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Central Administrative Tribunal
Principal Bench

O.A. No. 343 of 2003

New Delhi, dated this the 22nd September, 2003.

HON'BLE JUSTICE MR. V.S.AGGARWAL, CHAIRMAN
HON'BLE MR. R.K.UPADHYAYA, ADMINISTRATIVE MEMBER

Suresh Chand Meena,
S/o Sh. Bhairoo Lal Meena,
R/o C/o Vimal Kumar Jain,
House No.14/63-a,
Teela Nawada, Taj Ganj,
Agra

....Applicant.

(By Advocate: Shri S.K.Gupta, proxy for Shri
B.S. Gupta)

Versus

1. Union of India,
through
Secretary,
Ministry of Culture,
Shastri Bhawan,
New Delhi.
2. Director General,
Archeological Survey of India,
Janpath,
New Delhi.
3. The Director(Administration),
Archeological Survey of India,
Janpath,
New Delhi.
4. Shri R.Y. Sharma,
5. Shri V.K.Gaur,
6. Shri Pranab Kumar Chaudhary,
7. Shri Presenjeet Ghosh,
8. Shri K.N.Gaur,
9. Shri Naresh Chand.

....Respondents.

(Respondent No.4 to 9, through Director
General, Archeological Survey of India,
Janpath, New Delhi-110 011)

(By Advocate: Shri R.P. Agarwal for R-1 to R-3)

ORDER(ORAL)

Shri R.K.Upadhyaya, Administrative Member :-

This application under section 19 of the
Administrative Tribunals Act, 1985 has been filed by
applicant Shri Suresh Chand Meena holding post of

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Horticultural Assistant, Grade I with a request to quash the order dated 8.1.2003 (Annexure-A1) by which some Horticultural Assistants have been promoted to the post of Senior Horticultural Assistant in the scale of Rs.5500-9000/-. The claim of the applicant is that he belongs to Scheduled Tribe category and, therefore, he should have been promoted to the post of Senior Horticultural Assistant in view of the reservation policy as per O.M. dated 2.7.97.

2. It is stated by the applicant that he joined as Horticultural Assistant, Grade I in the scale of Rs.1400-2300/-(Revised to Rs.4500-7000/-). The next promotional post of Senior Horticultural Assistant in the scale of Rs.5500-9000/- is to be filled 100% by promotion. The eligibility for such a promotion is five years' regular service as Horticultural Assistant, Grade-I and the applicant claims that he was eligible for his next promotion. In this connection, reliance has been placed on the Govt. of India, Department of Personnel & Training's O.M. dated 2.7.97 where the provision for promotion to Scheduled Tribe candidates has been made to fill up the 14th vacancy by a candidate of ST community. Learned counsel of the applicant stated that the cadre strength of the Senior Horticultural Assistant is eight. On 2.7.97, five persons were already occupying five posts of Senior Horticultural Assistant. Three others were posted on 2.7.99. Therefore, as per the seniority list dated 15.11.2000, the eight persons were already holding

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the post of Sr.Hort.Assistant. In view of promotion of three Senior Horticultural Assistants to the next higher grade of Assistant Superintending Horticulturist in the grade of Rs.6500-10500/- and on account of death and retirement of certain other persons, there arose six vacancies in the cadre of Senior Hort. Assistants. The grievance of the applicant is that proper roster in terms of the O.M. dated 2.7.97 is not being maintained by the respondents. If the proper roster was being maintained and the directions contained in O.M. dated 2.7.97 were followed, the applicant's name should have appeared in the promotion list dated 8.1.2003 (Annexure A-1). The representations made by the applicant have also not been favourably decided. Therefore, this OA has been filed.

3. It is stated by the applicant that he had approached this Tribunal earlier by O.A.No.113/2003. Notice was also issued to the respondents on 10.1.2003. However, since the persons promoted by order dated 8.1.2003 were not made party and the respondents also took objection of territorial jurisdiction of this Tribunal, the applicant had withdrawn that OA with liberty to file a fresh O.A. Accordingly this application has been filed.

4. The respondents in their reply have admitted the factual position where it has been stated that the cadre strength of Senior Hort. Assistants was eight. Five persons were already occupying those

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posts when the new roster prescribed by O.M. dated 2.7.97 (Annexure R-I) was introduced. Three vacancies were filled up on 2.7.99. However, the respondents have also stated that "as per model reservation roster of DOPT, the point No.14 is earmarked to ST category." As per order dated 8.1.2003, the posts were filled up to Point No.13 of the Model Roster. The DPC held on 23.11.2002 was for five vacancies in the grade of Sr. Hort. Assistant. One post of SC candidate was carried forward. Therefore, the impugned order of promotion dated 8.1.2003 has been issued by which six officials (one SC candidate and five unreserved) have been promoted. Applicant's name did not find place in the select panel. Therefore, he has not been promoted.

5. In the rejoinder, the applicant has reiterated his contentions as contained in the OA. It has also been urged that the respondents having admitted that Point No.14 was meant for ST candidates have not actually promoted the ST candidate against Serial No.14. According to the learned counsel, it is a simple Arithmetic. There were five incumbents when the new roster system was introduced on 2.7.97. Three were posted w.e.f. 2.7.99. If six persons are promoted as has been done by the impugned order of promotion dated 8.1.2003, the sixth post (at Sl.No.14th) should have gone to ST category candidate. This has not been done. Therefore, the order dated 8.1.2003 deserves to be quashed and the respondents be directed to consider and promote the applicant along with consequential benefits.

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6. We have heard learned counsel of the parties and have perused the materials available on record.


7. There is no dispute that the 14th serial number in the roster should belong to ST community candidate. The applicant was not considered for promotion. Therefore, his name for that post reserved for ST category did not find place in the select panel recommended by DPC held on 23.11.2002. We are of the view that if the 6 vacancies were filled up as per recommendation of DPC dated 23.11.2002, the 14th vacancy should have been filled up by a candidate belonging to ST community as per roster prescribed by O.M. dated 2.7.97. The impugned order dated 8.1.2003 consists of promotion of six officials including Sl.No.6 belonging to SC category against reserved vacancy. The respondents have not produced copy of roster maintained by them. However, since it is admitted position that Serial No.14 should have gone to ST candidate, we have no hesitation to state that the impugned order dated 8.1.2003 is not in conformity with the reservation policy dated 2.7.97. To this limited extent, we quash the impugned order dated 8.1.2003 with the following directions:


- a) it is directed that the 14th vacancy as per roster has to fall to the share of a Scheduled Tribe;

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- b) the applicant, who is stated to be a Scheduled Tribe candidate, is to be considered and a review DPC for filling up that post should be convened;
- c) in case the applicant is found fit, the due benefit accruing to him should be awarded; and
- d) this exercise should preferably be completed within four months from the date of receipt of a certified copy of the present order.

8. In the result, this OA is allowed without any order as to cost.


(R.K. Upadhyaya)
Administrative Member


(V.S. Aggarwal)
Chairman

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