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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 499 & 849 of 1998. decided on 6.11.1998.

Name of Applicant : Rohtas Bhankhar & others

By Advocate : Shri ~~Dr. K.S.~~ Chouhan along with Shri Altaf Hussain, Shri Chand Kiran, Dr. K.P.S. Dalal)

Versus

Name of respondent/s Union of India & another


By Advocate : Shri R.V. Sinha

Coram:

Hon'ble Mr. N. Sahu, Member (Adminv)

Hon'ble Dr. A. Vedavalli, Member (J)

1. To be referred to the reporter - ~~Yes~~/No
2. Whether to be circulated to the other Benches of the Tribunal. - ~~Yes~~/No


(N. Sahu)
Member (Adminv)

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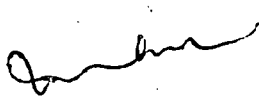
CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Applications Nos. 499 & 849 of 1998

New Delhi, this the 6th day of November, 1998

Hon'ble Mr. N. Sahu, Member (Admin)
Hon'ble Dr. A. Vedavalli, Member (J)

(1) O.A. No. 499 of 1998

1. Rohtas Bhankhar son of Shri Kitab Singh, r/o House No. 1/35, Patel Park, Line Paar, Bahadurgarh (Haryana) presently working as Assistant in the Ministry of Civil Aviation, Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi. (Roll No. 290).
 2. S.C. Kashyap son of late Sh. G.C. Kashyap, r/o U-242, Shakarpur, Delhi-92, presently working as Assistant in the Ministry of Finance, Department of Revenue, Personnel Section, North Block, New Delhi. (Roll No. 121)
 3. Sanjeev Kumar s/o Shri Narsingh Ram, r/o M.P.T. 435, Sarojini Nagar, New Delhi-110023, presently working as Assistant in the Ministry of Defence, Finance Division, Room No. 12-C, South Block, New Delhi-110011. (Roll No. 672).
 4. Ram Charan Meena son of Shri S.C. Meena, r/o Quarter No. 325, Sector-5, M.B. Road Pushp Vihar, New Delhi, presently working as Assistant in the Ministry of Defence, Finance Division, Establishment Section, 3 South Block, New Delhi. (Roll No. 671).
 5. Shiv Singh s/o Sh. Jot Singh r/o 16-B, Shish Ram Park, Uttam Nagar, New Delhi-59, presently working as Section Officer (Adhoc) in the Ministry of Telecommunication, P.A.T. Section, Room No. 1120, Sanchar Bhawan, 20 Ashoka Road, New Delhi. (Roll No.)
 6. Ashok Kumar s/o Shri Govind Ram, r/o RZ-295/345, Gali No. 4, Shiv Puri, West Sagarpur, New Delhi, presently working as Assistant in the Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110011 (Roll No.).
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7. Raj Kumar s/o Shri Sumer Singh r/o House No.88/9, Gali No.1, Shakarpur Khas, Delhi-110092, presently working as Assistant in the Ministry of Information and Broadcasting, Directorate General, Doordarshan, Mandi House, New Delhi-110001. (Roll No.784)
8. Shiv Ram Meena s/o Shri Shyo Narayan Meena, r/o 824, Krishi Kunj, (Loha Mandi) Inder Puri, New Delhi, presently working as Section Officer (ad-hoc), in the Ministry of Surface Transport, P.D.-III Desk, Parivahan Bhawan, Parliament Street, New Delhi (Roll No.559)
9. Ramesh Kumar s/o Shri Lallu Ram, r/o 72-D, Sector-4, Pushp Vihar, New Delhi, presently working as Personal Assistant in the Ministry of Law and Justice, Department of Legal Affairs, Central Agency Section, Government of India, (Supreme Court Compound), New Delhi. (Roll No.1630).

