

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4106 OF 2016

Shri Sanjay Lankeshwar Dhargawe,
Aged 43 years,
Occupation – Service (UDC),
R/o Rachana Sayantara Phase-II,
Flat No. A/403, Hazaripahad,
Nagpur – 440 007.

.... **PETITIONER**

VERSUS

- 1) The Union of India,
through its Secretary, Ministry of
Mines, Shastri Bhavan, New Delhi-
110 001.
- 2) The Director General,
Geological Survey of India, 27,
Jawahar Lal Nehru Road,
Kolkata – 700 016.
- 3) The Additional Director General,
Geological Survey of India,
Central Region, Seminary Hills,
Nagpur – 440 006.

.... **RESPONDENTS**

Mr. Alok Upasani, Counsel for the petitioner,
Mr. Pankaj Navlani, Counsel for the respondents.

CORAM : ROHIT B. DEO & Y.G. KHOBRAGADE, JJ.
DATED : 6th FEBRUARY, 2023

ORAL JUDGMENT : (PER : R.B. DEO, J.)

The challenge is to the judgment dated 06-5-2015 rendered by
the learned Central Administrative Tribunal (CAT) in Original

Application 2200/2012 whereby the Original Application preferred by the petitioner seeking quashing of the order dated 05-7-2012 which rejects the claim of the petitioner of restoring him to the post of Upper Division Clerk (UDC) from 04-10-2004, is rejected.

2. It would be apposite to note the pleadings in Original Application 2200/2012.

(a) The petitioner was working as Lower Division Clerk (LDC) in the year 2004. According to the petitioner, he is appointed against the Scheduled Caste (SC) quota.

(b) Respondent 3 issued order dated 13-12-2004 and promoted Mr. R.G. Godghate, who was then working as UDC, to the post of Assistant. The petitioner was promoted to the post of UDC vide office order dated 21-12-2004.

(c) Mr. R.G. Godghate was, however, reverted to the post of UDC vide office order dated 29-9-2005, and as a consequence, the petitioner was reverted to the post of LDC with effect from 29-9-2005.

(d) Mr. R.G. Godghate was then again promoted as Assistant vide order dated 18-4-2011 with effect from 04-10-2004.

(e) The petitioner submitted representation dated 06-5-2011 requesting that since Mr. R.G. Godghate is promoted as Assistant with effect from 04-10-2004, the petitioner may be restored to the

promotional post of UDC from 02-12-2004.

(f) According to the petitioner, instead of restoring him to the post of UDC from 02-12-2004, Mr. Satish Kumar Singh was promoted as UDC with effect from 03-11-2004 (notionally).

(g) The petitioner preferred a fresh representation dated 22-5-2012 which was rejected by the order impugned in the original application.

3. We may now note the grounds raised in the original application.

After extracting paragraph 5 of the order impugned, the petitioner contended that the office memorandum dated 10-8-2010 is not applicable. The petitioner contended that there was a vacancy of Scheduled Caste in 2004. The Circular dated 15-6-2004 clearly mentions that there were two vacancies in the cadre of UDC in the year 2004, one was for Open Category and the other was for Scheduled Caste (anticipated). The petitioner contended that he appeared for the Departmental Competitive Examination and was promoted to the post of UDC vide order dated 21-12-2004 against the vacancy created by the promotion of Mr. R.G. Godghate who was then promoted as Assistant.

4. It can thus be seen that the claim of the petitioner in the original application rested entirely on the assumption that the promotion of Mr.

R.G. Godghate as Assistant with effect from 04-10-2004 *ipso facto* crystallized into a right in favour of the petitioner for promotion as UDC with effect from the said date.

5. In response to the original application an affidavit-in-response came to be filed on behalf of the respondents. We may extract the relevant portions of the affidavit-in-response.

“12. Reply as to ground No.5.1 – It is submitted that during the recruitment year 2004, two vacancies had occurred under examination quota for the post of UDC at roster point No.06 vacated by Shri V. Swaminathan and point No. 09 vacated by Shri R.J. Godghate (SC) which were earmarked for UR category. Hence two UR candidates have been adjusted against the vacancies on the basis of the results of Departmental Examination 2004 for the above post. During the year 2004 there was no SC vacancy, Shri R.J. Godghate who vacated the said roster point No.09 in the post of UDC belonged to SC category and the said vacancy did not belong to SC category, hence in the review DPC held in terms of DOPT OM dated 10-8-2010, the position changed. The vacancy occurring at roster point No.06 and 09 was earmarked for UR category. Hence the promotion of Shri Satish Kumar for 2nd vacancy is in order.

