

(2010) 05 SHI CK 0217
In the High Court Of Himachal Pradesh

Sh. Sham Chand Negi

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Citation : (2010) 05 SHI CK 0217

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—Petitioner is aggrieved of the fact that private respondent No. 3 stands promoted as Junior Engineer. Petitioner is a member of the scheduled tribe claims that the respondents ought to have applied 40-Point Roster. Since the said post would have fallen to the scheduled tribe category ought to have considered him for promotion.

2. The facts are simple. In the State of Himachal Pradesh the post of Assistant Draftsman was redesignated as Draftsman. Petitioner was appointed as Draftsman in the year 1977. For the post of Junior Engineer, the State of Himachal Pradesh has framed Rules which stipulate that the said post is to be filled up in the following manner:

1. Direct recruitment. 50%
2. By promotion from amongst the D/man 12%
3. By promotion from amongst the Surveyors. 38%

3. The quota for the Draftsman is 12%. Draftsmen also have another channel of promotion which is the post of Head Draftsmen. The said post is to be filled up 100% by promotion. Petitioner was considered and recommended for promotion to the post of Head Draftsman sometime in the year 1989. However he choose not to accept the same and continued to officiate as a Draftsman.

4. In July, 1989 one post of Junior Engineer fell vacant and as per the roster point the same was to be filled up out of the 12% quota reserved for Draftsman. There is no dispute that amongst the Draftsman private respondent is senior to the petitioner. Thus considering his seniority he was promoted as a Junior Engineer some time in July, 1989.

5. In July, 1991 petitioner filed the instant petition before the erstwhile Himachal Pradesh Administrative Tribunal at Shimla which now stands transferred to this Court. Admittedly no interim order was passed in favour of the petitioner.

6. It is not disputed that petitioner was sent on deputation to the Marketing Board and now stands repatriated to the parent department. According to the respondents, petitioner was subsequently promoted as Head Draftsman and regularised as such w.e.f. 1.3.1991.

7. Petitioner also represented that for the purpose of filling up the quota reserved for the Draftsman the State should have applied the roster of reservation inter se amongst the Draftsman. Respondent/State admittedly rejected the same.

8. Mr. Bhuvnesh Sharma, learned Counsel for the petitioner, submits that out of the category of Draftsman till date no Scheduled Tribe member has been promoted. He has invited my attention to para 6(vi) of the return which reads as under:

The contents of this para are wrong and not admitted. The applicant has not made any representation dated 12.12.90 (Annexure A-4) to the Respondent No. 1 as contended by the said representation has been made to the Deputy Director, Schedule Caste/Schedule Tribe, Railway Board Building, Shimla-3 as is evident from Annexure A-4 attached with the application. It also denied that the Secretary (Personnel) to the H.P. Govt. vide his letter No. Per/AP-II(F)(4)-17/82 dated 19.1.1991, has conveyed the remarks as contended in this para particularly for his promotion. The matter was called for by the Govt. in reference to this Deptt. letter No. Agr.H(I)B(5)30/77 dated 6.10.89. The Govt. has advised to maintain the separate roster in respect of each of the feeder category i.e. Draftsman and Surveyor in accordance with the Govt. instructions contained in letter No. 2-11/72-DP(A-II), dated 22.10.1983, copy of which is annexed as Annexure R-2. The applicant has tried to bring the influence by making representation to the concerned Association/Tribal Department in furtherance of his interest. The copies of reference stipulated in this para will be produced to the Hon'ble Administrative Tribunal as and when directed.

9. Now Governmental instructions dated 22.10.1983 reads as under:

Copy of letter No. 2-11/72-DP(A-II), dated 22.10.1983 from the Joint Secretary (Personnel) Himachal Pradesh Govt. addressed to all Secretaries, Heads of Department, Deputy Commissioners etc. in Himachal Pradesh.

Subject:- Maintenance of Roster Registers in respect of SCs/STs-Procedure regarding.

I am directed to say that the State Government had been considering the procedure regarding maintenance of reservation roster in cases where more than one categories constitute the feeder categories for promotion to higher posts. It has now been decided after consultation with the Government of India, that in such case, separate roster in respect of each of the feeder categories should be maintained. The following illustration in this regard will serve as a guideline for the maintenance of such rosters.