-APPLICANTS

(By Advocate Shri Dr.K.Chouhan along with Shri Altaf Hussain, Shri Chand Kiran, Dr. K.P.S.Dalal)

Versus

1. Union of India through its Secretary, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, North Block, New Delhi-110001.
2. Union Public Service Commission, through its Secretary, Dholpur House, Shah Jahan Road, New Delhi-110011.

-RESPONDENTS

(By Advocate Shri R.V.Sinha)

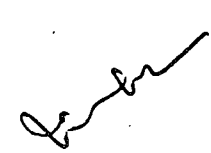
(2) O.A.No.849 of 1998

M.L. Verma son of Shri Ladu Ram Raigar, R/o Quarter No.139 Sector-12, R.K.Puram, New Delhi-110022 working as Personal Assistant in the Ministry of Non-Conventional Energy Sources, C.G.O. Complex, Block No.14, Lodhi Road, New Delhi. (Roll No.)

-APPLICANT

(By Advocate Shri Dr.K.Chouhan along with Shri Altaf Hussain, Shri Chand Kiran, Dr. K.P.S.Dalal)

Versus



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1. Union of India through its Secretary,
Ministry of Personnel, Public
Grievances & Pension, Department of
Personnel and Training, North Block,
New Delhi-110001

2. Union Public Service Commission,
through its Secretary, Dholpur House,
Shah Jahan Road, New Delhi-110011. -RESPONDENTS

(By Advocate Shri R.V.Sinha)

O R D E R

By Mr. N. Sahu, Member (Admnv) -

The applicants in both these Original Applications seek a direction to declare the instructions issued vide O.M. dated 22.7.1997 as unconstitutional and issue an appropriate order reserving 15% of the posts for the Scheduled Castes (in short 'SC') and 7 and 1/2% for the Scheduled Tribes (in short 'ST') in the S.Os/Stenographers (Grade B /Grade-I) Limited Departmental Competitive Examination, 1996 (hereinafter referred to as "the LDCE, 1996". The applicants pray that they be promoted on the basis of the instructions issued to them as candidates for the LDCE, 1996. They have also prayed for a direction declaring the result of the LDCE, 1996 as illegal. As the issue involved is common, both the OAs are being disposed of by this order.

2. The impugned order dated 22.7.1997 had withdrawn the instructions contained in O.M. No.8/12/69-Estt.(SCT) dated 23.12.1970 and O.M.No. 36012/10/76-Estt. (SCT) dated 21.1.1971 in so far as these provide for lower qualifying marks for SC/ST candidates in departmental qualifying/competitive examinations for promotion. Similarly, the

departmental instruction contained in para 6.3.2. of the DPC guidelines circulated vide OM No.22011/5/86-Estt(D) dated 10.4.89 to the extent that they provide for consideration of SC/ST candidates without reference to merit and the prescribed "bench mark" was also rescinded. The result of these instructions is that there shall be no separate standard of evaluation for candidates of the SCs/STs for promotion. There shall be uniform standard for everybody. The Ministry of Personnel has issued these instructions in accordance with the orders of the Hon'ble Supreme Court in the case of S.Vinod Kumar Vs. Union of India, JT 1996 (8) SC 643. The Hon'ble Supreme Court held that the provisions of lower qualifying marks and lesser level of evaluation in the matter of promotion for reserved category is not permissible under Section 16(4) in view of the command contained in Article 335 of the Constitution. Their Lordships followed para 8.29 of the judgment in Indra Swahney Vs. Union of India, 1992(Supp)3 SCC 217 = 1992 SCC (L&S) Suppl = (1992) 22 ATC 385.

