

Central Administrative Tribunal
Principal Bench
New Delhi

O.A. No. 1052/98.

Decided on 28.6.99

Shri D. C. Jayaraju Applicant

(By Advocate: **Sh. S. Ravindra Bhat**)

Versus

Ministry of Welfare Respondents
& Ors.

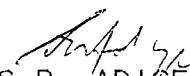
(By Advocate: **Sh. P. H. Ranchandani &**)
Sh. Madhav Panikar .

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not? No.


(S.R. ADIGE)
VICE CHAIRMAN (A)

Central Administrative Tribunal
Principal Bench

O.A. No. 1052 of 1998

New Delhi, dated this the 28th JUNE 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Shri D.C. Jayaraju,
Research Officer,
National Institute of Social Defence,
Ministry of Welfare,
West Block I, Wing 7,
Ground Floor, R.K. Puram,
New Delhi-110066. ... Applicant

(By Advocate: Shri S. Ravindra Bhat)

Versus

1. Ministry of Welfare through
the Secretary,
Government of India, 6th Floor,
Shastri Bhawan, New Delhi-1.
2. The Union Public Service Commission,
through its Secretary,
Dholpur House,
Shahjahan Road, New Delhi-11.
3. Ms. Chandra Prabha,
R/o C-605, Curzon Road Apartments,
New Delhi-110001.
4. Shri Dhruv Kumar,
Director,
Nation Commission for SC & ST
5th Floor, Lok Nayak Bhawan,
New Delhi-110003. ... Respondents

(By Advocates: Shri P.H. Ramchandani for R-1
Shri Madhav Panikar for R-2)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant who belongs to SC community
impugns his non-appointment by Respondent No.1 as
Director, National Institute of Social Defence
despite the recommendation by Respondent No.2
(UPSC) contained in letter dated 1.8.96 (Ann.
A-11).

2. It is common ground that R-1 sent requisition to R-2 for filling up the post of Director, NISD (Rs.4500-5700 pre-revised). As per Recruitment Rules (Ann. R-11) the post is to be filled by direct recruitment for which the qualifications are:

Essential

- (i) Masters Degree in Criminology or Social Work with specialisation in Criminology or Juvenile Delinquency from a recognised University or equivalent
- (ii) 12 Years experience on Social Degree (including research work)

Desirable

- (i) Doctorate Degree in any subject mentioned above.
- (ii) Aptitude for Social Defence work.

3. In the requisition form, the post was shown as reserved for SC candidate.

4. In response to the notification dated 26.4.95 for filling up the post issued by R-2, twenty applications were received, including that of applicant, as well as that of R-3, both of whom were ~~in house~~ ^{in house} candidates. Respondent No.2 provisionally selected applicant for interview for the post, and subsequently by letter dated 5.8.96 (Ann. R-2) recommended him for appointment after provisionally accepting the certificate submitted by him at the time of the interview, claiming to belong to SC community, but as instances had occurred when candidates had obtained and produced S.C. certificates even though they did not belong to this category, advised R-1 to verify further

* 4 The veracity of the S.C. certificate (which was enclosed with their letter) before offering him appointment. In the aforesaid letter it was also mentioned that applicant had not been medically examined and no inquiry into his antecedents had been made.

5. At about the same time R-2 also informed applicant by impugned letter dated 1.8.96 that he had been recommended by them for appointment as Director, NISD, but the letter made it clear that the appointment offer would be made only after the Govt. had satisfied themselves after such inquiry as may be considered necessary that he was suitable in all respects for appointment.

6. Respondent No.1 in its reply does not deny that in keeping with the advice of R-2, the veracity of applicant's case certificate was confirmed, but state that meanwhile upon receipt of a complaint from R-3 relating to the educational qualifications and other information furnished by applicant in his bio-data particulars, a preliminary examination was made, which showed certain discrepancies in the information submitted by applicant to UPSC along with his application for the post of Director, NISD. Respondent No.1 states that the matter was referred to the Vigilance Branch of the Ministry and the Ministry was called upon by CVC that pending investigation of the allegation and the Commission's advice thereon, it may be ensured that applicant is not given any kind

of higher assignment. Respondent No.1 further states that CVC has advised the Ministry to initiate major departmental proceedings against applicant whi is being processed.

7. Respondent No.1 furthermore states that in the course of processing applicant's case for appointment as Director, NISD their attention was drawn to settled law by judicial pronouncements, which suggested that there can be no reservation where there is only one post in the cadre, either for recruitment at the initial stage or for filling up future vacancies in respect of a post. Since there is only one post of Director, NISD it was being considered whether or not to reserve the post for an SC candidate, but the issue has now been settled by the Constitution Bench judgment dated 17.4.98⁹ the Hon'ble Supreme Court in PGI of Medical Education Vs. Faculty Association & Ors. JT 1998 (3) SC 223 which lays down that there can be no reservation in regard to recruitment to a single post.

8. An additional affidavit has been filed by R-1 on 16.2.99 in which it had been stated that Union of India has decided to fill up the post of Director, NISD by treating it as unreserved because

(i) Although R-2 recommended applicant's name for appointment to that post, a complaint was received alleging that applicant had furnished incorrect information about his educational qualifications etc., on examination of which most of the allegations were found correct and a charge sheet for

major penalty proceedings had been issued to applicant on 15.2.99 (Ann. R-1).

(ii) Dept. of Legal Affairs had advised that a single post could not be treated as reserved.

(iii) According to the recently introduced post based roster issued by DP&T also, a single post would be marked as unreserved.

and they state that R-2 has already been requested on 11.12.98 to take steps for readvertising the post of Director, NISD.

