

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 2606/2013
MA 429/2014

Reserved on: 17.05.2016
Pronounced on: 27.05.2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Puran Mal
S/o Late Shri Sohan Lal
R/o Plot No.11, Bhawani Nagar,
Near Bharat Petrol Pump, Dinpur, Najafgarh
New Delhi-110043 ... Applicant

(Through Shri M.K. Bhardwaj, Advocate)

Versus

Union of India and others through:

1. The Secretary,
Ministry of Health and Family Welfare
Nirman Bhawan, New Delhi
2. The Director General of Health Services
The Directorate General of Health Services,
Ministry of Health and Family Welfare
Nirman Bhawan, New Delhi
3. The Principal and Medical Superintendent
LHMC & Smt. S.K. Hospital,
New Delhi

(Through Shri Subhash Gosain, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant initially joined as Statistician-cum-Medical Record Librarian and thereafter was promoted as Medical Record

Technician (MRT). As per the Recruitment Rules (RRs), the post of MRT can be filled by promotion from amongst Lower Division Clerk (LDC)/ Br. Operator/ Statistician-cum-Medical Record Librarian with 8 years service in the grade. The applicant had completed the requisite years of service, however, his claim was not considered against SC quota vacancy available in the cadre of MRT. The applicant filed representation in June 2006 and again thereafter in September 2006 but, according to the applicant, the respondents took no action. Ultimately, the respondents issued circular dated 28.09.2006 for promotion to the post of MRT but the respondents circulated only two 'general' vacancies of MRT. The applicant objected before the authorities and sought promotion of SC candidate to the post of MRT. The authorities examined his claim and one post was earmarked for SC quota.

2. Thereafter, the DPC was held. According to the applicant, SC vacancies were available since 2004 but the respondents did not convene yearwise DPC nor followed the roster point correctly in as much as one Smt. Rajni Gulati of 'general' category was placed over and above the applicant without any justification.

3. It is the contention of the applicant that Smt. Rajni Gulati was not entitled to be placed above him for the following reasons:

(i) Smt. Rajni Gulati had refused promotion as Upper Division Clerk (UDC). Therefore, she was debarred

for any promotion for one year as per OM dated 1.10.1981;

- (ii) The date of birth of the applicant being 4.07.1966 and the date of birth of Smt. Rajni Gulati being 15.11.1967, the applicant was required to be treated as senior being elder in age;
- (iii) The vacancy of SC was point no.10 and that of 'general' category at point no.11; and
- (iv) Smt. Rajni Gulati was junior to the applicant.

4. The applicant's complaint is that despite pointing out all these discrepancies, the respondents placed Smt. Rajni Gulati over and above the applicant. At the time of consideration of their claim for promotion to the post of MRT, since the applicant was in the higher pay scale of Rs.3200-4900 vis-à-vis Smt. Rajni Gulati (pay scale Rs.3050-4590), the applicant was required to be treated as senior. It is the case of the applicant that when selection to a post is made from different streams of feeder posts, those in the higher pay scale should be placed above those candidates who are in lower pay scale. This principle was not followed by the respondents.

5. When the applicant got promotion order dated 14.02.2007, he realized that Smt. Rajni Gulati, LDC (present scale Rs.3050-4590) was promoted to the post of MRT in the pay scale of Rs.4000-6000 but placed above the applicant whose pay scale was indicated in the order as Rs.3200-4900/-. Being aggrieved by this order, the applicant submitted a representation dated

23.05.2007 pointing out all the aforementioned facts. Despite several representations, the respondents did not take any action. When the applicant noticed that his approach to higher official *namely* the Director General has not evinced any response from the respondents, he submitted a representation to the National Commission for Scheduled Castes on 03.07.2009. The respondents sent a communication dated 19.05.2009, placed at Annexure A-10, by which they have forwarded a copy of their reply to the National Commission for Scheduled Castes by the Directorate vide their letter dated 1.02.2008. In the aforesaid communication dated 19.05.2009, the respondents state that the allegations made were baseless and no discrimination whatsoever has been practiced in this regard particularly with reference to the applicant belonging to SC category. In that letter, it has been explained that the reason for keeping Smt. Rajni Gulati above the applicant Shri Puran Mal, is that the department has followed Department of Personnel and Training (DoP&T) OM dated 10.09.1985 and 12.12.1988, wherein it has been stipulated that where promotions to a grade are made from more than one feeder grade, the persons from the feeder grades are to be interpolated in order of grading awarded to them by the DPC. In this case, the grading of Smt. Gulati is higher than that of the applicant. It was further explained that Smt. Rajni Gulati was appointed in the feeder grade on 14.08.1987 whereas the applicant was appointed in the feeder grade on 10.09.1996 and, therefore, the seniority of the applicant has been fixed as per rules and no discrimination has been made to the applicant.

