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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

O.A. NO. 675 OF 1986.

DATE OF DECISION: 7-8-1991.

Shri Basudeo Anil and others. .. Applicants.

v.

The Union of India and others. .. Respondents.

CORAM:

Hon'ble Mr. G. Sreedharan Nair, .. Vice-Chairman.

Hon'ble Mr. S. Gurusankaran .. Member(A)

Shri E. X. Joseph, counsel for the applicants.

None for the respondents.

S. GURUSANKARAN, MEMBER(A):

JUDGMENT

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for quashing the order contained in O.M. No. 36011/14/83-Estt. (SCT) dated 30-9-1983 (Annexure-A-N) as ultra vires, quashing the promotion orders issued from December, 1983 onwards in which promotions have been made without considering Scheduled Caste/Scheduled Tribe Post Graduate Teachers (SC/ST PGTs for short), who were eligible to be promoted against the reserved posts in terms of the O.M. dated 30-4-1983 (Annexure-A-O), directing the respondents to consider and promote the applicants and other eligible SC/ST PGTs against the posts of Vice-Principal reserved for SC/ST PGTs from 1983 onwards on the basis of the inter-se seniority of SC/ST PGTs regardless of the zone of consideration related to the number of vacancies and directing the respondents that those eligible SC/ST PGTs who are found fit for promotion after such consideration be granted promotion with effect from the date on which they became eligible for promotion with reference to the vacancies reserved for SC/ST in the

respective years with all consequential benefits like arrears of salary, seniority etc.

2. Applicants 1 to 5, who belong to the Scheduled Caste / Scheduled Tribe, are working as PGT in the various senior secondary schools under the Delhi Administration. Applicant No.6 is a welfare association representing the interests of the SC/ST teaching staff and have joined the other applicants to protect the interest of all similarly placed SC/ST PGTs. The applicants joined service on various dates from 1974 to 1977. As per the Recruitment Rules, 1977 (Annexure-AC) 50 per cent of the posts of Vice-Principal and other equivalent posts are to be filled through a selection from amongst the eligible PGTs and equivalent posts. Even though 15% and $7\frac{1}{2}\%$ of the vacancies of the Principals are reserved for SC and ST candidates respectively, most of the promotions made during the last 15 years have been from amongst the general category. This is because general category candidates joined in 1963 ~~are~~ also availing promotions. Prior to 1979, there were no instructions regarding consideration of cases of SC/ST employees while making ad hoc promotions. Vide O.M. No. 36021/7/78-Estt (SCI) dated 16-4-1979, Department of Personnel (DOP for short) issued instructions that whenever ad hoc promotions are resorted to due to unavoidable reasons, the claims of eligible SC/ST officers should also be considered along with other eligible persons in the field, though there was to be no formal reservation for SC/ST in such promotions. Vide O.M. dated 30-4-1983 (Annexure-A-O) DOP issued certain guidelines from which the relevant paras (3) and (4) are reproduced below:

"(3) Since adhoc promotions are made on the basis of seniority-cum-fitness all the Scheduled Castes / Scheduled Tribes candidates covered in the relevant seniority list within the total number of such vacancies against which ad hoc promotions are to be made, should be considered in the order of their general seniority as per the graduation list, on the principle of seniority-cum-fitness and if they are not adjudged unfit, they should all be promoted on ad hoc basis.

(4) If, however, the number of SC/ST candidates found fit within the range of actual vacancies is less than the number of vacancies identified as falling to their share, if the vacancies were filled on a regular basis ^{vide} (2) above, then additional SC/ST candidates to the extent required should be located by going down the seniority list, provided they are eligible and found fit for such ad hoc appointment. This procedure should be adopted on every occasion on which ad hoc appointment is restored to".

The DOP issued a further O.M. dated 30-9-1983 (Annexure-A-N) on the same subject ^{from} in which the relevant para 2 is extracted below:

" It has now been decided that the Scheduled Castes/Scheduled Tribes candidates who are within the number of actual vacancies should be considered in accordance with their general seniority on the principle of seniority-cum fitness and if they are not adjudged unfit, they should all be promoted on ad hoc basis. If, however, the number of Scheduled Castes/Scheduled Tribes candidates found fit within the range of actual vacancies is less than the number of vacancies identified as falling to their share, then additional scheduled castes/scheduled tribes candidates to the extent required should be located by going down the seniority list but within 5 times the number of vacancies being filled on a particular occasion, subject of course, to their eligibility and fitness."

