

(2014) 09 DEL CK 0364

In the Delhi High Court

Case No : W.P.(C) 2671/2014 and C.M. No. 5567/2014

UOI

APPELLANT

Vs

Anil Kumar

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 DEL CK 0364

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

Bench : Division Bench

**Advocate : Jagjit Singh, A. Chawla and Siddharth, Advocate for the Appellant;
Chandan Kumar and Shankar Kumar Jha, Advocate for the Respondent**

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—This is a writ petition under Article 226 of the Constitution, against the order of the Central Administrative Tribunal (CAT) dated 10.01.2014 in O.A. No. 2479/2012, in which the CAT allowed the application of the Applicant/ Respondent, and directed the Petitioner- Department to consider him for promotion to the post of Head Clerk after he became eligible for that post w.e.f. 17.05.2008.

2. The brief facts of this case are that the Applicant/ Respondent was appointed as Clerk on 26.07.1990 and later, as a Senior Clerk on 17.05.2006. The next promotion available for him was to the cadre of Head Clerk, for which the rules prescribed an eligibility condition of two years service in the cadre of Senior Clerk. The petitioner completed this period on 17.05.2008. As on that date, the sanctioned cadre strength of Head Clerks was 17, of which 3 posts were reserved for SC candidates. One out of those was vacant. The respondent was not considered for promotion. He applied on 24.11.2009 under the Right to Information Act, 2005 (RTI) seeking the details about availability of SC posts. The Railways, on 07.05.2010, informed him that three posts of Head Clerk in the Ministerial cadre in the SC category were in Commercial Branch and during the

period from 2002 to 2007, two SC candidates were promoted against unreserved posts but adjusted against the SC points in the roster. On the basis of this information, he represented on 13.04.2010 and followed it with a reminder dated 20.03.2012 requesting the Railways to consider him for promotion to the post of HC reserved for SC category as per the roster point from due date. By letter dated 03.05.2012, the response to the representation, by the Petitioner-Railways was inter alia, that:

"1. As per 6th pay commission, posts of OS-II and Hd. Clerk have been merged in one grade, i.e., Rs. 9300-34800 G.P. 4200/-. Accordingly merged roster have been prepared of both cadre 80% PQ and 20% LDCE quota. Roster has been prepared accordingly. There are 03 posts reserved in roster of 80% PQ of SC and at present 03 SC employee are working against these points their date of promotion as under-

(a) Shri Ram Prakash 24.08.2006

(b) Shri Prem Kumar 2007

(c) Shri Kanta Prasad 01.09.2000

2. Smt. Krishna Dutt and Shri Pyare Lal were promoted as Hd. Clerk as UR candidate. At present their name has been placed against UR point in the merged roster of GP.4200/-"

3. The Applicant alleged that out of those three SC employees, Shri Ram Prakash was promoted against the unreserved post but was arbitrarily adjusted against reserved post. Thereafter, the SC point was actually lying vacant from 18.05.2008. With this case, he approached the CAT for relief.

4. The Applicant contended that in accordance with a Circular dated 21.08.1997 issued by the Railway Board, candidates belonging to reserved categories who are appointed on the basis of their own merit and not on account of reservation should not be counted and considered towards the quota meant for reserved vacancies. The Railway Board's letter dated 07.09.2002, too was relied on; it clarified that: "the SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualification will not be adjusted against the reserved points of the reservation roster. They will be adjusted against unreserved points". Reliance was also placed on a Railway Board Circular dated 01.09.2010 which stated, inter alia, that:

"3. The instructions on the subject have since been received by the Nodal Department i.e. DOP&T in the light of CAT/Madras order in OA No. 900/2005 (S.Kalugassalamoorthy vs. UOI & Others), upheld by High Court/Madras (WP No. 15926/2007). Based on the decision communicated by DOP&T in the matter, it is now clarified that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications will be adjusted against unreserved points of reservation roster, irrespective of the fact whether the promotion is made by selection method or non-selection method.

These orders shall take effect from 21.08.1997, the date on which post based reservation was introduced on Railways. However, the staff already promoted prior to issue of this letter may not be reverted. Shortfall in the category of SCs/ STs, if any, shall be made good through vacancies arising in future."

5. The Railways resisted the application, firstly alleging delay on the Respondent's part. It contended, on merits, that the post of Head Clerk had been merged into a single grade of Rs. 9300-34800/- in terms of the sixth pay commission recommendations with effect from 01.01.2006 and a merged roster for both cadres was applicable- 80% promotional quota and 20% LDCE quota. In the former (80% quota) 3 posts were reserved for SC candidates and on three dates, different officers were already working. Two, i.e. Ms. Krishna Dutt and Pyare Lal were promoted as Head Clerk - as unreserved candidates. In the revised cadre strength of 24 (17+7), 4 reserved slots fell vacant at points No. 4, 12, 17 and 24 and against those points, the SC staff have been adjusted. However, one Shri Ram Prakash was later promoted as Chief OS w.e.f. 06.11.2012 and the Respondent was promoted in his place w.e.f. 03.06.2013. The Respondent was also granted the second MACP in the grade of Rs. 9300-34800/- plus Grade Pay of Rs. 4200/- on 27.7.2010, which is the same as that of Head Clerk.

