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**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI.**

Dated: 5th November, 1993.

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

Hon'ble Mr. S.R. Adige, Member (A)

O.A. No. 328 of 1991.

Bhagwan Dass s/o Shri Sukha Ram,  
age about 46 years working as Photographer  
in J.P.N. Hospital, New Delhi & resident of  
2333/116, Pili Bldg., Ajmal Khan Road,  
Kasol Bagh, New Delhi-110005. ....Applicant.

Versus

1. Union of India through  
Secty. (Medical), Union Territory of Delhi,  
Delhi Admn., Sham Nath Marg, Delhi.

2. The Estate Officer,  
Technical Recruitment Cell Maulana Azad  
Medical College, New Delhi .....Respondents.

For the applicant: Shri P.L. Mimbath, counsel.

For the respondents: Shri Vinay Sabharwal, counsel.

O.A. No. 2304 of 1989

1. Shri T.S. Kapeer  
(Trilek Singh Kapeer)  
s/o Shri Nanak Chand,  
r/o 1888, Sector IV,  
Urban Estate, Gurgaon,  
Haryana.

2. Shri Girja Shanker Singh,  
s/o Shri Bharat Singh,  
r/o 262, Timarpur, DDA Flats,  
Delhi -7

....Applicants.

Versus

1. Maulana Azad Medical College,  
Bahadurshah Zafar Marg,  
New Delhi -110002 (through its DEAN)

2. Delhi Administration,  
5, Alipur Road, Delhi  
(through its chief Secretary) .....Respondents.

Applicant Shri T.S. Kapeer is in person.

Shri Vinay Sabharwal, counsel for the respondents.

**JUDGMENT(ORAL)**

(By Hon'ble Mr. J.P. Sharma, Member (J).)

Both these applications have been taken up  
together as a common question of fact and law is  
involved in these applications.

O.A. No. 2304/89

2. Applicants Shri T.S. Kapeer and Shri Girja Shanker  
Singh at the relevant time had been working as

Photographers with the respondent no.1. There was one post of Senior Photographer to which the applicant no.1 Shri T.S.Kapoor asserted a claim on the ground

that he is the seniormost and further that the respondents have wrongly considered that post as a reserved post since all the years, the said post of photographer has been a post of unreserved category.

The applicants have prayed for;

i) quashing the circular dated 11.9.89 whereby the Maulana Azad Medical College invited the applications from the staff working in the various medical institutions of Delhi Administration for filling up one post of Senior Photographer reserved for Scheduled Caste in the pay scale of Rs.1640-2900/- under a direct quota; and the detailed, and direct fill up the post of Senior Photographer job and one only of said job in pursuance of Circular dated 11.9.89; and no other post;

ii) a further direction to the respondents not to fill the post of Senior Photographer open and to fill the same in accordance with the rules;

iii) a further direction to the respondents to declare the third post of Senior Photographer open and to fill the same in accordance with the rules;

iv) a further direction to the respondents to consider the application of the applicants and other general candidates for promotion to the post of Senior Photographer against the post vacated by Shri D.P.Malha.

3. A notice was issued to the respondents who contested the application and in the reply, they stated that the existing one vacant post of Senior Photographer is a reserved post for SC candidate. In the book of Circular dated 11.9.89, maintained in the Technical Recruitment Cell at S.L.No.9/25 at page 221, the vacant post is reserved for SC candidate. It has been denied that the post is to be filled by promotion as per recruitment

a copy of which has been annexed to the counter at

Annexure-R1. There is no ground to quash the circular.

There were two posts of Senior Photographers in

September, 1977 and Shri D.P.Melha and Shri R.C.Sharma

were selected for the posts but the appointment of

Shri Sharma remained under dispute. One Shri K.S.Jelly,

who was also in the panel, filed a writ petition

in the Delhi High Court and vide judgment dated

20.4.88 delivered by CAT, Principal Bench, in T.A.

No.484/85, Shri K.S.Jelly was deemed to have been

appointed to the post of Senior Photographer w.e.f.

14.2.78 with consequential benefits. There are only

two posts of senior photographers and there is no

vacancy for a third post as averred in the application. Regarding

the above reservation, the respondents have pointed out that

in consequence of the reservation is required to be made on the basis

of 40.2.41 based on a vacancy position from time to time and the 40 Point

Roster prescribed for the purpose and not on the

basis of percentage. Thus, according to the respondents,

only 10.11% of the applicants have the case. The respondents have also

annexed the extract of register where at serial no.25,

there is an entry of Senior Photographer showing the

vacancy of the post as of reserved category. The application was

filed by the applicants on 19.11.89. There is an

interim order passed by the Bench on 8.12.89 that

no appointment will be made before the next date of

hearing, passed on the statement of the then counsel

of the respondent Shri M.M.Sudan.

