

Central Administrative Tribunal
Principal Bench, New Delhi

(11)

OA No. 2020/88

New Delhi this the 5th Day of August, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

Himmat Singh Rana,
C/o Sh. Balbir Singh Panwar,
14, East Guruangad Nagar,
New Delhi-92.

...Applicant

(By Advocate Sh. D.D. Banga)

Versus

1. Union of India through
Director General,
(CGHS), Directorate General
of Health Services,
Nirman Bhawan, New Delhi.
2. The Dy. Director,
C.G.H.S., Nirman Bhawan,
New Delhi.
3. Shri Bhoop Singh,
Dental Technician, C.G.H.S. Wing,
Safdarjung Hospital,
New Delhi.
4. Sh. Pankaj Aggarwal,
Dental Technician,
C.G.H.S. Dispensary,
Dental Department,
Sewa Nagar Market,
New Delhi.
5. Sh. Suraj Parkash,
Dental Department,
Medical Centre,
Parliament House Annexe,
New Delhi.
6. Sh. Suresh Kumar,
Dental Technician,
C.G.H.S. Wing,
Safdarjung Hospital,
New Delhi.

...Respondents

(By Advocate Sh. M.K. Gupta)

ORDER

Hon'ble Mr. N.V. Krishnan:-

The applicant, an employee of the C.G.H.S. (Nursing Attendant) applied for the post of Dental Technician which is to be filled up by considering departmental candidates. He was appointed by the order

dated 27.1.87 (Annexure P-5 collectively) w.e.f. 15.12.86 on a purely ad hoc basis as a Dental Technician. He is aggrieved by the subsequent order dated 14.7.87 (Annexure P.6) by which he was reverted to the post of Nursing Attendant from the same date on the ground that the respondents have made a mistake in making reservations for candidates belonging to Scheduled Castes (SC) and Scheduled Tribes (ST).

2. The facts are not in dispute.

2.1 The respondents issued a circular on 30.9.85, inviting applications to fill up four posts of Dental Technician by departmental candidates (Annexure P-1). The circular indicated that out of these posts, one post was reserved for SC and one for ST and two posts were unreserved.

2.2 The applicant was appointed to one of the posts on an ad hoc basis by the order dated 17.1.87 w.e.f. 15.12.86 (Annexure P-5 collectively). He would not have had any grievance if this had continued but he was reverted by the Annexure P-6 order dated 14.7.87 (Annexure P-6) from the same date. One Babu Ram, not properly selected, was nevertheless allowed to continue on ad hoc basis as Dental Technician.

2.3 He points out that the respondents have filled up the four vacancies by the appointment of the following persons:-

(12)

Bhoop Singh - General candidate.

Pankaj Aggarwal - General candidate but appointed against the post reserved for a ST.

Suraj Parkash - SC

Suresh Kumar - SC

2.4 It is thus alleged that contrary to the advertisement, three posts have been treated as reserved, two for SC and one for ST. Further, Suresh Kumar, a SC candidate has been appointed despite being medically disqualified. He contends that the reservation of three posts in this manner is contrary to the Annexure P-1 circular and is illegal.

3. The respondents have stated in their reply dated 30.11.88 that it was by mistake that, in the Annexure P-1 circular, it was mentioned that only one post was reserved for SC. Actually, two posts were reserved for them. Accordingly, when the Departmental Promotion Committee (DPC) met, it was requested to select candidates for two reserved posts of SC, one reserved post of ST and one post reserved for general candidate. The DPC prepared a panel of three general candidates in which Bhoop Singh, P.B. Aggarwal and the applicant were arranged in that order. The DPC also selected two SC candidates viz. Suresh Kumar and Suraj Parkash. No S.T. candidate could be selected. Therefore, Bhoop Singh was appointed to the one post reserved for general candidate. Suraj Parkash, a SC candidate was appointed to one of the two posts reserved for SC. Suresh Kumar, the other selected SC candidate was medically declared unfit. Therefore, the applicant was appointed on

ad hoc basis to the other post reserved for SC. However, Suresh Kumar filed an appeal and he was ultimately declared to be medically fit. Therefore, he had to be appointed to the second post reserved for SC. On his appointment, the applicant had naturally to be reverted. No ST candidate was available and accordingly, the next senior general candidate P.B. Aggarwal was appointed on an ad hoc basis against the post reserved for ST.

