

Central Adminisrative Tribunal
Principal Bench, New Delhi

M.A.No.491/2002 in
O.A.No.2274/2000

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Hon'ble Shri M.P.Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

Friday, this the 19th day of July, 2002

Narendra Kumar Gond
s/o Shri Pheru Ram Gond
UDC, B-II
DG Doordarshan
New Delhi - 110 001.

... Applicant

(By Advocate: Shri M.K.Bhardwaj)

Vs.

1. Union of India through
Secretary
Ministry of Information and
Broadcasting
"A" Wing, Shastri Bhawan
Dr. Rajendra Prasad Road
New Delhi - 110 001.
2. Director General
Doordarshan
Doordarshan Bhawan
Copernicus Marg
New Delhi - 110 001.
3. Director (Administration)
Staff-I Section
Directorate General of Doordarshan
Doordarshan Bhawan
Copernicus Marg
New Delhi - 1.
4. Director
Doordarshan Kendra
Doordarshan Bhawan
Copernicus Marg
New Delhi - 110 001. Respondents

(By Advocate: Shri H.K.Gangwani)

O R D E R (Oral)

By Shanker Raju, M(J):

Applicant, who belongs to ST community, impugns respondents' orders dated 14.3.2000 and 20.6.2000, whereby he has not been found suitable for appointment by the Selection Committee as Film/Video Editor under the Special Recruitment Drive for SC/ST

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candidates and has sought declaration that he has qualified for appointment as Film/Vidio Editor with all consequential benefits.

2. Pursuant to Special Recruitment Drive for recruitment of SC/ST candidates, respondents have issued an advertisement in August, 1995 inviting applications for filling up of, among others, posts of Film/Vidio Editor.

3. As per the advertisement, there were five posts of Film/Vidio Editors to be filled in Doordarshan, of which three posts were reserved for SC category and two posts for ST category. Applicant, who belonged to ST category applied against the above advertisement. There were 15 persons belonging to SC category who applied for three posts reserved for SC category and similarly applicant and another ST candidate applied for two posts reserved for ST category.

4. Applicant along with others was called for interview on 12.5.1996. As the other ST candidate did not turn up for interview and applicant was the sole candidate against two vacancies reserved for ST category but he was not issued appointment order. It is also stated that one SC candidate, who was awarded 17 marks, has been included in the panel at Sl. No.5 but he has not been appointed due to lack of vacancies against SC category. Applicant preferred several representations since 1996 and lastly in the year 2000 and after a long delay, on 14.3.2000 and followed by

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letter dated 20.6.2000, the respondents informed that applicant had not been recommended for appointment by the Selection Committee.

5. Applicant being aggrieved, filed OA 2274/2000, wherein in pursuance of statement made by the respondents that the entire selection process had been put in doubt and the matter has been referred by Ministry of I&B to CBI for investigation. In this view of the matter, the OA was dismissed with liberty to revive the same after the investigation by the CBI is concluded.

6. Applicant filed MA 491/2002 and contended that after investigations, the CBI returned back the matter to the Ministry of I&B in September, 2001. In this view of the matter, MA for revival was allowed, and the OA was restored to its original number.

O.A.No.2274/2000:

7. Heard the arguments of both the learned counsel on OA.

8. Learned counsel for applicant Shri M.K.Bhardwaj has relied upon MHA O.M.No.1/1/70-Est.(SCT) dated 25.07.1970 which is reproduced as under:

"6.5 Relaxation of standard of suitability in Direct Recruitment.

In direct recruitment whether by examination or otherwise, if sufficient number of Scheduled Caste/Scheduled Tribe candidates are not available on the basis of the general standard to fill all the

vacancies reserved for them, candidates belonging to these communities should be selected to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the number of vacancies reserved for Scheduled Castes and Scheduled Tribes cannot be filled on the basis of general standard, candidates belonging to these communities will be taken by relaxed standard to make up the deficiency in the reserved quota, subject to the fitness of these candidates for appointment to the post/posts in question."

9. It is contended that the respondents have acted mala fide against the guide-lines of the Government of India which are mandatory in nature and have ignored the claim of the applicant. It is in this backdrop stated that in pursuance of the Special Recruitment Drive for SC/ST, though a panel was prepared for 5 SC candidates where one of the candidates at Sl. No.5 secured 17 marks out of 50, was placed in the panel but when no such panel had been prepared by the respondents for ST candidates despite there were two vacancies for ST category and the applicant being the only ST candidate, who also secured 17 marks, was available. In this view of the matter, it is stated that the decision of the respondents and the rejection of the claim of the applicant as informed by the Selection Committee is violative of Articles 14 and 16 of the Constitution of India, as different yardsticks have been adopted by the respondents in the case of ST/SC candidates. Being a ST candidate applicant has been arbitrarily discriminated without any justification.

