

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.2978/2012

Order Reserved on:24.08.2015

Order pronounced on:09.09.2015

Hon'ble Shri A.K. Bhardwaj, Member (J)

Hon'ble Shri K.N. Shrivastava, Member (A)

Sh.Mahender Singh
S/o Late Sh. Battan Singh
R/o B-1/185, Gali No.6
New Ashok Nagar,
Delhi-110096.

.... Applicant

(By Advocate : Shri Kartar Singh)

Versus

1. The Secretary,
Ministry of Information
& Broadcasting, Shastri Bhawan,
New Delhi
2. Sh. Mohan Chandak
The Director General
Through Directorate of Field Publicity,
Ministry of Information &
Broadcasting, East Block-IV,
Level-III, R.K.Puram
New Delhi-110066
3. Sh. Surender Kumar,
Director Cum Chairmen (DPC)
Directorate of Field Publicity,
Ministry of Information &

Broadcasting, East Block-IV,
Level-III, R.K.Puram
New Delhi-110066.

4. Sh.Sharadh Kumar Shrivastva
Under Secretay (Reservation)
Govt. of India
Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training
North Block, New Delhi. Respondents

(By Advocate: Shri D.S.Mahendru)

ORDER

By Hon'ble Sh. K.N. Shrivastava,M(A):

This OA has been filed under Section 19 of the Administrative Tribunal Act, 1985 by the applicant. The grievance of the applicant in the OA is as to the respondents not promoting him to the post of Assistant in Department of Field Publicity (DFS). He became eligible for promotion to the post on 10.12.2010 itself. The specific relief(s) prayed in the OA are as under:-

- "8 (i) *Direct the respondents to consider the applicant for promotion, for the post of Assistant w.e.f. 01.05.2011 with applicable seniority in accordance with the seniority list with all consequential benefits and continuity of service.*
- (ii) *Pass any other order which this Hon'ble Tribunal may deem just and proper in the*

facts and circumstances of this case to meet the ends of justice."

2. The brief facts of the case as mentioned in the OA are as under:-

The applicant was appointed on 16.09.1971 to the post of Packer under respondent no.1. Thereafter, he was promoted as Lower Division Clerk on 15.01.1987 and later as Upper Division Clerk on 01.06.2006. He belongs to SC category. There are 6 posts of Assistant in the Directorate of Field Publicity, out of which 4 are filled up. Respondents have held DPC meetings regularly but the case of the applicant for promotion to the post of Assistant has not been considered. The applicant contends that 15% posts are reserved for SC candidates for promotion. As he belongs to SC category, his claim for promotion to the post Assistant ought to have been considered by the respondents. The applicant had approached this Tribunal earlier by filing OA-2326/2012 on the same issue. The said OA was disposed of by the Tribunal on 31.07.2012 by passing an order which reads thus:

"The grievance of the applicant in this case is that although the regular meetings of the Departmental Promotion Committee (DPC) for promotion to the post of Assistant were held on 22.7.2011 and subsequently on 4.4.2012 but the respondents have not taken any action pursuant to the meetings held by the DPC. His case is that two posts of Assistant are lying vacant since 22.7.2011 and the applicant being reserved category candidate and there was no such person working in the cadre of Assistant in the reserved category, he was entitled for promotion. For that purpose, the applicant has also placed on record the representation preferred by him on 13.4.2012, which has not been decided so far.

2. we have heard the learned counsel for applicant at admission stage and we are of the view that the present OA can be disposed of with a direction to the respondents to decide the aforesaid pending representation of the applicant by passing a reasoned and speaking order, thereby dealing with all the contentions raised by him in the representation.

3. Accordingly, the present OA is disposed of at this stage with a direction to respondent No.1 to dispose of the aforesaid representation of the applicant by passing a reasoned and speaking order within a period of two months from the date of receipt of a copy of this order. In case the applicant is still aggrieved by the order to be passed by the respondent No.1, it will be open for him to file substantive OA, thereby challenging the validity of the order."

3. Pursuant to the directions contained in this Tribunal order dated 31.07.2012 in OA 2326/2012, the respondents have passed the impugned order dated 29.08.2012 (pg 53-54) The relevant excerpt of the said order is reproduced below:-

