

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

+ **W.P.(C) No.3167/2001**

% **DATE OF DECISION: AUGUST 04, 2011**

UOI & ANR.

....APPELLANT

THROUGH: Mr. Maninder Singh, Sr. Advocate with
Mr. Gaurav Sharma, Advocate for the
petitioner.

VERSUS

BHAGWAN DASS & ORS.

....RESPONDENT

THROUGH: Mr. Rajshekhar Rao, Adv. with
Mr. Karan Lahiri, Advocate for the
respondent.

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE M.L. MEHTA

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| 1. | Whether reporters of Local papers be
allowed to see the judgment? | No |
| 2. | To be referred to reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

A.K.SIKRI, J. (ORAL)

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1. The respondent herein was promoted as Section Officer (SO) with the UOI in the office of Directorate of Accounts, Cabinet Secretariat on 01.03.1994. He belongs to Scheduled

Caste (SC) Category. Next promotion was to the post of Sr. Section Officer (Sr.SO) and as per the extant rules, a person with three years regular service as SO becomes eligible for consideration to the post of Sr. SO. The rules further provide that there should be a ratio of 80:20 for Sr. SOs and SOs of the Cabined strength of Sr. SOs. It is not in dispute that at the relevant time, there were 37 posts in the combined cadre of Sr. SOs/SOs. Thus, 80% of these posts came to the share of Sr. SOs.

2. The DPC for promotion to the post of Sr. SOs met on 7.03.1997. However, on that day the respondent had not become eligible. The DPC was again held in September 1998. This time, case of the respondent was considered for the said post. But, he was not promoted as according to the petitioner, no posts in the SC category was available. The respondent challenged the aforesaid non-promotion by filing an Application before the Tribunal under Section 19 of the Administrative Tribunal Act. It was primarily on two counts. One ground taken by the respondent was that there were five posts meant for SC candidates and since only 4 persons belonging to this category were working as Sr. SOs, the stand of the petitioner/ Union of India that there was no post for SC category was incorrect. On

this basis, he pleaded that being a SC candidate and one post in that category still available, he should have been promoted against that post. Since the Tribunal has accepted this plea of the respondent and decided the OA only on this ground, we would like to deal with this ground in the first instance and would refer to the other ground taken by the respondent later at the appropriate stage.

3. Coming to the vacancy position, it is not in dispute that there were 37 posts in the combined cadre of Sr.SOs/SOs. It is also not in dispute that 80% of these posts were meant for Sr. SOs. Further, it is also not in dispute that 15% of the posts are to be reserved for SC category candidates and 7.5% for ST category candidates. The entire dispute relates to the manner in which that 80% posts meant for Sr. SOs and out of these 80%, 15% meant for SC category are to be calculated. The exercise done by the Tribunal in arriving at a conclusion that 5 posts in the aforesaid cadre are to be allocated to SC category can be traced in para 5 of the impugned order which reads as under:

“The DPC which met on 7.3.1997 considered vacancies prior to 1.3.1997 on which date applicant was not eligible for promotion, but in

the subsequent DPC held in September 1998, applicant's claim for promotion should have been considered as an SC candidate on post-based roster basis, such that all the 5 vacancies available for SC candidates were filled up by them".

4. It is clear from the above that, while calculating 80% of 37, the Tribunal has arrived at a figure of 29.6 which taken upwardly by rounded off to 30. Thereafter 15% of this (which is meant for SC category) is calculated which comes to 4.5 and it is again rounded off to the next higher level i.e. 5.

5. Mr. Maninder Singh, learned Sr. Counsel appearing for the Union of India/ petitioner has challenged the aforesaid manner of calculation. His submission is that no such rounding off of 29.6 into 30 and thereafter rounding off of 4.5 into 5 was permissible as per the rules. Alternatively, he submitted that when 80% of 37 comes to 29.6, 15% of this 29.6 should have been taken into consideration instead of 30. If that is done, then 25% of 29.6 comes to 4.44. According to him, after applying the relevant instructions, one will have to omit the fraction and in this manner there would be four posts meant for SC category this purpose, our attention is drawn to OM

