

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Proceedings of the Sitting chaired by Shri Ravi Thakur, Vice-Chairperson, NCST on 21.07.2015 on the representation of S/Shri Y.D Negi, R.S. Meena, Dy. Directors and 21 other M/o Defence (AFHQ Cadre) employees regarding fixation of seniority on promotion by virtue of reservation orders.

Date of sitting: 21.07.2015

List of the officers present: (ANNEXURE - I)

Representation dated 30.08.2011 received from S/Shri Y.D. Negi, and R.S. Meena, Dy. Directors and 21 others M/o Defence (AFHQ Cadre) regarding fixation of seniority on promotion by virtue of reservation.

2. Ministry of Defence vide letter No. A./47964/SC/CSO/CAO/ Impl.Cell dated 21.10.2011 furnished reply.

3. A Sitting was held on 20.9.2013 in the Commission with the officers of Ministry of Defence including petitioners. The Commission sought documents for examination relating to fixation of seniority and promotion as per discussions held on 20.9.2013.

4. On examination of records Commission observed the following:-

- (a) Roster Register (40 & 200) point has not been maintained as per DoPT O.M. No. 36012/2/96-Estt.(Res.) dated 02.07.1997.
- (b) Entries are made in the Roster Register with pencils, overwriting, cuttings & register not signed by liaison officers.
- (c) The requisite summary not made in the roster registers in the end of the panel year.
- (d) The substantive vacancies of ST category were not released as per DPCs held.
- (e) Plotting in the roster is not made as per DoPT instructions contained in O.M. No. 36012/2/96-Estt.(Res.) dated 02.07.1997.
- (f) Consequential benefits have not been given to ST candidates who were promoted by virtue of rule of reservation.
- (g) The submission of JS (Trg) & CAO that Ministry of Defence have implemented the Hon'ble Supreme Court judgement of 19 Feb 2008 in letter & spirit is not in the light of judgment.
- (h) The Hon'ble supreme Court passed the order on inter se-seniority dispute between Departmental Promotees & Direct Recruit Section Officers (erstwhile ACSO) and did not speak about reservation, moreover the provisions enshrined in the Constitution of India regarding Reservations were not withdrawn by Hon'ble Supreme Court through the judgement dated 19 Feb 2008.
- (i) The DPC minutes for the year 1995-96 shows that Shri RS Meena has been placed in 40 points vacancy based Roster against the reserved point for ST. It is



Ravi Thakur

रवि ठाकुर/RAVI THAKUR
उपाध्यक्ष/Vice Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

not understood that the officer who have been selected by the DPC in the year 1995-96 and while releasing substantive vacancy he has been shown in the year 2000 instead of 1995-96.

- (j) Commission also observed that while drawing the substantive list in the year 2000, the ST Officers have not been placed in the light of they were actually promoted by DPC. It is also pointed out that the officers who were selected in review DPCs held in the year 2008, the ST candidates covered under extended zone have not been considered for promotion to Section Officers.

5. The matter was again taken up with the Secretary, Ministry of Defence, New Delhi vide NCST letter dated 07.05.2015. No report/reply was received from the authorities. Hence, the Sitting convened on 21.07.2015.

6. The Secretary, Ministry of Defence sought exemption from the Sitting vide letter dated 21/07/2015


Discussion

7. A reply to various points raised by the Commission earlier was submitted to the Chair by the Ministry Officials during the Sitting. The officers of JS (Trg), Ministry of Defence further informed that as per practice in the past, all the DR vacancies remaining unfilled during a recruitment year were being diverted to the promotion quota. This action of the Ministry was challenged in the Supreme Court of India. The Ministry Officials informed (in writing) as follows:

"Hon'ble Supreme Court vide their Judgment dated 19.02.2008 directed to re-fix the inter-se seniority between the DRs and DPs in the grade of ACSO in terms of the directions of the Hon'ble CAT (PB) Judgment dated 20.11.1992 in T.A.No.356 of 1985 (M.G. Bansal's case). It is again reiterated that vide para 25(e) of their Judgment of 20.11.1992, Hon'ble Tribunal had observed that – **"When the promotions are made from either of the sources, by direct recruitment or by departmental promotion, there shall be due compliance of the various instructions and Office Memoranda issued by the Department of Personnel and Training on the reservation of vacancies for SC/ ST and other categories in the proportion directed in the said instructions. The reservation, however, shall remain only at the time of appointment and not in the seniority inter se of the direct recruits and Promotees which shall be fixed as laid down in Rule 16(7) read with Schedule 3 and as directed in the preceding sub-para above."**

As stated above in Para 7 above, Hon'ble Apex Court had in their Order in Contempt Petitions No. CP No. 44/2009 and CP No. 289/2009 noted that – **"the seniority list had been prepared on the basis of the appointment in the substantive vacancies which had arisen, which appears to be in consonance of the directions given by this Court, as well as directions by the Central Administrative Tribunal in Bansal's case."** The above observation of the Hon'ble Supreme Court vindicates the correctness of the action taken by the Department in the matter."