4. In regard to Babu Ram, the respondents state that he has been continuing on an ad hoc basis from 17.1.76 and, therefore, it was not found proper to revert him merely to avoid the reversion of the applicant vide the reply to para 6 (c) of the O.A.

5. In the rejoinder to this reply the applicant has pointed out that reservation of three out of four posts is contrary to the instructions governing reservation in any recruitment year because the reservation shall not exceed 50% of the vacancies filled in a year.

6. At an earlier hearing when this ground was pressed, we had issued direction to the respondents to file an additional affidavit. This has been filed on 14.7.94. It is again stated that the Selection Committee was informed that, out of the four posts, two have to be filled up from SC candidates, one from ST, and, one from general candidate, i.e., the selection was based on a reservation of three posts for SC and ST. The respondents admit in this additional reply that, as per law laid down, not more than 50% of the vacancies, including the carry forward vacancies, can be kept reserved for SC and ST. The reply appears to

make out that realising this position, the respondents appointed two general candidates and not one. The tenor of the reply seems to be that, in the ultimate analysis, the rule of reservation has not been flouted. For, against four vacancies not more than two reservations have been made. Only two posts were available for the general candidates. In the panel of three general candidates, approved by the DPC, Bhoop Singh and P.B. Aggarwal are at serial No.1 and 2. Therefore, they have a preferential claim for appointment over the applicant who is only at serial No.3 in the panel. The other two posts have been filled up by SC candidates.

7. We have heard the learned counsel of both sides.

8. The learned counsel for the applicant contended that, admittedly, the selection as well as the initial appointments made, make it clear that the respondents had reserved two posts for SC and one for ST contrary to the reservation rule. If the reservation had been confined to only two posts, (viz. the carry over posts of SC and one ST) the respondents could have filled up only one post reserved for SC by a SC candidate. The vacancy reserved for the ST candidate could not have been filled, as there was no ST candidate. In the circumstance, the respondents were bound to appoint the applicant to that post in preference to the other SC candidate Suresh Kumar as on merit, the applicant was third on the panel. This appointment could have continued till a ST candidate was available, which, according to him, was only on 18.6.91, as evident from the seniority list produced for our perusal.

9. The learned counsel for the respondents, however, submits that, as a matter of fact, there were three slots which had to be filled up by reserved candidates. There was one SC and one ST carry forward vacancy. The third was the current vacancy reserved for a SC. Out of these three vacancies reserved for SC and ST, only two have been filled up, i.e., the carried forward SC vacancy and the carried forward ST vacancy. It is stated that the vacancy of the ST which is a carry forward vacancy could, in the absence of a ST candidate, be filled up by a SC candidate. Accordingly, the appointment of Suraj Parkash and Suresh Kumar, SC candidates, was not violative of any rule. In other words, de facto, there is no violation of the reservation quota rule. The applicant was appointed only on an ad hoc basis because of the fact that it is a reserved vacancy and the person selected, i.e., Suresh Kumar, a SC candidate, was initially not found fit on medical grounds. When he was cleared on those grounds, he had to be appointed to the reserved vacancy. Hence, it is contended that the applicant cannot have any grievance.

10. He further contends that if only two posts are available for general candidates, the applicant can have no claim thereto, as he is only the third in the panel of general candidate. If it is assumed that both the vacancies were reserved for SCs, the applicant can again have no grievance because they are reserved posts and 2 SC candidates have been appointed. Even if it is taken that out of the two reserved vacancies, one is a carry over SC vacancy and the other is a carry over ST vacancy, the applicant cannot claim to be appointed against a ST vacancy in the absence of a ST candidate, because the instructions

enable appointment of a SC candidate to such a vacancy. Thus, viewed from any angle, the applicant has no case and no injustice has been done to him.

12. Before, proceeding to examine the claims based on reservation, we have to dispose of a small issue. The case of the applicant based on the continuance of the ad hoc appointment of Babu Ram is to be rejected on two grounds. Firstly, Baburam has not been impleaded. Secondly, he has been on ad hoc appointment from 17.1.76. Therefore, his case is not comparable to that of the applicant and if it is allowed to continue, it cannot give the applicant any cause of action.

13. The issue that remains is fairly simple. If the respondents are to be bound by the action as actually taken by them, then it is clear that they have violated the rule of reservation by reserving three out of four vacancies for SC and ST at the time of selection by the D.P.C. Two SC candidates have been appointed and the third treated as a vacancy reserved for ST was filled up on an ad hoc basis by a general candidate. That being the declared intention and the rationale of appointment, such action would then necessarily be illegal. The question is whether there is any circumstance which renders these actions valid.

