

**Central Administrative Tribunal
Principal Bench**

**OA No. 4559/2011
MA No.3431/2011**

Order Reserved on: 27.10.2015
Order Pronounced on: 03.12.2015

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)**

Shri Harender
RO (IA) ARC,
R/o House No. 415, Kashmiri Bagh,
Kishan Ganj, Delhi-7

-Applicant

(By Advocate: Mr. M.K. Bhardwaj)

Versus

Union of India & Ors. through

1. The Secretary,
Deptt. of Personnel and Training,
North Block, New Delhi
2. The Director General (Security)
Cabinet Secretariat,
East Block-V, R.K. Puram,
New Delhi-66
3. The Director (ARC)
Cabinet Secretariat,
East Block-V, R.K. Puram,
New Delhi-66
4. The Asstt. Director (D), ARC
Cabinet Secretariat,
East Block-V, R.K. Puram,
New Delhi-66
5. The Chairman,
The National Commission for Scheduled Castes,
Loknayak Bhawan, New Delhi
6. Sh. VK Kanojiya,
FO (PL)/RO (IA)
Cabinet Secretariat,
East Block-V, R.K. Puram,
New Delhi-66

-Respondents

(By Advocate: Shri D.S. Mahendru)

ORDER

Dr. B.K. Sinha, Member (A):

MA No.3431/2011

For the reasons stated in this MA, the same stands allowed.

OA No.4559/2011

In the instant Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved with the action of the respondents in not correcting his seniority in the post of AFO (PL) despite directions of this Tribunal.

2. The applicant, vide means of this OA, has sought the following reliefs:-

- “i) To quash and set aside the impugned order dated 28/12/2010 (Annexure-1) and direct the respondents to fix the seniority of the applicant as AFO (PL) over and above the respondent no.6 and give all consequential benefits from due date.*
- ii) To quash and set aside the seniority list of AFO (PL) issued in the year 1998 and all subsequent consequential seniority list.*
- iii) To pass such other and further orders which their lordships of this Hon’ble Tribunal deem fit and proper in the existing facts and circumstances of the case.*
- iv) To allow the OA with exemplary cost.*
- v) To award appropriate compensation in favour of the applicant.”*

3. The case of the applicant, in brief, is that he was appointed as AFO (PL) in Aviation Research Centre (AFC) on 03.10.1994 against direct recruit SC quota and was confirmed on 18.09.1997. As per the hierarchy in the cadre of AFO (PL), the next promotion was to the post of DFO (PL). A draft seniority list of the aforesaid post was circulated vide communication of the respondents dated 14.09.1998,

as per which, one M.S. Dahiya was at Sl. No. 1 and the respondent no.6, namely, V.K. Kanojia, at Sl. No. 11. The applicant filed several representations stating therein that the seniority list should either be prepared as per the merit list or as per the date of joining. Therefore, he requested for correction of the seniority list. In the meantime, the applicant having fulfilled the eligibility criteria for DFO (PL) was promoted against this post vide order dated 03.10.2000. It is the case of the applicant that had his seniority been correctly fixed, he would have been promoted much earlier. However, the applicant continued to press the claim for correction of the seniority list and he became eligible for the second promotion to the post of FO (PL) in October, 2003 in terms of recruitment rules and was promoted as such vide order dated 21.01.2004 in the pay scale of Rs. 6500-10500/- with the date of joining on or after 01.04.2014 in IA Wing, ARC, HQrs., New Delhi. The applicant claims that annoyed with his pursuit of the matter of correction of seniority, the respondents transferred him from Photo Lab cadre to Motor Transport Cadre. He worked there for more than 1 ½ years and his claim for fixation of seniority was arbitrarily rejected. In the meantime, the applicant had approached the SC/ST Commission. The applicant alleges that the respondents reverted him to the post of DFO (PL) and also issued order dated 08.11.2005 confirming him at Sl. No. 21 in the seniority list below M.S. Dahiya and the respondent No.6 under due consultation with the Cabinet Secretariat. The applicant filed an application under RTI Act, 2005 on 06.03.2006 for which memo dated 06.06.2006 was issued to him seeking explanation. The applicant ultimately came to this Tribunal

vide OA No. 2357/2006, which was disposed of vide order dated 26.08.2008 directing as under:-

“6. Original Application is allowed to the extent, as mentioned above. The respondents would thus issue a notice to the applicant and pass orders in accordance with law after hearing him in the matter. The respondents would supply all relevant documents to the applicant including the roster dealing with promotions, and in particular the posts earmarked for SC/ST candidates. If the respondents are to reiterate the order of reversion, they will pass speaking order. The applicant would be restored to his promoted post of Field Officer (PL) but as regards the consequential reliefs, in our view, in the context of facts and circumstances of this case, the same would abide the final result of the case.”

