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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 546/86
T.A. No.

198

DATE OF DECISION 12.2.87

Sh. Sukh Pal Singh

Petitioner

Shri D.D. Chaufla

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri K.C. Mittal,

Advocate for the Respondent(s)

and Sh. V.P. Vohra, Admn. Officer of CIRTES

CORAM :

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. H.P. BAGCHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*

H.P. BAGCHI
(H.P. BAGCHI)
JUDICIAL MEMBER

12.2.87

S.P. MUKERJI
(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

OA No.546/86

Date of Decision: 12.2.87

Shri Sukh Pal Singh

...Applicant

Versus

Union of India & Others

...Respondents

For Applicant: Shri D.D. Chaufla, Advocate

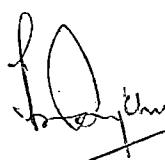
For Respondents: Shri K.C. Mittal, Advocate with
Shri V.P. Vohra, Administrative Officer
of CIRTES.

CORAM: HON'BLE MR. S.P. MUKERJI, ADMINISTRATIVE MEMBER
HON'BLE MR. H.P. BAGCHI, JUDICIAL MEMBER

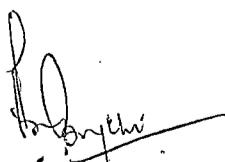
JUDGMENT:

The applicant who is working as an Office Superintendent in the Central Institute for Research and Training in Employment Service (C.I.R.T.E.S) of Ministry of Labour has moved this application under Section 19 of the Administrative Tribunals Act praying that he should be given the full pay and allowances of the post of the Office Superintendent for the period from 9.5.85 to 9.6.85 and 23.9.85 to 20.3.86 during which he performed the duties of that post in addition to his own duty as Cashier. He has also prayed that his appointment to the post should be made regular instead of ad hoc as it was on the basis of his selection and recommendation of the Departmental Promotion Committee.

2. The facts of the case can be summarised as follows. The applicant was working as a Cashier from which post promotion could be made to a solitary post of Office Superintendent in CIRTES. For this post UDCs. are also eligible. The applicant was senior most



amongst the UDCs/Cashiers. When the incumbent of the post of the Office Superintendent Shri Gupta was suspended, the applicant was asked orally to lookafter the duties of the post of Office Superintendent. On Shri Gupta's return to the post, the applicant reverted to his post of Cashier. Again when Shri Gupta retired voluntarily, the applicant was again directed "to lookafter the work of Office Superintendent in addition to his own work until further order". On 25.11.85, the duties and functions of the Office Superintendent were distributed amongst the applicant and others. On 20.3.86, a DPC met and considered candidates in whose list the applicant was at the top and Shri Puran Mall, a Scheduled Caste U.D.C. was the next. The DPC recommended that "Shri Sukh Pal Singh is selected as Office Superintendent subject to clarification from the Department of Personnel and Training as there is no reservation for a single post". They also recommended that the promotion will be "on ad hoc basis subject to clarification from the Department of Personnel & Training." Accordingly, the applicant was appointed as Office Superintendent formally on ad hoc basis and inspite of the representations by the applicant he was continued on that basis as Office Superintendent. The DPC met again on 18.7.86 to consider on the question of clarification as mentioned in their earlier meeting from the DPAR. Further the DPC noted that instead of getting a clear clarification from the DPAR, some clarification from the Director



General, Employment & Training, had been obtained. They therefore remanded the case back stating that "before the post of Office Superintendent is filled on regular basis clarification for DPC through DG, E&T, may be obtained to avoid confusion or doubt". The matter hung at that stage.

3. According to the respondents, since the applicant was simply looking after the duties and functions of Office Superintendent on an informal basis, the question of being given the full pay of the Office Superintendent during the two spells of period between 9.5.85 and 9.6.85 and 23.9.85 to 20.3.86 does not arise. They have further stated that the vacancy of Office Superintendent, according to the roster, was reserved for Scheduled Caste candidate as per Communal Roster. Therefore, the applicant could not be regularised against that post.

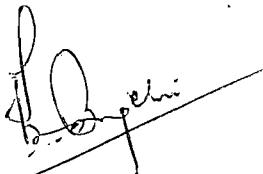
4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. So far as the question of payment of full pay and allowances as Office Superintendent during the aforesaid two spells is concerned, it is clear that the applicant was not appointed formally as an Office Superintendent between 9.5.85 and 9.6.85 as also between 23.9.85 and 20.3.86. He was asked to look after the work of Office Superintendent in addition to his own duty as purely stop-gap arrangement, being the senior most amongst UDCs/Cashiers. Since he was not appointed to the post of Office Superin-



tendent, he cannot claim the pay of the post.

