
(2011) 04 SHI CK 0058
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No 7279 of 2008

Tek Chand

APPELLANT

Vs

State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Constitution of India, 1950 — Article 16(4)

Citation : (2011) 2 ShimLC 251

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

Hon"ble V.K. Sharma, J.—The petition has been filed on the following prayers vide para No. 7 (i) to (iv):

7(i).That the recommendations of the DPC held on 27/28.9.2000 convened by the respondents 1 and 2 for the promotional post of District Treasury Officer may kindly be quashed and set aside.

(ii) That the promotion of the respondents 3 to 5, if any, in pursuance to the recommendation of the DPC held on 27/28.9.2000 by ignoring the applicant may kindly be quashed and set aside.

(iii) That the respondent may be directed to convene a fresh DPC, by considering the applicant for promotion as Distt. Treasury Officer as per the reservation policy and the R&P Rules and instructions forthwith.

(iv) In the alternative, the respondents may be directed to consider and promote the applicant as Distt. Treasury Officer w.e.f. the date from when the juniors i.e. the respondents 3 to 5 were promoted as Distt. Treasury Officer.

2. In reply on behalf of respondents No. 1 and 2, the following stand has been taken vide paras 3 and 6 (x) to (xiii):

3. In this connection it is submitted that there were three posts of District Treasury Officers in this Department which were lying vacant. This department

has considered the three eligible Treasury Officers by holding the D.P.C. for filling up the available three vacant posts of District Treasury Officers. Out of these three vacant posts of District Treasury Officers, one post became available on 3.12.1997 and as per 40 point Roster, it was to be filled from the candidate of General Category against Roster Point No. 3 against which Shri P.L. Sharma has been considered for the promotion of D.T.O.. Two other posts of District Treasury Officers became available to this department after 12.12.1997. So these two posts are to be filled up keeping in view the instructions of Department of Personnel in letter No Per (AP)-C-B (12)-1/98 dated 20.8.98 (Annexure R-1) which came into force w.e.f. 12.12.97. According to these instructions these two posts are also being filled up from amongst the candidates of general category.

There are 14 posts of District Treasury Officers in this department out of which 75% posts are filled up by promotion and remaining 25% are filled up by direct recruitment as per R&P Rules of District Treasury Officers. As per instructions of H.P. Government dated 20.8.1998, the existing appointments of the concerned cadre were to be adjusted in the initial operation of the Roster. Accordingly, on 12.12.1997, the situation of District Treasury Officers was as under in the concerned cadre:

Cadre - Category Strength

D.T.O.S/Shri

13 point Roster.

1. General

J.K. Guleria

Unreserved

2. S.T.

UrgainVidyarthi

2 Unreserved

3. General

B.S. Rana

3-do-

4. General

R.K. Korla

4-do-

5. General

Kuldeep Kumar

5-do-

6. General

SanjeevNakhasi

6-do-

7. General

G.S. Bali

7 S.C.

8. General

R.K. Sharma

8 Unreserved

9. General

M.S. Chandel

9 Unreserved

10. S.C..

R.L. Rongta

10-do-

11. Vacant

11-do- 1st 2nd 3rd U.R.U.R.S.T.

Thus it is clear from above situation that out of ten District Treasury Officers one each from S.C. and S.T. existed and eight District Treasury Officers were from General Category. The roster is to be operated vertically first and then replacement of the post is to be by rotation horizontally. D.P.C. has been held in the H.P. Public Service Commission for promotion of 3 Treasury Officers as Distt. Treasury Officers. Shri Tek Chand, Treasury Officer could not be considered for the promotion of District Treasury Officer as the Point No. 11 and 1st replacement point are for the candidates from general category.

6 (x) to (xiii). It is submitted that the initial operation of 13 point roster started w.e.f. 12.12.1997. As there was one D.T.O. each from S.C. as well as from S.T. on 12.12.1997. Both these District Treasury Officers were in the roster of promotees. At present the posts have to be filled up by way of replacement. As per note 2 in Annexure "D" of instructions dated 28.8.1998, replacement is to be done by rotation, horizontally against last post of cadre. Because 11th is the last post in the cadre, 1st and 2nd replacement was to be done from General Category (as read horizontally from the last post).