No.36012/2/96-Estt.(Res.), dated the 2nd July, 1997 which was issued to implement the judgment of the Supreme Court in **R.K. Sabharwal v State of Punjab** (AIR 1995 (2) SCC 745) holding that for reservation of job for the backward classes, the Government should apply post-based-roster instead vacancy-based-roster. Main reason was to ensure that the total reservations do not exceed 50%. Paragraph 8 of the aforesaid instructions/circular in Explanatory Notes reads as under:

"8.It would noted that at the end of the roster, "squeezing" has been done for the reserved categories to reach the number of posts to be reserved for them without violating the 50% limit laid down by the Courts. While drawing up rosters, the cadre controlling authorities should similarly "squeeze" the last point of the roaster. Such squeezing may not, however, be done where it would violate the rule of 50%."

6. The basis of above submission was that instead of rounding off to the next level, what is permitted is "squeezing" to ensure that the overall percentage of reservation is not exceeded. His submission was that if 5 posts are to be treated as meant for SC candidates against total post of 37, then the percentage would exceed 15% meant for SC category which is against the spirit of R.K. Sabharwal (supra). He also drew out attention to the model roster of reservation with reference to posts prepared keeping in view the mandate of **R.K.**

Sabharwal (supra). As per this roster posts at S.No.7, 15, 20, 27 and 35 are meant for SC category. He thus submitted that fifth post under SC category comes at Sr. No.35 whereas total posts in this category are only 29.3/30 and on this reckoning also, there cannot be 5 posts for SC category as against 29.6 posts available for Sr. SOs. He also referred to clarification which were issued by the C&AG vide Circular No. 9/NGE/98 No.108/NGE (App.)/3-97 dated 23.01.1998 regarding post-based-reservation roster wherein it was, *inter alia*, clarified that if there is a fraction of less than 0.5 then while preparing the roster, the squeezing of the last reserved point is to be done. Thus, his submission was that the Tribunal committed an error in arriving at the figure of 5 for the purpose of allocation of quota to the SC category.

7. As against the above, submissions of learned counsel for the respondent was that the rounding off done by CAT in the aforesaid manner was permissible having regard to the law laid down by the Supreme Court in the case of **State of Uttar Pradesh and another v Pawan Kumar Tiwari and others**[(2005) 2 SCC 10]. Learned counsel specifically referred to the following passage from the said judgment:

“6. The High Court has found mainly two faults with the process adopted by the State Government. First, the figure of 46.50% should have been rounded off to 47 and not to 46; and secondly, in the category of freedom fighters and ex-servicemen, total 3 posts have been ear-marked as horizontally reserved by inserting such reservation into general quota of 46 posts which had the effect of pushing out of selection zone 3 candidates from the merit list of general category.

7. We do not find fault with any of the two reasonings adopted by the High Court. The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its valued shall be ignored. 46.50 should have rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment.”

8. We are of the opinion that even if rounding off is permissible in the manner stated by the Supreme Court and as clarified by C&AG, the calculations as per simple arithmetic would clearly demonstrate that the posts which could be ear-marked for SC category would be 4 and not 5. The mistake which the Tribunal has committed is to first rounding off 29.6 into 30 and on that basis arriving at a figure of 4.5 while calculating 15% thereof for SC category and then rounding off of the same to 5. This rounding off on both occasions in an

upward manner has led to an error and would defy the simple arithmetic calculation. The Tribunal should have taken 80% of 37 which was coming to 29.6% and should have calculated 15% thereof. In this manner, exact figure would be 4.44. Since it is less than 4.5, the fraction is to be ignored and the exact figure which has to be arrived at in this manner would be 4 and not 5. If the rounding off is done at both these places and that too in a upward manner and not by ignoring fraction, then the percentage meant for SC category is inflated from 15% to 16.66%, though such a result is clearly impermissible. We are, therefore, of the opinion that the post meant for SC category would be 4 and not 5. Otherwise, as rightly pointed out by learned counsel for the petitioner, if 5 posts are taken into consideration then it exceeds the quota of 15% meant for SC category candidates.