"4. However, keeping in view the spirit of the direction of the Hon'ble CAT, New Delhi in the matter,

the facts regarding claims of the applicant are stated below:-

- (a) That there are six posts of Assistant in the Directorate of Field Publicity. New Delhi for which the feeder cadre is Upper Division Clerks (UDC)*
- (b) That the 'post based roster system' to be followed for effecting promotions and which seeks to ensure compliance with reservation norms is operative since 1997. As per the standard roster issued by the Government, when six posts are available in a particular cadre. 7th position is to be filled up by an SC candidate."*
- (c) That the Departmental Promotion Committee (DPC) met on 22nd July 2011 to promote candidate from amongst the feeder cadre to the two vacant posts of Assistant in view of different views expressed in the DPC on earmarking one post to Scheduled Caste candidates, the Committee unanimously decided to refer the issue to the Department of Personnel & Training through the Ministry of Information & Broadcasting. The matter was accordingly referred to the Ministry on 9.8.2011 and 23.8.2011.*
- (d) That the contention of the applicant that another DPC was held on 4.4.2012 and no pursuant action was taken on both occasion is factually incorrect.*
- (e) That the Ministry of Information & Broadcasting took up the issue of reservation for SC in the two vacant posts of Assistant with DoP&T, who on examination of the case vide their letter dated 9.4.2012 conveyed that "once all the fourteen points of the L-shaped roster are consumed, the roster has to be operated afresh from its initial point".*
- (f) That DFP has six posts of Assistant and all the fourteen points indicated in the L-shaped roster have been exhausted and hence, the roster has to be operated afresh according to which only the 7th position in the roster goes to an SC Candidate.*
- (g) That at present there are two vacant posts of Assistant and they belong to unreserved*

category as per the L-shaped roster. A total of nine candidates in the feeder cadre of UDC would be considered for promotion against the two vacant posts of Assistant. The applicant stands at number 4 in the Seniority List of UDCs.

- (h) *That from the above it is evident that the claim of the applicant for promotion to the post of Assistant as an SC candidate was not justified by the prevailing rules. Accordingly, the applicant's contention that this Directorate acted in an arbitrary and discriminatory manner and denied him promotion was not supported by facts."*

4. Aggrieved by the impugned order dated 29.8.2012, the applicant has filed the present OA.

5. Pursuant to the notice issued, respondents entered appearance and filed their counter reply on 31.12.2012 (pg.55-64) The applicant filed a rejoinder to the reply filed by the respondents (pg. 71-84)

6. As the pleadings were complete, the case was taken up for final hearing on 24.08.2015. Shri Kartar Singh, learned counsel for the applicant and Shri D.S. Mahendru learned counsel for the respondents argued the case.

7. Learned counsel for the applicant besides highlighting the points raised by the applicant in the OA and in the rejoinder submitted that the respondents are unreasonable in not promoting the applicant to the post of Assistant for

which he became eligible way back on 10.12.2010 itself. He stated that in spite of the fact that 2 out of 6 posts of Assistant are lying vacant, the applicant is being denied his rightful claim to promotion against one of the vacant posts. He stated that the applicant has been rendering service sincerely and has unblemished service record. He belongs to SC category for which there is reservation of 15% in promotion. Although DPC meetings for promoting UDCs to the grade of Assistant have been held a few times in the past but for undisclosed reasons, the claim of the applicant has not been considered by the respondents. He further argued that the L-shaped roster for the post came into existence on 2.7.1993 and all vacancies to be filled up through promotion must be filled up in accordance with the roster. He contended that a vacancy meant for SC category as per the said roster has instead been given to a general category candidate denying the rightful claim of applicant to that. The impugned order dated 29.08.2012 passed by the respondents is wrong and the same should be set aside and respondents should be directed to promote the applicant to the post of Assistant in accordance with the seniority list with all consequential benefits.

7. Learned counsel for the respondents submitted, that the respondents have been strictly following the L-shaped 14 points roster prescribed by the Govt. As per the said roster the 7th vacancy only can go to a SC candidate. The respondents had taken up the issue of reservation for the SC candidates vis-à-vis the 2 vacant posts of Assistants with the DOPT. The DOPT have advised that once all the 14 points in L-shaped roster are consumed, the roster has to operate afresh on the initial point and as such only the 7th post in the roster will go to a SC candidate. Learned counsel further submitted that there are 2 vacant post of Assistants and there are 9 eligible UDCs under the zone of consideration for promotion. The applicant is at Sl. No.4. He informed that the averment made in the OA that no SC candidate has been appointed in the Department of Field Publicity (DFS) is not correct and that one Shri Jagdish Chandra was appointed as Assistant w.e.f. 01.06.2006: who belongs to SC category.

8. We have perused the pleadings of both the sides as well as the documents annexed to them. We have carefully considered the arguments put forth by the learned counsel for both the parties. After perusal of the record, we are

convinced that promotions to the post of Assistant are given by the respondents in accordance with the L-Shaped roster prescribed by the Govt. and no injustice or discrimination has been meted out to the eligible candidates belonging to SC category.

9. In view of the above, we find that the OA is devoid of substance and is liable to be dismissed. OA is accordingly dismissed. No order as to costs.

(K.N. Shrivastava)
Member(A)

(A.K.Bhardwaj)
Member(J)

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