

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1019/98

New Delhi this the 2<sup>nd</sup> Day of June, 1998

(3)

Hon'ble Justice Shri K.M. Agarwal, Chairman  
Hon'ble Shri R.K. Ahooja, Member (A)

Shri Mahesh Chandra,  
Asstt. Information Officer,  
Directorate of Information & Publicity,  
Govt. of N.C.T.  
Old Sectt.  
Delhi.

(By Advocate: Shri M.R. Bharadwaj)

-Versus-

1. Chief Secretary to the Govt.  
of N.C.T. Delhi
2. Secretary,  
Departmetn of Public Relations,  
Govt. of Delhi  
5 Sham Nath Marg,  
Delhi.
3. Director,  
Informatijon and Publicity,  
Govt. of NCT, Block 9,  
Old Secretariat,  
Delhi-110 054

(By Advocate : None)

ORDER

Hon'ble Shri R.K. Ahooja, Member(A):

The case of the applicant is that he is entitled to be considered for promotion as a Scheduled Caste Officer for the reserved post of S.T following the 40 point roster. We notice, however, that in a cadre of 7 posts only 25% posts are to be filled by promotion. The number of posts thus to be filled by promotion would not exceed 2. It is also an admitted position that a Scheduled Caste Officer already stands promoted against the reserved vacancy at Point No. 1 in the Roster. It appears to us, therefore, that there can be no reservation to the second post as it

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(A)

will result in 100% reservation. The law is now well settled that reservation is against the 'post' and not the vacancy. A Constitution Bench judgement of the Supreme Court in R.K. Sabharwal and Ors. Vs. State of Punjab & Ors. JT 1995(2) SC 359 has held as follows:

"When all the roster-points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Caste/Tribes and Backward Classes in accordance with the reservation policy then the vacancy arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong."

2. This view has also been reiterated in Union of India Vs. Virpal Singh Chauhan & Ors (1995) 6 SCC 684 as follows:

"This appeal is liable to be dismissed applying the principle enunciated in R.K. Sabharwal. It is evident that out of the cadre strength of thirteen, there were three vacancies on the date of filing of the original application before the Tribunal and of the remaining ten posts, only two were occupied by the general candidates and the remaining eight were occupied by the members of Scheduled Castes. Since the representation of Scheduled Caste is already far beyond their quota, no further Scheduled Caste candidates could have been considered for the remaining three vacancies. This means that the Scheduled Caste candidates can be considered only as and along with general candidates but not as members belonging to a reserved category. The appeal is accordingly dismissed with the aforesaid clarification". (emphasis supplied).

3. The Hon'ble Supreme Court has also followed the same principle in Post Graduate Institute of Medical Education & Research, Chandigarh Vs. Faculty Association & Ors. JT 1998(3) SC 223. Hon'ble Justice G.N. Ray speaking for the Constitution Bench observed:

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"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. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise".

4. In the above case Supreme Court also took notice of the Govt. of India OM No. 36012/2/96-Estt (Res) issued by DOP&T in respect of the reservation roster following R.K. Sabharwal & Ors. Vs. State of Punjab (Supra). This OM provides in note 3 that:

"The relevant rotation by the indicated reserved category could be skipped over if it leads to more than 50% representation of reserved category."

5. Shri Bharadwaj for the applicant however argued that the law laid down by the Hon'ble Supreme Court in R.K.Sabharwal (Supra) has only prospective effect, and since the point in the roster for Scheduled Tribes was reached much before that judgement of the Supreme Court was delivered, the ratio laid down therein would not apply in the present case.

6. We have given our careful consideration to this argument. Since the applicant did not agitate his right at the relevant time and there is a provision for carry over<sup>9</sup> the vacancy in the reserve category in the roster we cannot accept the validity of the argument advanced by Shri Bhardwaj. The law as interpreted by the Hon'ble Supreme Court is that the reservation is against posts and not against vacancies. That being so we are of the view that

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there is no *prima facie* case to proceed further in the matter. In so far as the second relief sought for by the applicant is concerned, i.e., a direction to the respondent to release him for deputation to the post of Assistant Information Officer under Government of India, we notice that according to the applicant himself, the Government of India has since withdrawn the offer. That being so, the relief sought for is no longer relevant.

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7. In the light of the above discussion, the OA is dismissed at the admission stage itself.

No order as to costs.

*Kan*  
(K.M. Agrawal)

Chairman

*R.K. Ahuja*  
(R.K. Ahuja)  
Member (A)

\*Mittal\*