3. There is no reply on behalf of respondents No. 3 to 5.
4. Rejoinder refuting the above stand on behalf of respondents No. 1 and 2 and re-iterating the averments set up in the petition has been filed.
5. The petitioner at the relevant time was working as Treasury Officer and has since been promoted as District Treasury Officer. Bereft of details, his case is that though his claim for promotion to the post of District Treasury Officer on the strength of his status as a member of a Scheduled Tribe dates back to the year 2000 when respondents No. 3 to 5, who were junior to him, were promoted as such by ignoring his claim, yet he was promoted to the said post only subsequently in the year 2008.
6. The post of District Treasury Officer is governed by Recruitment & Promotion Rules (R&P Rules), Annexure A-2. It is a selection post with cadre strength of 14. The promotional quota is to the extent of 75%. Those Treasury Officers who were having three years" regular service or regular combined with continuous ad hoc service (rendered up to 31.3.1991), if any, in the grade were eligible for being considered for the post of District Treasury Officer. As per rules and procedure, particularly the one contained at Annexure A-3, three eligible persons were required to be considered against one post. However, admittedly when the first promotional post became available on 3.12.1997, 40 Point Roster was applied according to which, as per the stand on behalf of the respondents, the post was to be filled from the candidate of general category against roster point No. 3 against which Shri P.L. Sharma was considered. Thus, in essence only one person was considered for one post against the instructions which required that against one post three eligible officers were entitled to be considered. Similarly, two more posts of District Treasury Officer became available, after 12.12.1997 and the same were also filled up by adopting the same procedure and in the same D.P.C. without adhering to the instructions which required consideration of three eligible officers against one post.
7. Further more though admittedly the cadre strength was 14, while making promotions against the aforesaid three vacancies, 13 Point Roster was applied as is apparent from the stand taken on behalf of respondents No. 1 and 2 vide para 3 of the reply which stands extracted hereinabove. Meaning thereby that the instructions dated 20.8.1998, Annexure R-1, which have been relied upon on behalf of respondents No. 1 and 2 themselves, which provided that the number of points in the roster shall be equal to the number of posts in the cadre, were violated.
8. In support of his claim the petitioner has placed reliance upon the law laid down by the Hon"ble Supreme Court in R.K. Sabharwal and others Vs. State of Punjab and others, Paras 4 and 6 of the judgment being relevant are extracted below:
 4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at

the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the backward class/classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular backward class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/ promoted against the general seats. As mentioned above the roster point which is reserved for a backward class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/ Rules providing certain percentage of reservations for the backward classes are operative the same have to be followed. Despite any number of appointment/promotions belonging to the backward classes against the general category posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention raised by the learned Counsel and reject the same.

6. The expressions "posts" and "vacancies", often used in the executive instructions providing for reservations, are rather problematical. The word "post" means an appointment, job, office or employment. A position to which a person is appointed. "Vacancy" means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a "post" in existence to enable the "vacancy" to occur. The cadre strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of "Vacancy" has no relevance in operating the percentage of reservation.

9. Reliance has also been placed on *M. Nagaraj and Others Vs. Union of India*

(UOI) and Others, wherein it has been laid down as under vide para 83 of the report:

In our view, the appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that upper ceiling limit of 50% is not violated. Further, roster has to be post-specific and not vacancy based.

10. In view of the facts and circumstances of the case, the petition is disposed of with a direction to respondents No. 1 and 2 to consider the case of the petitioner for promotion to the post of District Treasury Officer, if otherwise found eligible, from the due date, that is, when respondents No. 3 to 5 were promoted as District Treasury Officers pursuant to the D.P.C. held on 27/28.9.2000, by holding a review D.P.C. within three months from the date of production of copy of this judgment by the petitioner, strictly in accordance with R&P Rules, Annexure A-2, instructions dated 4.11.1981, Annexure A-3 and 20.8.1998, Annexure R-1 and the law laid down by Hon''ble Supreme Court in the cases of R.K. Sabharwal and others and M. Nagaraj and others (supra) along with consequential benefits, if any.

11. The petition stands disposed of in the above terms, so also pending application(s), if any.