

Central Administrative Tribunal
Principal Bench

O.A.No.3257/2001

Hon'ble Shri S.A.T.Rizvi, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 8th day of Nov., 2002

Sunil Kumar
s/o Shri Ishwar Dayal
r/o 6/14 Mohalla Maharam
Shahdara
Delhi - 110 032. Applicant

(By Advocate: Shri Vikas Singh)

Vs.

National Capital Territory of Delhi
through its Director (Education)
Sham Nath Marg
Delhi - 110 054. Respondent

(By Advocate: Sh. George Parackin)

O R D E R

By Shri Shanker Raju, M(J):

By this OA, applicant has sought directions to the respondents to appoint him in the post of PGT-Hindi from the date other similarly situated candidates have been appointed as such.

2. Respondents through their notifications issued on 12.6.1998, 7.8.1998 and 6.3.1999 advertised 27 posts of PGT-Hindi (Males) out of which 11 for Un-Reserved (UR), 4 for Scheduled Caste, 7 for Other Backward Class, 2 for Ex-Servicemen and 3 for Physically Handicapped.

3. Applicant appeared in the examination conducted through Delhi Subordinate Service Selection Board (hereinafter called as "DSSSB"), and the results were published on 4.10.1999, wherein 48 people have been declared selected, out of which 2 were female and 22 were male. From the list of selected candidates,

24 female and 20 male candidates have been appointed. Applicant's name stood at Sl. No.7 amongst UR candidates against the notified vacancies of 11.

4. Respondents declared list of selected candidates on 10.12.1999 for the post of PGT-Hindi (Males) where 7 UR candidates have been selected and name of the applicant had figured at Sl. No.7.

5. In the list published by DSSSB on 10.12.1999, it has been mentioned that the name of the applicant had been sent for appointment to the post of PGT-Hindi in the East Zone, but in the said list, one OBC candidate and one SC candidate have been shown to be selected against UR vacancies of PGT-Hindi.

6. Applicant, through representations, sought his appointment to the post of PGT-Hindi on the basis that he was declared successful in the 11 vacancies have been notified for UR, applicant's name stood at Sl. No.7.

7. Applicant, through letter dated 23.10.2000 was informed that his name was in excess of the vacancies notified, his dossier has been returned.

8. One Shri Birbal Singh Poonia, who stood at Sl. No.6 in the select list, filed OA No.1536/2000 which was allowed vide Tribunal's order dated 24.4.2001, directed the respondents to appoint the applicant therein with all consequential benefits, giving rise to the present OA.

9. By an order dated 5.12.2001, respondents have been directed by this Tribunal to keep one post of PGT-Hindi vacant to accommodate the applicant, subject to the outcome of the present OA.

(P)

10. Contention of Sh. Vikas Singh, who is appearing for applicant, is that as against 11 UR notified vacancies for the post of PGT-Hindi, the applicant's name was appeared at Sl.No.7, he has a right to be appointed being eligible in all respects.

11. Sh. Vikas Singh deprecated the action of respondents and stated that the respondents have illegally and arbitrarily shown one OBC and one SC candidate to have been selected against the UR vacancies of PGT-Hindi (Males). Against 11 vacant post of PGT-Hindi, only 5 candidates belonging to the UR category have been appointed, which according to applicant, violates Articles 14 and 16 of the Constitution of India. According to the learned counsel for applicant, in January 2000, 20 persons had already joined in the post of PGT-Hindi.

12. Shri Vikas Singh states that though the name of applicant has been shown at Sl. No.11 against 22 vacancies recommended for appointment, in the list of the candidates, one SC candidate, one OBC, 2 Visually Handicapped candidates have been shown. As per OM dated 22.5.1989 only SC/ST candidates selected on their own merits are not to be adjusted against reserved vacancies, and as one OBC candidate who is higher in merit, the same is to be counted towards OBC category and he should be excluded from the UR

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candidates merit list and automatically applicant's name comes at Sl. No.10, excluded him to be appointed to the post. (11)

13. Sh. Vikas Singh further contended that at Sl.Nos.3 and 4 of the merit list, S/Sh. Anil Kumar and Nathu Ram Nishad were shown in the list under visually impaired category and accordingly they are to be brought on PH quota, as there is no horizontal reservation for PH and are adjusted in the category to which they belonged to. As such no further reservation, for the PH quota should have been resorted to by the respondents.

