

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

(20)

OA No.1492/99
OA No.1517/99

New Delhi this the 28th day of November, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)

OA No.1492/99

Ashok Kumar Sagar,
S/o Shri Sukhbasi Lal,
R/o B-178, Delhi Admn. Flats,
Timarpur. ...Applicant

(By Advocate Shri Sarvesh Bisaria)

-Versus-

1. Lt. Governor through
Chief Secretary,
Govt. of NCT Delhi,
5, Sham Nath marg,
Delhi.
2. Secretary,
Ministry of Health & Family Welfare,
Govt. of NCT of Delhi,
15, Sham Nath Marg,
Delhi.
3. UPSC through
Secretary,
Dhaulpur House,
Shahjahan Road,
New Delhi.
4. Sh. Abhijit Sen, S/o Sh. Sujeet Sen,
R/o B-3/40, Pharma Apartments,
I.P. Estate Extn. Delhi.
5. Sh. A.P. Singh,
S/o Sh. Trilochan Singh,
R/o 165, Plt.C, Mayur Vihar-I,
Delhi.
6. Sh. P.K. Jaggi,
S/o late Sh. C.L. Jaggi,
R/o F-138, Tagore Garden,
New Delhi. ...Respondents

(Respondents 1&2 through Sh. Ajesh Luthra, Advocate)

(Respondents 4to6 through Advocate Sh. S.C. Luthra)

OA No.1517/99

Ravi Kant,
S/o Sh. Narain Dass,
R/o K-202, Sarojini Nagar,
New Delhi-110023. ...Applicant

(By Advocate Shri G.S. Lobana, though none appeared)

(2)

-Versus-

1. Lt. Governor of Delhi
Raj Niwas, Civil Lines,
Delhi.
2. The Chief Secretary,
Govt. of NCT of Delhi,
5, Sham Nath Marg,
Delhi.
3. The Principal Secretary,
Health & Family Welfare,
Government of NCT of Delhi,
15, Sham Nath Marg,
Delhi-110054.
4. Chairman, UPSC
Dhulpur House,
Shahjahan Road,
New Delhi.
5. Sh. Abhijit Sen, S/o Sh. Sujeet Sen,
R/o B-3/40, Pharma Apartments,
I.P. Estate Extn. Delhi.
6. Sh. A.P. Singh,
S/o Sh. Trilochan Singh,
R/o 165, Plt.C, Mayur Vihar-I,
Delhi.
7. Sh. P.K. Jaggi,
S/o late Sh. C.L. Jaggi,
R/o F-138, Tagore Garden,
New Delhi.

... Respondents

(Respondents 1&2 through Sh. Ajesh Luthra, Advocate)

(Respondents 4to6 through Advocate Sh. S.C. Luthra)

O R D E R

Justice V. Rajagopala Reddy, Vice-Chairman (J):

As these two OAs raise common questions of law, they are disposed of by a common order.

2. However, the facts in OA-1492/99 are stated as illustrative of the disputes that arise in these cases. The applicant was initially appointed as Drug Inspector in 1979 in the Department of Drugs Control. The next higher cadre in the department is Assistant Drug Controller (ADC for short), which is to be filled up 100% by promotion from

OK

amongst the Drug Inspectors possessing seven years of service. Five vacancies of ADC arose, in view of the retirement of three ADCs and the promotion of one person during 1990, 1995, 1997 and 1998. As one post was filled up there were four permanent posts vacant and the applicant was eligible for promotion as he had completed 8 years of service. The applicant in OA-1492/99 belongs to the SC category while the applicant in OA-1517/99 belongs to ST community. He was, however, promoted on ad hoc basis on 3.4.97 to the post of ADC against a permanent vacancy. On 6.2.97, a proposal was sent to fill up the four posts of ADCs on permanent basis applying 40 point roaster, which was in vogue. In the said recommendation out of four posts one post was reserved for ST and another for SC. But without filling up the posts on regular basis the applicant has been continued on ad hoc basis. It is now understood that they are sought to be filled up in accordance with the post-based reservation, as per the law laid down by the Supreme Court in R.K. Sabharwal and Others v. State of Punjab, 1995 (2) SCC 745 and accordingly the respondents had recommended to fill up the four vacancies without providing for any reservation. Hence, the OA.