5. As regards the question of his regular appointment as Office Superintendent after he was selected by the DPC, the moot point which still remains unresolved is whether being a solitary post to be filled by promotion from the feeder cadre of UDCs/Cashiers can be reserved for Scheduled Caste/Scheduled Tribe candidate. The contention of the respondents is that the first point in the 40-Point Roster was to go to a Scheduled Caste Candidate, but since it was a solitary post, it was filled up by a general candidate and on the next occasion when it became vacant, it was to go to a Scheduled Caste candidate. This question was considered at great length by the Punjab & Haryana High Court in S.S. Kalsi, Supdt. / Engineer Vs. M.L. Sehgal, Supdt. Engineer: 1981(1)SLR 461 and the court came to the conclusion that when the promotion is to a solitary and isolated one, it cannot be reserved for a scheduled caste candidate. The following extracts from the said judgment dated 19.2.81 in which, the Division Bench had discussed all previous judgments of the Supreme Court and other High Courts, can be quoted with benefit:-

"From these admitted facts, the first and the foremost point which straightforwardly arises is whether the reservation policy framed by the State Government from time to time in favour of Scheduled Castes, Scheduled Tribes and Backward Classes, would be applicable to a single post cadre either at the time of initial appointment or at any subsequent time of filling the vacancy. On this point, the counsel for the parties relied on

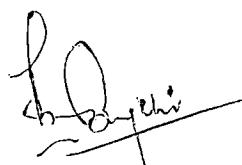


"various decisions rendered by the Supreme Court which deserve to be noticed. These are:

1. M.R.Balaji and others v. The State of Mysore and others, AIR 1963 SC 649
2. I.Devadasan v. Union of India and another, AIR 1964 SC 179.
3. State of Punjab v. Hira Lal and others, AIR 1971 SC 1777.
4. Arati Ray Choudhury v. Union of India and others, AIR 1974 SC 532.
5. State of Kerala and another v. N.M. Thomas and others, AIR 1976 SC 490.
6. Akhil Bharatiya Sashit Karamchari Sangh, AIR 1981 SC 298.

"7. A reading of all the aforesaid judgments has driven me to the following conclusion:-

- (i) That the reservation, inclusive of all categories, cannot exceed 50%.
- (ii) that there is slight deviation in Thomas's case (supra) on the carry-forward rule, yet the decision in Devadasan's case (supra) was neither doubted nor over-ruled. This fact is further borne out from a reading of the latest decision of the Supreme Court in A.B.S.K. Sang's case (supra). The filling in of vacancies on the basis of carry-forward rule in a particular year, on the peculiar facts of Thomas's case and A.B.S.K. Sang's case was not interfered with. Therefore, Devadasan's case still holds good;
- (iii) That although in Thomas's case and A.B.S.K. Sang's case the filling in of vacancies of reserved categories by applying the carry-forward rule in a year upto 68% was not interfered with, yet it was held that in one year the reservation shall not be substantially more than 50% of the promotional posts;
- (iv) That while on the basis of Hira Lal's case (supra), the very first position in the roster could be given to a Scheduled Caste, according to Arati Ray Choudhury's case (supra), the very first point in the roster is not to be given to a reserved candidate and the second post falling in the cadre has to be deemed to be reserved instead of the first;



“(v) That Arati Ray's case is the nearest case on facts because in that case the cadre was of two posts and according to the roster, while the first post was to go to a Scheduled Caste, it was given to the general category and when the second post fell vacant, that was given to the reserved category of Scheduled Castes on the basis that it will amount to 50% reservation only. A reading of para 13 of the Arati Ray's case clearly goes to convey that if the first post in the roster was to be given to the Scheduled castes, it would have meant 100% reservation and that is why the giving of the first reserved post to the general category and the second post to the reserved category, was upheld as valid. Similar is the conclusion on a reading of paras 88 and 89 of A.B.S.K. Sangh's case; and

“(vi) that while filling the vacancies the number of vacancies falling vacant were taken into consideration for applying the carry-forward rule and for holding that substantially more than 50% of the promotional posts shall not be given to reserved categories and whenever there was a single vacancy, the total number of posts in the cadre were taken into consideration to find out that if the existing vacancy was given to a Scheduled Caste, whether it would amount to substantially more than 50 per cent reservation."