13. Reply as to ground No.5.2 – It is submitted that during the year 2004 there was no SC vacancy, Shri R.J. Godghate who vacated the said roster point No. 09 in the post of UDC belonged to SC category and the said vacancy did not belong to SC category, hence in the review DPC held in terms of DOPT OM dated 10-8-2010, the position changed. The vacancy occurring in roster point No.06 and 09 was earmarked for UR category. It is relevant to mention that the reservation in Government services has been made post based in terms of DOPT Om dated 2-7-1997 and following the same principles as referred in the aforesaid OM the review was done and the position as

emerged and mentioned in the above paras, were followed. A copy of relevant portion of the document regarding filling up of roster under Distance learning module for reservation in services published by ISTM, New Delhi under DOPT as uploaded in DOPT portal is annexed as Annexure-R/1 for ready reference.

14. Reply as to ground No.5.3 – It is submitted that as per the review DPC held in terms of DOPT OM dated 10-8-2010 during the recruitment year 2006 two vacancies have occurred at roster point No.07 and 08 vacated by Shri M.S. Shrouti and Shri A.D. Papuwar earmarked for 1-SC and -UR. As such Shri R.R. Ghatole under UR category and Shri S.L. Dhargave under SC category were promoted to the post of UDC under Departmental Examination, 2006.

6. In essence the respondents emphasized that the vacancy at roster Point 6 and the vacancy at roster Point 9 vacated by Mr. V. Swaminathan and Mr. R.G. Godghate were earmarked in the roster in force in the recruitment year 2004 for unreserved category and, therefore, two candidates of the unreserved category are adjusted against the said vacancies on the basis of the results of the departmental examinations conducted in 2004. The respondents further asserted that the vacancy earmarked for the Scheduled Caste category in the roster became available only when Mr. M.S. Shrouti (who was appointed against the vacancy earmarked for Scheduled Caste at roster Point 7) was promoted as Assistant in the year 2006.

7. The learned CAT considered the decision of the Hon'ble Apex

Court in *R.K. Sabharwal and others v. State of Punjab and others*, (1995) 2 SCC 745 and the Circular dated 02-7-1997 issued by the Department of Personnel and Training on the basis of the said decision. The Circular dated 02-7-1997 clarifies that the roster is to be operated on the principle of replacement and not as a 'running account' and emphasizes that the points at which reservation for different categories apply are fixed as per the roster and vacancies caused by the retirement of persons occupying those points shall be filled by appointment of persons of the respective categories.

8. The learned CAT accepted the submission of the respondents that an inadvertent mistake occurred in the year 2003 inasmuch as vacancy at Serial 5 was for unreserved category and not Scheduled Caste category and similarly vacancies at Points 6 and 9 in 2004 were for unreserved category.

9. We find no reason to interfere with the judgment of the learned CAT.

10. Mr. Alok Upasani does argue with some vehemence that since Mr. R.G. Godghate belongs to the Scheduled Caste category, the vacancy which occurred due to the promotion of Mr. R.G. Godghate as Assistant,

is required to be filled in by Schedule Caste employee. It is difficult to accept such submission. We note that there is absolutely no dispute that Mr. R.G. Godghate was appointed in vacancy at Point 9 in the roster which was for unreserved category since the vacancy which was available due to Mr. R.G. Godghate the promotion was for the unreserved category. The question of considering the claim of the petitioner to that vacancy, from the Scheduled Caste category, just does not arise. In our considered view, the vacancy became available to the petitioner, for appointment under the Scheduled Caste quota, only when Mr. M.S. Shrouti was promoted as Assistant and the vacancy at roster Point 7 became available in the year 2006. The petitioner has been rightly granted the benefit of promotion from the date the vacancy became available due to Mr. M.S. Shrouti's as Assistant.

11. We do not further agree with the submission canvassed by Mr. Alok Upasani that after the promotion of Mr. R.G. Godghate, the representation of the Scheduled Caste category in "examination quota" of UDC was less than 15% and, therefore, in order to fulfill the "prescribed" percentage, the petitioner ought to have been promoted against the vacancy which occurred due to Mr. R.G. Godghate's promotion as Assistant. We have already noted *supra* that since Mr. R.G. Godghate was occupying the post/vacancy at roster Point 9 which

was for unreserved category, the said vacancy was rightly filled in by the candidate belonging to the unreserved category. We do not find any reason to interfere in writ jurisdiction.

12. The petition is dismissed.

(Y.G. Khobragade, J.)

(Rohit B. Deo, J.)

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