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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

C.A.NO. 1801/94

New Delhi, this the 31st day of March, 1995

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri Brijlal Thakur,
s/o Shri Mahajan Ram,
Operation Theatre Assistant,
Central Hospital,
Northern Railway, Basant Lane,
New Delhi.

... Applicant

By Advocate: Shri S.K. Sawhney

Vs.

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.

2. Chief Hospital Supdt.,
Central Hospital,
Northern Railway,
Basant Lane, New Delhi.

3. Smt. Prakash Kaur, w/o
Operation Theatre Assistant,
Central Hospital,
Northern Railway,
Basant Lane, New Delhi.

... Respondents

By Advocate: Shri P.S. Mahendru

ORDER

Hon'ble Shri J.P. Sharma, Member (J)

A post of ECG Technician in the grade of Rs. 1200-2040 had fallen vacant on 30.11.93 in the Central Hospital, Northern Railway. This post was earlier occupied by general candidate Mrs. William Chand. The Trade Test for the post was held on 24.11.93 and the applicant has passed the trade test, while Respondent No.3 Smt. Prakash Kaur has failed in the Trade test.

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✓ The grievance of the applicant is that respondents are promoting Respondent No.3 and he made a representation on 1.2.94 but the same has not been replied. The applicant has filed this application on 7.9.94 praying for the grant of the reliefs that the respondents be directed to promote the applicant to the post of ECG Technician and the post should not be filled up by S.C. candidate.

2. A notice was issued to the respondents, who contested this application. It is stated by the respondents that the vacancy is the shortfall of SC candidate against roster point No.1 as exhibited in Annexure R-1. Respondent No.3 has to be given three chances as per instructions contained in SC/ST Brochure, Edition, 1985 (Page No. 449) and 2 more chances are given to SC/ST candidates in subsequent selection before finally declaring them unsuitable for further promotion, and this is exhibited in Annexure R-2 to the counter. It is said that the post in question is reserved for SC/ST candidates, so it cannot be given to the applicant though he might have passed the Trade test securing the highest marks. Further there are instructions of the Railway Board dated 3.8.94 that in any cadre upto 4 posts the promotions for reserve community is to be done on the basis of roster register points and not on the basis of percentage. Since the cadre in question is being of one post, the roster register is implemented for promotion. It is, therefore, stated that the post of ECG Technician falls on the roster point reservation having been carried over from the last 2 selections. The applicant, therefore, has no case. We heard the learned counsel for the parties at length and perused the records. From

the annexure filed to the counter by the respondents that S.C. reservation was carried over in 1983-85 and again of other category in 1993 when S.C. candidates were not available and/S/ Shri Surinder Singh, Bhim Sen and Mrs. William Chand were appointed. Now point No. 4 is S.T. point. Since S.T. is not available and now S.C. has become available, so the vacancy has been treated as reserved vacancy. During the course of hearing, Railway Board's letter dated 31.7.71 has been produced. This letter is on reservation quota for SC/ST candidates and it is observed that there has been representation to the Board that selections are still being held for a single post with the result that the candidates belonging to SC/ST categories are denied the chances of their being considered for such selections as when there is only one vacancy it is treated as unreserved irrespective of the point of roster. The Board has finally opined that the grievance can be removed by considering 2 posts i.e. one actual and the other to cover unforeseen circumstances and the compliance of the instructions be strictly observed. The reference has also been made to the Circular of the Railway Board dated 9.7.75 with regard to reservation for SC/ST in single vacancy arising in a recruitment year and it was decided that in such a situation in the first year in which a single vacancy occurs that vacancy shall continue to be treated as unreserved irrespective of the fact whether it has or has not occurred against a reserved point in the roster. It will be filled by next candidate due to promotion and if that person happens to be a candidate from a community other than for which the vacancy was reserved, the reservation would be carried forward to the subsequent recruitment/selection/Trade Test year. In the subsequent years the

first vacancy even though it might be a single vacancy in that year, shall be treated as reserved in favour of the SC/ST as the case may be and shall be filled by a person of respective community.