It has also been pointed out that Smt. Rajni Gulati was more qualified being a Graduate as compared to the applicant who is Higher Secondary. In any case, the applicant states that his case was rejected and the Commission informed accordingly and nothing has been done by the respondents to redress his grievance till date. Being aggrieved by this, the applicant has filed this OA seeking the following reliefs:

- i) To declare the action of the respondents in not finalizing the seniority in the grade of MRT as illegal and unjustified.
- ii) To declare the action of respondents in not promoting the applicant as MRT against point no.10 and against the select panel of 2006-07 as illegal and unjustified;
- iii) To direct the respondents to fix the seniority in the grade of MRT by placing the applicant over and above Smt. Rajni Gulati; and
- iv) To allow the O.A. with costs.

6. Learned counsel for the applicant, Shri M.K. Bhardwaj, raised the following grounds to claim relief sought by the applicant:

- (i) That the respondents have discriminated against the applicant vis-à-vis Smt. Rajni Gulati and thus violated Articles 14 and 16 of the Constitution;

(ii) Since the vacancy for SC category in the cadre of MRT was lying vacant since September 2004, while preparing select panel on the basis of recommendations of DPC held on 14.02.2007, yearwise panel was required to be prepared. If this had been done, the applicant would have received his promotion in the select panel for 2006-07 as the vacancy for S.C. was available in the said year. In that eventuality, the applicant would automatically get seniority over and above Smt. Rajni Gulati;

(iii) The respondents failed to consider that when Smt. Rajni Gulati had refused to take promotion as UDC, they should have debarred her for promotion for one year i.e. 2007-2008. In this regard, learned counsel for the applicant referred to OM dated 10.04.1989. In para 17.12 of the said OM under the heading "refusal of promotion", it has been stated that when a Government employee refuses to accept promotion, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later and on eventual promotion to the higher grade, such

Government servant will lose seniority vis-à-vis his juniors promoted to the higher grade earlier;

- (iv) That since the applicant and Smt. Rajni Gulati were promoted by a common order and joined on the same date, the applicant was to be treated senior being elder in age;
- (v) The respondents failed to consider that when there are various feeder categories to one promotion post, for the purpose of seniority the relevant basis is the pay scale meant for the feeder post and the one who was in the higher scale should be placed senior. Therefore, since the applicant was in a higher scale, as pointed out earlier, he was required to be treated senior;
- (vi) The applicant was the only candidate who was serving in Medical Report Department where the post was available whereas Smt. Rajni Gulati was serving with different nature of work. The applicant, therefore, claims that he should have been given preference on the basis of experience in the relevant field;
- (vii) According to the applicant, the justification provided by the respondents in their letter dated 19.05.2009 is contrary to rules and

instructions because in the matter of promotion, the DPC is not required to give grading. Similarly, the ground of Smt. Rajni Gulati having higher qualification is also against the rules as the Circular dated 20.08.2006 does not provide that additional weightage shall be given for qualification for promotion to the post of MRT. Therefore, no discrimination could have been made based on higher qualification. Similarly, the length of service in the feeder grade has also been wrongly considered by the respondents for which there is no specific provision in the rules;

- (viii) It has been stated that the vacancy was for SC category against which Smt. Rajni Gulati was considered though she was not an SC candidate;
- (ix) Smt. Rajni Gulati belongs to the ministerial cadre of LDC and apart from the channel for promotion to MRT available to LDCs, she also had the channel of promotion to UDC though it was not available to the applicant, which the respondents should have considered.

