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CAT/7/12

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A.No. 1443/87.

DATE OF DECISION 8.10.1993

SHRI GURDEV LAL, Petitioner

SHRI B.S. MAINEE, Advocate for the Petitioner(s)

Versus

UNION OF INDIA & OTHERS Respondent

SHRI H.K. GANGWANI, Advocate for the Respondent(s)

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The Hon'ble Mr. N.V. Krishnan, Vice-Chairman {A}

The Hon'ble Mr. B.S. Hegde, Member {J}

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal?

J U D G E M E N T

[Delivered by Hon'ble Shri B.S. Hegde, Member (Judicial)]

The applicant was appointed as a Lower Division Clerk in the year 1972 in the Indian Institute of Labour Study which is one of the units under the Ministry of Labour. He joined National Labour Institute with effect from 1.3.1975 as a Junior Clerk. Thereafter, he was promoted as Assistant

Grade II with effect from 1.3.1976 and again

as Assistant Grade I with effect from 5.11.1980.

The applicant is aggrieved by the order of the (An.I) appointing the third respondent supervisor. Respondents dated 13.10.1986/ and prays for the

following reliefs :-

- (1) This Tribunal may be pleased to quash the impugned order dated 13.10.1986 being illegal, and unconstitutional as per the grounds mentioned above.
- (2) That this Hon'ble Tribunal may be further pleased to direct the Respondents to order promotion to the post of supervisor in accordance with the procedure laid down for the non-selection post as has been done in the past for filling up such posts and promote the applicant.
- (3) That this Hon'ble Tribunal may be further pleased to direct the respondents to treat this post of supervisor as 'Reserved' one for the candidates belonging to the Scheduled Caste Community.

2. The applicant represented against Respondent No. 3, (An. A-2) Shri Lakshmi Narain/ who has been appointed as Supervisor

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in the payscale of Rs 650-960 with usual allowances
the applicant
therein he contended that being junior to him, should
not have been considered for the same. Further, he
being the senior-most Assistant Grade I, and is
also a scheduled caste candidate, he ought to
have been considered for the same. He also
in the lawyer notice Annexure 3
contends that the said post was a non-selection
post and earlier also no interview was held for
promotion in accordance with the extant rules
for reservation for the Scheduled Caste and
Scheduled Tribes candidates. Point No. 1 on the
roster is always reserved for the scheduled
caste. Hence, great injustice was done to the
applicant by not appointing him to the post of
Supervisor. His further argument was that the
Respondents never declared the applicant
unsuitable to hold the post of Supervisor. In
accordance with the rules, promotion on the basis
of seniority-cum-suitability, a senior candidate
cannot be ignored until and unless he is declared
unfit etc. Therefore, the Dean was wrong in accepting
procedure of the positive selection by the committee
which is in violation of all the practices/
conventions/precedent/rules. If there is single^{over}carried/
vacancy, that is to be treated as 'Reserved' for
the Sch. Caste and Sch. Tribes whereas, in the

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instant case, the Respondent treated the vacancy as a General post, because the field of eligibility included Mrs Shashi Bajaj, who is not a Sch. Caste.

3. The Respondents, in their reply, denied the contentions raised by the applicant. Respondent No. 2 is the Dean of the National Labour Institute, New Delhi, which was set up as an autonomous society under the Societies Registration Act, 1960 by the Government of India. The Dean of the Institute as its Principal Executive Officer, is responsible for the administration of the affairs of the Institutes. He is being appointed by the Government of India in consultation with the Executive Council.

4. The rules and regulations of the Institute provide that -

- Rule XI - 2 (d) " (i) Selection Committee will be set up by the Chairman of the Executive Council for selection of suitable persons in various positions carrying an initial pay of Rs 1,200/- or more per month; and
- (ii) For vacancies in other positions, the Dean of the Institute may set up Selection Committees."

