

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 1595 of 2000

New Delhi, dated the 8th January, 2002

(16)

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)

Shri Gurpreet Singh,
S/o Shri Sartaj Singh,
R/o F-174, Vikaspuri,
New Delhi-110018.

..... Applicant

(By Advocate: Shri G.D. Gupta)

Versus

1. Govt. of NCT of Delhi through
The Chief Secretary,
5, Sham Nath Marg,
Delhi-110054.
2. The Labour Commissioner,
Govt. of NCT of Delhi,
15, Rajpur Road,
Delhi-110054.
3. Union Public Service Commission
Through its Chairman,
Dholpur House,
Shahjahan Road,
New Delhi-110011.

..... Respondent

(By Advocate: Shri Devesh Singh)

ORDER (Oral)

Hon'ble Mrs. Lakshmi Swaminathan, VC (J)

This application has been filed by the applicant mainly challenging the validity of advertisement issued by the Respondents in the Employment Exchange dated 22-28.7.2000.

2. Respondents have issued the aforesaid advertisement in which they have stated that one post of Assistant Electrical Inspector in the Labour Department is reserved for a Scheduled Caste (SC) candidate. The advertisement also prescribed the requisite qualifications etc. which the candidate should fulfill.

3. One of the contentions of Shri G.D. Gupta, learned counsel for applicant is that the Respondents could not have reserved the post of

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Assistant Electrical Inspector as advertised by them as reserved for a SC candidate. According to the learned counsel, as per revised roster of 1997 point No.1 has to be kept as unreserved and cannot be reserved for a SC candidate as the Respondents have done in the impugned advertisement. He has relied on the Government of India, Ministry of Personnel, Public Grievances & Pensions, Dept. of Personnel & Training's O.M. dated 2.7.1997. This had been issued on the basis of the revised roster, as a post based roster in implementation of the Hon'ble Supreme Court's judgment in R.K. Sabharwal Vs. State of Punjab (1995 (2) SCC 745). In this circular it has been stated that as per the existing instructions, vacancies based roster has been prescribed. In pursuance of the judgment of the Apex Court in R.K. Sabharwal's case (supra) the Court has held that vacancies based rosters can operate only till such time as the representation of persons belonging to the reserved categories in a cadre reaches the prescribed percentages of reservation. Thereafter, the rosters cannot operate and subsequent vacancies ought to be filled by appointment of persons from the respective category so that the prescribed percentage of reservation is maintained. In implementation of the directions of the Hon'ble Supreme Court, the Government of India has decided, inter alia, that the existing 200-point, 40-point and 120-point vacancy based rosters shall be replaced by post based rosters. All Ministries and Departments were required to prepare the respective rosters on the basis of the clarifications issued in this circular. Shri G.D. Gupta, learned counsel has laid stress on paragraphs 8 and 9 of this O.M. which provides that the existing orders on the subject are deemed to have been amended and these orders shall take effect from the date of their issue i.e. 2.7.1997. As per the Annexure to this O.M. which is a model roster of reservation with reference to the posts for Direct Recruitment, it has been indicated that for the post at Serial No.1 it is meant for an unreserved candidate. Learned counsel has submitted that the Respondents have sent the requisition for

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the aforesaid advertisement which has been published in July, 2000 only after the O.M. of 1997 has been issued some-time in 1999. He has submitted as the post of Assistant Electrical Inspector is a direct recruit post which has been advertised subsequent to the circular of 1997 and the Respondents have not denied his averments that it is the first post in the cadre they could not have indicated it as a reserved post for a SC candidate in the advertisement. 18

4. In the alternative, the learned counsel for applicant has relied upon the Government of India, Dept. of Personnel & Administrative Reforms' O.M. dated 19.4.1975 read with O.M. of 30.11.81. His contention is that as there was only one vacancy which was advertised for the year 2000, even if it falls on the reserved category, as indicated in the roster, it will have to be treated as 'Unreserved' in the first instance and filled accordingly and the reservation will have to be carried forward to the subsequent year. Learned counsel for applicant has contended that in whatever manner, the issue is seen the Respondents could not have reserved the single post arising for the first time for the relevant year for a SC candidate keeping in view the DOPT O.M. dated 2.7.97 and DP&AR O.M. dated 29.4.75. He, therefore, prays that the advertisement may be quashed and set aside and the post be treated as 'Unreserved' from the same cut off date, as otherwise the applicant would become over-aged.

