the case are that the applicant who belongs to Scheduled caste category was appointed as Clerk cum Typist on 30.7.2002 in the respondent department against a reserved vacancy. On the basis of service record, he was promoted as Junior Assistant on 24.12.2009. The applicant has further stated that his work and conduct had been good and satisfactory. The services of the applicant is governed by the provisions of Estate Office, Chandigarh Administration Service (Class III) Recruitment Rules, 1976(for short Rules, 1976). The next promotion of the applicant is to be post of Sub Inspector (Enforcement). The applicant has stated that there are 18 posts of Inspectors and Sub Inspectors (Enforcement) in the respondent department and as per the reservation policy (15% in promotion), out of 18 posts, 3 posts of Sub-Inspectors (Enforcement) are required to be filled up from amongst the employees of S.C. category. In this regard, the applicant has also annexed the copy of detailed instructions dated 2.7.1997 regarding post based reservation while implementing the judgment passed in the case of R.K.Sabharwal vs State of Punjab issued by the Government of India, Ministry of Personnel & Training. The applicant also made a detailed representation dated 4.7.2013 followed by various reminders by submitting therein that as per the reservation policy, he may kindly be considered and promoted to the post of Sub Inspector (Enforcement). Thereafter, the applicant served a legal notice dated 5.7.2014 upon respondent no.4 for considering his case for promotion to the post of Sub Inspector (Enforcement) against the post reserved for Scheduled caste category. However, respondent no.4 had rejected

the case of the applicant for promotion by taking a plea that the percentage of S.C candidate in promotion in services of the Chandigarh Administration is 15% for Group A, B, C & D category and as per roster maintained by the department, only two posts go to the S.C.category. In the said impugned order, the respondents have also mentioned that the applicant was charge-sheeted under Rule 5 read with Rule 8 of the Punjab Civil Services (Punishment&Appeal) Rules, 1970 on 10.7.2014. Hence the present OA.

3. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement. They have stated that the applicant has concealed from the Tribunal that an FIR No.1 dated 23.5.2014 has been registered against him with the Police Station (Vigilance Cell), U.T. Chandigarh under Sections 420, 467, 468, 471, 120-B IPC and 13(1)(d), 13(2) of P.C. Act, 1988 regarding Booth No.1, Khuda Lahora, U.T. Chandigarh, as such, his name cannot be considered for the post of Sub Inspector (Enforcement). The applicant has also been charge-sheeted for major penalty under Rule 5 read with Rule 8 of the PCS(P&A) Rules, 1970 and an Inquiry Officer namely Shri Sanjeev Jindal, Additional District Judge (Retired) was appointed vide order dated 22.9.2014 to look into the charges leveled in the said charge-sheet. The Inquiry Officer submitted his enquiry report on 11.3.2015 by holding that the applicant was found guilty for sitting on the file unnecessarily for the period as referred to in the charge-sheet/allegations by way of not presenting the file prior to court date to Assistant/Senior Assistant dealing with the court case for its proper handling in violation of the prevailing practice in the department.

4. On merits, the respondents have stated that 15% reservation is to be given in promotion to the scheduled caste candidate category, as such, two posts fall to the category of SC category candidate out of 18 posts of Sub Inspectors (Enforcement). There is shortfall of one post of Sub-Inspector (Enforcement) of Scheduled caste candidate in promotion in the office of respondent and since the applicant has been charge-sheeted for major penalty and an FIR has also been lodged, as such, the applicant cannot be promoted.

5. The applicant has filed a rejoinder by generally reiterating the averments made in the OA.

6. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

7. The applicant's first plea in this case is with regard to erroneous calculation with regard to number of posts reserved for SC category. He has contended that 15% of 18 posts reserved for SC comes out to be 2.7 which should be rounded off to 3 and therefore the respondent's submission that only 2 posts are reserved for SC is not correct and needs to be quashed. On the other hand, the respondents have placed before us the roster for filling up the relevant posts and the same shows that only 2 posts have been earmarked against SC and accordingly the posts are filled. The applicant could not have been considered against the third post that did not exist.

8. The issue of assigning exact number of posts based on percentages has in the past also created anomalous situations. Conceivably, if all numbers are arrived at by rounding off the fractions,

anomalies can occur. For instance, in the instant case if the number of posts is say 3 instead of 18, then 15% of 3 works out to be 0.45, which when rounded off becomes zero. This would mean that against these 3 posts, there never could be an opportunity for promoting a SC candidate. The situation becomes more complex when there are reservations for many categories like SC, ST, OBC, Women etc. To overcome this difficulty, the system of roster was evolved by the government where on occurrence of each vacancy, it was worked out as to which category will occupy that vacancy. Naturally, therefore, in a situation like the one that we have before us, where a vacancy of 3 is being claimed because the fraction based on 15% reservation works out to be 2.7, such accommodation becomes impractical. If one strictly goes by the concept of rounding off the fractions to the nearest whole number, there will undoubtedly arise situations of over representation or under representation. A roster therefore, devised to iron out such anomalies becomes a very useful and practical document to take care of such a situation. The roster, a copy of which was placed before us, has not been challenged by the applicant. We are convinced that the respondents have committed no error in allocating 2 posts for SC candidates for promotion to a post where the total strength is 18, as explained above. The applicant has placed before us a judgment in the case of **Bhudev Sharma versus District Judge, Bulandshahr & Another** (Appeal (Civil) No.6168 of 2001) decided on 31.10.2007. This judgment in fact strengthens the analysis that we have carried out above. It is a case of reservation of physically handicapped quota where the number of reserved post works out to be 0.6, which the court has interpreted as 1 and held the entitlement to appointment. However, this is not the case of a single post. In other words, in the case before Apex Court if this

were not allowed the purpose of reservation would have been defeated altogether. In the case before us, the facts and circumstances are different. There is no denial of representation of SC in promotion. It is a case of adjustment vis-à-vis other reservations that have been resolved by devising a roster.

9. That brings in the next plea of the applicant about his consideration for a fresh vacancy. Respondents have in detail placed before us the cases pending against him and the reason why he cannot be promoted: None of the facts with regard to these proceedings against the applicant has been refuted or denied by him. This leaves us with no option but to disregard the applicant's plea for his promotion to a fresh vacancy under SC category.

10. In the light of the discussion above, we are of the view that the case does not deserve our interference. We accordingly dismiss the OA. No costs.

(UDAY KUMAR VARMA)
MEMBER (A).

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- April 08 , 2016.

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