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Central Administrative Tribunal

PRINCIPAL BENCH

Shri.....Dr.....A.....Vedavalli.....Vice Chairman
Member (A)

Pre - delivery ORDER in

T.A./O. A. No. (24) of 1987.....

is sent herewith for consideration.

With regards,

Aravindan
(H. Sch) 15/6/98

member (A)

15.6.98

Re
15/6

Thanks. I agree.

With regards.

15
17/6/98

Handle Shri N. Sahin - Member

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1241/97 of decided on 29/6/98

(23)

Name of Applicant: Radhey Shyam Gupta & ors.

By advocate: Mrs. Meera Chhibber

Versus

Name of Respondents: U.O.I. through Lt. Governor, Delhi & ors.

By advocate : Shri Vijay Pandita

Corum

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

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

1. To be referred to the Reporter or not? ... *Yes*
2. Whether to be circulated to other Benches of the Tribunal? ... *No.*

Signature

(N. Sahu)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1241 of 1997

New Delhi, this the 29th day of June, 1998

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

(24)

1. Shri Radhey Shyam Gupta, S/o late Shri Rameshwar Prasad, R/o 1102, Kucha Natwar, Chandni Chowk, Delhi-110006.
2. Sh. Indresh Pal Saxena, S/o Sh. R.S.D.Saxena, R/o D-16, D.D.A.Flats, Timarpur, Delhi.
3. Sh. M.M. Sharma, S/o Sh. R.C.Bhatt, R/o 75/6, Model Town, Delhi.
4. Sh. Jai Bhagwan Gupta, S/o Sh. Inder Mal, R/o B-3/66, Phase-II, Ashok Vihar, Delhi.
5. Sh. Vinod Kumar Nirbhai, S/o Sh. Ganga Vallabh Nithoriya, R/o J-144, Kartar Nagar, Delhi.

-APPLIANTS

(By Advocate - Mrs. Meera Chhibber)

Versus

1. Union of India, through Lt.Governor, Raj Niwas, Delhi.
2. Chief Secretary, 5, Shambhavi Marg, Govt. of N.C.T. of Delhi.
3. Principal Secretary (Education) Old Secretariate, Govt. of N.C.T. Delhi.
4. Director of Education, Directorate of Education, Old Secretariate, Delhi.

-RESPONDENTS

(By Advocate Shri Vijay Pandita)

O R D E R

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

Orders dated 15.7.1996 and 9.9.1996 (Annexure-P1) issued by the Chief Secretary, Govt. of N.C.T. of Delhi promoting Teachers to the post of Vice Principal in the pay scale of Rs.2000-3500/- "on

purely adhoc & emergent basis for a period of six months or till the regular appointments are made whichever is earlier" are impugned in this Original Application.

2. The background facts briefly are that under the recruitment rules the post of Vice Principal is a Group 'B' selection post to be filled 100% by way of promotion from amongst Post Graduate Teachers (in short PGTs)/ Head Masters. In the tentative seniority list issued on 9.7.1996 of Lecturers/PGTs appointed/promoted between 1.5.1970 to December, 1975 the applicants figure at serial nos. 104, 379, 331, 309 and 192 respectively. On 15.7.1996 and 9.9.1996 a promotion list of 38 persons belonging to reserved category was issued. Except five candidates (Sl.Nos. 1 to 5) in the impugned list none of the other candidates were to be seen in the seniority list. All other persons have become PGT only after 1976. Even in a seniority list they will come at the bottom and there is no scope for them to come within the extended zone of consideration. An averment has been made in the rejoinder (para 5) that reserved candidates up to 1974 eligibility have been promoted as Vice Principal. This only proves that these Teachers promoted as Vice Principal are much much junior to the applicants. The promoted persons have become PGTs/Lecturers only after 1975.