3. The learned counsel for the applicants relied on the amended article 16(4-A) of the Constitution for providing reservation in promotion. He relied on the decision of the Hon'ble Supreme Court three judge Bench in Ram Bhagat Singh and another Vs. State of Haryana and another, 1998 SCC (L&S) 203. In this decision their Lordships held that the lower qualifying marks for SC/ST candidates without affecting efficiency required for the job

might be prescribed. In that case the petitioners who were law graduates felt that 55% of marks in aggregate in all papers including viva voce constitute rather a high standard for qualification and eligibility and accordingly approached the Court for relief. We have to remember that this was a case of direct recruitment and not a case of promotion. In these O.As. we are concerned with promotion. The second aspect to be remembered is that the judgment of the Hon'ble Supreme Court in the case of Ram Bhagat Singh (supra) was decided on 4.4.1990. The Hon'ble Supreme Court did not have the benefit of the decision in Indra Sawhney's case (supra) which was a 9 judge constitution bench delivered on 16.11.1992. The third point is that when even a two judge Bench of the Hon'ble Supreme Court decides a case: we cannot presume that it did not consider other relevant Apex decisions on the subject. Indra Sawhney's case is definitely a binding precedent to the extent of those portions of the judgment which are not rendered otiose by a constitutional amendment.

4. The second decision cited by the learned counsel for the applicant is the case of Superintending Engineer Public Health UT Chandigarh and others Vs. Kuldeep Singh and others, 1997 SCC (L&S) 1044 = (1997) 9 SCC 199 decided on 21.1.1997 by a three judge bench. Citing that case the applicant relied on the following observations of the court -

"It is settled law that it should be read consistent with Article 46 of the Constitution to take special care of the

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educational and economic interests of the Scheduled Castes and the Scheduled Tribes and to protect them from injustice and all forms of exploitation. Appointment to an office or post under the State is one of the policies of the State to accord economic justice as part of the social justice for integration of Scheduled Castes and Scheduled Tribes in the social mainstream, as also dignity of person and equality of status. It would be an opportunity to improve excellence which is a fundamental duty. In the light of Article 16 (4-A) introduced by the Constitution (77th Amendment) Act, 1995 the claims of the Scheduled Castes and the Scheduled Tribes for promotion shall be taken into consideration in making appointment or giving promotion. It is the constitutional duty coupled with the power of the authorities implementing the rules of recruitment including promotion. In that behalf, in Comptroller and Auditor General of India, Gian Prakash V. K.S. Jagannathan, (1986) 2 SCC 679, at page 693 a three-Judge Bench of this Court was to consider whether the appellant - Comptroller and Auditor General of India was under the constitutional obligation to fix the lesser standard of examination in the light of the Brochure, to inform the Scheduled Caste and Scheduled Tribe employees of the same and to conduct refresher courses before conducting examination and whether the failure to discharge the duty was unconstitutional."

5. We have carefully considered the submissions of the learned counsel. If Kuldeep Singh's case (supra) had directly laid down the law on the question of providing a lesser standard for promotion we would certainly follow the decision in this case in preference to the decision of Vinod Kumar (supra). However, we are not impressed by the argument of the learned counsel for the applicants, who has taken certain observations out of context. In Kuldeep Singh's case (supra) Kuldeep Singh and others are ST candidates who challenged the promotion given to general category candidates in 1988 and 1989 to the post of Head Draftsman before the CAT during the pendency of OA. The applicants (respondents before

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the Supreme Court) were promoted on 26.6.93. The CAT directed the respondents to consider them for promotion from the date they were actually due with consequential benefits. This direction of the CAT was upheld by the Supreme Court. The Supreme Court held that in a calendar year if the recruitment has been made and if the candidates belonging to the reserved category are not available; the reserved vacancies are required to be carried forward for three recruitment years. This was the interpretation given by the Hon'ble Supreme Court in respect of the phrase "subsequent recruitment year" in the Brochure on Reservation for SCs and STs, Chapter-1. As the Government filled up the posts on the erroneous ground that three years period had elapsed on a wrong construction of the phrase, the Supreme Court held that the respondents cannot be denied the benefit and upheld the order of the CAT. This case does not deal with the point at all as to whether there should be a lower qualifying standard or lower marks of evaluation for the purpose of reservation in promotion. We are satisfied that the impugned OM dated 22.7.1997 issued by the Ministry of personnel is in consonance with the Hon'ble Supreme Court's decision in Vinod Kumar's case which in turn relied on para 8.29 of the judgment in Indra Sawhney's case. We are also satisfied that the amended Art. 16(4-A) only speaks of reservation for promotion and does not in any way convey that there should be lower qualifying marks for SC/ST candidates in departmental qualifying/ competitive examinations for promotion. We are also satisfied that the contention that no