9. Respondents No.3 & 4 have also filed their reply.

10. Applicant has filed rejoinder to reply as well as additional affidavit of R-1, in which it has been contended that R-1 along with R-3 & 4 have launched a smear campaign against applicant to deny him his rightful appointment as Director, NISD. It has been contended that after confirmation of his caste certificate there was no further cause to deny him appointment as that was the only reason why the applicant's appointment was held up. It is contended that the judgment in PGIME's case (Supra) was rendered much after the applicant's selection, at which point of time the judgment of the three Judge Bench of the Hon'ble Supreme Court in UOI Vs. Madhav 1997 (2) SCC 332 and State of Bihar Vs. Bageshwari Prasad 1995 Suppl. (1) SCC 432 were holding the field. The furnishing of incorrect information about his educational qualifications etc. in his application

for the post of Director, NISD has been strenuously denied and it is urged that the Educational qualifications produced by him were the very basis for his appointment as Senior Research Investigator (a reserved post) through UPSC at which point of time his educational and caste credentials had been verified.

11. We have heard applicant's counsel Shri Bhat and counsel for Respondent No.1 Shri Ramchandani.

12. In addition to the facts already noticed above Shri Bhat has urged that the time R-2 had selected applicant and informed him of the position on 1.8.96, Respondent No.3 had filed O.A. No. 1983/95 against her non-selection, which was rejected by order dated 20.3.96. Thereupon the father of R-3 made a complaint against applicant which was forwarded by R-4 without disclosing the relationship. These pertained to the educational qualifications and ability of applicant, but later the complaints were withdrawn. On 6.6.96 the Andhra University had verified the certificates submitted by applicant and on 1.8.96 he was informed that he was selected for the post, but between September, 1996 and October, 1997 when repeated representations for issue of consequential appointment orders proved unsuccessful, he filed the present O.A., ^{upon which} various allegations were made against him to justify withholding of the appointment letter, which included

(A)

- (a) Caste Certificate not being genuine;
- (b) University Certificate not being genuine;
- (c) Making false TA claims.

13. Shri Bhat has argued that since there was no truth in the allegations either instigated by R-3 or ^{by} other quarters, the matters were dropped, and the only defence of respondents was that the appointment was not being made because single post reservations was not permissible in law. On the application applying for production of documents, the matter had been directed to be put up for final hearing by order dated 12.1.99, on the next date i.e. 16.2.99 but one day before i.e. on 15.2.99 respondents had served a charge sheet on applicant.

14. Shri Bhat has emphasised that the stand of R-1 that the post of Director, NISD being a single post cannot be reserved is untenable, because the advertisement was issued in 1995 and the selections were made in 1996. Hence the law obtaining on the date of advertisement applies for the post as held in AIR 1990 SC 1233 (Para 13); 1990 (1) SCC 411; and 1990 (2) SCC 669. It is also argued that the reasons given for non-appointment of applicant are arbitrary and the charge sheet relied upon in this regard cannot come in applicant's way. Since all material particulars as required by UPSC and R-1 were verified and within its knowledge, hence there was no concealment, fraud or

A

misrepresentation vitiated the selection process.

Reliance is placed on AIR 1976 SC 376. Lastly it is argued that R-1 has not withdrawn from the selection or cancelled the process and cannot be allowed to attack the notification dated 26.4.95 as unconstitutional or on any other ground.

15. We have considered the matter carefully.

16. In the PGIME's case (Supra) a 5 member Constitution Bench of the Hon'ble Supreme Court has reviewed the entire development of the law on the question as to whether in a single cadre post, reservation for the backward classes namely S.C., S.T. & OBC can be made either directly or by applying ration of roster point. After noting that there have been conflicting decisions on this point, their Lordships have held as follows:

" In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent percent reservation for the backward classes is not permissible within the constitutional frame work. The decisions of this Court to this effect over the decades have been consistent (emphasis furnished). Hence, until there is plurality of posts in a cadre, the question of reservation will not arise. [Para 33 & 34]."

17. While doing so the Hon'ble Supreme Court have approved the view taken in the judgment in Dr. Chakradhar Paswan Vs. State of Bihar & Ors.

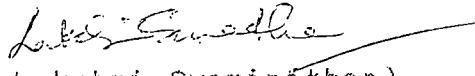
JT 1998 (1) SC 496 that there cannot be any reservation in a single post cadre and have not approved the reasoning ^{adopted} taken in UOI & Anr. Vs. Madhav 1997 (2) SCC 332; State of Bihar & Ors. Vs. Bageshwari Prasad & Anr. 1995 Suppl. 1 SCC 432; UOI & Others Vs. Brij Lal Thakur JT 1997 (4) SC 195 and other judgments that are not in accordance with the aforementioned decision of the five member Constitution Bench.

18. The fact that while handing down the ruling, in the PGIMER's case (Supra) their Lordships have observed "the decisions of this Court to this effect over the decades have been consistent" makes it abundantly clear that when the Notification dated 26.4.95 was issued for filling up the single post of Director, NISD by treating it as a reserved post, that action was not in accordance with law and under the circumstances, Respondents cannot be faulted if they do not issue the appointment letter to applicant, and take steps to fill the post afresh, treating it as unreserved.

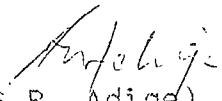
19. In the light of the above, without considering it necessary to dwell on the question whether the educational qualifications and other information furnished by applicant in his application to UPSC while applying for the post of

Director, NISO contained discrepancies, which disentitled him to appointment, we find ourselves unable to grant the relief prayed for by him.

20. In the result this O.A. is dismissed. No costs.


(Mrs. Lakshmi Swaminathan)
Member (J)

/GK/


(S.R. Adige)
Vice Chairman (A)