5. We have seen the reply filled on behalf of the Respondents and heard Shri Devesh Singh, learned counsel. It is relevant to note that only a short reply has been filed and they have not cared to file any detail reply to answer the averments made by the applicant on merits. Two preliminary objections have been taken by the Respondents in their reply namely;

- (i) that the applicant being a Departmental employee has no claim to the post falling in the Direct Recruit quota;
 - and (ii) that the O.A. suffers from multiple reliefs and is, therefore, not maintainable under Rule 10 of CAT (Procedure) Rules, 1987.
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6. We have carefully considered the pleading and submissions made by the learned counsel. We are unable to agree with the preliminary objections raised by the Respondents. There is no legal bar to a Departmental employee applying and being considered for a post as a direct recruit provided he fulfills the prescribed eligibility conditions under the Rules. So the preliminary objection (i) is rejected. The main relief sought by the applicant is with reference to quashing of the impugned advertisement issued by the Respondents in July, 2000 and the other reliefs are consequential in nature to this. Under the circumstances the second preliminary objection is also rejected.

7. We do not find any specific denial of the applicant's contentions in the reply filed by the Respondents. From a perusal of the documents on record, therefore, we find merit in the submissions made by Shri G.D. Gupta, learned counsel which are based on the Government of India, DOPT O.M. dated 2.7.97 following the implementation of the directions in the judgment of the Hon'ble Supreme Court in R.K. Sabharwal's case (supra). The Annexure to the O.M. gives a Model Roster of reservation with reference to posts for Direct Recruitment, which shows that a post at Serial No. 1 is meant for an unreserved category candidate.

8. The earlier DP&AR O.M. dated 29.4.75 is also relevant to the issues raised in this application. Nothing has been brought on record by the Respondents to show on what basis they have reserved the single post for the year in question for a SC candidate, to controvert the averments made by the applicant.

9. The O.A. was filed on 28.8.2000. By Tribunal's order dated 28.8.2000 an opportunity has been given to Respondents to go ahead with the interviews in pursuance of the impugned advertisement, if so advised, though they were restrained from finalising the result of the interview for the post of Assistant Electrical Inspector in the Labour Department. This interim order has been continuing from time to time. Learned counsel for

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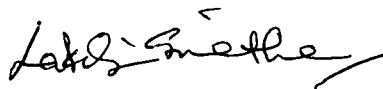
respondents is unable to inform the latest position as to what further action, if any has been taken by the Respondents with regard to the impugned advertisement of July, 2000. Shri G.D. Gupta, learned counsel has submitted that on the basis of information given by the applicant who is present in the Court, no finalisation of the selection has been done so far.

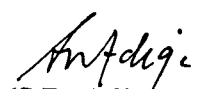
10. As mentioned above, from the documents which have been placed on record by the applicant, including the DOPT O.M. 2.7.97, we are unable to conclude that Respondents have acted, in accordance with the relevant law, rules, and instructions in the action taken by them to reserve the post of Assistant Electrical Inspector in the Labour Department for a SC candidate. They have not also placed any rules or instructions to controvert the submissions made by the applicant. The O.M. dated 2.7.97 was to take effect from the date of its issue and selections were not to be finalised, having regard to the interim order passed by the Tribunal dated 28.8.2000.

11. In the facts and circumstances of the case we find that the impugned advertisement issued by the Respondents in July, 2000 is not in accordance with the relevant law, rules and instructions referred to above.

The O.A. accordingly succeeds and is allowed to the following extent:

- (i) the impugned advertisement of July, 2000 is quashed and set aside;
- (ii) Respondents may issue a fresh advertisement which will substitute the earlier advertisement treating the post as unreserved and keep the other terms and conditions the same. No order as to costs.


(Mrs. Lakshmi Swaminathan)
Vice Chairman (J)


(S.R. Adige)
Vice Chairman (A)

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