

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2055 of 2003

New Delhi, this the 12th day of May, 2004

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)
HON'BLE MR.S.K. NAIK, MEMBER (A)

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Asharfee Sah
S/o Late Shri Chhakauri Sah
Distribution Assistant,
Directorate of Advertising & Visual Publicity,
Ministry of Information and Broadcasting
(M.M. Wingh) (Despatch)
'B' Block, K.G. Marg,
New Delhi -110001.

Residential Address

Asharfee Sah
D-353 Sarojini Nagar,
New Delhi-110 023.Applicant

(By Advocate: Shri G.D. Bhandari)

Versus

Union of India through

1. The Secretary,
Ministry of Information &
Broadcasting (DAVP),
Shastri Bhawan,
New Delhi.
2. The Director,
Directorate of Advertising &
Visual Publicity,
PTI Building, 3rd Floor,
Parliament Street,
New Delhi.Respondents

(By Advocate: Shri R.V. Sinha)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant has filed this OA under Section 19 of the AT Act seeking quashing of the order dated 7.8.2003 whereby his claim for consideration for promotion to the post of Assistant Distribution Officer against ST quota has been rejected vide Annexure AA.

2. He further seeks a direction to the

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respondents to consider the case of the applicant in the DPC being held for the post of Assistant Distribution Officer, Group 'B' post by pin-pointing the ST replacement point as per the model roster for promotion for cadre strength upto 13 posts, considering the sanctioned strength of ADO at 6 for the present. He also claims consequential benefits.

3. The facts in brief are that the applicant is working as a Distribution Assistant which is a feeder cadre for promotion to the post of Assistant Distribution Officer, Group 'B' Gazetted.

4. The applicant further submits that sanctioned strength of the cadre of ADO is 6. The applicant also claims that two posts had fallen vacant on 1.5.2002 and 1.9.2002 but the same have not been filled up till further order and it is also stated that the same have been abolished.

5. The applicant further claims that one Shri Jai Prakash is also holding the post of Assistant Distribution Officer, who is to be repatriated soon. It is further stated that since the creation of posts of Assistant Distribution Officer, 16 replacement points have been filled up but no ST has been appointed so far.

6. The applicant also referred to Recruitment Rules according to which the post of Assistant Distribution Officer can be filled up by two methods:
(i) 33.1/3% by promotion, failing which by deputation and
(ii) 66.2/3% by transfer on deputation, failing which by

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direct recruitment so the applicant is stated to be eligible under the first category in the quota for promotion which is 33.1/3% and under this quota the eligible official category is Distribution Assistant who has completed 8 years regular service in the grade.

7. The applicant claims that since he has completed 8 years of service and fulfils the eligibility criteria and since no ST is appointed to this post so he is entitled to be considered for promotion to the said post under the promotion quota.

8. The respondents are contesting the OA. They pleaded that the applicant had earlier filed an OA 1234/2003 which was disposed of with a direction to the respondents to decide the representation of the applicant which has been disposed of vide impugned order.

9. Respondents further submit that all the points taken up by the applicant in his representation has been considered and duly replied in the impugned order by passing a reasoned and speaking order.

10. The respondents also submit that the roster is to be operated on the principle of replacement and not as a "running account" and in the case of small cadres (upto 13 posts) all the posts shall be earmarked on the same pattern as in the model post based rosters. Initial recruitment against these posts shall be by the category for which the post is earmarked. Replacement of incumbents of posts shall be by rotation as shown horizontally against the cadre strength as applicable.

11. The respondents further pointed out that the sanctioned strength of ADOs is 6 and two posts of ADOs which had fallen vacant on 1.5.2002 and 1.9.2002 could not be filled up as instructed by Ministry, because these two posts were included in the list of 63 identified by DAVP for abolition in view of ERC recommendations.

12. It is further submitted that as per recruitment roster, the vacancy which occurred on 1.5.2002 was earmarked for promotion and the next vacancy which occurred on 1.9.2002 was slated for deputation and since the post could not be filled up, there is no question of reservation against such vacancies.