4. In O.A. No.328/91, Bhagwan Dass has a grievance

of non-consideration of the applicant for the reserved

vacant post of Senior Photographer in the Maulana Azad

Medical College and he has prayed for the grant of

the relief that the respondents be directed to

consider the case of the applicant for which he had

already applied on 19.9.89 with a supplementary

application dated 30.4.90 in both ways as a departmental candidate as well as a direct recruit.

5. It was also given to the respondents who have stated that since another application

No.2304/89 has been filed in the Principal Bench, CAT with regard to the relief of the promotion against the post of Senior Photographer, in view of this, the case of the applicant could not be considered. By

an order dated 18.3.93, it was observed that O.A.

No.2304/89 is a cross-application and be taken together.

This application is, therefore, coming along with

earlier application No.2304/89.

6. Learned Shri Charya, learned counsel for the applicant who is never present. The applicant Shri T.S.Kapeer is present on several occasions for adjournment which was granted with a direction that the matter shall remain on daily board. The matter is thereafter coming on Board on every working day of the Bench.

7. We have heard Shri T.S.Kapeer who gave a lucid statement that during the pendency of the original application, another post of Senior Photographer has since fallen vacant due to the retirement of Shri K.S.Jelly, Senior Photographer on 31.10.93. He also stated that he has no grievance if he is considered along with other general/candidate for the said post which is of general category as per available material on record.

8. Shri P.L.Mirrath, learned counsel for the applicant Shri Bhagwan Dass argued that the applicant has been denied his legitimate promotion.

irrespective of the fact that one of the posts for which the circular was issued in September, 1989, was a reserved category post. The respondents have filed

the extract of the register maintained in 40 Point Roster showing at serial No.9/25 on page 221 the vacant post as a reserved post for SC candidate. Shri

B.S.Charya is not present and we have waited for him for a long time. The applicant is also satisfied

regarding the contention if the applicant no.1 is considered for the second and subsequent posts which has fallen vacant due to the retirement and death of Shri K.S.Jelly on 31.10.93.

9. We have gone through the pleadings of

O.A.No.2304/89 and the averment made in the application is that when the last time the post of Senior Photographer in 1977 fell vacant, both these posts were filled up by framing a panel of general category candidates. In view of this, it is averred that the

post of Senior Photographer has never been during the past 10 years a reserved post. However, we cannot

admit, as we are oblivious of the fact that under the reservation and general policy adopted by the Government exhibited in various

order of dated D.O.P. O.Ms. a 40 Point Roster is to be maintained

to fill up certain posts on the basis of prescribed

reservation to the extent of 15% for SC and 7½

for ST candidates which was at the relevant time.

Thus, there is no merit in the contention of the

respondents related to Senior Photographer

applicants Shri T.S.Kapser and Girja Shanker that

the circular dated 11.9.89 inviting applications

from the departmental candidates for filling up one

vacant post of Senior Photographer reserved for SC

is violative of any rules or that is arbitrary or

discriminatory.

10. Regarding the other relief of creation

of third post, claimed in O.A.No.2304/89, the

respondents have clearly averred in their reply

and it is also highlighted in the argument

of the respondents that there are two posts of Senior

Photographers. This point is not disputed by the

applicant Shri T.S.Kapser who is present.

11. Regarding the case of Shri Bhagwan Dass, if he is otherwise eligible either on promotion basis or a direct recruit, he should have a right to be considered along with the eligible scheduled caste candidates for the post of Senior Photographer.

12. In view of above facts and circumstances, we dispose of both the applications as follows:-

- i) O.A.No.2304/89 with regard to cancellation of the circular dated 11.9.89 inviting application as well as with regard to issue of a direction for creation of third post of Senior Photographer, it is for the administration and need, no direction but the applicants shall be considered along with other eligible general category candidates according to the rules for any other post which may have fallen vacant as is revealed during the course of hearing by applicant no.1.
- ii) O.A.No.328/91 is allowed with a direction to the respondents to consider the case of the applicant both on the basis of promotion and direct recruitment along with the other eligible scheduled caste candidates for the post of Senior Photographer for the reserved category post.
- iii) The respondents are directed to comply with the above directions as expeditiously as possible.
- iv) Parties to bear their own costs.

A copy of the order is placed in the file.

(S.R/ADYGE)  
MEMBER(A)

(J.P.SHARMA)  
MEMBER(J)

ug

Sevraju Singh  
12/11/93  
C.O. IV