7. Learned counsel for the respondents states that with reference to the representation dated 18.04.2007 of the applicant, OM dated 16.05.2007 was issued clarifying to the applicant that as per notified rules, the post of MRT is to be filled by promotion from amongst Statistician-cum-Medical Record Librarian, Bradma Operator and LDC with 8 years regular service in the grade and having MRT training as per notified RRs. It was further clarified that the working experience in the Medical Record Department is not essential for promotion to the post of MRT. Explaining the background of the case, the respondents stated as follows:

“1. That the name of Shri D.L.Sangari Medical Record Technician, who retired on superannuation w.e.f. 31.8.1997 was left out inadvertently and due to oversight while plotting the names of existing MRT in the Post Based Reservation Roster Register at initial operation stage. It caused a great misunderstanding to the applicant as well as to the administration.

2. That the applicant became eligible only on 01.01.2005 for the post of MRT as the eligibility condition under the relevant RRs is 8 years regular service with 6 months training in MRT (copy of RRs) at A-12 of OA). However, no vacancy occurred during the year 2005-06.

3. Accordingly, he was considered against the vacancy arisen during the year 2006-07 as per the factual position at that time. Hence, the contention of the applicant to promote him against SC point is misleading.

4. That due to interpolation or plotting of the name of Shri D.L.Sangari (now retired), the Post Based Reservation Roster Register has been revised and the entire position of the roster for which the applicant is contending, has been changed and point No.7 earmarked for SC candidate has been consumed or occupied by Shri Ramesh Chand Kanojia, MRT who belongs to SC category. There was/is no SC point available in the Revised Roster

Register. Thereafter, the year wise break up of occurrence of vacancies in the grade of MRT is as follows:

2001-02	02 Vacancy (filled by promotion)
2002-03	No. Vacancy occurred
2003-04	No. Vacancy occurred
2004-05	01 Vacancy (filled by promotion)
2005-06	No. Vacancy occurred
2006-07	02 Vacancy (filled by promotion)
2007-08	01 Vacancy (filled by promotion)

5. In the changed scenario, the vacancies arisen during the year 2001-02 to 2007-08 were to be filled up by unreserved category candidates. But due to inadvertent omission or misrepresentation, the applicant was erroneously promoted as MRT. As to avoid injustice to unreserved candidates, the respondent has no option but to hold a review DPC for the year 2006-07 and 2007-08 to rectify the inadvertent omission/commission."

8. Regarding Smt. Rajni Gulati's refusal for promotion to the post of UDC, the respondents pointed out that, as per Rules, she was debarred to be promoted to the post of UDC only and not for other posts as per her entitlement in terms of eligibility. Moreover, it has been found that in the DPC held on 14.02.2007, the promotions were made as per existing RRs. As per the observations regarding vacancies noticed at that time, one point was earmarked for SC due to non availability of SC candidate against point no. 7 in the existing roster at that time. After plotting the name of Shri D.L. Sangari in the roster, there was no need to earmark the SC point, as Shri Ramesh Chand Kanojia (SC candidate) had occupied 7th point of the roster.

9. Learned counsel for the respondents also pointed out that in the RRs for the post of MRT, there is no quota which has been prescribed for each feeder post. In this regard, the learned

counsel drew our attention to the following provision in the DoP&T OM dated 10.09.1985 and 12.12.1988 which establishes that no quota has been prescribed in the RRs:

"Where the posts in the feeder grade are in different scales of pay or even in the identical or equivalent scales of pay, the officers up to the number of vacancies for each feeder grade as per the quota **may be selected** and interpolated in a combined select list **according to the grading**. The persons who are assigned the same grading by the DPC should be arranged in the consolidated order of merit with reference to the date arrived after adding the requisite number of years of qualifying services in the feeder grade to their date of appointment (i.e. with reference to the date from which they become eligible for promotion after rendering the prescribed qualifying service in the feeder grade, maintain their inter-se seniority in the present service grade.

DOP&T vide its OM dated 12.12.1988 has clarified that "the matter has been examined in the light of a recent judicial pronouncement and it has been decided that the instructions quoted above may continue to be followed subject to the modification that among the persons in the feeder grades given the same grading those in the higher scales of pay will rank senior to those in the lower scale of pay."

(emphasis supplied)

10. It is also stated that the roster points are only meant for identifying the points for promotion for reserved and unreserved categories and it has no connection whatsoever for determining seniority of the promoted officer(s) who are promoted as per the RRs and other relevant rules in this regard. The inter-se-seniority has to be according to the grading and when the grading is the same, those in higher scale of pay will be treated senior to those in the lower scale of pay.