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रवि ठाकुर/RAVINTHAKUR
उपाध्यक्ष/Vice Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
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8. The action taken by the Ministry of Defence in pursuance to the Supreme Court Judgement and the issues raised by the petitioners were discussed in detail. It was pointed out that adequate number of Scheduled Tribe candidates were not available for promotion against the actual number of due reservation out of the vacancies filled by promotion during each year. Yet the Scheduled Tribe candidates empanelled by DPC, against the available Scheduled Tribe reserved vacancies in a recruitment year were shown, adjusted against the vacancies filled in subsequent recruitment year. For instance 99 candidates were empanelled for promotion for the select year 1987-88. Share of Scheduled Tribe candidates out of 99 vacancies comes to 7 (excluding any shortfall or backlog from previous recruitment year). As only 3 Scheduled Tribe candidates were available for promotion, all of them were included in the promotion panel. However, all these candidates were given the seniority with effect from January 1994 instead of the select year 1987-88. Several other examples of similar nature are noticed in relation to the subsequent recruitment year.

OBSERVATIONS, FINDINGS AND RECOMMENDATION OF NCST

9. The Supreme Court's directives related to division of vacancies between DPs and DRs in a recruitment year and consequent seniority of DRs on the basis of date of joining only. The Commission also pointed out that the Supreme Court did not put any restriction on following the DoPT instructions relating to reservation for Scheduled Tribes in promotion and recruitment, which is the demand of the petitioners. The Supreme Court, in para 25 and concluding para 32 of its Judgment dated 19-02-2008 has pin pointed its opinion in favour of promotees and Scheduled Tribe DPs deserve to be given reservation and seniority accordingly. The relevant extracts are given below:

25. Now, coming to the issue whether the High Court was justified in granting relief to DRs Association in CWP No. 4058 of 2002 and Union of India v. Smt. Ammini Rajan & Ors. in Writ Petition (C) No. 5396 of 2002 by overlooking and not properly appreciating the substance of the order recorded by the CAT in Shri M.G. Bansal's case. The High Court, by its impugned order dated 14.11.2006, has held that the order of the Central Administrative Tribunal in Smt. Ammini Rajan's case is contrary to its earlier decision dated 20.11.1992 passed in M.G. Bansal's case The Judgment of the High Court setting aside the order of the Tribunal in Smt. Ammini Rajan's case would plainly amount to interference with the decision of the CAT in M.G. Bansal's case and further if the order of the High Court is given effect to, the result thereof would be that the DRs. shall be permitted to take advantage of more than 12 years of ante-dated seniority without holding an office. The petition filed by Smt. Ammini Rajan was primarily seeking implementation of the earlier decision of the CAT in Shri M.G. Bansal's case.

32. In the light of the above factual situation The Judgment of the CAT in M.G. Bansal's case has attained finality when two SLPs filed by the DRs against the said Judgment came to be dismissed


रवि ठाकुर/RAV! THAKUR
उपाध्यक्ष/Vice Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
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by this Court on 20.01.1995. Consequently, the Writ Petition CWP No. 4058/2002 of the AFHQ Civil Service (Direct Recruits-Gazetted) Officer's Association and CWP No. 5396/2002 preferred by Union of India against the order of the CAT in OA No. 1356/1997 titled Smt. Ammini Rajan & Ors. v. Union of India & Ors. are dismissed. CWP No. 62/2003 and CWP No.4458/2002 filed by the DPs shall stand allowed accordingly. CWP No. 18073/2005 shall also stand disposed of in terms of this Judgment. As the dispute and controversy relating to inter se seniority between the DPs and DRs has remained unsettled and is lingering over the past many years, the respondent-authority is directed to determine and settle the seniority list in strict compliance and spirit of the Judgment of the CAT dated 20.11.1992 in TA No. 356/1985 (CW 3/1978) rendered in Shri M. G. Bansal & Ors. v. Union of India & Ors.....

10. In fact the CAT order referred by the supreme Court of India itself laid emphasis that there shall be due compliance of the various instructions and Office Memoranda issued by the Department of Personnel and Training on the reservation of vacancies for SC/ ST and other categories in the proportion directed in the said instructions. The main issue raised by the complainants related to following the correct method of counting of vacancies for promotees and applying the reservation rule as per instructions issued by Department of Personnel and Training.

