

(2014) 10 DEL CK 0068
In the Delhi High Court
Case No : Writ Petition (Civil) 7025/2010

Kusum Lata Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 10 DEL CK 0068

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Jyoti Singh, Sr. Advocate, A.K. Trivedi, Rajeev Manglik and Sameer Sharma, Advocate for the Appellant; Saqib, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.

C.M. No. 15789/2013 (for early hearing)

For the reasons mentioned in the application, C.M. No. 15789/2013 is allowed.

W.P. (C) 7025/2010

1. The petitioner in these proceedings - under Article 226 of the Constitution of India, seeks directions to quash the orders of the Central Administrative Tribunal (CAT) - dated 07.09.2006 in O.A. No. 1705/2006 (hereafter called "the main order"); the order dated 30.06.2008 in R.A. No. 88/2008 (hereafter called "the review order") and the order dated 22.09.2009 in M.A. No. 1635/2009 (hereafter called "the recall order"). The CAT had denied her claim for ante- dated promotion as Superintendent (Legal) with effect from 09.05.2000, when she was promoted on ad hoc basis to that post.

2. The brief facts are that the cadre of Superintendent (Legal) comprises a sanctioned strength of 18, of which 1/3rd (6 posts) are earmarked for direct recruits; 2/3rd (12 posts) are earmarked to be filled by promotion from amongst the cadre of Assistants (Legal), who complete 5 years service in the post.

Concededly, the petitioner (an SC candidate) was appointed as Assistant (Legal) through the Union Public Service Commission (UPSC) selection on 28.02.1992. She became eligible for consideration for promotion on 27.02.1997. She was promoted on ad hoc basis with effect from 09.05.2000. One Bir Singh Majhi (an ST direct recruit candidate) was promoted on 09.10.2001 as Superintendent (Legal). This was reflected in a Seniority List circulated to all concerned on 31.07.2002.

3. The petitioner had represented to the Secretary, Union Ministry of Law, on 29.01.2002, contending that she was senior to said Sh. Majhi and had joined two years before him and being possessed of better qualifications her claim for promotion was, therefore, superior. Upon not receiving a favorable response, she approached the CAT by filing O.A. No. 1705/2006. In the meanwhile she was promoted on 27.08.2003 as Superintendent (Legal) on regular basis.

4. Arguing that she was entitled to be promoted to the post of Superintendent (Legal) on the basis of her being a reserved/SC candidate, she sought a direction to that effect by filing O.A. No. 1705/2006. The CAT accepted the respondent's argument that of the four vacancies in the grade of Superintendent (Legal), which had to be filled by promotion, one was reserved for ST candidate and others were unreserved. Therefore, Sh. Majhi, being the only eligible ST official within the zone of consideration, was promoted against a vacancy reserved for such candidates and that the other vacancies could not be filled by reserved category candidates. In respect of one Sh. P.K. Saha, whose promotion to an SC vacancy was mentioned by the petitioner- in her original application, the CAT recorded that he was considerably higher than the petitioner in the seniority list and that he had been appointed as Assistant (Legal) on 16.12.1982.

5. The petitioner had earlier approached this Court in W.P. (C) 3557/2008. That petition was disposed of on 07.05.2008. The Court noticed that some materials which had not been produced before the CAT but were sourced through application under the RTI Act, 2005 indicated that one Patankar (ST candidate) was promoted as Superintendent (Legal) with effect from 21.02.1991 against an SC reserved vacancy. The Court felt that these matters ought to be considered in a review proceeding by the CAT and accordingly relegated the petitioner to such remedy. The review petition was considered and disposed of by review order of 30.06.2008. The petitioner thereafter applied for recall of the other orders, being M.A. No. 1635/2009. In this, it was contended that the respondents had not followed the DOPT's Office Memorandum of 02.07.1997, especially para 12, which clarified that in case of small cadres comprising up-to 13 posts, all posts were to be earmarked as in the model post-based roster and that replacement of incumbents would be by rotation, in terms of a table contained in the Memorandum itself. Relying on this and the observations of the Supreme Court in R.K. Sabharwal and others Vs. State of Punjab and others, , it was contended that a vacancy in the cadre of Superintendent (Legal) existed as at the time when the petitioner became eligible and that the promotion of someone from the

unreserved category was illegal.