4. The applicant filed the CP for non-compliance, which was disposed of vide order dated 31.07.2009 giving him the liberty to file a fresh OA. Accordingly, the applicant filed OA No. 2644/2010 following which the respondents restored him to the post of DFO (PL) w.e.f. 01.04.2010 without having considered the main issue of his seniority. This Tribunal vide order dated 30.09.2010 disposed the OA with the following directions:-

“2. The stand of the respondents is that the applicant promoted to the post on 1.4.200 (sic) was actually meant to be filled by a SC category and not by a ST category. Hence, OM dated 6.11.2003 is not applicable. This has a repel effect now which require re-consideration of the applicant for seniority in the lower grade of DFO (PL), which shall be considered by the speaking order to be passed within three months from the date of receipt of a copy of this order. Accordingly, the OA stands disposed of. No costs.”

Accordingly, the impugned order came to be passed on 28.12.2010. This impugned order after having stated the background of the case states that 10% of the post of AFO are to be filled up by Promotion and 90% by Direct Recruitment, which works out to ratio of 21:3 for which DPC was held in September, 1993. The DPC recommended two officials for promotion, as only two officials in the feeder grade were eligible for promotion. The process of direct recruitment was finalized on 15.09.1993, whereas the process of DPC was finalized

on 07.09.1993, on the basis of which two officials, namely, M.S. Dahiya and V.K. Kanojia (respondent no.6) were promoted, while the applicant along with others joined the post of AFO (PL) on the basis of DR quota. The rota quota rules were applied to fix the seniority between the DRs and the promotees by making rotation between two groups. Hence, the seniority amongst the DRs and Promotees were to be based on the ratio of 1:9. The first candidate in the seniority list was a promotee, subsequently 9 candidates from Sl. No. 2 to 10 were direct recruits, 11th was again a promotee and then Sl. No. 12 to 20 were direct recruits. Since there were no other promotee, direct recruits were placed from Sl. No.21 onwards.

5. Dissatisfied with the aforesaid speaking order, the applicant approached this Tribunal vide the instant OA. The basic argument of the applicant is that once the respondents had admitted that there were four vacancies of SC in DR quota, out of which one was filled from feeder cadre post of Lab Assistant and three from outside, including the applicant. They were required to place excess promotees below the DR. The excess promotee cannot be placed over and above the direct recruits, as the rotation of quota is done within the limit as prescribed in the RRs for each category, thereby the respondent no.6 had been promoted against a vacancy meant for DR. There had been four vacancies of SC in DR quota and out of which one vacancy had been given to the feeder category violating the DoP&T OM No. 25.04.1989, which clearly provides that DR vacancies cannot be filled up by promotion. These four vacancies could have only been filled up by direct recruitment and the mistake made needs to be corrected immediately. Thus, the

respondent no.6 has wrongly been placed over and above the applicant.

6. The applicant further submits that when initially out of 21 vacancies, 8 had been reserved for SC/ST, how could the respondents have filled 18 vacancies from the general candidates and one by promotion without there being any vacancy. The applicant being the topper must get higher place in the seniority list. It has not been explained as to how the seniority of the applicant has been correctly fixed and has prayed for the reliefs as detailed in para 2 of this order.

7. The respondents have filed a counter affidavit rebutting all the averments of the OA. The respondents assail the OA on grounds of non joinder of parties as respondent no.1, 4 and 5 are necessary party to the OA, limitation and delay, and for concealing the material facts.

8. Both the applicant and the respondent no.6 have been promoted to the rank of RO (IA) that has not been mentioned by the applicant. There is no violation of any statutory rules or binding statutory instructions. The matter has been referred to the Cabinet Secretariat where it was independently examined in consultation with the DoP&T.

9. The respondents further refute the charges of favoritism towards general category candidates, as the respondent no.6 with whom the applicant is locked in basic dispute regarding seniority, also belongs to the SC category. The applicant was also considered against the SC vacancy thereby giving the due benefit of reservation to him. His seniority in the grade of DFO (PL) was fixed as per the

inter se seniority in the feeder grade of AFO (PL). Hence, no undue benefit has been given to any person. The respondents in respect of contentions in para 4.10 of the OA submit as under

“4.10 That in reply to the contents of corresponding para, it is submitted that it has already been made clear in the previous paras that his position in the seniority, as a result of Direct Recruitment to the post of AFO (PL) in the year 1993 is correctly fixed. It is reiterated here that during the year 1992 a direct recruitment to fill-up 21 vacancies and DPC to fill-up 3 vacancies in the rank of AFO (PL) under promotion quota was held, in accordance with the then Recruitment Rules (10% Promotion and 90% Direct Recruitment). In Direct Recruitment quota, applicant herein along with others was selected and in promotion, out of 3, only 2, including respondent No.6, i.e., Sh. V.K. Kanojia, were recommended for promotion. Subsequently, in accordance with the provisions of RR's (10% Promotio and 90% direct Recruitment) the seniority list was prepared wherein the applicant was placed at S.No.21. In the process, none of the vacancy was transferred from DR quota to Promotion quota or vice versa as claimed by the applicant. It made amply clear that the position of applicant in the seniority was correctly placed.”