“(vii) All the aforesaid conclusions lead to the irresistible view that if a single post cadre or a vacancy arising therein is given to a reserved category, it would certainly amount to 100% reservation, for all the time, he would continue to man the post and so long as he would be there, it would not be even by a fraction of a percent less than 100. Therefore, I am of the view that a single post cadre can never be reserved and none of the instructions issued by the State Government would be applicable in the case of such a post.

“(viii) Mr. Hira Lal Sibal, appearing for S.S. Kalsi, urged that the roster talks of a vacancy and not of a post and, therefore, since the first vacancy was given to the general category, which was reserved for the Scheduled Castes, the present vacancy, which is the second one, necessarily has to go to the Scheduled Castes, on the basis of Arati Ray's case (supra). I do not find any merit in this contention. In Thomas's case (supra), and A.B.S.K. Sangh's case (supra), in spite of applying the carry-forward rule, the learned Judges of the Supreme Court were of the view that the filling in of vacancies in a particular year should not be substantially more than 50%

" and in spite of giving the largest latitude for the reserved vacancies they were not able to exceed the limit of 68%. Therefore, even if we look to the vacancies only and not to the posts, I am of the view that if the present vacancy in the single post cadre is given to a Scheduled Caste, it would amount to 100% reservation, which is not permissible by any of the decisions of the Supreme Court on which reliance has been placed by Mr. Sibal.

" 9. For implementing the reservation policy of the State Government under which the first vacancy is to be filled by a Scheduled Caste, the roster will have to be guided by the Supreme Court decision in Arati Ray's case, for the State Government itself has indicated in the instructions that the first vacancy in a year shall be given to the general category against the reserved post for Scheduled Castes and the second vacancy which is for the general category shall be given to the Scheduled Castes in the subsequent two years or so to the extent to which the carry-forward rule would be applicable in a given case under the instructions. Therefore, to give effect to the instructions about the roster as also the carry-forward rule, I am of the confirmed view that such instructions would be applicable to a cadre consisting of atleast two posts. Since in the present case there is only one post in the cadre, the instructions are wholly inapplicable.

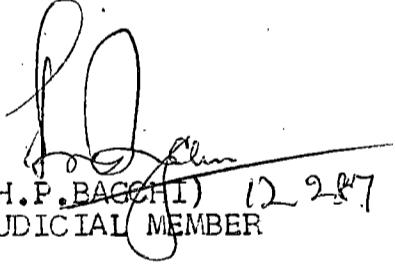
" 10. Mr. Sibal then placed reliance on two Single Bench decisions, one of this Court by Harbans Lal, J., in Shangara Singh v. State of Punjab and others, 1970(2) SLR 484, and the other of Andhra Pradesh High Court in H.B. Singh v. Postmaster General, Andhra Pradesh and another, 1979(1) SLR 682. I have carefully gone through both these decisions and find that they do not lay down correct law and are opposed to the decisions of the Supreme Court already noticed above. Harbans Lal, J., was of the view that I.Devadson's case did not hold the field in view of Thomas's case (supra). I am of the view that this was not a correct observation as it is not borne out from a reading of Thomas's case nor from a reading of the latest decision in AB.S.K.Sangh's case (supra). Accordingly, the decision in Shangara Singh's case (supra) is overruled. The reasons given by Jeevan Reddy, J., in H.B. Singh's case (supra) are directly opposed to the view of the Supreme Court, particularly in Arati Ray's and A.B.S.K. Sangh's case (supra), and is disented from."

6. We respectfully agree that the aforesaid findings of the Hon'ble Judges of the Division Bench



and decide in this case that the post of Office Superintendent cannot be reserved for a Scheduled Caste candidate as it will be tantamount to 100% reservation. Accordingly, the applicant is entitled to regular promotion with effect from 21.3.1986 when he was appointed on an ad hoc basis merely on the ground that the DPC having selected him for the post was not sure whether the solitary post should or should not be reserved for a Scheduled Caste candidate.

7. In the facts and circumstances, the application is partly allowed only to the extent of regular promotion of the applicant as Office Superintendent with effect from 21.3.1986 with all consequential benefits. There will be no order as to costs.


(H.P. BAGCHI) 12-2-87
JUDICIAL MEMBER


S.P. MUKERJI
12-2-87
ADMINISTRATIVE MEMBER