3. Even in the subsequent years if for the reason, the vacancy is not filled by a person of the community in whose favour it is reserved, the reservation shall be carried forward to three years subsequent to the selection/Trade test/Recruitment years in the case of Class III and Class IV posts and thereafter, if necessary as per existing orders. It will be exchanged between SC and ST, as the case may be. However, in the case of promotion to posts in Class II and lowest rung of Class I, the carry forward is not permissible in the case of 2 or more vacancies occurring in a recruitment/selection year, the single vacancy shall be carried forward only to one subsequent selection/recruitment year and if no SC/ST becomes available in the subsequent years also the reservation would lapse. It appears that by the Railway Board's letter dated 5.10.94 the figure 4, in the letter dated 29.7.93 of the Railway Board it has been amended to figure 7. Railway Board has issued other circulars also dated 26.8.82, 27.12.83 and 7/11.4.84. It is referred to the fact that if there is a single vacancy in a particular recruitment year and there is an element to carry forward either due to single vacancy or otherwise the vacancy should be treated as reserved. It lays down that oldest carried forward reservation has to be adjusted against it. These circulars of the Railway Board, however, have to be considered in the light of the law regarding a single vacancy in the cadre. There may be

cases where a cadre may consist of more than one vacancy and in that event the reservation may be effectively possible. But when there is a single isolated post in the cadre whether the reservation of such a post can be said to be legal? The policy of reservation has been laid down under Article 16(4) of the Constitution of India. The reservation percentage for SC/ST has been prescribed and is 15% and 7½% respectively. If there is a single isolated post in the cadre and if that is reserved, the reservation will be 100% and which will be unconstitutional. The Hon'ble Supreme Court considered the matter in the case Dr. Chakradhar Paswan Vs. State of Bihar reported in 1988(2) SCC 214. It has been squarely laid down that if there was only one post in the cadre there could be no reservation under Article 16(4) of the Constitution.

In this case the decision of Arati Ray Choudhury Vs. UCI reported in 1974(1) SCC 87 has been distinguished.

This point has also been recently considered in the case of Chetana Dilip Motghare(SMT) Vs. Bhide Girls' Education Society, Nagpur and Others. This is reported in 1995(29) ATC 107. The Hon'ble Supreme Court considered the review petition in Civil Appeal No.2193/89 which was decided on 22.1.93 reported in 1993 Supp.(3) SCC 527. That decision has squarely relied the case of Dr. Chakradhar Paswan.

The review was moved by the petitioners that there is a judgement of Three Judges Bench in C.A.No.242/92 Vidyulata Arvind Kakade Vs. Digambar Gyanba Surwase decided on 17.1.92 in which a view has been taken that the reservation applies in the case of isolated post also. It was further

argued that the judgement of Arati Ray Choudhury was maintained while deciding that case. The Hon'ble Supreme Court dismissed the review petition and held that the judgement in the case of Vidyulata Arvind Kakade is a judgement per incuriam. The above discussion goes to show that there is an isolated post in a cadre as in the present case there is a single post of ECG Technician there cannot be a reservation point. The respondents, therefore, have wrongly applied the reservation roster in carrying forward the vacancy for the last 2 selections.

4. We have heard Shri P. S. Mahendru at considerable length and also the Senior Personnel Officer of the concerned Railways¹ was called by Shri Mahendru to highlight the policy of reservation adopted by the railways for an isolated post in a cadre. We could not get any substantiate help from the respondents in this matter and only those circulars have been relied upon while the case of Dr. Chakradhar Paswan declared the law in the year 1988. The circulars which have been quoted are with regard to single vacancy in a recruitment year and they do not relate^{to} an isolated post in a cadre. Since the respondents have not placed any material before us as to on what basis they are maintaining the roster for single isolated post and not having got any help from the respondents in that regard nor the learned counsel for the respondents has cited any law on the subject or any circular of the Railway Board, we have considered the matter in the light of the available material and the law on the point as laid down in the case of Dr. Chakradhar Paswan. The recent decision in the review application of the case of Bhide Girls' Education

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Society goes to show that the ratio laid down by the Hon'ble Supreme Court in the case of Dr. Chakradhar Paswan¹ still holds the field.

5. In the above conspectus ^{of} facts and circumstances of the case, we allow the application and direct the respondents to fill the post of ECG Technician as unreserved isolated post and consider the case of the applicant for appointment to that post according to recruitment rules. In the circumstances, the parties to bear their own cost.

(B.K. SINGH)
MEMBER(A)

J. P. SHARMA
MEMBER(J)