

**Central Administrative Tribunal
Principal Bench**

OA No. 3395/2012

Order Reserved on: 31.01.2018
Order Pronounced on: 06.02.2018

Hon'ble Mr.V.Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

Sh. Chander Pal Singh
S/o Sh. Sohan Pal Singh
R/o House No. B-201,
Usma Urja Sahkari Awas,
Plot No. C-58/3, Sector-62,
Noida, U.P.

... Applicant

(By Advocate: Sh. A.K.Bhakt)

Versus

1. Union of India through
Its Secretary,
Ministry of HRD,
Shastri Bhawan,
New Delhi.
2. The Director,
Central Hindi Directorate,
Department of Education,
M/o HRD, West Block No.7,
New Delhi.
3. The Secretary,
Ministry of Personnel, Grievances
& Pension,
Department of Personnel & Training,
North Block,
New Delhi.

... Respondents

(By Advocate: Sh. Y.P.Singh for respondents No.1 & 2
Sh. Hanu Bhaskar for respondent no.3)

ORDER

By Hon'ble Ms. Nita Chowdhury, Member (A)

This Original Application has been filed by the applicants claiming the following reliefs:-

“(a) direct the respondents to pay all consequential benefits to the applicant including the difference of salary of Rs.3,00,000/- since 01.02.2006 and consider the applicant's promotion to the post of Stenographer Senior against the SC point w.e.f. 01.02.2006 with all consequential benefits including arrears of pay.

(b) to quash and set aside the impugned memorandum Dated 15.11.2011 and direct the respondents to maintain the post based roster in the cadre of Stenographer Senior as per OM dated 02.07.1997.

(c) direct the respondent to fill up the 14th point in the cadre of Stenographer Senior by promoting SC candidate by quashing the instructions if any, which restrain filling up 14th point in the cadre upto 13th post in cycle No.1.

(d) direct the respondents to redraw the model roster by giving 14th point to SC Category.

(e) pass any other order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

2. The applicant has filed this OA challenging the discriminatory and arbitrary act of the respondents whereby the promotion of the applicant was refused and the posts reserved for Scheduled Caste (SC) category are being filled up directly by the candidates of General category in complete violation of statutory

principles of reservation guaranteed by the Constitution of India. He is challenging the office memorandum dated 14.11.2011 passed by the respondents clarifying that the principle of squeezing or replacement cannot be made applicable in case of small cadres having 13 or less posts and therefore 'L' shaped roster is not applicable. The applicant, aggrieved with this memorandum being the SC employee who was entitled to promotion for the post of Stenographer (Senior) at point 14 since 1st February 2006 as per prescribed SC reservation of 15%, was refused promotion as the posts reserved for SC category are being filled up directly by the candidates of General category, which is in complete violation of statutory principles of reservation guaranteed by the Constitution of India.

3. The factual relevant details in this OA briefly are that on 26.07.2007 applicant made a representation to respondent No.2 for considering him for the vacant post of Stenographer (Senior) on account of deputation of one Ravi Mala as the same is reserved for the SC Category. Thereafter, there was a lot of correspondence between the applicant and the respondents and finally the respondents gave their reply dated 04.09.2008 to the applicant.

4. In this regard, the Court on 18.10.2016 had sought clarification from the respondents with regard to the factual

position of reservation in Central Hindi Directorate in reply to which the respondents clarified that there are seven sanctioned posts of Stenographer (Sr.) in Central Hindi Directorate. However, Central Hindi Directorate has stated in their counter reply that there are six sanctioned posts of Stenographer (Sr.), because for the last twenty or more years there are only six posts of Stenographer being filled in Central Hindi Directorate.