10. Shri M.K.Bhardwaj further stated that had there been five vacancies for SC, the SC candidate in the panel at Sl. No.5 would have been appointed. It



is stated that as per the OM ibid to the extent of number of vacancies reserved for ST, the same cannot be filled on the basis of general standards and the candidates belonging to these communities shall have to be taken by the relaxed standard to make up for the deficiency in the reserved quota, subject to the fitness of these candidates for appointment to the post(s) in question. As the applicant was otherwise found fit and was comparable to SC candidate who was placed in the panel at Sl. No.5 with identical marks secured in the selection, rejection of his claim is against law. It is further stated that the vacancy of ST has not been re-advertised by the respondents and still have vacancies to adjust ST candidate. It is stated that representation of the ST has not been made by the respondents and the applicant who fulfilled all the eligibility criteria otherwise as per the rules has not been appointed without any basis.

11. It is further stated that even after the relaxed standards in favour of the ST candidates, unfilled posts should have been re-advertised and the recruitment process has to be completed. As two ST vacancies have remained vacant for the last five years and the applicant who fared better than other ST candidate and applicant was the sole representative in ST category, should have been selected and should not have been declared unfit to hold the post. As the selection committee has not strictly complied with the above Circular relating to SC/ST candidates, action is illegal.

12. By placing reliance on the Apex Court's decision in *Jay Narayan Ram v. State of U.P. and Others*, 1996(1) SCC 332, it is contended that the applicant had obtained marks equal to that obtained by last SC candidate selected, the denial of appointment to the applicant is unconstitutional.

13. Respondents' counsel Shri H.K.Gangwani, denied the contentions of the applicant and also produced the relevant record of the Selection Committee. According to him, the Selection Committee had not recommended the name of the applicant for appointment and as the entire selection process had been put in doubt, the matter had been referred by the Ministry of I&B to CBI and now the matter has come back from the CBI and is to be investigated by the Department itself.

14. It is further stated that the respondents have already given detailed reply to the applicant where the position has been rectified and it is further stated that as the matter has been referred to CBI, no further action should be taken to fill up the vacancies.

15. We have carefully considered the rival contentions of both the parties and perused the material on record. As per the consolidated assessment sheet, we find that the panel for SC candidate consists of five candidates, wherein last candidate at Sl. No.5 had secured 17 marks. As the vacancies were only 3, the first three persons mentioned in the panel have been appointed. Whereas

in case of ST, though the applicant secured 17 marks with that of SC candidate, whose name appeared at Sl. No.5 in the panel, the Select Committee has not recommended him for recruitment to the post of Film/Video Editor.

16. On our pointed query as to what was the criteria and the relaxed standard followed by the respondents to consider the cases of SC/ST in the Special Recruitment Drive, no specific reply has been forthcoming on behalf of the respondents.

17. In view of the decision of the Apex Court in **Jay Narayan Ram** (supra), if last SC candidate selected has obtained marks equal to that of the other candidates, denial of appointment is unconstitutional. In this background, on summoning the records, we find that out of 14 candidates, 5 SC candidates have been empanelled whereas the candidate at Sl. No.5 had secured 17 marks. The vacancies were only 3, otherwise he would have been appointed by the respondents. On the other hand, applicant, who was the only ST candidate remained after interview in the Selection Committee and despite accord of 17 marks by not preparing the panel and placing the name of the applicant within his quota cannot be countenanced.

18. Moreover, as per the Circular dated 25.7.1970 candidates belonging to ST category have to be accorded relaxed standard in order to make up for the vacancies in reserved quota. As the applicant was identically situated as that of SC candidate figuring at Sl. No.5, with equal number of marks, the panel

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should have been drawn by the respondents for ST candidates and being the sole representative of the ST category, the applicant would have been certainly appointed to the post.

19. We are aware of our limitation to sit in judgment over the findings of a Selection Committee but if the action is mala fide and smacks of hostile discrimination, the same cannot be allowed to stand in view of Articles 14 and 16 of the Constitution of India.

20. As the applicant has been meted out a differential treatment arbitrarily by the respondents, and they have failed to explain and apprise the Court as to the criteria adopted for such a differential treatment meted out to SC/ST candidate, the action of the respondents is certainly in derogation of Articles 14 and 16 of the Constitution of India depriving the applicant of equal opportunity. Being an identically situated, the applicant deserves equal treatment.

21. In so far as the contention of the respondents that the matter has been referred to CBI, and the CBI has returned back the investigation to the Ministry and the decision is to be taken up by the Ministry of I&B their contention that they have not undergone any process of re-advertising the post of ST due to pendency of CBI investigation cannot be a valid defence.

22. In the result and having regard to the reasons recorded above, OA is partly allowed. We set-aside the impugned orders dated 14.3.2000 and 20.6.2000. Respondents are directed to reconsider the case of the applicant in the light of the observations made above, for appointment to the post of Film/Video Editor. However, it is made clear that if the applicant is appointed in pursuance of the above instructions, he shall not be entitled for any consequential benefits. No costs.

S. Raju

(Shanker Raju)
Member(J)


(M.P. Singh)
Member(A)

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