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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 2081/2003

New Delhi, this the 3rd day of November, 2004

**HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. SARWESHWAR JHA, MEMBER (A)**

**Murari Lal,
Asstt. Surveyor of Works (E),
CCW, A.I.R., Soochna Bhawan,
New Delhi**

... **Applicant**

(By Advocate : Shri Rajender Nischal)

Versus

1. **Union of India
Through it's Secretary,
Ministry of Information & Broadcasting,
Shastry Bhawan, New Delhi**
2. **Parsar Bharati,
(Broadcasting Corporation of India)
Through it's Chief Executive Officer,
PTI Building, New Delhi**

... **Respondents**

(By Advocate : Shri Surender Kumar)

ORDER

By Sarweshwar Jha, A.M. :

The applicant has impugned the OM of the Ministry of Information & Broadcasting dated 17.06.2003 whereby his claim for promotion to the post of Executive Engineer (E) in the back-log vacancy in the said post reserved for SC candidates has been rejected on the ground that at the relevant time there were only two vacancies and not three vacancies as claimed by the applicant. He had approached this Tribunal earlier also vide OA No. 2058/2002 which was decided on the 7th August, 2002 and in which case MA No.620/2003 was decided on the 15th March, 2003. It had been directed in the said OA at the admission stage itself that the case of the applicant be considered as per rules and reservation roster for promotion as Executive Engineer (E) under the special drive on the same basis as his three colleagues were promoted in 1991 w.e.f. 1.1.1993 on completion of

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8 years' service as Assistant Engineer (E) by taking into account his ad-hoc service from 1.1.1985 to 23.10.1986 or w.e.f. 24.10.1994 when he had completed 8 years of regular service as Asstt. Engineer (E). The Tribunal had further directed that 'in case the applicant is found fit for promotion, he should be accorded appropriate seniority and other consequential benefits except back wages' - (Annexure A/4).

2. In this OA, the applicant has reiterated the fact of his initial appointment as a Junior Engineer and his subsequent promotion as Assistant Engineer (E) and that he has become eligible for promotion as Executive Engineer (E). He has given the details of the vacancies which were earmarked for promotion of S.C. Assistant Engineer (E) in paragraph 4.3 of the OA. On the question of whether he had completed 8 years of service as Assistant Engineer (E), he has confirmed that he had completed the said number of years as on 24.10.1994 and thus had become eligible for the said promotion w.e.f. 24.10.1994. He was promoted to the said post on ad-hoc basis w.e.f. 1.4.1999, but was reverted to the lower post w.e.f. 29.08.2002. He had represented vide his representation dated 31.10.2000 for regularizing his services in the post of E.E. and to which he was given the reply also vide letter of the respondents dated 1.12.2000 that in view of the coming into force of Prasar Bharti Act the UPSC had declined to hold the DPC. Resultantly, the applicant's case for promotion to the reserved vacancy of Executive Engineer (E) for the year 1993-94 was not considered. All these facts had been placed before the Tribunal while filing OA No. 2058/2002 and it is observed that the respondents, while complying with the orders of the Tribunal and while issuing their Office Memorandum dated 17.06.2003, have given details of the vacancies as were available as on 24.10.1994 and as to why the applicant could not be promoted to the post of EE (E) under special drive as per rules governing reservation. Their Office Memorandum dated 17.6.2003 is quite explicit on the subject.

3. The reply of the respondents also gives the same position, reiterating the directions of the Tribunal in OA No. 2058/2002 and also the fact that only two posts of Executive



Engineer (E) were available for SCs as per the existing reservation roster (post based) in an extra strength of 16 Executive Engineers in the AIR. The two Assistant Engineers who were given promotion against the said two vacancies are senior to the applicant and are still in position. The respondents have thus submitted that, for the said reasons, the applicant cannot be considered for promotion to the grade of Executive Engineer (E) under the post-based reservation roster.

4. In the rejoinder, the applicant has contended that the vacancies meant for SCs were to be calculated on the basis of 40 point roster and not on the basis of the post-based roster, which came into effect only from 2.7.1997. He has disputed the claim of the respondents that there were only two posts earmarked for SCs. He having become eligible for promotion to the post of Executive Engineer on the basis of his having rendered 8 years of service as on 1.1.1993, and the 40 point roster being in operation in the year 1993, he should have been considered for promotion to the said post, as according to the said roster there were three vacancies earmarked for SC candidates and that only two posts had been filled by relaxation of educational qualifications.

5. On perusal of the Office Memorandum as issued by the respondents in compliance with the orders of the Tribunal dated the 7th August, 2002 and the orders dated the 28th March, 2003 in MA No.620/2003, it is observed that the respondents have placed reliance on the judgement of the Hon'ble Supreme Court in R.K. Sabharwal's case in which, among other things, it has been held that SC/ST candidates appointed by reservation in excess of quota should be appointed on regular basis from the date on which reserved posts become available for them, which means that all promotions including against vacancies for the period when post-based rosters were not in vogue, should be made as per post based reservation roster only. The respondents have, therefore, submitted the following:-

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"There were only 19 sanctioned posts of EE (E) in the year 1994. As per post based reservation roster only two of these posts are reserved for SC candidates and two AEs belonging to SC category have already been appointed to the post of EE(E) by reservation against SC reserved vacancies. Both the candidates appointed were senior to the applicant and were in position in the post of EE(E) as on 24.10.1994. Thus reservation

quota for SCs was complete as on 24.10.1994. Therefore, no other post of EE(E) could be filled as reserved for SCs as on 24.10.94."

6. It is thus observed that the contention of the applicant that post based roster was not applicable in his case has already been taken into account by the respondents while considering his case in compliance with the orders of this Tribunal given in the previous OA and while issuing their Office Memorandum of 17.6.2003. We do not find any new fact having been brought to our notice on the subject by the applicant. It is expected that he might have been promoted to the post against the vacancies in the post of EE(E) for the subject years, though no mention has been made in this regard by the applicant or the respondents in their submissions, perhaps for the reason that that was not the subject matter of the OA.

7. Having thus regard to the facts of the case as submitted by the parties, we find no merit in the OA and the same is accordingly dismissed, with no order as to costs.



(Sarweshwar Jha)
Member (A)



(Shanker Raju)
Member (J)

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