

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA.No.52 of 1994

Dated this the 24th of November, 1994.

Shri N.V. Krishnan, Hon. Vice Chairman(A)  
Shri C.J. Roy, Hon. Member(J)

Jitender Nath,  
S/o Shri Nagendra Nath,  
R/o 16, Venus Apartments,  
Indra Enclave, Rohtak Road,  
New Delhi 110 041. ...Applicant

By Advocate: Shri Saurabh Prakash

versus

1. Union Public Service Commission(UPSC)  
through its Secretary,  
Dholpur House, Shahjahan Road,  
New Delhi.
2. The Director General,  
National Museum, Janpath,  
New Delhi.
3. Department of Culture,  
through its Secretary,  
Shastri Bhawan,  
New Delhi ...Respondents

By Advocate: Shri M.M. Sudan.

O R D E R (Oral)

(Shri N.V. Krishnan)

The grievance of the applicant is in respect of item No.2 the advertisement issued by the Union Public Service Commission (U.P.S.C.) and published in the Employment News dated 8-14, May, 1993 (Annexure A-1), relating to the post of one Keeper (Central Asian Antiquities) in the National Museum, Ministry of Human Resource Development, Department of Culture. The advertisement states that it is reserved for ST candidate, failing which, it is to be treated as reserved for SC candidate. The applicant, who is in service and is a general candidate, claims that the post in question is an

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isolated post in the cadre and it cannot be reserved for either SC or ST candidate. He relies upon the judgement of the Hon. Supreme Court in Chakradhar Paswan versus State of Bihar (1988 (2) SCC 214). The applicant, therefore, prays to quash the impugned advertisement Annexure A-1 and issue a direction to the respondents to re-advertise the post as an open cadre post. When the matter was taken up for admission, an interim direction was given that any result that might be declared by the competent authority in regard to the selection, will be subject to the outcome of this OA. That interim order is still continuing.

2. The respondents filed a reply on 5.4.94. It was stated that there are 11 posts of Keeper in various disciplines, including the post advertised by the UPSC, referred to above. For the purpose of reservation, these posts have been clubbed with other Class-II posts in terms of the instructions of the Ministry of Home Affairs OM dated 28.1.52 and OM dated 11.11.71 and 20.12.74 of the Department of Personnel and Training. These instructions have been annexed as Annexure-I with the reply and are contained in Chapter-5 of the Brochure issued by the Department of Personnel and Training titled "Brochure on reservation for SC & ST in 1987 (VIIth Edition). The Ministry of Education was approached by the Director,

National Museum in respect of clubbing of posts for the purpose of reservation. The proposal was approved by the Ministry of Home Affairs and that approval was communicated by the Ministry of Education vide letter dated 29.6.64 (Annexure-2 to the reply).

3. It is stated that this post fell vacant on 30.11.86, when the incumbent was promoted. It fell at roster point No.17 of the roster, which was reserved for ST. A requisition was sent to the UPSC which has tried to fill up the post accordingly. As this did not materialise earlier, the present advertisement has been issued.

4. When this reply was filed, the applicant with our permission, amended the OA, in which, the instructions of the Government of India, on which the respondents have relied, have also been challenged.

5. The respondents have filed an amended reply. The reply to the amended OA does not deal with the judicial authority cited by the applicant.

6. We have heard the learned counsel for the parties today.

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7. We have seen the judgement of the Hon'ble Supreme Court in Chakradhar Paswan versus State of Bihar (1988 (2) SCC 214). The court posed for itself three questions as follows:-

"7. The questions that fall for our determination are: (1) Is the post of Deputy Director (Homoeopathic) an 'isolated post' and therefore reservation of the post for a Scheduled Caste candidate amount to 100 per cent reservation and must therefore be declared to be impermissible under Article 16(4)? (2) Whether the posts of the Director and the three Deputy Directors could be grouped together for purposes of implementing the policy of reservation, according to the 50 point roster. And (3) Could the posts of the Director and the three Deputy Directors in the Directorate of Indigenous Medicines although they are posts carried on different grades, still be clubbed together for purposes of reservation merely because they are Class I posts?"

They were answered as follows:-

"9.....The conclusion is irresistible that the posts of the Director and those of the Deputy Directors constitute different cadres of the Service....."

".....The High Court rightly held that the reservation of the post of Deputy Director (Homoeopathic) amounted to 100 per cent reservation which was impermissible under Article 16(4) as otherwise it would render the guarantee of equal opportunity in the matter of public employment under Article 16(1) wholly elusive and meaningless."

"10....The three posts of Deputy Directors of Homoeopathic, Unani and Ayurvedic are distinct and separate as they pertain to different disciplines and each one is isolated post by itself carried in the same cadre. There can be no grouping of isolated posts even if they are carried on the same scale....."

".....The Government of India instructions clearly show that there can be no grouping of one or more isolated posts for purposes of

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Professor of Surgery, Professor of Gynaecology pertain to particular disciplines and therefore each is an isolated post."

"17. It is quite clear after the decision in Devadasan case, that no reservation could be made under Article 16(4) so as to create a monopoly. Otherwise, it would render the guarantee of equal opportunity contained in Articles 16(1) and 16(2) wholly meaningless and illusory. These principles unmistakably lead us to the conclusion that if there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at the initial stage or for filling up a future vacancy in respect of that post. A reservation which would come under Article 16(4), presupposes the availability of at least more than one post in that cadre."

It is observed that in para-10 of the Judgement, the Court considered the very instruction on which reliance is placed by the respondents.

8. Admittedly, the post of Keeper in question is an isolated post. Therefore, there cannot be any reservation.

9. The learned counsel for the respondents could not satisfy us why this OA should not be allowed on the basis of the judgement of the Supreme Court. He only contended that the applicant cannot now challenge the order dated 26.6.1964 of the Ministry of Education relating to clubbing of the isolated posts. That objection is not maintainable as it is for the first time in the counter that respondents have referred to this fact. Other than this, he has not been

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able to show any reason why we should not apply the ratio of the Supreme Court Judgement to this case.

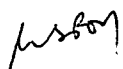
10. In the circumstances, we are of the view that the reliance placed by the respondents on the fact that this post is no more an isolated post, as it stands clubbed with other Class-II posts cannot stand scrutiny, in view of the Supreme Court's judgement. Therefore, in so far as the clubbing of the post of Keeper (Central Asian Antiquities) is concerned, we declare that the action taken by the respondents in this regard under the authority of Annexure-2 letter dated 29.6.64 cannot be sustained and is quashed. That post is declared to continue as an isolated post. No reservation can, therefore, be made in respect of such an isolated post.

11. For the aforesaid reasons, we quash the impugned advertisement of the UPSC (Annexure A-1) in so far as it concerns the post at Sl.No.2, namely Keeper (Central Asian Antiquities) in the National Museum, Ministry of Human Resource Development, Department of Culture. We direct the respondents that recruitment to this post can now be taken up, if at all, treating it as an unreserved post.

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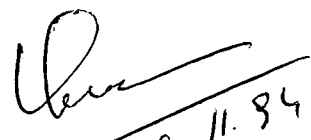
12. Before parting with the case, we have to only observe that the third respondent would be well advised to reconsider the letter dated 29.6.1964 (Annexure-2) in the light of the above judgement of the Supreme Court. A copy of this order be sent to that respondent separately.

13. OA is disposed of, with the above observation. No costs.

  
(C.D. ROY)

MEMBER(J)

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(N.V. KRISHNAN)  
VICE CHAIRMAN(A)