Illustration:- 'A' is a higher post. The feeder categories for promotion to this post are B and D. The ratio of percentages prescribed as per Recruitment and promotion Rules in respect of these categories is B-20% C-40% D-40%. Thus in case of promotion in category A (for which feeder categories C and D) separate rosters are required to be maintained for promotion from B to A, C to A, and D to A, to Determine the number of reservation.

2. You are, therefore, requested to comply with these instructions strictly while maintain roster in the above mentioned cases.

10. According to him the State has impliedly admitted the petitioner's case and consequently the impugned action needs to be quashed.

11. I am afraid the contention needs to be rejected.

12. In para 6(ix) of the return, the State itself has clarified that the posts in question are required to be filled up in accordance with the instruction dated 25.2.1976 issued by the Government of India.

13. Instruction dated 25.2.1976 reads as under:

Subject:- Reservation for Scheduled Castes and Scheduled Tribes in posts filled by promotion-Applicability to grades or services in which the element of direct recruitment does not exceed 66-2/3%.

The question of enlarging the scope of the existing scheme of reservations for Scheduled Castes and Scheduled Tribes in posts filled by promotion by extending them to grades or services in which the element of direct recruitment is not more than 66-2/3% (as against the existing limit of 50%) has been under the consideration of Government. Under the existing orders, reservations have been provided at 15% and 7-1/2% of the vacancies for Scheduled Castes and Scheduled Tribes respectively (i) promotions through limited departmental competitive examinations in Group B, C and D (formerly Classes II, III and IV) (ii) in promotions by selection in Group B, C and D (formerly Classes II, III and IV) and from group 'B' (Class 'II') to the lowest rung of Group 'A' (Class-I) and (iii) in promotion on the basis of seniority subject to fitness in all groups A, B, C and D (formerly Classes I, II, III and IV) (in all cases), in grades or services in which the element of direct recruitment, if any, does not exceed 50% vide orders in para 2 A and B (b) of the Ministry of Home Affairs (now Department of personnel and Administrative Reforms) Office Memorandum No. 1/12/67-Estt. (C) dated 11.7.1968 read with Office Memorandum No. 27/25/68-Estt. (SCT)

dated 25.3.1970, Office memorandum No. 27/2/71-Estt. (SCT) dated 27.11.1972 and Office Memorandum No. 10/41/73-Estt. (SCT) dated 20.7.1974. It has now been decided in partial modification of these orders that the reservations in posts filled by promotion under the existing scheme as indicated above should be made applicable even to grades or services, in which the element of direct recruitment, if any, does not exceed 66-2/3%.

2. The above instructions take effect from the date of issue of these orders except where a Select List for promotion under the relevant orders has already been prepared by the Departmental Promotion Committee and approved by the appropriate authority, before the date of issue of these orders.

3. Ministry of Finance etc. are requested to bring the above decision to the notice of all concerned.

4. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders issue in consultation with the Comptroller and Auditor-General of India.

14. The same stands reiterated in terms of instruction issued by the Government of Himachal Pradesh on 12.10.1976.

15. In the respondent department there are 83 posts in the cadre of Junior Engineer. 50% posts are to be filled up by direct recruitment and remaining 50% by promotion. The feeder category constitutes the Draftsman and Surveyor in the ratio of 12% and 38% respectively. Thus out of 42 posts to be filled up by promotion, 10 posts are to be filled up by Draftsmen and 32 posts by Surveyors. In the return it has been clarified that Draftsman alone had occupied 11 posts. In fact this was done due to inadvertence.

16. Governmental instructions dated 22.10.1983 are not in supersession of the earlier instructions. They are clarificatory in nature. Both have to be harmoniously construed and applied. These are to be applied only where the element of direct recruitment does not exceed 66-2/3%. Significantly reservation for the posts of Junior Engineer is only to the extent of 15% Scheduled Castes and 7% Scheduled Tribes. If the instructions dated 22.10.1983 were to be applied, as is so endeavoured to be done by the petitioner, it would in fact lead to reservation far in excess than what is provided for under the law. This would lead to an anomalous situation. Hence it would not be correct to contend that the post which was filled in by private respondent No. 3 was to be filled up by a candidate belonging to a Scheduled Tribe.

17. Instructions dated 22.10.1983 were not required to be applied hence there was no question of reservation inter se amongst the Draftsman who were to be considered for promotion. No legally enforceable right of the petitioner stands violated. Hence the petition is dismissed.