

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1070 of 1994 and
MA No. 1536 of 1994



New Delhi this the 1st day of September, 1994

Mr. Justice S.K. Dhaon, Acting Chairman
Mr. B.N. Dhoundiyal, Member

1. All India Central PWD SC/ST
Association represented by
Shri Phool Singh, General
Secretary,
Room No.109 B,
I.P. Bhavan,
First Floor,
New Delhi.

2. V.P. Singh
Sectional Officer,
CPWD (Horticulture),
13th Floor,
M.S.O. Building,
Police Headquarter,
I.T.O.,
New Delhi.

3. Charat Kumar
Sectional Officer (Horticulture),
CPWD, I.P. Bhavan,
New Delhi.

...Applicants

By Advocate Shri K.B.S. Rajan

Versus

1. The Union of India
through the Secretary,
Min. of Urban Development,
Nirman Bhavan,
New Delhi.

2. The Director General Works,
C.P.W.D.,
Nirman Bhavan,
New Delhi.

...Respondents

By Advocate Shri V.S.R. Krishna

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Acting Chairman

The controversy pertains to the promotion
to the post of Assistant Director (Horticulture)
in the quota reserved for Scheduled Castes/Scheduled
Tribes. The applicants alleged themselves to be
prospective promotees to the said post, as they are

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Scheduled Castes. They came to this Tribunal with the grievance that the post earmarked for Scheduled Castes/Scheduled Tribes have been dereserved. The respondents were taking active steps to fill up the vacancies by promotion of general candidates.

2. Affidavits have been exchanged between the parties. However, no rejoinder-affidavit has been filed despite time being granted to the applicants for doing so. In the absence of any rejoinder-affidavit, we have to treat the averments made in the counter-affidavit as correct. Though this case has not been formally admitted, yet with the consent of the parties we are disposing of the same finally and we have heard it with that thing in view.

3. The contention advanced in the forefront is that the decision taken by the respondents to dereserve the said post runs contrary to the terms of the OM dated 10.07.1990, a true copy of which has been filed as Annexure-A to this applicaiton. Before we read the terms of the OM, we would like to have a look at the counter-affidavit filed on behalf of the respondents.

4. The material averments in the counter-affidavit are these. DPC has been held for promotion against 3 vacant/anticipated vacancies (2 unreserved and one reserved for ST). No SC/ST candidate is available within the normal and extended zone of consideration viz. 15 candidates. Seniormost Scheduled Caste candidate is available at Serial No.17. According to the instructions, _____ interchangeability of SC/ST candidates is permissible. Therefore, against the vacancy reserved for a Scheduled Tribe, a Scheduled Caste

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candidate can be promoted, if available. Since no Scheduled Caste/Scheduled Tribe candidate is available, dereservation has been proposed and approved. The ^{8/} instructions also provide that due to non-availability of Scheduled Caste/Scheduled Tribe candidate in promotion quota the vacancy can be temporarily diverted to direct recruitment quota. Paragraph 6 of the Department of Personnel of Personnel & Training guidelines dated 10.07.1990 lays down that "diversion of vacancies may be effected after careful consideration". The following reasons have been assigned for dereserving the post:-

(i) The vacancy which is proposed to be filled up by dereservation would become available on 01.09.1984. Monsoon season is very crucial for Horticulture works. It is not administratively possible to keep the post of Assistant Director of Horticulture vacant in Monsoon season.

(ii) There is acute stagnation in the promotion of Sectional Officer (Horticulture) grade. Promotions are being made after 21 to 23 years of service as Sectional Officer (Horticulture). Diversion of promotion quota to Direct Recruit will increase the stagnation.

5. Now we may read the OM on which reliance is placed by the applicants (Annexure A). Paragraph 3 of the said OM, inter alia, states that where recruitment to a grade is made both by promotion and direct recruitment, i.e., where separate quotas for promotion and direct recruitment are prescribed

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(8)

in the recruitment rules, reserved vacancies falling in the promotion quota which cannot be filled due to non-availability of eligible persons belonging to Scheduled Castes and Scheduled Tribes in the feeder cadre may be temporarily diverted to the direct recruitment quota and filled by recruitment of candidates belonging to Scheduled Castes or Scheduled Tribes, as the case may be, in accordance with the provisions relating to direct recruitment contained in the recruitment rules. In the subsequent year(s) when reserved vacancies in the direct recruitment quota becomes available they may be diverted to promotion quota to make up for the vacancies diverted earlier and filled from Scheduled Caste/Scheduled Tribe candidates in the feeder cadre who might by now have become eligible for promotion. The exchange of vacancies in this manner will ensure that the structure and composition of the cadre remain unaffected over a period. In paragraph 6 it is stated that diversion of vacancies may be effected after careful consideration of all aspects. If, for instance, a candidate belonging to Scheduled Caste or Scheduled Tribe is likely to become eligible for promotion in the near future, it may be preferable to keep the reserved vacancy unfilled till that time, rather than diverting the vacancy for direct recruitment of a candidate from outside. The powers for relaxation of recruitment rules in the manner indicated above may be exercised judiciously to ensure that

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the interests of persons belonging to Scheduled Castes and Scheduled Tribes are taken care of and are not adversely affected by following these instructions mechanically, *inter alia*.

6. OM dated 19.12.78 relates to the dereservation of a post. It states that a vacancy reserved for SC or ST may be dereserved and filled up by a general candidate in case no suitable candidate belonging to SC or ST, as the case may be, is available to fill such a reserved vacancy. A reserved vacancy should not be kept unfilled for more than one year in anticipation of SC/ST candidates, unless there is no recruitment in any particular year. Appointing authority shall take all possible steps to secure SC/ST candidates for appointment against reserved vacancies and proposed dereservation only when it becomes inevitable. A reserved vacancy should not be filled up by a general community candidate unless it is dereserved. The Department of Personnel & Training is shown to be the competent authority for dereservating the post.

7. We may note that it is not the case of the applicant that the competent authority has not passed the order of dereservation. On the contrary, in the counter-affidavit it has been emphasised that dereservation has been proposed and approved. It is implicit in the averment that this has been done by the competent authority. Moreover, there is a presumption that official acts are duly performed.

8. We have considered the problem with due care and we have come to the conclusion that there does not really exist a conflict between the OMs relied by the applicant and the respondents. The power to dereserve, ^{is} independent of the OM, on which reliance has been placed by the applicant. The OM of 1990 will have its full play so long as there exists reservation of vacancy of Scheduled Castes and Scheduled Tribes for filling a promotional post. Once that situation ceased to exist, the OM will cease to have any operation. Whether the power

(10) of dereservation has been exercised arbitrarily is a different question. We have already indicated that in the counter-affidavit reasons have been given as to why power of dereservation has been exercised. We are unable to discern any illegality in the exercise of that power. In the result no benefit can be given to the applicant on the basis of the OM dated 1990.

9. It is contended by the applicant that he should be given the benefit of the later OM. The earlier OM should give way to the later OM. This proposition has a limited scope. It can be pressed into service only after a real conflict between the two OMs exists. We have already indicated that there is no conflict. Moreover, the law is well settled that a harmonious construction should be given where two provisions are being interpreted. The same principle will apply where the contents of two OMs are being interpreted.

10. This application fails and is dismissed but without any order as to costs.

B.N.Dhoniyal
(B.N. DHOUDIYAL)

MEMBER (A)

S.K.Dhaon
(S.K. DHAON)
ACTING CHAIRMAN

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