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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.602/96

NEW DELHI THIS THE 14th DAY OF March, 1997.

HON'BLE DR JOSE P. VERGHESE, VICE CHAIRMAN (J)
HON'BLE MR S. P. BISWAS, MEMBER (A)

1. Shri Srivastava, S.N.,
Chief Prosecutor,
Directorate of Prosecution,
Patiala House Court,
New Delhi.

2. Maha Singh,
Chief Prosecutor
Tees Hazari Courts
Delhi .

....Applicants

(By Advocate : Shri BB Raval)

VERSUS

1. Lt. Governor,
Government of N.C.T. of Delhi
Raj Niwas, Delhi.

2. Principal Secretary
Home Government of N.C.T. of Delhi
5 Shyam Nath Marg,
Delhi.


3. Gulab Singh Mehra
Chief Prosecutor,
Crime branch,
Tis Hazari Courts
Delhi
Directorate of Prosecution
Tis Hazari Courts
Delhi.

4. Shri R.P. Dhania,
Chief Prosecutor
Central District
Directorate of Prosecution,
Tis Hazari Courts
Delhi.

5. The Chairman,
Union Public Service Commission,
Dholpur House, Shahajahan Road,
New Delhi.

.... Respondents

(By Advocate : Shri S.K. Gupta & Shri V.C. Sondhi)



JUDGEMENT

(By Hon'ble Dr Jose P. Verghese, Vice Chairman (J))

1. The principal reliefs claimed by the petitioner are to:-

(i) Direct the list/panel of Chief Prosecutors dated 31.5.1995 be rectified by the respondents 1 and 2 and the Respondents Nos.3 and 4 should be placed at the bottom of the list.

(ii) That the respondents Nos 3 and 4 are not eligible to be appointed to the post of Public Prosecutor keeping in view the fact that the respondents Nos 3 and 4 are junior to the applicants in the category of Additional Public Prosecutor as well Chief Prosecutor.

2. In support of his case the petitioner pressed for quashing of the orders passed by the respondents on 21.5.1995. The said order at P./15 of the paper book shows that it is only a panel prepared by the D.P.C. The contention of the petitioner was that the respondents are relying on the said panel list as if it is a seniority list and the promotions are being made out of the said list. The petitioner was of the considered opinion that if said list is acted upon as seniority list, only then the relief sought in this behalf will be available to him.

3. In support of his case, the petitioner relied upon the Constitution Bench decision of the Hon'ble Supreme Court in R.K.Sabharwal's case and also the judgement of the Hon'ble Supreme court in Union of India & Ors. vs. Veerpal Singh Chauhan, JT 1995 (7) SC P. 230.

4. The main directions issued in those cases were:

- (i) Once the number of posts reserved for being filled by reserved category candidates a cadre, category or grade (unit for application of rules of reservation) are filled by the operation of roster, the object of rule of reservation should be deemed to have been achieved and thereafter the roster cannot be followed except to the extent indicated in para 5 of R.K.Sabharwal. While determining the said number, the candidates belonging to the reserved category, but selected / promoted on their own merit (and not by virtue of rule or reservation) shall not be counted as reserved category candidates.
- (ii) The percentage of reservation has to be worked out in relation to number of posts in a particular cadre, class, category or grade (unit for the purpose of applying the rule of reservation) and not with respect to vacancies.
- (iii) So far as Railway Guards in Railway service are concerned, that is the only category we are concerned herewith - the seniority position in the promoted category as between reserved candidates and general candidates shall be the same as their inter se seniority position in Grade 'C' at any given point of time provided that at that given point of time, both the general candidate and the reserved category candidates are in the same grade. This rule operates whether the general candidate is included in the same batch of promotees or in a subsequent batch. (This is for the reason that the circulars/letters aforesaid do not make or recognise any such distinction.) In other words, even if a Scheduled Castes/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster then his senior general candidate and the senior general candidate is promoted later to the said higher

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grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Schedule Tribe candidate. The earlier promotion of the Scheduled Caste/Scheduled Tribe candidate in such a situation does not confer upon him seniority over the general candidate even though the general candidate is promoted later to that category.