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reservation has been given to the candidates belonging to SC/ST category due to withdrawal of the relaxation is incorrect. The reservation policy remains intact and is inviolable. What is withdrawn is only the earlier directive of relaxation of qualifying marks and standard of evaluation. The Supreme Court in Indra Sawhney's case has held that it would not be permissible to prescribe lower qualifying marks or lesser level of evaluation for the reserved category since that would compromise with efficiency in administration. It is important to remember that this relaxation is withdrawn only in promotion matter. Instructions for relaxed standard of evaluation exists as far as direct recruitment is concerned.

6. Three other grounds taken by the applicants are that : the withdrawing of the relaxations should be applied only to examinations which are announced after 22-9-77. The LDCE 1996 conducted between 20.12.96 and 23.12.96 was held much before the rescinding done by the impugned order and as such the revised instructions, even if constitutionally not valid, should not affect those examinations held before the date of the notification. Secondly, relaxing the standard of evaluation for promotion is the ~~un~~^{an} stated presumption in Article 16(4-A) of Constitution providing reservation in promotion. This is so, according to the learned counsel, because if a candidate qualifies the examination on the general standard, such a candidate cannot be treated as a reserved candidate. He relied on the Apex

decision in Post Graduates Institute of Medical Education and Research Vs. K.L. Narasimhan and another, 1997(6) SCC 283. The observation of the Apex Court at page 293 is as under. -

"It is settled law that if a Dalit or Tribe candidate gets selected for admission to a course or appointment to a post on the basis of merit as general candidate, he should not be treated as reserved candidate. Only one who does get admission or appointment by virtue of relaxation of eligibility criteria should be treated as reserved candidate."

7. If the selection of SC/ST candidate is also on the general standard of evaluation for purposes of promotion, then they are to be treated only as general candidates and the roster points reserved for promotion cannot be taken as filled up. Thirdly, in R.K. Sabharwal Vs. State of Punjab, 1995 (2) SCC 745 the Hon'ble Supreme Court was called upon to consider whether the reservation in promotion as per the roster was correct in law and, therefore, constitutional and whether the employees belonging to Scheduled Castes have right to be considered for promotion on their own merit, if so, how they are required to be adjusted in the roster prescribed by the Government. The Constitution Bench has pointed out that when the percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserved points, it has to be taken that the posts shown at the reserved points are to be filled from amongst the members of the reserved categories. The candidates belonging to the general category are not entitled to be considered for the reserved points. On the other hand, the reserved

category candidates can compete for the non-reserved posts. In the event of their appointment to the said posts, their number cannot be added and taken into consideration for working out the percentage of reservation. The grievance of the applicants is that the result of the LDCE, 1996 declared 305 candidates as qualified in the written part of the examination and no reservation has been given to the candidates belonging to the SC and ST. According to the learned counsel, this is a violation of Art. 16 (4-A) of the Constitution.

8. The respondents state that once the nine judge bench in Indra Sawhney's case, laid down the law, that law became effective from the date of pronouncement of the judgment, namely, 16.11.1992 and overruled all the instructions and circulars contrary to the said judgment. The result of the LDCE 1996 has been declared on 9.2.98 after the new rule deleting the proviso to Rule 8 was notified on 17.1.1998.