3. The law is well settled that yearwise vacancies have to be ascertained and only those candidates are to be considered who come within the

zone of consideration which is three times the number of vacancies. The law is also well settled that if in any particular year the number of reserved category persons are not available, there would be no carry forward of reservation from year to year. The applicants strongly urge that it was totally illegal to fill all the 38 vacancies from amongst the reserved candidates alone and that too by going outside the seniority list. The applicants themselves are high up in the seniority list as compared to the PGTs who are promoted in the impugned list. The learned counsel for the applicants contends that this procedure adopted by the respondents is contrary to the decision of the Hon'ble Supreme Court in the case of R.K. Sabharwal Vs. State of Punjab, JT1995(2)SC251. It is contended that there was no identification of posts and the roster should clearly establish the points at which the reserved category falls and only those points are to be filled by reservation. It is further submitted that although the promotions are said to be purely adhoc, the promoted persons continue to be working as Vice Principal even till date even when no order has been issued extending their period. The learned counsel has referred to the SC/ST brochure to support his contention that in case of promotion by selection in Group 'B' post if sufficient number of reserved candidates are not available in a year, the vacancies will not be carried forward.

4. It is alleged that the vacancies have been bunched together and not earmarked yearwise and this procedure is contrary to the law laid down by the Hon'ble Supreme Court in the case of K.C.Gupta Vs. Lt.Governor of Delhi & ors, 1994 Supp(3) SCC 408. The learned counsel cited the decision of Chandigarh Bench of this Tribunal in the case of Suresh Kumar Vs. Union of India & 20 others, 1995(2) ATJ 208 as an authority for the proposition that SC/ST officials who did not normally come within the zone of consideration ought not to have been picked up from lower down the seniority list and considered against reserved points. The rules and instructions provide a method only for considering eligible persons. If a candidate is not eligible he cannot be considered in violation of such instructions simply because he belongs to the reserved category. In the case of SC & ST candidates it has been laid down that where adequate number of such candidates are not available the field of choice may be extended upto five times the number of vacancies. The applicants' counsel contend that even if the zone of consideration is extended to five times the number of vacancies, the promoted Vice Principals in the impugned orders are no where to be found within the zone.

5. In support of the claim that the promoted persons are still working, the applicants' counsel has placed a copy of the Secondary School Examination, attested on 20.4.1998 by one Shri

L.P.Singh (at serial no.16 in the promotion list dated 15.7.1996), Vice Principal of Govt. Boys Senior Secondary School, Dayal Pur, Delhi.

6. The learned counsel has expressed the concern of the applicants on the ground that the respondents contemplate further promotion to the post of Vice Principal and to this effect a letter dated 6.3.1998 was shown. This step, it is submitted is totally unwarranted.

7. Prior to 1979, there were no instructions regarding consideration of cases of SC/ST employees while making ad-hoc promotions. Vide O.M.No. 36021/7/78 - Estt(SCT) dated 16.4.1979, Department of Personnel issued instructions that whenever adhoc promotions are resorted to due to unavoidable reasons, the claims of eligible SC/ST officers should also be considered along with other eligible persons in the field, though there was to be no formal reservation for SC/ST in such promotions. Vide O.M. dated 30.4.1983 the Department of Personnel issued certain guidelines from which the relevant paras (3) and (4) are reproduced below -

"(3) Since adhoc promotions are made on the basis of seniority-cum-fitness all the Scheduled Castes/ Scheduled Tribes candidates covered in the relevant seniority list within the total number of such vacancies against which adhoc promotions are to be made, should be considered in the order of their general seniority as per the gradation list, on the principle of seniority-cum-fitness and if they are not adjudged unfit, they should all be promoted on adhoc basis.

(4). If, however, the number of SC/ST candidates found fit within the range of actual vacancies is less than the number of vacancies identified as falling to their share, if the vacancies were filled on a regular basis, then additional SC/ST candidates to the extent required should be located by going down the seniority list, provided they are eligible and found fit for such adhoc appointment. This procedure should be adopted on every occasion on which adhoc appointment is resorted to.

The Department of Personnel issued a further O.M. dated 30.9.1983 on the same subject from which the relevant para 2 is extracted below -

"It has now been decided that the Scheduled Castes/ Scheduled Tribes candidates who are within the number of actual vacancies should be considered in accordance with their general seniority on the principle of seniority-cum-fitness and if they are not adjudged unfit, they should all be promoted on adhoc basis. If, however, the number of Scheduled Castes/ Scheduled Tribes candidates found fit within the range of actual vacancies is less than the number of vacancies identified as falling to their share, then additional scheduled castes/ scheduled tribes candidates to the extent required should be located by going down the seniority list but within 5 times the number of vacancies being filled on a particular occasion subject of course, to their eligibility and fitness."

