

PETITIONER:
P. SHESHADRI

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT 09/03/1995

BENCH:
FAIZAN UDDIN (J)
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FAIZAN UDDIN (J)
AGRAWAL, S.C. (J)

CITATION:
1995 SCC (3) 552 JT 1995 (2) 661
1995 SCALE (2)195

ACT:

HEADNOTE:

JUDGMENT:

1. Delay condoned.
2. Leave granted. Counsel for the parties are heard.
3. In this appeal under Article 36 of the Constitution of India the appellant has challenged the judgment dated 31.7.1992 passed by the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (hereinafter referred to as the Tribunal) dismissing the application of the appellant filed under Section 19 of the Administrative Tribunals Act, 1985 against the respondents herein seeking the relief of declaration that the action of respondents No. 1 and 2 in not promoting the applicant to the post of Dy. Director/Executive Engineer alongwith other candidates by an order dated 28.2.1990 as arbitrary or illegal. In the said application the appellant also sought a direction to the respondents to declare him as having been promoted to the post of Dy. Director/Executive Engineer with effect from 28.2.1990 with all consequential benefits.
4. The short question that arises for determination by this Court in this appeal is whether the Tribunal has correctly interpreted the Office Memorandum No. 27/ 2/71-E 4(SET) dated 27.11.1972 in holding that the appellant was not entitled to be promoted as Dy. Director/Executive Engineer because of his placement in the approved promotion panel.
5. Admittedly at the relevant time the appellant was holding the post of Assistant Director/Assistant Executive Engineer, in Central Water Engineering (Group-A) and that he was fully eligible for being considered for promotion to the next higher grade of Dy. Director/Executive Engineer. The appellant's case before the Tribunal was that though his name was considered and he being the only candidate belonging to the Scheduled Tribe community his name was included in the panel of selected candidates and placed at serial No. 26 of the combined select list but by order dated 28.2.1990 only 22 persons were promoted and the appellant

was not promoted because there were only 22 posts available and therefore persons at Serial No. 1 to 22 in the approved panel were promoted while according to the appellant when 22 663

persons were promoted there should in any case be at least one point belonging to the Scheduled Tribe candidate in accordance with the prescribed roster. The appellant therefore, approached the tribunal for the necessary direction.

6. The respondents contested the appellant's application by stating that 78 vacancies were anticipated up to 31.12.1990 out of which 12 were reserved for Scheduled Castes and 6 for the Scheduled Tribes against which only the appellant, as the sole officer belonging to the Scheduled Caste community was found eligible, by the Departmental Promotion Committee in its sitting held on 3.8.1990 and 27.8.1990. The respondents' further stand was that having regard to the directions contained in Office Memorandum No. 27/2/71 -E(SEI) dated 27.11.1972 issued by the Department of Personnel, they prepared separate select lists of candidates belonging to the Scheduled Castes and Scheduled Tribes in addition to the general list and all the separate select lists were merged into one combined list in which the name of all the selected officers including those belonging to Scheduled Castes and Scheduled Tribes were arranged in the order of their interseniority in the feeder cadre viz. Assistant Director/Assistant Executive Engineer in which the name of the appellant figured at Sl. No. 26. It was stated by the respondents that the number of the vacancies as were anticipated did not come through and they could promote only 22 officers and, therefore, the first 22 in the panel of the combined list were promoted. The appellant could not be promoted as his chance for promotion would come only according to his placement in the approved panel.

7. The tribunal, after considering the rival contentions, came to the conclusion that having regard to the promotion policy the promotions have to be made in accordance with the instructions contained in the Office Memorandum dated 27.11.1972. It took the view that the combined select list prepared in accordance with the instructions forms the basis for promotion in which the names of all the selected officers, general as well as those belonging to Scheduled Castes and Scheduled Tribes are arranged in the order of their interse seniority. The tribunal also took the view that the rosters which have been prescribed for reservation, are for determining the number of vacancies to be reserved for Scheduled Castes and Scheduled Tribes and that the 40 point roster is not for determining the order of actual appointment or for the purpose of determining seniority. After analysing the instructions contained in Office Memorandum dated 27.11.1972 the Tribunal took the view that the respondents committed no illegality in making promotions of 22 persons by order dated 28.2.1990 and on that basis, rejected the application made by the appellant against which this appeal has been preferred.