5. Mr.S.K.Gupta, appearing on behalf of the respondents submitted that the ratio of the above cited cases are not applicable to this case in as much as the list referred to is not a seniority list. The order dated 31.5.1995 is only a consolidated list of selected candidates.

CONSOLIDATED PANEL

1. S.K. Dutta
2. G.S. Mehra (SC)
3. R.P. Dhandia (SC)
4. S.N. Srivastava
5. R.K. Manchanda
6. Maha Singh
7. S.K. Verma
8. S.C. Garg

This consolidated list is prepared out of year-wise panel prepared and recommended for promotion by DPC itself.

Panel for the year 1990-91

- i) S.K. Dutta
- ii) G.S. Mehra (SC)
- iii) R.P. Dhandia (SC) - In lieu of the vacancy reserved for ST.

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PANEL FOR THE YEAR 1991-92

1. S.N. Srivastava
2. R.K. Manchanda

PANEL FOR THE YEAR 1993-94

1. Maha Singh

Panel for the Year 1994-95

1. S.K. Verma
2. S.C. Garg

6. Learned counsel for the respondents further submitted that there were three vacancies in the year 1990-91, one for general, one reserved for SC and the third one reserved for ST and since there was no ST candidate the said vacancy was converted under the "exchange rule" and was given to the SC candidate and Serial No.1 Shri S.K. Dutta was selected against the general vacancy and vacancy at Sr. No.2 being of SC candidate was selected against the vacancy reserved for Scheduled Castes candidate and R.P. Dhanial at Sr.No.3 was selected against the reserved vacancies for ST after exchanging them in favour of Scheduled Castes candidate.

7. Mr S.N. Srivastava and Mr R.K. Manchanda at Serial No.4 & 5 respectively were selected for two vacancies for the year 1992-93 while there were 2 vacancies for the year 1994-95 and Mr Maha Singh and Mr S.K. Verma both general candidates were selected on the said year. These facts were not disputed by the petitioner.

8. On the basis of these facts, the submission of the Counsel for the respondents was that since the said select list is not seniority list, the Select List for the post of Chief Prosecutor cannot be quashed on any

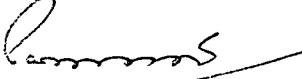
ground as much less grounds set with the assistance of the above cited two cases of the Hon'ble Supreme Court. The post of Chief Prosecutor according to the recruitment rules, is in the scale of Rs.2200-75-2800-EB-1000-4000 and there is reservation in the said cadre and as such treating the general candidates as senior to the reserved candidate is not the question that would arise in this case. It may be relevant for the purpose of promotion to the next cadre where there is no reservation and that stage has not taken place.

9. The contention of the petitioner was that the petitioners were appointed on purely adhoc and emergent basis for a period of six months or till regular arrangements are made, whichever is earlier and the said order passed dt 15.8.95, after the expiry of six months was withdrawn, and it is started that some other orders have been passed for appointment on adhoc basis. Since the order withdrawing the adhoc appointment of the petitioner and the order of appointment of any other candidate on adhoc basis are not under challenge in this petition, we are unable to say anything about the legality of those orders.

10. In the circumstances, the reliefs sought by the petitioner cannot be achieved. All the same the petitioner urged that his name should be shown in the seniority list which might be prepared in future for the purpose of selection of candidate to the post of Public Prosecutor where there is no reservation. The petitioners are at liberty to take whatever remedy available in law as and when such an event takes place and it is not for the Tribunal at this stage to enter

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into any speculative reasoning on such a future event, and we cannot be called upon to give any reliefs where such an event has not taken place. In the circumstances, the petition is dismissed, and the parties to bear their own costs.


(S.P. Biswas)
Member (A)


(Dr Jose P. Verghese)
Vice Chairman (J)

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