6. The CAT, by its impugned order, accepted the respondent's contention and directed that he should be given promotion from a date earlier to the one in which he was given the higher grade. It held that:

"Admittedly, the Applicant became entitled for promotion as HC on 17.05.2008. Prior to that date, all the three SC posts were occupied by three SC candidates, namely, Shri Kanta Prasad, Shri Ram Prakash and Shri Prem Kumar. Shri Ram Prakash and Shri Prem Kumar stood promoted to the post of OS-II with effect from 2006 and 2007 respectively. The Respondents themselves admitted that no effort has been made to fill up those posts from among the eligible SC candidates. Between 2008 to 2011, they have not initiated any action to make promotion to those posts. The contention of the Respondents is that the posts of OS-II and HC were merged with effect from 01.01.2006 consequent upon the implementation of the recommendations of the 6th Pay Commission and the roster of both the grades got merged from the same date. The said merger had taken place much later than 17.05.2008, i.e., only w.e.f. 03.09.2009. Therefore, there was no justification for the Respondents for not considering the Applicant for promotion under the SC quota during the period from 17.05.2008 to 03.09.2009. Granting benefits arising out of the MACP Scheme to the Applicant w.e.f. 27.07.2012 cannot be considered as a substitute for his promotion to the grade of HC from the due date. Even after the merger of the HC and OS-II with retrospective effect from 01.01.2006, the Respondents have only adjusted the present incumbent belonging to SC category against the slot reserved for SC candidate.

12. We also find there is no merit in the contention of the Respondents that this

case is hit by limitation. The Applicant has been consistently requesting the Respondents to consider him for promotion against the SC vacancy which was already vacant before 18.05.2008. We also do not appreciate the submission of the Respondents that Applicant has been considered against the vacancy occurred due to the promotion of one Shri Ram Prakash who has been promoted as Chief OS w.e.f. 06.11.2012 and he has since been promoted as HC on 03.06.2013.

13. In the above facts and circumstances of the case, we allow this OA and direct the Respondents to consider the case of the Applicant in accordance with the rules for promotion to the post of Head Clerk after he became eligible for that post w.e.f. 17.05.2008. In case he is found suitable, he shall be given promotion from the due date with all consequential benefits except back wages on the principle of "no work no pay". We also notice the fact that the Applicant has already been given the 2nd MACP benefits which are at par with the pay of Head Clerk w.e.f. 27.07.2010 and later on he was also promoted as HC w.e.f. 03.06.2013.

14. The aforesaid direction shall be complied with, within a period of 2 months from the date of receipt of a copy of this order."

7. The Union of India, through the Railways, argues that the CAT erred in issuing the impugned directions. It was firstly urged that no one is entitled to claim promotion merely on the basis that a certain post fall vacant on a particular date, or that he became eligible at some point in time. Highlighting that courts and Tribunals direct antedating of promotion based only on the finding of some fault on the administrative authority, it was argued that since there was no finding of undue delay in considering the applicant/respondent's name for promotion, or any other fault, the direction given in favour of the respondent is unsupportable in law.

8. It is evident from the above narrative that the Railways' denial of the applicant's claim was premised on the implementation of the Sixth Pay Commission recommendations. However, the CAT held that effect of those recommendations were given much later. The Railways' stand was that the posts of OS-II and HC were merged with effect from 01.01.2006 consequent upon the implementation of the recommendations of the Sixth Pay Commission and the roster of both the grades got merged from that date. Yet, as a matter of fact, that merger took place much later than 17.05.2008 (i.e when the applicant became eligible for consideration to promotion as Head Clerk), only w.e.f. 03.09.2009. Clearly, therefore, the Railways' rationale for not considering the Applicant for promotion under the SC quota during the period from 17.05.2008 to 03.09.2009 was unconvincing and untenable. CAT also held that the benefit of MACP Scheme given to the Applicant on 27.07.2012 was no substitute for his promotion to the grade of Head Clerk from the due date. Its findings are that after the merger of the Head Clerk and OS-II with retrospective effect from 01.01.2006, the Railways merely adjusted the incumbent belonging to SC

category against the slot reserved for SC candidate. The merger and its aftermath, in adjusting incumbent candidates (promoted against unreserved category in reserved category) slots, resulted in the denial of promotion of the respondent, to the reserved slot.

9. This Court also notices that the Railways did not deny the effect and applicability of the Circular of 01.09.2010, which clearly stated that "it is now clarified that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications will be adjusted against unreserved points of reservation roster, irrespective of the fact whether the promotion is made by selection method or non-selection method. These orders shall take effect from 21.08.1997, the date on which post based reservation was introduced on Railways. However, the staff already promoted prior to issue of this letter may not be reverted. Shortfall in the category of SCs/STs, if any, shall be made good through vacancies arising in future." The facts of the present case, especially the manner in which the SC vacancies were sought to be adjusted against those who found a place in the unreserved category vacancies, was contrary to the above circular, which had echoed an earlier instruction, i.e. the Railway Board's letter dated 07.09.2002, which clarified that:

"the SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualification will not be adjusted against the reserved points of the reservation roster. They will be adjusted against unreserved points".

10. In view of the foregoing discussion, this Court finds that the Petitioner-Railways' contentions are unmerited. The writ petition has to fail; it is accordingly dismissed along with the pending application without any order as to costs.