14. Sh. Vikas Singh also contends that one SC candidate Sh. Mukhesh Kumar who has been considered in UR category on merit, has not joined the post, applicant is to be considered in his place despite, the averments of the respondents is that there has been no cancellation of any candidate in the same category.

15. It is the contention of applicant that reservation for PH should have been resorted to subject wise and when already 2 visually handicapped candidates have been appointed as PGT-Hindi as UR, and providing one more reservation to the PH certainly exceeds quota of 3 per cent reservation, and rather 20% reservation has been resorted to.

16. On the other hand, Sh. George Paracken, learned counsel appearing on behalf of the respondents, rebutted the contentions of applicant and

also produced the relevant record for our perusal. Respondents had requisitioned 20 male candidates in Hindi, out of which 9 were UR, 7 OBC and 4 SC and request was made to DSSSB to nominate one PH candidate and one visually handicapped candidates amongst 20 vacancies and adjusted them against the category for which they have been selected without giving any additional reservation to them. On this the DSSSB nominated 22 candidates as against the requirement of 20 candidates which included 4 SC, 7 OBC and 9 UR and nominated additionally selected two more candidates in 2 PH candidates, i.e., 1 OH + 1 Vis, over and above the candidates requisitioned. Due to this, 2 other candidates have become excess and those dossiers have been returned.

17. As per the merit list applicant stood at Sl. No.7, being an UR candidate, above him 2 visually handicapped candidates, one OBC and one SC secured 3rd, 4th, 7th and 8th position respectively as such they cannot be adjusted against the reserved vacancy as per OM dated 22.5.1989. Although out of 22 nominated candidates, 11 candidates belong to SC and OBC, all of them cannot be included in the list of reserved candidates because 4 of them have come in the merit list and they have to be adjusted as UR candidates. As such only 9 candidates were in reserved category, thereby limiting the reservation to less than 50%. As applicant was at Sl. No.11 of the merit list being the junior most as a UR candidate, no junior to him has been appointed, there is no illegality in the action of the respondent.

18. It is contended by the respondents that the department had given only 3% reservation to PH candidates keeping in view of over all vacancies in each subjects in a recruitment year.

19. This 3% reservation is bifurcated between Orthopaedically Handicapped and blind candidates in the ratio of 1 : 1. If the subjectwise vacancies are to be treated on the basis of the reservation for PH. The respondents have, therefore, clubbed the entire vacancies in different subjects in a recruitment year to provide suitable reservation to the PH to ensure that the total reservation does not exceed 50%.

20. It is contended that as the DSSSB sent additional 5 male PH candidates belonging to UR forcing the respondents' department to adjust all those 5 PH candidates against the notified vacancies meant for UR candidates resulting thereby, 4 UR male candidates in different subjects could not be offered appointment, which included the case of the applicant as PGT-Hindi.

21. Sh. George Paracken states, in so far as reservation of the vacancies and clubbing the vacant post, that the same is permissible as per OMs dated 11.11.1971 and 22.5.1989. According to which SC/ST candidates selected on their own merit will not be adjusted against the reserved vacancies. Out of 5 male PH candidates, 2 were selected as in the PGT-Hindi, 2 as PGT-Political Science and 1 as PGT-History. As 2 PH candidates were also of UR category, they were to be adjusted, with the result in

the merit list Shri Birbal Singh Poonia and the applicant figuring at Sl. No.10 and 11 respectively, could not be adjusted. In the case of Shri B.S.Poonia supra, the total vacancies are 20, and the reservation had not exceeded 50%, the OA was allowed by this Tribunal.

