

UNREPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

W.P.(C) No. 6053 of 2001

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Reserved on : April 30, 2009
Pronounced on : May 22, 2009.

Shir P.S. Vasudeva

through :

... Petitioner

Mr. B.L. Babbar, Advocate.

VERSUS

Union of India & Others.

through

... Respondents

Mr. Sanjay Katyal, Advocate for the
UOI.

Mr. K.G. Seth, Advocate for the
respondent No. 4.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. OA No. 973/1998 filed by the petitioner challenging the promotion of the respondent No. 4 against SC Vacancy in the Grade of Assistant Foreman has been dismissed by the learned Tribunal vide its judgment dated 29.09.2000. The petitioner had even sought the review of the said judgment, but the Review Petition also met the same fate as it was dismissed on 19.02.2001. Orders dated 19.02.2001 passed in the review application has been assailed in the present writ petition and it is sought that the promotion of the respondent No. 4 to the post of Chargeman Grade- I w.e.f. 15.09.1981, Assistant

Foreman w.e.f. 15.09.1983 and Foreman w.e.f. 15.09.1986 given by the Review DPC held on 21.03.1996, be declared void *ab initio*. Consequential prayer is made that the petitioner be considered for the promotion to the aforesaid post from the respective dates.

2. The dispute between the petitioner and the respondent No. 4 has the following history:
3. The petitioner was initially appointed in INMAS, which comes under the Ministry of Defence, as Mechanist in the year 1962. He was promoted to the post of Instrument Mechanist in the year 1963 and thereafter Precision Mechanic in 1968 and Chargeman Grade I on 15.09.1981 and Assistant Foreman on 27.11.1991. He retired from service, on attaining the age of superannuation on 31.05.1988. The petitioner states that he was senior to the respondent No. 4 as well as one other person Shri Khem Chand who also belonged to the SC category in the seniority list, which was issued in the year 1996. In the seniority list, name of the petitioner figured at Sl. No. 2 and the respondent No. 4 was at Sl. No. 5. One Shri Zile Singh was above the petitioner. It was because of the reason that as Chargeman Grade I, Zile Singh was promoted on 16.03.1981, the petitioner on 15.09.1981 and Shri Khem Chand on 15.03.1988. Zile Singh got further promotion as Assistant Foreman on 15.09.1983 and Foreman w.e.f. 15.09.1986. Thus in 1993, the petitioner was working as Assistant

Foreman, Shri Zile Singh as Foreman and the respondent No. 4 was still working as sChargeman Grade II.

4. Dispute between the parties triggered on the implementation of judgment of the Bangalore Bench of the Central Administrative Tribunal rendered on 06.04.1993 in OA No. 600/1991. This OA was filed by Precision Mechanics of DRDO Establishment, Bangalore. In that judgment, the Tribunal ordered preparation of a combine Seniority List of Precision Mechanic and Chargeman Grade II as on 12.09.1981 vide SRO No. 246/1981 and directed to hold a Review DPC for vacancies available after 12.09.1981 upto 28.01.1992 to the post of Chargeman Grade I and above. While implementing the judgment a Review DPC was held on 21.03.1996. Shri Khem Chand was shown to have been promoted on 15.09.1981 as Chargeman Grade I, 15.09.1983 as Assistant Foreman, 15.09.1986 as Foreman against SC vacancy.

According to the petitioner, the respondent No. 4 could not be accommodated against SC vacancy as it had already been filled up by Mr. Zile Singh as Chargeman Grade-I on 16.03.1981. The Review DPC wrongly promoted the respondent No. 4 as Chargeman Grade I w.e.f. 15.09.1981 removing the name of Mr. Zile Singh. It was also submitted that since Mr. Zile Singh had already retired in August 1995, he was shown and given the placement as Chargeman Grade I on 15.09.1981 by Review DPC, whereas his position was not disputed

at all as he was already promoted as Chargeman Grade I on 16.03.1981.

5. Challenging the aforesaid promotions given to the respondent No. 4 on the basis of Review DPC, the petitioner filed aforementioned OA. His contentions have, however, not been accepted by the learned Tribunal. The Tribunal in this behalf noted that though Shri Zile Singh being an SC candidate was promoted to the post of Chargeman Grade I w.e.f. 15.09.1981, revision of the seniority on the basis of judgment given by Bangalore Bench of CAT, it was found that Mr. Zile Singh was ineligible for promotion. As a result, he could not have been promoted to the Grade I, since it was a Scheduled Caste point. Next person, *viz.*, the respondent No. 4 was considered against this SC point and was rightly promoted. It was stated that the respondent No. 4 had been considered for promotion to the grade of Assistant Foreman against the carry forward vacancies as per the then applicable rules.

6. Accepting the contention of the respondents, the Tribunal noted that when Mr. Zile Singh was given the benefit of reservation as SC candidate, the petitioner had not challenged the same. Therefore, he could not question the validity of reserving that point against SC vacancy. However, promotion of Mr. Zile Singh was set aside because of the judgment passed by Bangalore Bench of CAT and

Review DPC was constituted, which found Mr. Zile Singh as ineligible for promotion. Thus, as the post could have only been filled by an SC candidate as per roster point and the respondent No. 4 was eligible to hold the post, department was right in looking forward for an eligible SC candidate to man that post.