9. What exactly is the scope of "reservation in promotion"? In Indra Sawhney's case (supra) it has been held by the majority at para 743 -

The question then arises whether clause (4) of Article 16 is exhaustive of the topic of reservations in favour of backward classes. Before we answer this question it is well to examine the meaning and content of the expression reservation. Its meaning has to be ascertained having regard to the context in which it occurs. The relevant words are 'any provision for the reservation of appointments or posts'. The question is whether the said words contemplate only one form of provision namely reservation simpliciter, or do they take in other forms

of special provisions like preferences, concessions and exemptions. In our opinion, reservation is the highest form of special provision, while preference, concession and exemption are lesser forms. The constitutional scheme and context of Article 16(4) induces us to take the view that larger concept of reservations takes within its sweep all supplemental and ancillary provisions as also lesser types of special provisions like exemptions, concessions and relaxations, consistent no doubt with the requirement of maintenance of efficiency of administration - the admonition of Article 335. The several concessions, exemptions and other measures issued by the Railway Administration and noticed in Karamchari Singh (1981) 1 SCC 246: 1981 SCC(L&S) 50 are instances of supplementary, incidental and ancillary provisions made with a view to make the main provision of reservation effective, i.e. to ensure that the members of the reserved class fully avail of the provision for reservation in their favour. The other type of measure is the one in State of Kerala Vs. N.M. Thomas, (1976) 2 SCC 310: 1976 SCC(L&S) 227. There was no provision for reservation in favour of Scheduled Castes/ Scheduled Tribes in the matter of promotion to the category of Upper Division Clerks. Certain tests were required to be passed before a Lower Division Clerk could be promoted as Upper Division Clerk. A large number of Lower Division Clerks belonging to SC/ST were not able to pass those tests, with the result they were stagnating in the category of LDCs. Rule 13-AA was accordingly made empowering the Government to grant exemption to members of SC/ST from passing those tests and the Government did exempt them, not absolutely, but only for a limited period. This provision for exemption was a lesser form of special treatment than reservation. There is no reason why such a special provision should not be held to be included within the larger concept of reservation."

10. What then is covered by exemptions and concessions to advance the cause of SCs, STs and OBCs for reservation for promotion under Article 16(4-A). Giving more chances for passing examinations, relaxation in age, training facilities, preparation time, are some of them to enable them to get prepared and compete with others.

11. There is a lack of proper understanding of the provisions relating to reservation in promotions under Article 16 (4-A) of the Constitution. What is contemplated is that only the reserved categories can be promoted to the slots in the roster specified for them in the particular cadre. Art.16(4-A) does not also say that there should be relaxed standard of evaluation in promotion. If suitable candidates are not available in a competitive examination for promotion, the reserved points shall be carried forward in accordance with the instructions on the subject. After enjoying the benefit of reservation in direct recruitment with relaxed standard there seems to be no justification again for relaxed standard for promotion. In any competitive examination standards of evaluation are to be determined by the employer. It is no doubt true the rule prevalent when the applicant wrote the examination, namely, proviso to Rule 8 was very much in their favour for relaxed standard, but as pointed out this proviso to Rule 8 was no longer valid after Indra Sawhney's case (supra) and was illegally continued all these years. In a competitive examination every candidate must be prepared fully to compete in the papers and show maximum preparedness. He cannot hope to be picked up or selected even if he does not come up to the qualifying standard. That would be a premium on inefficiency. The idea of reservation for promotion does not imply relaxation in standards. If SC/ST and general candidates

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compete and gets selected, the SC/STs will occupy their slots in roster and thereby gain seniority. It will be useful to them for further promotion.

12. In view of the above, we would respectfully hold that the impugned order only followed the Hon'ble Supreme Court's decision in Vinod Kumar's case (supra) and we do not see any infirmity legal or constitutional, in that order.

13. In the result, both the O.As. are dismissed. No costs.

(Dr. A. Vedavalli)
Member (J)

(N. Sahu)
Member (Admnv)

rkv.

Atk Seal

Prer/Kur
6-11-98

(Dr. A. Vedavalli)
Central Administrative Tribunal
Principal Bench, Faridkot House
New Delhi-110001