8. With regard to adhoc promotions it is submitted that whenever adhoc promotions are made in exceptional circumstances there is no formal reservation for SCs & STs but the claim of this community should be considered. The adhoc promotions should be considered only against vacancies in excess of 45 days. All such vacancies should be placed on the appropriate roster and the number of vacancies

falling to the share of SCs & STs should be demarcated. Such adhoc promotions are to be made on the basis of seniority-cum-fitness and SC & ST candidates should be considered in the order of general seniority. In order to find out more SC/ST candidates the authorities can go down upto five times the vacancies and when regular promotions are made, the adhoc appointee should be considered for reversion strictly in the reverse order of seniority. These instructions are to be found in an O.M. No. 36011/14/83-Estt(SCT) dated 30.4.1983 issued by the Department of Personnel & Administrative Reforms.

9. After notice, the respondents explained that the seniority list of PGTs/lecturers after 1975 onwards has not been finalised because in the light of the Hon'ble Supreme Court's decision in R.K. Sabharwal's case it would be necessary to change the seniority of 20 years of persons likely to be listed. The orders challenged are stated to be only adhoc appointments and the promoted persons have no vested right to a particular post. It is submitted that the instructions following the decision of the Hon'ble Supreme Court in R.K. Sabharwal's case (supra) would be implemented in due course.

10. In response to our order dated 2.9.1997 for furnishing to the Court the total strength and the total number of vacancies, the respondents could not furnish any statement.

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11. We have carefully considered the contentions made by the rival counsel. Their Lordships in the case of R.K.Sabharwal(supra) have held that the reservation for SC/ST/BC provided under the instructions are to be operated in accordance with the roster maintained by each department and implemented in the form of a running account from year to year. This would ensure avoidance of excess or short fall in the percentage of reservation. Once the percentage of reservation provided for the reserved category is achieved there is no justification to operate the roster thereafter. The running account is to operate annually till the quota provided under the instructions is reached and not thereafter. The expressions 'posts' and 'vacancies' should not be confused. There must be a post in existence first to enable the vacancy to occur. The cadre strength is always measured by the number of posts comprising the cadre. The percentage reservation has to be worked in relation to the number of posts. The concept of vacancy has no relevance in operating the percentage of reservation.

12. We notice that all the above principles laid down in R.K.Sabharwal's case (supra) have not been complied with. No roster has been prepared. Roster points for reservation have not been earmarked. The zone of consideration has not been fixed and whether the requisite number of SC & ST are to be found in the zone or not has not been ascertained. The action of the respondents appears to us to be wholly arbitrary. Even if the promotions are adhoc, the

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respondents could not make promotions in a whimsical manner. Even for an adhoc promotion the incumbent gets the pay of the promoted post and performs the duties of the promoted post and if such promotions are made illegally there is an unjust deprivation of this privilege to those who deserve to be considered for promotion.

13. In the circumstances of the case we have no other alternative except to set aside the impugned promotion lists dated 15.7.1996, and 9.9.1996 as illegal. We direct the respondents to redo the promotions either regular or adhoc by following the law laid down by the Hon'ble Supreme Court in the case of R.K.Sabharwal (supra). The respondents shall first identify the source of vacancies yearwise and shall not bunch together all the vacancies. There is no justification to issue even ad-hoc promotions only to the reserved candidates and not consider senior general candidates. We also direct that after the number of vacant posts are ascertained the promotions can be considered only within 3 to 5 times of the said number depending on whether adequate number of SC & ST candidates are available. Even for an adhoc promotion the procedure laid down cannot be ignored. The claim of senior persons cannot be brushed aside arbitrarily promoting persons who are junior. One important guideline for an adhoc promotion is observance of seniority. We further direct that this exercise shall be completed within a period of 6

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weeks from the date of receipt of a copy of this order.

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14. In the circumstances of the case, the O.A. is allowed. No costs.

A Vedavalli
(Dr. A. Vedavalli)
Member (J)

Naveen Sahu 29.6.98.
(N. Sahu)
Member (Admnv)

rkv.