7. The contention of the petitioner is that the reservation was post wise and not vacancy wise, was turned down on the ground that the judgment of Supreme Court in the case of *R.K. Sabharwal & Ors. Vs. State of Punjab*, JT 1995 (2) SC 351 was prospective in nature, i.e., it was to be given effect from the date of decision as per the direction in the said judgment itself and it is not applicable to the promotions made in the years 1981-85. Another contention of the petitioner that there could not be reservation on a single post, was also turned down by the Tribunal on the ground that this was also not applicable when the respondent No. 4 was appointed against the carry-forward vacancy. The Tribunal in this behalf relied upon the judgment of the Supreme Court in the case of *Shri Suresh Chand Vs. Shri J.B. Agarwal and Others*, JT 1997 (S) SC 72, wherein the Court held as under:

“This Court has considered the entire case law in *Union of India & Another Vs. Madhav* (JT 1996 (9) SC 920). The Bench of three Judges, which both of us were members, held that in case of solitary isolated post on the basis of the rule of rotation, the benefits and facilities should be extended to the reserved candidates, namely, Scheduled Castes (sic. Castes) and Schedules (sic. Scheduled) Tribes for appointment by promotion to the single post and, therefore, application of the rules of reservation is not unconstitutional.”

8. Before us, the contentions of the learned counsel for the petitioner remained the same and it was strongly argued that the Tribunal did not deal with those contentions appropriately. The learned Tribunal reiterated that since Mr. Zile Singh was promoted on 16.03.1981 against the SC vacancy, this SC post had been consumed inasmuch could have been as aforesaid promotion of Mr. Zile Singh was not withdrawn. Thus against the same Roster Point, the respondent No. 4 could not have been considered. The contention is that there was only one post of Assistant Foreman, which was held by Mr. Zile Singh at the relevant point of time, i.e., on 15.09.1983, which he vacated only on 15.09.1986. It could not have been treated as reserved. It was also argued that the Tribunal fell in error by being influenced from the fact that the petitioner had not challenged the promotion of Mr. Zile Singh to the Assistant Foreman. According to the petitioner, he could not have done so as Mr. Zile Singh was much senior to him. It was, however, argued that the Tribunal also wrongly held that Central Administrative Tribunal, Bangalore Bench had set aside the promotion of Mr. Zile Singh and Review DPC was constituted and Mr. Zile Singh was found ineligible to be promoted to the post to which he had been promoted as an SC candidate. This position is stated to be factually incorrect as Mr. Zile Singh was not even a party in that OA and he had already been promoted as Chargeman Grade I and above against vacancies available after

12.09.1981 to 28.01.1992, considered by the Review DPC. Learned counsel argued that this was for the reason that after 28.01.1992 Zile Singh was no longer eligible for promotion as Chargeman Grade I. The Tribunal's decision also that Review DPC found Sh. Zile Singh ineligible to be promoted to the post of Chargeman Grade I as an SC candidate and therefore they had gone up to Mr. Khem Chand to promote him is again a wrong averment. The decision of 28th September, 1992 of Senior Administrative Officer to the Director (copy enclosed) clearly shows that DPC after decentralization was held on 15.03.1981 when one Sh. R.K. Bhattacharya (UR), Sh. Zile Singh (SC) were promoted. In second DPC the meeting was held on 15.09.1981 in which Sh. M.L. Bedi (UR), Sh. P.S. Vasudeva (petitioner) were promoted as Chargeman Grade I. Even if the contention with respect to Sh. Zile Singh is accepted the issue with respect to post of Assistant Foreman being a single post in the cadre whether same can be reserved has to be decided. The petitioner had relied upon the Judgment in the case of *Dr. Chakradhar Paswvan Vs. State of Bihar*, 1988 Vol. II SCC 214, the Tribunal *suo motu* relied upon the judgment of *Sureh Chardra* (supra) and the case of *Union of India Vs. Madhu*, JT 1996 Vol. 9 SC 90, which judgment stands overruled in a review petition in the matter of *Post Graduate Institute of Medical Education and Research Vs. Faculty Association and Ors.* JT 1998 Vol. III SC 223, which judgment has been again followed by the three

Judge Bench in the matter of *S.R. Murthy Vs. State of Karnataka* and Ors. 1999 (Vol. IX AD SC 10). In these judgments, the Supreme Court has held that a single post cadre reservation at any point of time on account of rotation or roster is bound to bring about a situation where such single post in the cadre will be kept reserved exclusively for the members of backward classes and in total exclusion of general members of the public. As such total exclusion of general members of the public and 100% reservation for the backward classes is not permitted even within the constitutional framework. If these two judgments are to be followed then the respondent No. 4 could not have got the promotion as Assistant Foreman under the SC category. The petitioner being senior to him as Chargeman Grade I, he would have been entitled to promotion as Assistant Foreman and thereafter Foreman. In the case of **Post Graduate Institute of Medical Education** (supra), the Supreme Court has again affirmed Chakradhar Paswan's case.

