

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speak about reservation, moreover the provisions enshrined in the Constitution of India regarding Reservations were not withdrawn by Hon'ble Supreme Court through the judgement dated 19 Feb 2008.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/RAVIL THAKUR
उपाध्यक्ष/Vice Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
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