13. It is further stated that as per the Recruitment Rules 33.1/3% of posts are to be filled up by promotion and 66.2/3% posts are to be filled by deputation. Therefore, as per the instructions post based reservation in the grade of Assistant Distribution Officer is to be prepared for two posts, i.e., 33.1/3% of the sanctioned strength and rest of 4 posts which are 66.2/3% of the sanctioned strength are to be filled up by deputation are to be excluded and not to be taken while preparing the roster.

14. It is also submitted that post based roster for promotion to the post of ADO is to be prepared for two posts in accordance with model roster for promotion upto 13 posts w.e.f. 2.7.1997. According to that, the vacancy which arose on 7.6.2003, which was slated for 4th replacement point which is earmarked for un-reserved

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category, therefore, the applicant cannot claim that he has a right to the said post to be filled up by ST candidate.

15. We have heard the learned counsel for the parties and gone through the record.

16. The learned counsel appearing for the applicant referred to page 29 of the counter-affidavit which shows that only one post of ADO has been abolished but in order to rebut this contention, the learned counsel for the respondents has referred to Annexure R-3 which is at page 31 of the counter-affidavit and submitted that two posts of ADOs had been identified to be abolished and then he also referred to Annexure R-7 whereby the department had been directed not to fill up two posts.

17. The counsel for the respondents then also referred to model roster and submitted that the vacancy which is likely to become available does not fall on the roster point meant for SC/ST so the applicant cannot claim any right for the same.

18. On the contrary the learned counsel for the applicant submitted that so far there has been 16 replacements and till date no ST candidate has been appointed so it cannot be said that no vacancy has fallen vacant against reservation point meant for ST.

19. In reply to this, learned counsel for the respondents submitted that after the judgment in the case of R.K. Sabharwal Vs. State of Punjab as well as J.C. Mallick Vs. Ministry of Railways the Apex Court directed



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that post-based rosters meant for small cadre upto 13 posts is to be adopted instead of vacancy-based roster as per the direction of the Apex Court. Referring to the same, the learned counsel for the respondents submitted that after 1997 new roster has been adopted and 4th replacement is meant for un-reserved candidate. The respondents have also brought record about maintenance of the roster. The posts of ADO have never been filled by a ST candidate since the operation of the existing roster. However, 4 SC candidates were promoted against the vacancies of ADOs from the date when the said posts of ADOs were created.

20. It is also pointed out that post based roster has been introduced w.e.f. 2.7.1997 and after the adoption of the post based roster, ST point has never been reached.

21. As against this counsel for the applicant has also submitted that grouping of cadres should have been done to provide better reservation but that has also been controverted by the respondents by saying that in this case no grouping could be done as grouping of isolated post is permissible only in the case of direct recruitment and not in the case of posts filled by promotion and for this purpose the applicant has relied upon GOI, DOP&T OM dated 2.7.1997 wherein it has been pointed out that in small cadres of upto 13 posts, the method prescribed for preparation of roster does not permit reservation to be made for all the three categories. In such cases, the administrative Ministries/Departments may consider grouping of posts in different cadres as prescribed in this Department's OM dated 28.1.1952 and in the event if it is not possible to

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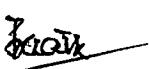


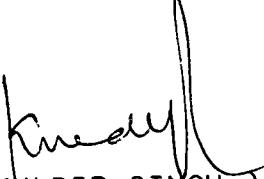
resort to such grouping, the enclosed rosters for cadre strength upto 13 posts may be followed. In this case since it has been submitted by the respondents that it is not possible to resort to grouping as they are resorting to roster meant for 13 posts, so we find that this provision is not available to the applicant.

22. Thus we find that even after examining the case of the applicant from all the angles, the applicant is unable to satisfy that post on ST point has become available and the department has not given promotion to the applicant.

23. On the contrary the record submitted by the department clearly established that ST point in the roster for small cadres upto 13 posts has not yet reached so the applicant cannot claim as a matter of right to get promotion against the reservation point meant for ST category.

24. Accordingly, the OA is bereft of any merit and the same is dismissed. No costs.


(S.K. NAIK)
MEMBER (A)


(KULDIP SINGH
MEMBER(JUDL))

/Rakesh