The applicants' case is that having given certain privileges ^{vide} O.M. dated 30-4-1983 for SC/ST for considering their cases for ad hoc promotion by going down the seniority list to fill up the posts reserved for SC/ST, whenever required, the restriction placed for going down the seniority to 5 times the number of vacancies being filled is arbitrary and illegal. They contend that by such a restriction, SC/ST candidates may not get any promotion at all for another 15 or 20 years and all the posts reserved for them would be dereserved and occupied by general category, since their seniority is very low due to their late recruitment. They have, therefore, suggested that a separate seniority list should be maintained for SC/ST and they should be promoted as per seniority-cum-suitability against the posts reserved for them.

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without taking into consideration their inter-se seniority with the general category. The applicants have produced vide Annexures A-A and A-B, two lists giving service particulars of SC/ST PGT staff circulated by the respondents in 1981 and 1985. They have stated that the reserved posts of Vice-Principals were filled in by promotion from amongst the SC/ST PGTs on the basis of the separate statements giving service particulars and seniority upto June, 1983. The respondents have denied the same and they have stated that one M.P.S. Dangi has been promoted in June, 1983 based on the guidelines contained in DGP circular dated 30-4-1983 (supra). The applicants have not produced any documents to support their contention. The applicants claim that the restriction placed limiting the zone of consideration for SC/ST PGT staff to 5 times the vacancies in case of ad hoc promotions as arbitrary and unconstitutional and violative of Articles 335, 46, 38, 14, 15 and 16 of the Constitution of India.

3. We have heard the learned counsel for the applicant and perused the records. The respondents have raised a preliminary objection in their counter affidavit against the applicants filing the application on behalf of other SC/ST PGT staff. We are not able to agree with this objection; The 6th Applicant is a Welfare Association to protect the interests of SC/ST staff and whether they are a recognised association or not, there can be no objection to their filing the application on behalf of all similarly placed SC/ST PGT staff. The constitutional provisions particularly Article 16(4) under which the State can make provisions for the reservation of appointments and posts in favour of any backward class of citizens is only an enabling provision. The Constitution itself does not, for obvious reasons, lay down any specific percentages or guidelines, and it is for the Government to lay down guideline

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and percentages depending upon the circumstances, and the reservation itself is being extended with the approval of the Parliament. We notice that before 1983, there was no specific reservation for SC/ST staff in such ad hoc promotions and the O.M. dated 30-4-1983 (supra) was issued specifically providing for such reservation. Since the O.M. dated 30-4-1983 (supra) only stated "by going down the seniority list", the O.M. dated 30-9-1983 (supra) conveyed the decision regarding the guidelines as "going down the seniority list, but within 5 times the number of vacancies being filled". Hence, we are not able to agree with the contention of the applicants that the decision conveyed in O.M. dated 30-9-1983 is in any way arbitrary or violative of constitutional provisions.

4. The learned counsel for the applicant also pointed out the difference between regular promotions to the post of Vice-Principals, which has to be necessarily through a process of selection and ad hoc promotions, which is done on the basis of seniority-cum-suitability. While appreciating the difference, we are of the opinion that since ad hoc promotions are being resorted to due to difficulties in conducting selections for regular promotions and the very same posts, which are to be filled by selection are being filled up on ad hoc basis, persons, who will not even come within the zone of consideration for the regular selection restricted to 5 times the vacancies cannot obviously be considered for ad hoc promotions, as otherwise it would be discriminatory and give unintended benefits to such persons. We, therefore, find that the C.M. dated 30-9-1983 takes care of this aspect also. Regarding the suggestion of the applicants that the ad hoc promotions against posts reserved for SC/ST in regular selection should be made from separate seniority list maintained for SC/ST staff, we note that the guidelines do not provide for the same. We also observe from Annexure AA

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that there were a number of SC/ST PGT staff senior to one M.P.S.Dangi promoted in June, 1983. We can only infer from this that barring those who were considered unfit all the 73 SC/ST PGT staff senior to M.P.S.Dangi must have been promoted prior to 1983. Most of them have been appointed as PGT after 1968, which means that they must have been promoted as Vice- Principals within 15 years. But, the applicants themselves in para 7 of their application have stated that the general category PGT staff recruited from 1963 onwards were awaiting promotion in 1986. Hence, it can be presumed that the SC/ST PGT staff have derived definitely certain benefits because of the reservation provisions. But, whether the provision at present made is adequate or not particularly in one specific category of SC/ST PGT staff of Delhi Administration is to be decided by the Government themselves and it is not a matter in which this Tribunal can issue any directions to the Government, much less interfere.

5. In view of the above, we do not find any merit in the application and accordingly, we dismiss the application.

Uparkar
7/8/1991
MEMBER(A)

R. S. S.
7-8-1991
VICE-CHAIRMAN.