6. In the recall order, the CAT noted that the principle of replacing "SC candidate by SC candidate" could not be applied rigidly and in this regard relied upon para 4(e) of the Office Memorandum dated 02.07.1997. On this basis, the CAT rejected the petitioner's contention holding that the respondent's initial position in the review application, i.e. that Sh. Majhi had been promoted to an available ST category reserved vacancy was correct. The relevant discussion in this regard is as follows:

"The Post Based Roster is an appendix to annex-III of the DOP&T's OM dated 2.07.1997, adverted to above. The model roster is called "L" shaped roster in which the cadre strength from 1 to 13 is marked vertically. The horizontal arm of this "L" has the position at the time of "Initial Recruitment" and after 1st, 2nd and so on up to the 13th replacement. The first replacement has 13 posts vertically, the second replacement has 12 posts vertically, the third replacement has 11 posts vertically till the 13th replacement has only one post of ST. In the "Initial Recruitment", the SC vacancy comes at the roster point 7. In the horizontal replacement arm, the SC vacancy at the 6th point. The fifth replacement is for unreserved category. The SC point in the first replacement vertically is at sixth point vertically. Paragraphs 2 & 3 of the note below the roster reads thus:

"2. All the posts of a cadre are to be earmarked for the categories shown under column Initial Appointment. While initial filling up will be by the earmarked category, the replacement against any of the posts in the cadre shall be by rotation as shown horizontally against the last post of the cadre.

3. The relevant rotation by the indicated reserved category could be skipped over if it leads to more than 50% representation of reserved category."

Paragraph 12 of the OM dated 2.07.1997 is also about small cadres and is reproduced below:

"12. 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. While operating the relevant roster, care will be taken to ensure that on no occasion the percentage of reserved category candidates exceed 50%. If such a situation occurs at any time, the relevant reserved point occurring as a result of rotation will be skipped."

The learned counsel for the Respondent would urge in his submission that in spite of the promotion of Sh. P.K. Saha, the official in the SC category, the next replacement would be from unreserved category."

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and further as follows:

".....if the principle of replacing SC candidate by SC candidate and unreserved candidate by the unreserved candidate were to be observed, ST candidate would not find a place, ever. The principles, which have been laid down for preparation of "post based rosters" of say 100 posts, cannot be applied to 13 post roster. It is clearly stated in paragraph 4(3) of the OM of 2.07.1997 that:

"(e) in small cadres upto 13 posts, the method prescribed for preparation of rosters does not permit reservation to be made for all the three categories."

It will be evident from the fact for reaching the SC point in the roster, the serial number is multiplied by 0.15 (because reservation is 15 per cent) and for ST point, the serial number is multiplied by 0.075 (because the reservation is 7.5 per cent). The first reservation point would come when the multiplication exceeds 1. For example. the first SC point comes at serial number 7 because 0.15 multiplied by 7 is 1.05. The first ST point would come at serial number 14, because 14 multiplied by 0.075 is 1.05. Therefore, normally in a 13 point roster, ST point would not come. This special roster has been generated because of this reason. Since this is a case of promotion, there will be only two categories because there is no quota for OBC in promotion. However, the problem in 13 post roster vis-?-vis the 100 point roster would remain."

7. The petitioner argues that the CAT's decision is erroneous because it has failed to correctly appreciate the binding nature of the directions contained in the Office Memorandum dated 02.07.1997. It was submitted that the overall reading of that Office Memorandum, especially para 12, indicated that in small cadres - in the present instance, the cadre being only 12 posts, the rotation was to take place after the 13th vacancy. So viewed, the respondents' action in promoting Sh. C.B. Gill ahead of the petitioner was in violation of the norms outlined in the Office Memorandum. It was also contended that the submission with regard to Majhi's promotion being against an ST slot defied the fact that he was two years junior to the petitioner and her claim for promotion ought to have preceded his. Highlighting that even in the original application itself, the grievance made was that Sh. Majhi's promotion was prior to the petitioner without mentioning when an SC vacancy arose, learned senior counsel, Ms. Jyoti Singh submitted that, upon the further promotion of Sh. P.K. Saha as Assistant Legal Advisor (ALA), in terms of the model roster and the Office Memorandum of 02.07.1997, being an SC candidate, his vacancy had to be filled by another SC candidate, i.e. the petitioner. Since that was not done and instead that post was filled by a general category candidate, i.e. Sh. C.B. Gill, the petitioner was entitled to be given ante-dated promotion at least with effect from that date.

8. The respondents argued that in terms of the instructions contained in the Office Memorandum of 02.07.1997, at the point of initial operation of the roster, the rotation of incumbents for different categories had to be determined. If an earlier appointee in the cadre happened to be an SC candidate, against point no.