They submit, that two posts of Supervisors fell vacant in the Institute. Out of the two, one post fell vacant w.e.f. 5.9.1986 and for filling up these posts, the Dean constituted a Selection Committee in accordance with rule XI-2(d) with the following members /

quoted above with the following members :-

1. Dr. Syed Akhtar, Fellow
2. Dr. C.S.K. Singh, Associate Fellow
3. Dr. Cherian Joseph, Associate Fellow

The Selection Committee considered all the three Assistants Grade-I who were eligible for consideration to the post of Supervisor including the applicant. It is further submitted that the Institute is a research and training institution and does not have the system of maintenance of annual confidential reports for any of the staff of the Institute. In order to assess the suitability of the candidates for the post, the Selection Committee, after thorough scrutiny of the personal files, service records and papers relating to these three candidates, held an interview of the candidates. The Committee thereafter, recommended the name of Shri Lakshmi Narain for the post of Supervisor, who is Respondent No. 3 and who is ^{also} a scheduled caste (Annexure II) candidate. The recommendation of the Committee was accepted by the Dean and accordingly Shri Lakshmi Narain was appointed to the post w.e.f. 13.10.1986. Further, they also denied by saying that the Institute is not maintaining any reservation roster in respect of supervisory staff. As such the question of reservation does not arise, since the post in question is of

supervisory cadre. Further, no post in the Institute is classified as selection and non-selection. In the past also, there were several instances where the Selection Committees have held interviews of the candidates.

Therefore, this is not a singular Instance where the Committee called for interview the eligible candidates. Accordingly, they denied the contention of the applicant stating that it was a non-selection post.

It is incorrect to state that the post in question was reserved for scheduled caste and the question of selecting senior-most amongst the scheduled caste candidate does not arise. The promotion to this post is not by seniority alone but it is based on merit cum seniority.

6. For consideration of the post of Supervisor, only incumbents working as Assistant Grade I are eligible and have been considered for appointment to the post of Supervisor. Therefore, the selection made by the Selection Committee is

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in accordance with the rules of the Institute and there is no violation of any rule. It is specifically mentioned in the rules make provision for constitution of selection committee by Dean for all posts carrying an initial pay of less than Rs 1200/-p.m. Hence, there is no discrimination in selecting Respondent No.3.

6. Thus, the allegations made by the application is wild and baseless and are therefore, denied.

7. In the light of the above, the point to be seen here is while selecting Respondent No.3 whether the Selection Committee has deviated from the existing procedure in choosing a candidate for the said post. It is an undisputed fact that the members of the committee belonged to the Institute, and they are aware of the working of the candidates and their performance. On perusal of the records, qualifications and experience (Annexure I of respondents we notice that Mrs Shashi Bajaj and Laxmi Narain's

qualifications are higher than the applicant.

Both are graduates, whereas the applicant is a matriculate. As far as experience is concerned, all the three have joined in the year 1975.

Perhaps, the Selection Committee must have gone by the performance of each official and gave their assessment to be a Scheduled Caste candidate. Committee held in their report to the Dean considering their seniority-cum-merit of each candidate. Selection Committee is of the opinion that Shri Narain is the most suitable candidate for the post of Supervisor (Administration).

He showed a keen diagnostic ability to understand administrative issues, a far better understanding of the functions of a Supervisor and the capacity to see alternative solutions of administrative problems. Accordingly, they (Annexure 1 of Respondents) recommended his name for the said post. This is the unanimous choice of the Selection Committee constituted by the Dean and, therefore, questioning the selection made by them is not based on any valid ground. Further, it is made out that no roster is kept in filling the post of

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supervisor, and no reservation any post for Scheduled Caste and Scheduled Tribes as contended by the applicant. All eligible candidates have been listed by the Selection Committee and it is incorrect to say that the post should be filled on seniority basis. The very fact that a selection committee was constituted by the Dean himself indicate, that the post is to be filled up on the basis of suitability and no seniority only. Further, as the selection of Respondent No. 3 has been made by the committee, there can be no bias.

8. Therefore, we do not want to go further into the question of reservation. For the applicant can have a grievance on this score only the selected candidate (i.e. Respondent No. 3) belonged to the general category. That is not the case. Respondent No. 3, who has been selected, is also a Scheduled Caste. Therefore, the objection on this ground is futile.

9. For these reasons, we are of the view, that there is no merit in this O.A. and hence the petition deserves to be dismissed.

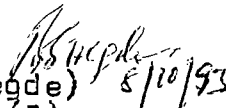
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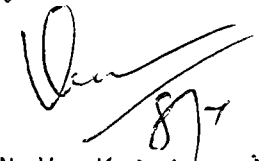
10. Accordingly, we dismiss the O.A.

In the facts and circumstances of the case

there will no order as to costs.


(S.S. Hegde)
Member (J)

8/10/93


(N.V. Krishnan)
Vice-chairman (A)