

Central Administrative Tribunal
Principal Bench

O.A. No. 636/2000

Decided on 9.2.2008

Duni Chand & Others

... Applicants

(By Advocate: Shri Sant Lal)

Versus

U.O.I. & Others

... Respondents

(By Advocate: Shri S.M. Arif)

CORAM

Hon'ble Mr. S.R. Adige, Vice Charman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not? NO

(S.R. ADIGE)
VICE CHAIRMAN (A)

Central Administrative Tribunal
Principal Bench

O.A. No. 636 of 2000

New Delhi, dated this the 9th MAY, 2001

(3)

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

S/Shri

1. Duni Chand
S/o Shri Ram Singh
Asst. Chief Supdt. (Traffic),
C.T.O., New Delhi.
2. Aliexious Minj,
S/o Shri Paschal Mint
3. Gopi Chand
S/o Shri Mewa Ram
4. Ram Swarup Meena
S/Shri K.R. Meena
5. Rewti Prasad,
S/o Shri Ram Prasad
6. Kewal Ram
S/o Shri Sawal Singh .. Applicants

(By Advocate: Shri Sant Lal)

Versus

1. Union of India,
Ministry of Communications,
Dept. of Telecommunications
through the Secretary,
Dept. of Telecommunications,
Sanchar Bhawan,
New Delhi-110001.
2. The Chief General Manager,
Northern Telecom Region,
Eastern Court,
New Delhi-110050.
3. The Chief Superintendent,
Central Telegraph Office,
Eastern Court,
New Delhi-110050. .. Respondents

(By Advocate: Shri S.M. Arif)

ORDER

S.R. ADIGE, VC (A)

In this O.A. filed on 18.4.2000, applicants



impugn respondents' orders dated 29.12.99 (Annexure A-1) and dated 30.12.99 (Annexure A-2) reverting them from the posts they were holding under the 10% BCR Scheme. They seek restoration to their original position to Grade IV with consequential benefits.

2. As per applicants' own averments, respondents introduced the Time Bound One Promotion Scheme vide order dated 17.12.83 by which Group C and Group D employees were to be given the next higher pay scale or completion of 16 years service in basis grade, in which there was no reservation for SC/ST. Applicants further aver that respondents introduced the second Time Bound Scheme, known as Biennial Cadre Review Scheme vide order dated 16.10.90 (Annexure A-6). Under the aforesaid BCR Scheme 10% posts in the pay scale of Rs.1600-2600 were to be in the pay scale of Rs.2000-3200, which was designated as Grade IV.

3. Admittedly applicants all of whom belong to reserved category were placed in the aforesaid scale¹ between 1991 and 1995 after applying the rules and instructions regarding reservation.

4. Respondents have stated in their reply that applicants' reversion was necessitated because CAT Ahmedabad Bench in its order dated 11.4.97 in O.A. No. 623/96 has held that ^{reservation} ~~reservation~~ would not be available in regard to upgraded posts, which order

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(15)

has been upheld by the Gujarat High Court in its order dated 24.3.99 in C.A. No. 7576/97 (copies of both orders taken on record).

5. Whether placement in 10% BCR Grade IV amounts to promotion for which reservation for SCs and STs is applicable or not has been conclusively settled by the CAT, Full (Bangalore) Bench order dated 26.4.2000 in M.L. Rajaram Naik Vs. the Additional Director, CGHS, Bangalore 2000 (2) ATJ 423. In that order the aforesaid CAT, Ahmedabad Bench order dated 11.4.97 in O.A. No. 623/96 as well as the Gujarat High Court order dated 24.3.99 in C.A. No. 7576/97 has been noted and ^{7 cu} dismissed. In Paras 29 and 30 of the aforesaid Full Bench order dated 26.4.2000 it has specifically been observed thus

29. The fact that the contrary decision of the Ahmedabad Bench has been affirmed by the Hon'ble High Court of Gujarat, in our considered view, cannot be a factor precluding the consideration of the issues referred to this Full Bench by the aforesaid Division Bench of the Bangalore Bench of the Tribunal. The decision of the Hon'ble High Court of Gujarat, as is obvious, is not binding on the Bangalore Bench of the Tribunal though it has persuasive value. Further, when the decision of the Ahmedabad Bench, which has been affirmed by the Hon'ble High Court of Gujarat, is found to be at variance with the principles laid down by the Hon'ble Supreme Court, which have not been referred to by the Ahmedabad Bench at all, or is in conflict with the decision rendered by the Madras Bench of the Tribunal, it is all the more necessary for the Full Bench to go into the merits of these decisions of the Benches of the Tribunal.

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In the light of the detailed discussions made by us above and in particular applying the principles laid down by the Hon'ble Supreme Court in Union of India & Anr. Vs. S.S. Ranade, in State of Rajasthan Vs. Fateh Chand Soni and in Ramprasad & Others Vs. D.K. Vijay & Others, reported in (1995) 4 SCC 462, (1996) 1 SCC 562 and in (1999) 7 SCC 251 respectively, we hold that appointment to the upgraded posts of Senior Pharmacists in CGHS and upgraded posts of BCR Grade IV in the Department of Telecommunications amounts to promotion attracting the principles of reservation for special categories like SCs and STs.

(b)

6. We are bound by the aforesaid order of CAT Full (Bangalore) Bench in M.L. Rajaram Naik's case (supra) and applying the aforesaid ruling to the facts and circumstances of the present case, the impugned orders are not legally sustainable.

7. In the result the O.A. succeeds and is allowed to the extent that the impugned orders are quashed and set aside. Applicants will be entitled to their original position in Grade IV with consequential benefits. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

S.R. Adige

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

'gk'