1, the remark "utilized by ST" had to be entered; likewise, the general category appointee had to be reflected as "utilized by general category" and so on till all appointments were adjusted in the respective rosters. It was argued that consequently, Sh. Saha, an SC candidate, had been appointed as Superintendent (Legal) against a post reserved for SC, which was duly noted by the DPC which held its proceedings on 21.02.1991. At that point of time, Sh. Saha was the lone SC candidate considered and appointed; since another SC vacancy existed to be filled by promotion but no eligible SC candidate was available, Sh. R.B. Patankar, an ST candidate, was selected and appointed to the SC vacancy. Upon the framing of the guidelines of 02.07.1997, Sh. Saha however, was adjusted against an SC slot. The reservation roster for Superintendent (Legal) promotee cadre attracted the 13 point roster and only one vacancy was earmarked for SC officers. At the time of recasting in 1997, already one candidate, Sh. Saha existed. Therefore, the respondents submit that the SC vacancy was utilized and was never vacant in 1997.

9. It is evident from the above discussion that the petitioner's claim for ante-dated promotion was initially based upon her being "passed over" at the relevant time. She had articulated the grievance with regard to promotion of Sh. P.K. Saha. The records, indeed, even the DPC proceedings, would indicate that Sh. P.K. Saha was promoted as Superintendent (Legal) on 21.02.1991 against a regular SC vacancy. Apparently, a carried forward (1989) SC vacancy existed at that time. However, since no other eligible SC candidate was available, an ST candidate, i.e. Sh. Patankar was promoted. Sh. Saha was appointed as Assistant (Legal) on 16.12.1982 and Sh. Patankar was appointed to the same cadre on 09.03.1984. Clearly, therefore, the petitioner's claim that either of their promotions as Superintendent (Legal) against SC vacancies was incorrect, lacked merit. She, in fact, entered the cadre of Assistant (Legal) only on 28.02.1992 as a direct recruit. Her eligibility for promotion itself could have been on 27.02.1997.

10. As far as the promotion of Sh. C.B. Gill is concerned, the Court notices that the said officer had entered the cadre of Assistant (Legal) on 25.01.1985, i.e. 7 years prior to the petitioner. As, at the point of time when in fact he was promoted to the post of Superintendent (Legal), on 14.08.1997, there was no SC vacancy - a fact which has been glossed over by the petitioner during the course of the proceedings, he naturally was accommodated against an unreserved vacancy. At no point of time was his promotion ever questioned; even the petitioner concedes that doubts about his slot arose only in 2008, i.e. 11 years after his promotion. Apart from the fact that the petitioner had barely become eligible for promotion to the post of Superintendent (Legal) in 1997, the fact that Sh. Saha occupied the lone SC vacancy in 1997, decisively rules out the petitioner's claim for promotion ahead of Sh. Gill's candidature. Her complaint, therefore, that Sh. Gill occupied an SC slot cannot be entertained. It is rejected.

11. Now, concerning Majhi, this Court notices that the vacancy against which he was promoted was an ST vacancy, according to the roster. Being the lone eligible

ST candidate, there was no question of anyone else being promoted. Undoubtedly, the petitioner, as an SC candidate, was, in the normal turn, senior to him - having been recruited in 1992; but she could not fill the ST vacancy slot; being the lone eligible candidate, Shri Majhi was given promotion on 09.10.2001. This Court finds no infirmity in the manner of implementation of the 02.07.1997 roster.

12. As far as the argument regarding violation of the 1997 roster goes, the Court notices that the petitioner's entire claim is based upon the cadre comprising of 12 posts. As noticed earlier, the cadre comprises of both promotees - (12 posts) and direct recruits (6 posts). In such circumstances, the Office Memorandum of 02.07.1997, by para 4(c) sub-divides the concept of cadre and states that two rosters would have to be maintained- one for direct recruits and one for promotees. Para 12 of the Explanatory notes (Annexure-1) to the Office Memorandum dated 02.07.1997 also directs that while operating the roster, care should be taken to ensure that on no occasion, the percentage of reserved category of candidates exceeds 50%. In the present instance, there is no doubt about the fact that in the promotee cadre one vacancy was to be earmarked to SC officers and one to ST officers. In these circumstances, the promotion of Sh. Majhi in 2001 to the lone ST vacancy which fell to the quota of ST candidates in the cadre of Superintendent (Legal) cannot be declared illegal or irregular.

13. This court also notices that the earliest point in time when the petitioner could and should have approached the Court was after 29.01.2002, when the provisional seniority list was published. She not only approached the CAT much later, in 2006, but also did not implead those likely to be affected, such as Sh. Majhi, Saha and Gill. In these circumstances, even if her claim had some merit, the Court could not have granted any relief against them firstly because they were not impleaded and secondly, because the application was filed belatedly.

14. In view of the foregoing conclusion, the petition has to fail and is accordingly dismissed without any order as to costs.