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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1536/2000

New Delhi, this the 24th day of April, 2001

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. S.A.T.RIZVI, MEMBER (A)

Birbal Singh Poonia,
S/o Late Jhabar Ram,
R/o A-168, Dakshinpuri,
New Delhi-110065 Applicant
(By Advocate : Shri Vikas Singh)

VERSUS

National Capital Territory of Delhi
through its Director (Education),
Sham Nath Marg,
Delhi - 110054 Respondent
(By Advocate : Shri George Paracken)

O R D E R (ORAL)

By S.A.T. Rizvi, Member (A):

The applicant is an aspirant for the post of Post Graduate Teacher-Hindi (Male). He has been finally selected and finds place at serial No. 10 in the list of selected candidates (Annexure R-3). The aforesaid list has been prepared in accordance with the policy of reservation. He has, however, not been appointed.

2. After hearing the learned counsel on either side and perusing the documents on record, we find that 20 posts of PGT-Hindi (Male) were to be filled and three different notices were issued for the purpose on 21.5.1998, 16.6.1998 and 8.1.1999. The number of vacancies notified as shown at page 11 of the counter reply filed by respondent No.1 gives the break-up of vacancies, inter alia, caste and community wise. Out of the said 20 vacancies, 4 are shown to have been reserved in favour of SC candidates, 7 for OBCs and 9 for General

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Candidates. However, against the aforesaid 9 vacancies earmarked for General Candidates, 2 are required to be filled by retired defence persons, 2 from Physically handicapped category and one from among the Orthopedically handicapped category. These 5 vacancies have been treated as part of the General category. Out of the 20 appointments made, 11 have been made in respect of reserved categories and only 9 have been made from general category candidates. According to the learned counsel for him, the applicant appearing at serial No.10 ^{2 of the select list IV} should have been appointed from among the general candidates. The applicant stands at serial No.10 among the general candidates and, therefore, if the reservation policy had been correctly and scrupulously followed, the applicant would have been appointed as a general candidates. By appointing one person more than the 50 per cent reservation limit from among the reserved candidates, the aforesaid policy has been violated. In the present situation, the action on the part of the respondent calls for remedy and that is why the present OA.

3. In normal course we would have directed the respondent to undo the selection process which has resulted in breach of the Government policy. But we would not do the same as, according to the learned counsel for the applicant, yet another 4 vacancies of the general category have since been notified by the respondent by their notice dated 11th December, 2000. The learned counsel also tells us that the process of selection under the aforesaid notice is still going on

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and is yet to be completed. In the circumstances, we find that it will be in the fitness of things to direct the respondent to appoint the applicant, who is already a selected candidate, against one of the aforesaid 4 vacancies. We find, by this action, the error committed by the respondents in not complying with the reservation policy can be rectified partially, at any rate.

4. In support of the reservation policy followed by the respondents, the learned counsel appearing on their behalf has sought to argue that the Govt. of N.C.T. of Delhi has been following the practice of clubbing the vacancies in respect of all the posts irrespective of the subject for the purpose of quantifying reservations and in this view of the matter there has been no mistake on the part of the respondents. The learned counsel appearing on behalf of the applicant has, on the other hand, disputed the practice followed by the Govt. of N.C.T. of Delhi by placing reliance on the Judgement rendered by the Supreme Court in Dr. Chakradhar Paswan Vs. State of Bihar and Others decided on 8th March, 1988 and reported as (1998) 2 SCC 214 and also on the judgement of the same Court in Dr. Suresh Chandra Verma and Others Vs. The Chancellor, Nagpur University and Others decided on 21st August, 1990 and reported as (1990) 4 SCC 55. In the above cases, the Supreme Court has observed as under:

(1998) 2 SCC 214 :

"10. The three posts of Deputy Directors of Homoeopathic, Unani and Ayurvedic are distinct and separate as they pertain to

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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."

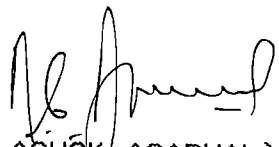
(1990) 4 SCC 55 :

"11. According to us, the word "post" used in the context has a relation to the faculty, discipline, or the subject for which it is created. When, therefore, reservations are required to be made "in posts", the reservations have to be postwise, i.e. subjectwise."

If one has regard to what the Supreme Court has laid down in the aforesaid judgements, it is clear that the practice followed by the respondent- authority by clubbing posts for reservation purposes is erroneous and the plea advanced by the learned counsel appearing on behalf of the respondent is, in the circumstances, rejected.

5. In the circumstances, the OA is allowed with a direction to the respondents to appoint the applicant against one of the general category posts notified by them by public notice dated 11th December, 2000. Further, since the applicant could not be appointed entirely due to the mistake committed by the respondent authority, he will be entitled to all the consequential benefits in terms of seniority and back wages with effect from the date others have been appointed in pursuance of the list at page 41 of the counter reply filed by the respondent authority. No costs.


(S.A.T. RIZVI)
MEMBER (A)


(ASHOK AGARWAL)
CHAIRMAN

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