

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 3086/2003

New Delhi this the 13th day of May, 2004

Hon'ble Shri Justice V.S. Aggarwal, Chairman  
Hon'ble Shhri S.A. Singh, Member (A)

M.P. Nim,  
Assistant Director,  
Sub Division No. 1,  
Division No. II,  
IP Bhawan, New Delhi

...Applicant.

(By Shri K.R.S. Rajan, Advocate)

VERSUS

1. Union of India through  
The Secretary, Ministry of Urban Development  
Nirman Bhawan, New Delhi
2. Director General of Works,  
Central Public Works Department. Nirman Bhawan,  
New Delhi
3. Chairman,  
Union Public Service Commission,  
Dhaulpur House, Shahjahan Road,  
New Delhi
4. Shri Shrivastava,  
Dy. Director (Hort)  
C/o Chief Engineer (CPWD)  
Seminary Hills CGO Complex, Block-A  
Ground floor, Nagpur, maharashtra.
5. Shri Randhir Singh,  
Dy. Director (Hort)  
C/o Chief Engineer (CPWD), Geeta Nagar,  
Gauhati, Assam (Near BSF Camp Office Tusar)

.....Respondents

R-1 to 3.

(By Shri R N Singh proxy for Sh. R V Sinha/ Advocate)

None for R-4 & 5

O R D E R (ORA1)

Justice V.S. Aggarwal, Chairman :

The applicant is an Assistant Director in the Office of Director General of Works, Central Public Works Department. There is no doubt that there are 7 posts of Deputy Director and the next promotion from the post of Assistant Director (Horticulture) which the applicant is holding is to the Deputy Director. The

*ls Ag*

post of Deputy Director has to be filled up 100% by promotion from Assistant Director.

2. By virtue of the present application, the applicant seeks that Point No.15 for the post of Deputy Director, which was held by Shri Bankey Lal should be filled up by promoting a Scheduled Caste candidate. Needless to state that the applicant is a Schedule Caste candidate, and therefore he prays in addition to that his name should be considered for promotion as Deputy Director (Horticulture).

3. Petition has been contested.

4. During the course of the submission, our attention was drawn towards the order passed by this Tribunal in OA No.424/2000 decided on 22.8.2000 in the case of D.C.R Azad Vs. Director General, Directorate General of Works and Others.

5. Perusal of the order passed by this Tribunal referred to above reveals that at that time Point No.7 as per the roster maintained for Scheduled Caste had fallen vacant. D.C.R. Azad was a Scheduled Caste candidate and he had filed the aforesaid application. This Tribunal had quashed the order of the respondents and directed to convene a review DPC to consider the claim of the applicant therein along with the other eligible candidates of Scheduled Caste to fill up the vacancy caused at Point No.7.

ls Ag

6. Presently, Point No.15 had fallen vacant because of retirement Shri Bankey Lal. The argument advanced is that on parity of reasoning, the said post of Scheduled Caste should also be filled by promoting an eligible Scheduled Caste candidate. When the earlier OA was filed by DCR Azad (supra), this Tribunal had directed -

"According to the learned counsel of the applicant in view of the ratio of R.K. Sabharwal (supra) even if the appointees/promotees belonging to backward classes occupy general category posts, the excess has not to be adjusted as required under the DOPT's instructions. The given percentage for backward classes has to be provided in addition to the existing position. In this view of the matter the respondents cannot deny applicant's consideration as a SC candidate against the post of DD(Hort) fallen vacant by promotion of Shri V.K. Verma at roster point no.7.

The respondents have not been able to point out any mistake in the post-based reservation roster for the post of DD(Hort) effective from 2.7.1997. Although DOPT's instructions do require adjustment of excess through future appointments, the respondents have failed to counter the interpretation provided by the applicant to the ratio of R.K. Sabharwal (Supra) in accordance with which "[Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition". Agreeing with the learned counsel of the applicant in the light of ratio of R.K. Sabharwal(supra) we hold that the post fallen vacant on promotion of Shri V.K. Verma at roster point no.7 has to be provided to a SC candidate.

In the result the OA is allowed. The impugned order dated 7.1.2000 is quashed. The respondents are directed to convene a review DPC to consider the case of the applicant along with other eligible SC candidates to fill up the vacancy caused due to promotion of Shri V.K. Verma at roster point no.7, and if the applicant or any other eligible SC candidate is found fit for

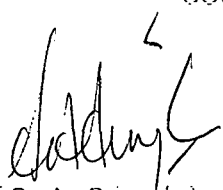
As Ag

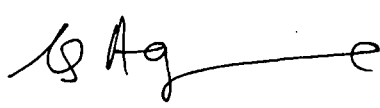
(4)

promotion as DD(Hort), he should be promoted against point no.7, within a period of three months of the communication of this order. No order as to costs.

7. On parity of reasoning, therefore, it must be held that Point No.15, i.e. the post which had fallen vacant must be filled by eligible Scheduled Caste candidate. Keeping in view these facts, we allow the present application and direct:

- a) the claim of the applicant along with other eligible Scheduled Caste Candidates should be considered for promotion to the post of Deputy Director (Horticulture) in accordance with rules; and
- b) the applicant (if promoted) should be given consequential benefits.

  
(S.A. Singh)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

/kdr/