8. Learned counsel for the appellant vehemently urged before us, that the impugned judgment of the tribunal is against the promotion policy enunciated by the Central Government for the benefit of the members of the Scheduled Castes and Scheduled Tribes as well as against the very object and spirit of the Office Memorandum dated 27.11.1990 and other related Government instructions in this behalf. It was submitted that though 78 vacancies were anticipated up to 31.12.1990 yet accepting that only 22 posts were available for promotion then also having regard to the

promotion policy and the percentage

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of reservation allocated to the members of the Scheduled Tribes, the appellant could not have been ignored and in any event one post out of the 22 posts must have been made available on 28.2.1990 when 22 promotions were made. It was, therefore, submitted that the impugned order of the tribunal could not be sustained either in law or on facts.

9. It may be pointed out that Office Memorandum No. 27.2.71 -E(SET) dated 27.11.1972 issued by the Department of Personnel, Government of India, relates to the introduction of promotion scheme to the members belonging to Scheduled Caste and Scheduled Tribe community. A reading of the said memoranda goes to show that prior to 17.11.1972 there was no reservation for Scheduled Castes and Scheduled Tribes in appointments made by promotion on the basis of seniority subject to fitness and it was only by O.M. dated 27.11.1972 that the Government of India communicated its policy providing 15 per cent reservation for Scheduled Castes and 7 1/2 per cent reservation for Scheduled Tribes in promotion to all classes of posts/ service made on the basis of seniority subject to fitness. This policy was adopted by the Government of India in supersession of its earlier orders contained in Office Memoranda No. 1/1 2/67- ESTT (C) dated 11.7.1968 according to which there was no reservation for Scheduled Castes and Scheduled Tribes in the appointments made by promotion. The Government, therefore directed appointing authorities to maintain a separate 40 point roster to determine the number of reserved vacancies in a year with a view to implement the aforementioned reservation policy. In pursuance of the said policy, detailed instructions were issued to the authorities concerned to make promotions in accordance with the directions contained therein with a view that the members belonging to the Scheduled Castes and Scheduled Tribes may have the benefit of getting promotion to higher grade/cadre earlier than the employees who did not belong to the Scheduled Castes and Scheduled Tribes. Clause (i) of paragraph 3 of O.M. dated 27.11.1972 provides for preparation of a separate 40 point roster to determine the number of reserved vacancies in a year which also prescribes the points for reservation for Scheduled Castes and Scheduled Tribes. Clause (ii) provides that wherever according to the points in the roster there are any vacancies reserved for Scheduled Castes and Scheduled Tribes, separate list should be drawn up of the eligible Scheduled Castes and Scheduled Tribes officers as the case may be, arranged in order of their interse seniority in the main list. Clause (iii) contemplates that the Scheduled Castes and Scheduled Tribes officers should be adjudged by the Departmental Promotion Committee separately in regard to the fitness and clause (iv) of paragraph 3 of O.M. dated 27.11.1972 reads as under:-

"when the Select Lists of officers in the general category and those belonging to Scheduled castes and Scheduled tribes have been prepared by the Departmental Promotion Committee these should be merged into a combined select list in which the names of all the selected officers general as well as those belong to Scheduled Castes and Scheduled Tribes are arranged in the order of their inter-se seniority in the original seniority list of the category or grade from which the promotion is being made. This

combined select list should thereafter be followed for making promotions in vacancies as and when they, arise during the year.

10. Government of India, Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions again issued O.M. No. F.22011/5/86-ESTT/ D dated 10.3.1989 providing the procedure to be observed by Departmental Promotion Committee. Paragraph 2.3.2 (ii) of the said O.M. dated 10.3.1989 lays down the method of promotion by selection and reads as under

"In promotion by selection to posts/services from Group 'C' to Group 'B' within Group 'B' and from Group 'B' to the lowest run in Group 'A', selection against vacancies reserved for SCs and STs will be made only from those SCs/STs officers, who are within the normal zone of consideration prescribed vide the Department of Personnel & A.R. O.M. No. 22011/3/76-Estt.(D) dated 24th December, 1980. Where adequate number of SCs/STs candidates are not available within the normal field of choice, it may be extended to five times the number of vacancies and the SCs/STs candidates (and not any other) coming within the extended field of choice, should also be considered against the vacancies reserved for them. If candidates from SCs/STs-obtain on the basis of merit with due regard to seniority, on the same basis as others, km number of vacancies than the number reserved for them, the difference should be made up by selecting candidates of these commumucs, who are in the zone of consideration, irrespective of merit and 'bench mark' but who arc considered fit for promotion. Officers belonging to SC/ST selected for promotion against vacancies reserved for them from within the extended Geld of choice should however be placed at bloc below all the other officers selected from within the normal field of choice.