11. Learned counsel for the respondents explained that based on service record of Smt. Rajni Gulati and the applicant, it is

seen that they have had different grading, namely, Ms. Gulati had a grading of 'very good' and the applicant had the grading of 'good' and, therefore, their names were arranged as per the overall grading of last five year ACRs, which is in terms of the DoP&T guidelines dated 12.12.1988.

12. Learned counsel for the respondents also explained that in 2004-2005, the applicant was not eligible for the post of MRT. Moreover, neither SC/ST nor unreserved vacancy arose in the year 2004-2005. The applicant was eligible for promotion in the year 2006-2007 and he was considered and promoted as per available facts. However, after plotting the name of Sh. D.L. Sangari, ex MRT, the position entirely changed and no SC point was available to accommodate the applicant in the year 2006-2007. It is reiterated that after inclusion of Shri Sangari in the post based reservation roster, no SC point can be earmarked for SC candidate as Shri Ramesh Chand Kanojia belonging to SC community had occupied 7th point of roster.

13. In his reply, learned counsel for the applicant pointed out that as per RRs (Annexure A-12) of 1993, in column 8 under the heading educational and other qualifications required for direct recruits, it is clearly mentioned as follows:

"2. Training in Medical Record Technology for six months."

14. Therefore, it was necessary for Smt. Rajni Gulati to complete training in order to become eligible for the post of MRT whereas Smt. Gulati did not complete the training and hence

was not even eligible to be considered. Learned counsel for the applicant also pointed out that the applicant had obtained through RTI a copy of reservation roster in respect of MRT working with the respondents. In this, the learned counsel drew our attention to the chart as on 02.07.1997 for the post of MRT. It contains a list indicating serial number of the posts, category for which the post is earmarked, name of the incumbent, date of joining, whether SC/ST/OBC/General and remarks. Learned counsel pointed out that at serial no.5, under UR category, name of Shri Ramesh Chand Kanojia has been mentioned but in the remarks column it has been stated 'Promoted on ad hoc basis in his own seniority. He is SC candidate.' The contention of the applicant is that Shri Ramesh Chand Kanojia has been promoted at his 'own merit' against UR vacancy and not utilizing an SC vacancy. Therefore, the contention of the learned counsel for the respondents that Shri Kanojia has used up roster point no.7 is factually incorrect.

15. We have heard the learned counsel for the parties and gone through the pleadings available on record.

16. The main bone of contention in this case is whether there was an SC vacancy and if so, whether the applicant should have been considered against that vacancy. The respondents admit that even after interpolation or plotting of the name of Shri D.L. Sangari, point no. 7 was earmarked for SC candidate. According to the respondents, this vacancy of SC has been consumed or occupied by Shri Ramesh Chand Kanojia who belongs to SC

category and therefore, there is no SC vacancy available now to give promotion to the applicant in 2006-2007.

17. In the background of the reply dated 24.10.2011 to an RTI application and the roster as on 2.07.1997 pointed out by the learned counsel for the applicant, there is a doubt regarding the stand taken by the respondents as, in that roster, sl. no. 5 is shown as UR vacancy against which Shri Kanojia is occupying the post since 2001. Though Shri Kanojia belongs to SC community, the remarks column also states "Promoted on ad hoc basis in his own seniority." One can only conclude that Shri Kanojia has been promoted as MRT not against an SC vacancy by providing benefit of reservation to him in promotion but that he has been promoted against a 'general' category post on his 'own merit'.

18. *Prima facie*, therefore, it would appear that it is incorrect to state that SC vacancy at point no. 7 has been consumed by Shri Kanojia. However, it may be necessary for the respondents to re-examine the specific issue in more detail and then take a final view.

19. We, therefore, dispose of this OA with a direction to the respondents to re-examine the issue whether Shri Kanojia was promoted as MRT on his own merit or as an SC candidate. If it is determined after such enquiry that he was promoted on his 'own merit', then the respondents shall consider the case of the applicant for promotion to the post of MRT against point no. 7 and against the select panel of 2006-2007 and issue orders

accordingly, with all consequential benefits. In case, however, after examining the issue the respondents come to the conclusion that Shri Ramesh Chand Kanojia was indeed promoted against SC vacancy giving advantage to him of reservation on promotion and not on his 'own merit', then they shall pass a reasoned and speaking order under intimation to the applicant. The applicant would then be at liberty to challenge that order, if so advised, in accordance with law.

20. The O.A. is disposed of accordingly. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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