5. The contention of the applicant that a candidate from the General category was promoted to the post of Stenographer (Sr.) on account of deputation of one Ravi Mala, is false. The said candidate i.e. Sh. Suresh Kumar Dahiya, Stenographer (Jr.) was given regular promotion to another vacant post of Stenographer (Sr.) and not on the post which had fallen vacant due to deputation of Smt. Ravi Mala. Under this roster, reservation is applicable on rotation basis and not on replacement basis as contended by the applicant. Roster Point No.14 which is meant for ST category has been kept vacant since there is no ST candidate in the feeder cadre and next 21st point is earmarked for SC. They have also referred to the instructions of DOPT OM No.36012/17/2002-Estt. (Res.) dated 06.11.2003, which inter alia states that "it is not permissible to fill up a post reserved for ST by a SC candidate or vice versa by exchange of reservation between SCs and STs", hence the claim of the applicant is not

tenable. In brief, it is the contention of the respondents that they did not in any way act in violation of Article 14 and 16 of the Constitution. 16 persons have been promoted to the post of Stenographer (Sr.). Among the persons promoted as per the DOPT guidelines, the 7th Point in the roster which is demarcated for SC has been utilized by a SC candidate Ravi Mala and the 14th Point which is demarcated for ST has been kept vacant since there is no eligible ST candidate in the feeder cadre. Thus, there is no violation of DOPT guidelines at any stage.

6. In the arguments before the Tribunal the contention of the respondents that this OA, which has been filed by the present applicant, is time barred. He has sought relief that he be granted consequential benefit since 01.02.2006 is clearly beyond the period of limitation. Further the Department has acted in accordance with the Rules and there has been no discrimination against the applicant whatsoever. Moreover the prayer, as made in the OA, is contradictory to each other. He has not challenged the OM dated 02.07.1997 which prescribed for the 14 points 'L' shaped roster and rather the applicant is praying that the said OM be complied with by the respondents. Earlier, he had filed an OA No.972/2010 before this Tribunal regarding promotion to the post of Stenographer (Sr.) as he belongs to SC category and was working as Stenographer (Jr.). The sanctioned strength of

Stenographer (Sr.) is 06. He had filed the OA with the contention that he should be considered for the 14th position which was earmarked for ST and presently vacant and cannot be given to SC candidate.

7. Both the parties were heard and the rules perused. The rejoinder affidavit contains the copy of the concerned DOPT OMs and a perusal of the same clearly brings out that the respondents have carefully followed the instructions issued by DOPT and seeing the matter as it presently stands, it is clear that there is no violation of the present rules and the present 'L' shaped roster is being enforced.

8. While perusing the records in the file, it is noted that the applicant made a number of representations to the National Commission for Scheduled Castes and in turn, the National Commission had also forwarded his request to the DOPT vide their letter dated 05.01.2011. The relevant part of the letter is reproduced below:

“..... that in the L Type Roster as maintained by the Department of Personnel and Training vide its O.M. No.36012/2/96-Est(Rs) dated 2nd July, 1997, the SC category employees are not getting their due reservation of 15% as in these orders only one point is provided against 2 points in the roster.

You are, therefore, requested to look into this matter personally and give your comments/views as to how the reservation to the SC category can be given to the fullest percentage in the L type roster i.e. 1 point

given against 2 points in the present roster, which has resulted in continued suffering from 1997 till date.”

From the above correspondence itself, it becomes clear that National Commission had recommended for increase in reservation. In this context, the respondents aver that no such increase has taken place and they have acted according to the present existing DOPT orders.

9. Following the judgment of the Constitution Bench of Hon’ble Supreme Court in the case of **Shri R.K.Sabharwal vs. State of Punjab** and also **J.C.Malik vs. Ministry of Railways**, the DOPT issued OM No. 36012/2/96-Est (Rs) dated 02.07.1997 on the subject – ‘Reservation Roster – Post based and the entire matter was considered in detail and secondly, in the annexures to the OM dated 02.07.1997, model rosters of reservation for direct recruitment and promotion have been prescribed. As per records and details given by the respondents the cadre strength of the post of Stenographer (Sr.) in the organisation in which the applicant is working is six. As such the reservation roster at Appendix to Ann. III of the OM dated 02.07.1997, would apply to this case. The principle of squeezing or replacement cannot be made applicable in case of small cadres having 13 or less posts. In such cases reservation is given by rotation, therefore, principle

of squeezing or replacement is not applicable in case of 14 points 'L' shaped roster.

10. The respondents have clearly followed the instructions about 'L' shaped roster as contained in DOPT's OM dated 02.07.1997. Hence, the relief sought by the applicant is not maintainable. Accordingly, the OA is dismissed. No order as to costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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