

Central Administrative Tribunal
Principal Bench

O.A. No. 682/2003

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New Delhi this the 28th day of November, 2003

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)
Hon'ble Shri Kuldip Singh, Member (J)

Karan Singh
S/o Late Shri Girwar Singh
Working as T.V. Producer, Grade-II
Central Institute of Educational Technology
Chacha Nehru Bhawan (NCERT)
Sri Arbindo Marg
New Delhi-110 016.

-Applicant

(By Advocate: Shri K.S. Chauhan)

Versus

1. National Council of Educational Research & Training (NCERT)
Through its Director
Sri Arbindo Marg
New Delhi-110 016.
2. Union of India
through its Secretary
Ministry of Human Resource Development
Shastri Bhavan, New Delhi-110 001.
3. Central Institute of Educational Technology. Through its Joint Director
Chacha Nehru Bhawan
Sri Arbindo Marg
New Delhi-110 016.

-Respondents

(By Advocate: Ms. Deepa Rai, proxy for
Shri R.K. Singh)

O R D E R

Hon'ble Shri V.K. Majotra, Vice Chairman (A)

Applicant has been working as T.V. Producer Grade-II in scale of Rs.1640-2900 w.e.f. 25.9.1987 on ad hoc basis. He was regularised on that post w.e.f. 19.1.1989. According to the applicant, Smt. Anita Gupta and Smt. Uttam Puri are senior to the applicant as T.V. Producer Grade-II. He claims to be eligible for promotion to the post of T.V. Producer Grade-I. One such post reserved for Scheduled Tribes (STs)

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category is stated to be vacant since 1995. According to the applicant, as the said post remained vacant despite three years of carry forward of reservation for ST category, the same should have been exchanged favouring Scheduled Caste category. Applicant belongs to a Scheduled Caste. He has alleged that Smt. Uttam Puri a general category candidate was accommodated against the said vacant post. Her selection was challenged by Smt. Anita Gupta through TA-5/2002 decided on 13.1.2003; the Tribunal had directed respondent No.2 National Council of Education and Research and Training (NCERT) as follows:-

- "(a) It is directed that respondent No.2 would consider if a vacancy in the promotee quota had arisen in the year 1990 or in any case in the year 1995 or whichever year.
- (b) If on the said date any vacancy arose, respondent No.2 would consider who are the persons eligible to be considered for promotion as per the Recruitment Rules.
- (c) In case the applicant is the sole person eligible to be considered, her name shall be considered in accordance with the Recruitment Rules".

The above exercise was directed to be completed within a period of four months. Applicant has alleged that his entitlement to the said post was not considered by the respondents.

2. Learned counsel of the applicant pointed out that applicant had made a representation dated 26.9.1996, which was rejected by the respondents vide

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Annexure A-3A dated 4.6.1997 stating that applicant's claim for ad hoc promotion to the post of T.V. Producer Grade-I cannot be considered as the post is reserved for ST candidate under direct quota. He further stated that while the respondents have rejected the claim of the applicant upon introduction of post-based roster w.e.f. 2.7.1997, vacancy-based roster was required to be followed by the respondents till completion of reservation quota on vacancy-based roster. 3. Learned proxy counsel on behalf of respondents was not prepared to submit her arguments despite the revised call. As such, we proceeded to consider the case on the basis of the pleadings submitted in the counter reply of the respondents.

4. Respondents have taken a preliminary objection that the OA is time barred as applicant's claim for promotion relates to the year 1995. Applicant has come up before the Tribunal after a gap of more than 7 years. This contention of the respondents has not been rebutted on behalf of the applicant. Applicant had not challenged the promotion of Smt. Uttam Puri who was promoted to the post of T.V. Producer Grade-I on 5.6.1998. The same was challenged by Smt. Anita Gupta in TA 5/2002, which was decided on 13.1.2003. According to the respondents, the competent authority re-examined the case of Smt. Anita Gupta in terms of Tribunal's orders dated 13.1.2003 and rejected her claim for promotion and upheld the appointment of Smt. Uttam Puri. As per the available record here, promotion of

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Smt. Uttam Puri to the post of T.V. Producer Grade-I has become final.

5. Not only that the present OA is time barred, cause of action for the applicant having arisen with the promotion of Smt. Uttam Puri in 1995/1998, we do not find any substantial merit too, in the claim of the applicant.

6. No doubt as held in the case of R.K. Sabharwal Vs. State of Punjab" the vacancy-based rosters can operate only till such time as the representation of persons belonging to the reserved categories, in a cadre, reaches the prescribed percentages of reservation. Thereafter the rosters cannot operate and vacancies released by retirement, resignation, promotion etc. of the persons belonging to the general and the reserved categories are to be filled by appointment of persons from the respective category so that the prescribed percentage of reservation is maintained".

7. It has been contended on behalf of the respondents that vacancy on the post of T.V. Producer Grade-I, reserved for Scheduled Tribe was available in the DR quota until 2.7.97 (as a backlog vacancy since 1986). Until 1994, there were 4 permanent posts (2 in DR and 2 in promotion quota). According to the 40 point Roster prevailing at that time, one post in the DR quota was reserved for ST, which on exchange and carry forward formula was held by Shri Padam Singh

(SC) until 1995. However, on the recommendations of the SIU, Ministry of Finance, vide its report dated 26.2.1991, one post of T.V. Producer Grade-I was abolished in 1994 and only three permanent posts of T.V. Producer remained in the Establishment (2 for promotion & 1 in DR quota, reserved for ST). Upon the introduction from 2.7.97, this post relating to DR quota reserved for ST, fell into the general category within the promotion quota and as such Smt. Uttam Puri was promoted in 1998 on the recommendations of the DPC. The DPC had considered the case of the applicant as well who was not selected.

8. In this background, respondents have contended that there is no vacancy in the promotion quota for any of the reserved category. The applicant has not been able to establish his claim against the contentions raised on behalf of the respondents. The applicant had made a representation on 23.1.96 to the National Commission for SC/ST as well which had obtained a report from the respondents on applicant's representation. Annexure-R/A dated 16/22.2.1996 is respondents' report to the National Commission. Respondents had conveyed the same facts to the National Commission as stated by them before the Tribunal. Further, it has not been established on behalf of the applicant that respondents had not operated vacancy-based roster till representation of persons belonging to the reserved categories had reached prescribed percentages of reservation. Applicant seems to be claiming that reserved DR quota

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should have been appropriated in his favour while considering his candidature for promotion to the post of T.V. Producer. Such a course of action would be illegal. He cannot be considered for promotion against a post meant for DR quota. Further, action of respondents in compliance of directions contained in Tribunal's order dated 13.1.2003 has confirmed promotion of Smt. Uttam Puri.

9. Having regard to the discussion made above, this OA is dismissed being devoid of merit. No costs.


(Kuldip Singh)
Member (J)


(V.K. Majotra)
Vice-Chairman (A)

cc.