22. We have carefully considered the rival contentions of the parties and perused the material on record.

23. As per OM dated 13.2.1997 issued by DoPT laying down reservation for the PH persons in Group A and B posts/services under the Central Government. The reservation to PH persons which included blindness, hearing impairment and locomotor disability or cerebral palsy, which is restricted to 3% in all. It is further laid down that points No.33, 67 and 100 in the roster would be meant for categories of disability. The PH persons appointed under reservation should be placed in the appropriate category to which they belong. This is on the principal of interlocking horizontal reservation as per the dictum of Hon'ble Supreme Court in Indira Sawhney's case CWP No.930/90. According to this, the reservation for SC/ST/OBCs is vertical whereas for PH persons it is horizontal, which cut across the vertical reservation making an inter-locking reservation. Accordingly, the vertically handicapped quota will have to be placed in the appropriate category to which the candidate belongs to by making necessary adjustments

24. We also come across the decision of the co-ordinate Bench in OA 1536/2000 dated 24.4.2001 where on the basis of the Apex Court in Dr. Suresh Chandra Verma & Others v. The Chancellor, Nagpur University & Others, 1990(4) SCC 55 holding that reservation should have to be post and subject wise, clubbing the posts for reservation purpose has been held to be erroneous.

(15)

25. It the light of the aforesaid ruling and the directions of the Government's instructions, we find that applicant could not be offered appointment and his candidature and his dossiers has been sent back, as the DSSSB has nominated two PH over and above the number of candidates requisitioned. As per the merit list, applicant stood at Sl. No.11 as an UR candidate as before the applicant, two PH (Visually), one OBC and one SC who were at Sl. No.3, 4, 7 and 8 could not be adjusted against the reservation vacancies, and as against 20,22 nominated candidates have been sent by DSSSB, 11 belongs to SC and OBC, and out of which 4 reserved candidates, who had come in the merit list, were treated as UR candidates.

26. The stand of the respondents that if the subjectwise vacancies is to be treated as basis of reservation for the PH, in order to provide one vacancy for the Orthopaedic or Blind a minimum of 60 vacancies are to assign in the criteria, so they have clubbed the entire vacancies in different subjects in a recruitment year to provide suitable reservation to the PH candidate, at the same time ensuring that the total reservation does not over 50%.

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27. It is also the stand of the respondents that out of the 5 male PH candidates have been notified, 2 were selected as PGT-Hindi, 2 as PGT-Political Science and 1 as PGT-History, belonging to UR, and in order to adjust 4 junior UR candidates could not be adjusted which interalia include applicant and one Sh. B.S.Poonia. The stand that 9 posts were meant for UR category candidates, and 2 PH candidates who have been selected by the DSSSB were to be adjusted, and applicant and B.S.Poonia whose dossiers have been returned is concerned, we find from the merit list that Sl. Nos.3 and 4, namely, S/Shri Anil Kumar and Nathu Ram Nishad are in the visually impaired category and were in PH quota they have to be adjusted in the category to which they belong. A reservation quota for them, keeping in view of the post and subject wise reservation, had already exceeded in Hindi subject, where the posts were more desired having two PH category persons who have been adjusted against their quota in the category to which they belong, i.e., UR over and above this quota, selecting appointment to 2 more PH candidates would have exceeded the quota of 3% and would amount to 20% reservation which cannot be countenanced.

28. In view of the decision of the Apex Court in Dr. Suresh Chandra Verma's case supra and also the view taken by the Co-ordinate Bench in OA 1536/2000 supra clubbing of posts for reservation as done by the respondents, admittedly, is not legally sustainable, which had deprived the applicant of his right of being appointed. As the respondents have acted erroneously

and due to their mistake applicant could not be appointed, we could have set-aside the entire selection but keeping in view of the fact that one post has already been left vacant in the subject of PGT-Hindi, we allow this OA, Set-aside the memorandum dated 23.10.2000 with a direction to the respondents to appoint the applicant against the post already kept vacant, with all consequential benefits including back-wages with effect from the date other similarly situated persons have been appointed in pursuance of the merit list at Annexure-R-6, within three months from the date of receipt of a copy of this order. No costs..

S. Raju

(Shanker Raju)
Member(J)

S.A.T.Rizvi

(S.A.T.Rizvi)
Member(A)