11.A combined reading of the instructions contained in these memoranda will

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go to show that in the first instance the number of reserved vacancies in a year have to be worked out on the basis of 40 point roster as envisaged in sub-clause (i) of paragraph 3 of O.M. dated 27.11.1972. Thereafter separate lists arc to be drawn up of the eligible Scheduled Castes or Scheduled Tribes officers arranged in the order of their inter se seniority in the main list. Clause (iii) of paragraph 3 enjoins a duty on the Departmental Promotion Committee to adjudge the Scheduled Castes and Scheduled Tribes officers separately in regard to their fitness. Thereafter the select lists of the officers in the general category and those belonging to the Scheduled Castes and Scheduled Tribes arc prepared by the Departmental Promotion Committee. The same have to be merged into a combined select list in which the names of all the selected officers, general as well as those belonging to Scheduled Castes and Scheduled Tribes arc arranged in the order of their inter se seniority in the original seniority list of the category/grade from which the promotion is being made and this combined select list is the basis for making promotions in vacancies as and when they

arise during the year. Further clause (ii) of paragraph 2.3.2 of O.M. dated 10.3.1989 contemplates that selection against vacancies reserved for Schedule Castes and Schedule Tribes will be made only from those Schedule Cast/ schedule Tribes officers who are within the normal zone of consideration prescribed by the Department of Personnel and A.R. vide O.M. No.22011 dated 24th December, 1980. It further contemplates that where number of Scheduled Caste/Schedule Tribe candidates are not available within the nominal field of choice, it may be extended to Five Times the number of vacancies and Schedule Caste/Schedule Tribe candidates (and not any other) coming; within the

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extended field of choice, should also be considered against the vacancies reserved for them. If candidates from Scheduled Castes and Scheduled Tribes obtained on the basis of merit with due regard to seniority, on the same basis as others, are less than the number of vacancies reserved for them, the difference should be made up by selecting candidates of these communities, who are in the zone of consideration, irrespective of merit and bench mark but who are considered for promotion and officers belonging to Scheduled Castes and Scheduled Tribes selected for promotion against vacancies reserved for them from within the extended field of choice would however be placed en block below all the other officers selected from within the normal field of choice. In view of the aforesaid clear instructions with regard to the reservation quota for the Scheduled Tribes as 7-1/2 per cent, it is beyond comprehension to say that not even a single post will go to the member of the Scheduled Tribe out of the 22 posts which were available for promotion to the post of Dy. Director/Executive Engineer on the relevant date i.e. on the date when 22 officers were promoted to that grade. Any other interpretation of...,'he memoranda referred to above will not only frustrate the scheme but it will render the reservation policy as nugatory and no effect to the reservation quota can be given.

12. The tribunal seems to have been misled by the last sentence contained in clause (iv) of paragraph 3 in O.M. dated 27.11.1972 which reads as follows:-

"This combined select list should therefore be followed for making promotions in vacancies as and when they arise during the year."

The aforementioned sentence cannot be read form out of the context in which it has been used. The preceding clauses of the said memoranda clearly contemplate that there have to be separate select lists of officers in the general category as well as those belonging to the Scheduled Castes and Scheduled Tribes having been prepared by the Departmental Promotion Committee and then all the three have to be merged to form a combined select list. It does not mean that in the case of Scheduled Castes and Scheduled Tribes the promotions have to be made only in accordance with the placement of the members of the Scheduled Caste and Scheduled Tribe in the combined select list. They have to be picked up from the select list of officers belonging to Scheduled Castes and Scheduled Tribes prepared by the Departmental Promotion committee, according to the availability of reserved vacancies and their turn in the said lists. This intention is also spelt out from clause (ii) of para 2.3.2 of O.M. dated 10th March, 1989 which provides that promotion by selection against vacancies reserved for Scheduled Caste and Scheduled Tribe will be made only from those Scheduled Caste/ Scheduled Tribe officers who are within the normal zone of consideration.

13. Having regard to these facts and circumstances the appellant having been selected by the Departmental Promotion Committee and he being the only eligible officer belonging to the Scheduled Tribe community should have been promoted to the higher post/grade of Dy. Director/Executive Engineer and the respondents committed a serious error and illegality in not doing so. Consequently, the appeal succeeds and is hereby allowed. The impugned order of the tribunal is set aside

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and the application of the appellant filed before the tribunal is allowed. According to the Counter Affidavit filed in this Court by Shri A.K. Barua on behalf of the respondents, the appellant was also promoted as Dy. Director/Executive Engineer by order dated 7.9.1993 and the appellant had joined as Deputy Director /Executive Engineer on 22.9.1993. Since we find that the appellant was entitled to be promoted on 28.2.1990, it is directed that he will be deemed to have been promoted with effect from 28.1.1990 with all consequential benefits. The respondents are directed to pay a sum of Rs. 3000/- as costs of this appeal to the appellant.

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JUDIS