9. We may point out here that this very case was forwarded by the petitioner to Department of Personnel & Training and they had also given the opinion that the exercise undertaken by the Tribunal was incorrect. The position is explained in the following manner:

“4. If a roster is prepared for 30 posts as per procedure prescribed by the DOPT, posts falling at points 7, 15, 20 and 27 should be reserved for SC candidates. Next point

reserved for SC would fall at point 34. Since number of posts is only 30, fifth point for SCs would not occur. If we go by the judgment of the Tribunal the post falling at point 30 which otherwise is meant for unreserved category would go to a Scheduled Caste candidate. It is felt that it would result into unintended benefit to candidates belonging to Scheduled Castes and would be against the spirit of the judgment of the Supreme Court in R.K. Sabharwal case.

6. It would be pertinent to refer to the Supreme Court judgment in Indra Sawhney's case wherein it was reaffirmed that reservation should not exceed 50%. If principle of rounding off is adopted there are possibilities of reservation exceeding the limit of 50%. For instance consider the case of a cadre of 50 posts were all the posts are filled by direct recruitment. Reservation of 15%, 7.5% and 27% is available to SCs, STs and OBCs respectively in such a case. Out of 50 posts, quota for respective categories would be as follows:

SC	7.5	rounded off to 8
ST	3.75	rounded off to 4
OBC	13.5	rounded off to 14

Total reserved posts 26

7. Thus 26 posts out of 50 would be reserved. Reservation here would become 52% which is not permissible as law laid down by the Supreme Court.

8. If argument of rounding off is accepted, there may be demands that while preparing rosters, wherever fraction of .5 occurs, the post should be reserved. It would result into

excessive reservation and whole principle of preparing the roster would go haywire.

9. Methodology for preparing post-based rosters provides 'squeezing' of reservation towards the end of the roster. Purpose of such squeezing is to complete the percentage of reservation. Its purpose is not to exceed the prescribed percentage of reservation. If 4.5 is rounded off to 5 and thus 5 posts are kept reserved for SCs, percentage of reservation for SCs would come to 16.66 which exceeds the percentage of reservation of 15 prescribed for SCs.

10. We are in agreement with the said clarification issued by the DoPT. For the aforesaid reason, we hold that the Tribunal was not right in concluding that there are 5 posts meant for SC category candidates.

11. At this stage we would like to point out the second contention which was taken by the respondent herein in his OA filed before the Tribunal. It was also argued that the total number of persons in the category of SC who were appointed as Sr. SOs as on that day were 3. There was one more person belonging to SC category holding the post of Sr. SO but he was promoted against that post meant for ST as the said post of ST had not been filled up for more than three years and was, therefore, exchanged in favour of SC category. On this basis, the plea of respondent was that even if there were four posts

meant for SC category, one post was still available and the respondent should have been adjusted against that post. Learned counsel for the petitioner, on the other hand, had argued that this submission of respondent is based on “plotting” exercise which was undertaken while examining the vacant posts pursuant to the instructions contained in OM dated 2nd July, 1997. Therefore, it was not permissible for the respondent to take shelter under the said chart which was prepared for an altogether different purpose stating the post as on 31st December 1998. He also submitted that apart from persons belonging to SC category who were shown in the said chart, there were some other SC candidates also holding the post of Sr. SO but were away on deputation and therefore, on that basis alone it cannot be said that there were only 3 SC candidates in position as against 4 posts or one ST candidate was promoted against the post meant for SC candidate.

12. Be that as it may, it is not necessary for us to go into this aspect for simple reason that the Tribunal has not considered this issue at all. Since the OA is decided only on the first contention taken by the respondent based on the number of vacancies and once we find that the conclusion of Tribunal is not correct, we set aside the impugned order of the Tribunal

holding that at the relevant time there were 4 posts available for SC category candidates in the cadre of Sr. SO.

13. The matter is remitted back to CAT for deciding other contentions raised by the respondent. It would be open to both the parties to rely upon whatever relevant material is available in support of their respective contention.

14. The writ petition stands disposed of in the aforesaid manner without there being any order as to costs.

15. The parties are directed to appear before the Tribunal on 29th August, 2011. Since much time has already been elapsed, the Tribunal may endeavour to decide the matter in an expeditious manner.

(A.K.SIKRI)
JUDGE

(M.L.MEHTA)
JUDGE

AUGUST 04, 2011
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