3. The learned counsel for the applicant contends that as the vacancies arose prior to the judgement of the Supreme Court came into force, vacancy-based reservation as per 40 point roaster alone is applicable. The ratio of R.K. Sabharwal's case (supra) can be applicable only to fill up the vacancies which arose in accordance with the said judgement and OM dated 2.7.97 issued by the DOPT.

4. The learned counsel for the respondents, however, placing strong reliance upon the above OM contends that as the earlier procedure, which was held illegal, has been replaced and as the posts are now sought to be filled up afresh the law which is applicable as on today alone is to be followed. Hence, all the four posts should be filled up by the general candidates.

5. We have given careful consideration to the contentions advanced by the learned counsel. The only question that needs to be considered in this case is whether the four posts of ADC are to be filled as per the law laid down by the Supreme Court in R.K. Sabharwal's case, i.e., post based reservation or as per vacancy based reservation as was in vogue earlier. The OM dated 2.7.97 was issued purporting to follow the judgement of the Supreme Court. It is not in controversy that out of the above four posts two posts were earlier reserved, i.e., one for SC and another for ST and the remaining for general. The OM dated 2.7.97 was issued purporting to comply with the judgement of Sabharwal's case. Accordingly the reservation roaster was recast and as per the new roaster all the vacancies, fell in general category. The newly constituted DPC which met on 2.6.99 appears to have recommended four persons other than the applicant and it is now stated that they have been appointed pending the disposal of the OA. Since at the time of filing of the OA they were not appointed they could not be impleaded in the OA and on the principle of *les-pendens* whatever appointments are made pending the OA are subject to the outcome of the OA. It is, therefore, in our view, not

(24)

necessary to implead the persons who have now been appointed in the same vacancies which are the subject matter of these OAs.

6. A reading of the OM dated 2.7.96 shows that the Supreme Court in R.K. Sabharwal's case had directed that the vacancy-based roaster could operate only till such time as the representation of persons belonging to the reserved categories in a cadre reaches the prescribed percentage of reservation. Thereafter the existing roaster should not operate and the vacancies released by retirement, resignation, promotion etc. of the persons belonging to the general and reserved categories should be filled up by appointment of persons from the respective categories to maintain the prescribed percentage of reservation. Accordingly the Government decided that the existing 40 point roaster should be replaced by post-based roaster and the departments were directed to prepare roasters. But the OM also states that the selection which were finalised should not be disturbed and in other cases the recruitment be withheld till the revised roasters are brought into operation. In the present case, as stated in the reply, the revised roasters were brought into operation only after 5.1.98 which is evident from the letter to the UPSC dated 5.1.98, the respondents could follow the earlier roaster i.e., post-based roaster till the new roaster is recast in 1998. Since the DPC met in 1998 and as the vacancies arose prior to the OM came into force and when the earlier roaster was not recast, two posts should have been reserved as decided earlier, one for ST and another for SC. In fact, had the posts been filled up when they arose, the reservation policy which was in vogue should

have been followed. It is trite law, that the law as existing when the vacancies arose should be followed. If that be so, we are of the considered view that the decision of the respondents in not reserving the two posts for SC/ST is illegal. The judgment cited by the respondents in Parasram Dass & Others v. Commissioner of Police & Others, (OA No.2486/97) decided on 23.3.98 does not help them, as it was decided on the ground that the panel had expired and in that case, the vacancies did not arise prior to the judgment.

7. In view of the foregoing, the OAs succeed. The appointments made, pending the OAs, are quashed. The respondents shall fill up the four vacancies in question as per vacancy-based reservations within three months from date. The OAs are allowed with costs of Rs.5,000/- (Rupees five thousand only).

(Govindan S. Tampli)
Member (Admnv)

'San.'

On behalf of
(V. Rajagopala Reddy)
Vice-Chairman (J)