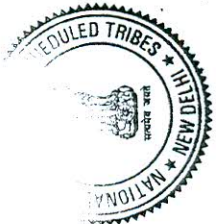
11. In the above context the Commission invited the attention towards instructions of the Department of Personnel and Training prescribed in OM No. AB – 14017/2/97-Estt. (RR) dated 19th January 2007 which referred to (i) Supreme Court's Judgment in R K Sabarwal's case, (ii) Supreme Court's directives dated 18.12.1998 in CWP No. 5893 of 1997 and Supreme Court's Judgment dated 22.02.1999 in WP (c) No. 306 of 1988 with WP (c) No. 651 of 1997.

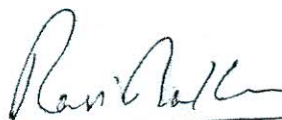
12. The vacancy based Rosters were replaced by the Post Based Rosters in compliance to the Judgment at (i) above. In view of the change in Roster system the DoPT, vide OM No. AB – 14017/2/97-Estt. (RR) dated the 25th May, 1998 had amended the instructions/ guidelines dated 18.03.1988 to replace the words "percentage of the 'vacancies' to be filled by various methods" by the words "percentage of the 'posts' to be filled by various methods."

13. The Judgment mentioned at (ii) above held as follows:

" The quota of percentage of departmental promotees and direct recruits has to be worked out on the basis of the roster points taking into consideration vacancies that fall due at a given point of time. There is no question of filling up the vacancy created by the retirement of a direct recruit by a direct recruit or the vacancy created by a promotee by a promotee "

14. The Judgment mentioned at (iii) above reiterated the above mentioned decision. In view of these developments the Government decided to rescind the




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राष्ट्रीय अनुसूचित जनजाति आयोग
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instructions contained in the OM dated 25.05.1998 and directed vide OM dated 19.01.2007 that the (original) instructions/ guidelines contained in DoPT OM dated 18.03.1988 would continue in its form that existed before the issuance of OM dated 25.05.1998. Thus the quota based on the words "percentage of the 'vacancies' to be filled by various methods" have to be followed retrospectively in making appointments in each recruitment year. The DoPT has also attached, along with the OM dated 12.01.2007, detailed illustrations on the subject and the share of SCs, STs and OBCs in each method of recruitment that is DP or DR

15. The CAT (PB) orders were issued on 20.11.1992 when vacancy based Rosters were being followed. However, directives of the CAT (PB) for following the reservation rule for each category while making appointments shall also hold good while following Post Based Rosters. Further, the DoPT OM dated 19.01.2007 prescribes arriving at number of vacancies to be filled through DP and DR respectively as per Recruitment Rules, in each recruitment year and the reservation for SCs, STs and OBCs in those vacancies while the Supreme Court Judgment dated 19.02.2008 directs to follow the prescribed Recruitment Rules regarding distribution of vacancies between DP and DR and consequent seniority among them.

16. The Commission therefore advised that Ministry of Defence has to follow the instructions contained in the DoPT OM dated 19.01.2007 also, which were issued in compliance of the Supreme Court's judgments, while following the directives dated 19.02.2008 of the Supreme Court as these Judgments are supplementary and not contradictory to each other and the roster of Section Officer (ACSO) to be re-calculated duly considering the availability of the vacancies reserved for Scheduled Tribes in promotion and number of eligible ST employees available against those vacancies during each recruitment year since the year 1987-88 with consequential seniority and benefits.

17. The Commission further advised the Ministry of Defence to submit rosters, for the post of Assistants, Section Officer (erstwhile ACSO) and Deputy Director, promotion list, DPC Minutes etc maintained since 1990 till 2015 positively by 28.07.2015. Vacancy position, details of SC/ST employees, who got selected on promotion as per eligibility etc., to be provided by the Ministry by 28.07.2015. The Commission emphasized that Liaison officer for SC/ST also need to attend the next meeting as well as Sitting, as the case may be, which may be held in this case in the Commission in future.




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राष्ट्रीय अनुसूचित जनजाति आयोग
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ANNEXURE-1

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List of participants

NCST

1. Shri Ravi Thakur, Hon'ble Vice Chairperson (In chair)
2. Shri N. Balasubramanian, Research Officer
3. Shri R.C. Durga , Consultant
4. Shri P.V. Mohandas, PS to Vice-chairperson

Officers of Ministry of Defence

1. Shri R.N. Dubey, Joint Secretary (Trg) and CAO, AFHQ
2. Ms. J Galgotia, Director, HR, CAO
3. Shri Naresh Viridi, Dy CAO (P&L)

Petitioners

1. Shri Vijay Kumar
2. Shri T. Sundup
3. Shri U.S. Meena
4. Shri J.P. Xalxo
5. Shri G. Damsomthang
6. Shri K.C. Meena
7. Shri R.P. Meena
8. Shri N. Pau
9. Shri J. Lalit Xaxa
10. Shri S. H.R. Meena
11. Shri C. Nunthuk
12. Shri R.S. Meena