10. The respondents in respect of paras 4.11 to 4.21 also submit that the grievances of the applicant have already been addressed by the department by restoring him to the post of FO (PL) from the date of his original promotion i.e. 01.01.2004 vide order dated 30.08.2010 and that raking up these issues once again only serve to confuse the matter. The Tribunal had never directed the respondents to correct the seniority list but rather vide its order dated 30.09.2010 in OA No. 2644/2010, they were directed to reconsider the applicant's seniority by means of a speaking order which has since been done vide order dated 28.12.2010 and the applicant was intimated about his position in the seniority list of AFO (PL). The respondents have, therefore, claimed that no violation of rules have taken place and have prayed for dismissal of the OA.

11. The applicant in his rejoinder application has reiterated that there were four vacancies of SC in direct recruit quota and one

vacancy was given to the feeder category in violation of the DoPT norms conveyed vide OM dated 25.04.1989 and that he is being discriminated vis-à-vis general category candidate.

12. We have carefully gone through the pleadings of the case and patiently heard the learned counsel for the parties. The only issue to be considered by us is that whether one post of DR quota has been diverted to the promotion quota to accommodate the respondent no.6 and to benefit the general category candidates.

13. It is an admitted position that the applicant had been appointed as AFO (PL) on 03.10.1994, hierarchy of which includes DFO (PL), FO (PL) and SRO (IA). The applicant was promoted as DFO (PL) on 03.10.2000 and to the post of FO (PL) reserved for SC candidate by exchange of vacancy but was reverted in terms of OM dated 06.11.2003 which prohibited exchange of reservation between SC and ST candidate. It is further an admitted position that a draft seniority list was circulated vide letter dated 14.09.1998 in which the applicant was placed at Sl. No. 21, while the respondent no.6 had been placed at Sl. No. 11

14. It is also an admitted fact that as per the recruitment rules for the post of AFO (PL), ratio of 1:9 has been provided in favour of the promotee from the feeder cadre and the direct recruit. It is also admitted that that the claim of the applicant to have his promotion restored against the post of FO (PL) was allowed by order dated 30.08.2010 w.e.f. 01.04.2004. For the sake of clarity, we extract the order below:-

"OFFICE ORDER NO. 803/2010

Sh. Harender, (SC category) was promoted to the post of FO (PL) w.e.f. 01.04.2004, against a reserved ST post vide O/o No. 1/ARC/Photo/91(25)-450 dated 21.01.2004.

2. He was reverted to the post of DFO (PL) in compliance with DoP&T Om No. dated 06.11.2003 which envisaged that a post reserved for ST cannot be filled by a sc candidate and vice-versa by exchange of reservation. He was reverted to the post of DFO (PL) vide Order No. 1/ARC/Photo/91(25)-7545 dated 08.11.2006.

3. However, after careful examination, it was observed that the post against which Sh. Harender, was promoted w.e.f. 01.04.2004 was actually meant to be filled by SC category and not ST category. Hence the contents of DoP&T OM dated 06.11.2003, are not applicable in this case. Accordingly, reversion order dated 08.11.2005 in respect of Sh. Harender, is hereby quashed and his promotion to the post of FO (PL) w.e.f. 01.04.2004 stands.

4. This issues with the approval of SS:ARC.

*Sd/
(Pradeep Singh)
Joint Deputy Director (Pers-C)"*

15. The basic argument of the applicant is that one of the vacancies fixed for direct recruit quota had been transferred to promotion quota and the respondent no.6 was promoted against this vacancy. Hence, the respondent no.6 needs to be placed at the bottom of the seniority list and the applicant could be moved up to occupy the place vacated by him at Sl. No. 11.

16. The counter affidavit and the documents filed establish the facts clearly that the post of AFO (PL) had to be filled in accordance with the then prevailing RRs in ratio of 1:9 by promotion vis-à-vis direct recruitment. It also stands mentioned that a direct recruitment to fill up 21 post in the grade of AFO (PL) and a DPC to fill up 3 posts by promotion was held in the year 1992-93. The DPC recommended two officials, namely the respondent no.6 and one M.S. Dahiya, whose name stands at Sl. No.1 in the seniority list issued on 14.09.1998, as being only eligible for promotion against

three vacancies under promotion quota. The direct recruitment was finalized on 15.09.1993. Accordingly, the first promotee M.S. Dahiya has rightly been placed at Sl. No. 1 with 2 to 10 being direct recruits and 11th was the respondent no.6 followed by 12 to 23 direct recruits. The applicant was placed at Sl. No. 21 as per his position in the seniority list. We have also taken a note of the fact that the respondent no.6 being a SC candidate, the claim of the applicant that he being discriminated against SC does not hold. We note that he has been given the due benefits in time. His promotion to FO (PL), though it was cancelled was re-examined as it has already been mentioned and he had been restored with his original date i.e. 01.01.2004 and has subsequently been promoted to the post of SFO (PL) w.e.f. 12.05.2011. Hence, we do not find any merit whatsoever in the argument of the applicant that he had been incorrectly placed vis-à-vis the respondent no.6 and that the post in DR quota has been diverted to promotion quota. We have swayed by the fact that when there were three posts for promotion, the DPC having taken place earlier and only two candidates being found eligible for promotion, the question of diversion of post does not arise at all. Hence, in conclusion we hold that the OA is misplaced and we dismiss the same without costs.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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