14. In other words, the question that has to be decided is whether, as claimed by the respondents their orders cannot be faulted or impugned, because, de facto, the reservation rule has not been infringed.

15. We are inclined to agree with this contention of the respondents. For, the number of actual appointments made on the basis of reservation is only two viz. Suraj Parkash and Suresh Kumar. The other two persons appointed are general candidates viz. Bhoop Singh and P.B. Aggarwal. In other words, even though the respondents proceeded with the filling up of the vacancies on, admittedly, wrong assumptions about the law regarding reservation, yet, they finally limited, *de facto*, the reservation to two vacancies only.

15. The learned counsel for the applicant, however, contends that the respondents did not have such a case at all and that, therefore, this cannot now be considered. We have considered this argument. We are of the view that the rule is that, in so far as a statutory order is concerned, its validity will have to be determined only on the terms of the order or the reasons given therein and no additional reason can be given in support of that order. That rule does not apply in the present case. The orders of appointment and reversion do not give any reasons for the appointments made or for the reversion ordered. It is only in the first reply to the OA that the respondents have stated what had actually happened. In the additional affidavit, they have tried to state that, in any case, the ultimate result can be sustained on the basis of the rules regarding reservation. We do not see why such a stand cannot be taken by the respondents. The objection of the learned counsel for the applicant is, therefore, rejected.

16. The position would not have been different if the respondents understood the position correctly right from the beginning and the DPC was advised to make selection on the basis of the Annexure P-1 notice. In that case also, the two general vacancies would have been filled up by Bhoop Singh and P.B. Aggarwal. The only SC vacancy would have been filled up by Suraj Parkash. As there was no ST candidate for the only ST vacancy, the question would be whether that vacancy should be filled up by the applicant who is the next general candidate or by Suresh Kumar, the other selected SC candidate.

17. It is unfortunate that even though an opportunity was given to the respondents to file an additional affidavit, still, all the relevant facts have not been brought on record in that additional affidavit, particularly regarding the carry over of the SC and ST vacancies. We have only the arguments of the learned counsel for the respondents that one SC vacancy and one ST vacancy have been carried over for three years and this was the last year when selection was to be made to fill up those vacancies. It was possible to fill up the SC vacancy by a SC candidate. In so far as the ST vacancy is concerned, none could be selected. It is contended that, this being the last year, this vacancy could be filled up by a SC candidate, as provided in the instructions of the Ministry of Home Affairs OM No.21/25/68-Estt(SCT) dated 25.3.7 (pages 192-93 of the Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Services - Seventh Edition). If, indeed, the vacancies have been carried over to the third year, this

contention is correct and the appointment of a SC candidate to the reserved ST vacancy in the third carry over year is wholly justified.

18. The question is whether the vacancies have actually been carried over to the third year. About this, the applicant's counsel had a legitimate doubt. The question then is whether when a vacancy for a ST is available and a ST candidate has not been selected, but a general candidate selected on merit and a SC candidate selected on reservation are available in the waiting list, who should be given preference in the matter of ad hoc appointment to the ST vacancy until a ST candidate is selected.

19. We have carefully considered this matter. The general candidate, in any case, can claim no right to a reserved vacancy. This is not the situation in the case of a SC candidate or a ST candidate. As mentioned above, there are instructions that, instead of allowing a reserved vacancy to get dereserved in the last year of carry over and have it filled up by general candidate, the instruction provide that a SC vacancy can be filled in the last year by a ST candidate and vice versa. That principle should also hold good for ad hoc appointments. If Government decides to appoint, on an ad hoc basis, the SC candidate to the vacancies reserved for ST, even though a general candidate having better merit is available, the decision cannot be faulted on any reasonable ground. We are of the view that this decision will stand the test of both Articles 14 and 16 of the Constitution of India. In this view of the matter, we

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find that even if the carry over was not for the last year, yet, the applicant did not have a preferential right to be appointed to the ST vacancy over the SC candidates.

20. No other ground was raised or pressed.

21. In the result, we find that neither any injustice, has been done to the applicant nor has the rule of reservation been violated to his detriment. Therefore, we do not find any merit in the OA, which is dismissed. No costs.

16/5/89
(C.J. Roy)
Member (J)

N.V. Krishnan
(N.V. Krishnan)
Vice-Chairman

'Sanju'