9. It is difficult to accept the aforesaid submissions of the learned counsel for the petitioner. It cannot be disputed that the Bangalore Bench of the CAT had given directions vide its judgment dated 06.04.1993 for preparation of a Combined Seniority List of both the categories of Industrial and Non-industrial (Technical Categories)

and to convene the Review DPC on that basis. Precise direction in this behalf are in the following terms:

“10. In the light of the position expounded as above and in consonance with the decision of the Supreme Court referred to supra, we direct that the Department should convene a review DPC as per the orders then in force and consider the suitability of the applicants for regular appointment as Chargeman Gr. I and above with effect from the date they became eligible on the lines of the action taken in similarly situated cases in LRDE of Defence and Research Development Organization, Bangalore. In the absence of separate quotas for the industrial and non-industrial (Technical) categories, there is need for preparation of a combined seniority list of both the categories. Such a seniority list should be prepared on the basis of rational and objective principles for promotion to the level of Chargeman Gr. I and above in respect of vacancies which arose prior to 26.1.92 and which will be available after 12.9.81 to Precision Mechanics in the scale of Rs.425-700 with three years' service. No costs.”

10. It is explained by the respondents that to implement the directions of the learned Tribunal, Combined Seniority Lists of Chargeman Grade II and Precision Mechanics, based on the principle that all Chargeman Grade II existing on 12.09.1981, i.e., the date of publication of SRO 246/81, through which the Precision Mechanics in the pay scale of Rs.425-700 (pre-revised) with three years' regular service in the grade were made eligible for promotion to the grade of Chargeman-I, will rank *en bloc* senior to Precision Mechanics. Accordingly, the concerned establishments prepared the combined seniority list and based on eligibility and the availability of vacancies those figuring in the seniority list have been promoted as Chargeman-I and above. Shri Zile Singh, the erstwhile Supervisor Technical Grade II redesignated as Chargeman Grade II, figuring in

the seniority list became ineligible to be promoted as Chargeman-I as his seniority in the grade of Chargeman Grade II meanwhile been refixed as 15.12.1979 in accordance with the office letter No. 93789/PM/RD/Pers-1 dated 16.02.1993 . Since he could not complete the residency period as per rules, his promotion as Chargeman Grade I had to be postponed from 15.03.1981 to 15.03.1988 in the Review DPC. Shri Khem Chand who was promoted as Precision Mechanic w.e.f. 01.03.1977, completed his residency period of three years in the pay scale of Rs. 425-700 and became eligible to be considered for promotion to the grade of Chargeman Grade I w.e.f. 15.03.1981.

11. Similar issue had come for consideration before the Bombay Bench of the Tribunal as well in OA No. 324/1988 titled *Shri Mathew Philip & Others. Vs. Union of India & Ors.*, which was decided on 07.02.1992.

12. Once we proceed on the basis that Mr. Zile Singh, who was promoted earlier as Chargeman Grade-I became ineligible for consideration to the said post, while implementing the judgment of the Bangalore Bench, the Review DPC was duty bound to ignore the candidature of Mr. Zile Singh. Mr. Zile Singh was admittedly considered and promoted as Chargeman Grade-I earlier being an SC candidate as the said Roster Point was meant for SC category. Thus, Mr. Zile Singh was not thrown out of the consideration illegally as alleged by the

petitioner. Rather he was not eligible to be considered for promotion as Chargeman Grade-I. Since it was an SC Point, the respondent No. 4 who was the next SC candidate and eligible in all respects had to be considered for promotion as Chargeman Grade-I. The DPC after consideration found him fit for promotion and he was accordingly promoted as Chargeman Grade -I w.e.f. 15.09.1981.

13. Insofar as promotion of the respondent No. 4 to the post of Assistant Foreman is concerned, the only contention is that single vacancy could not have been reserved. Learned counsel for the official respondent produced the original Roster Register to show that there were more vacancies shown therein and it was not a single point Roster. That apart even otherwise, in the argument advanced by the petitioner, what is lost sight is that this vacancy was a carry forward vacancy of previous year. As per the mandatory provision on reservation, a single vacancy is to be treated as unreserved only in the initial recruitment year. However, the reservation is to be carried forward to subsequent three recruitment years. In the subsequent recruitment years, even if there is only one vacancy, it should be treated as reserved against the carried forward vacancy from the initial recruitment year and a SC/ST candidate, if available, is to be appointed even if it is the only vacancy in that recruitment year. In this case, the single vacancy in the grade of Assistant Foreman on 15.09.1983 was a carried forward vacancy from the previous year.

Since Shri Khem Chand was the senior most SC candidate available, he was promoted against this vacancy.

14. The Tribunal has, according to us, rightly decided this issue referring to the Judgment of the Supreme Court in the case of **Suresh Chand** (supra). In this conspectus, judgments referred to by the learned counsel for the petitioner would have no application.

15. We thus find no merit in the writ petition, which is accordingly dismissed. No costs.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

May 22 , 2009.

pmc