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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

OA 2457 of 1990

Date of decision 10th Jan., 1991.

Shri Kirpal Singh Applicant

versus

1. Union of India through the Foreign Secretary, Govt. of India, Ministry of External Affairs, New Delhi.
2. Administrative Officer (PE), Ministry of External Affairs, Akabar Bhawan, New Delhi.

CORAM: HON'BLE MR. B.S. SEKHON, VICE CHAIRMAN.
HON'BLE MR. P.C. JAIN, ADMINISTRATIVE MEMBER.

For the Applicant - Dr. D.C. Vohra, Advocate.
For the respondents - Kumari Seema Gupta, Advocate.

B.S. SEKHON:

Shorn off superfluities, the factual matrix necessary to be noticed for adjudication of the instant Application lies within a short compass. Applicant worked with the respondents as a Water man on daily wages during the period between 16th April, 1990 and 15th Oct., 1990. The recruitment to Class-IV posts in the Ministry of External Affairs is to be made in accordance with the Ministry of External Affairs (Class IV posts) Recruitment Rules, 1972 (for short the 'Rules') (copy Annexure R/A). The Rules have been made by the President under proviso to Article 309 of the Constitution. The Rules as amended, lay down that 75% of vacancies in Class-IV posts shall be filled by direct recruitment and 25% by transfer. With a view to filling the

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backlog of the vacancies meant for the reserved categories, the Central Government launched a Special Recruitment Drive (SRD). The salient guidelines in respect of the SRD have been set out in D.O. No. 28034/5/90-Estt. (A)/SRD dated 16th May, 1990 (copy Annexure R/B) from the Secretary, Ministry of Personnel, Public Grievances and Pensions, New Delhi. Para 2(i) of Annexure R/B states in explicit terms that the drive will apply to vacancies to be filled by direct recruitment. As per para 2(iii), the vacancies ^{are} to be filled by Ministries/Departments by their own arrangements either through the Employment Exchange or through advertisement in the Press. Para 2(vii) states that while calling for applications, at least a period of six weeks may be prescribed for receipt of applications and wide publicity may be given so that the information reaches the target groups. Para 2(viii) recites that while sending requisitions to the Employment Exchanges, a period of seven days may be given for nomination of candidates. If no nominations are received within this period, or if adequate number of candidates are not sponsored, the vacancies may be advertised in Newspapers and in the Employment News inviting applications from candidates registered with any of the Employment Exchanges. Such applications are to be considered alongwith applications, if any, received from the Employment Exchange.

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2. Vacancies reserved for Scheduled Tribe candidates were advertised vide Annexure 'M'. This was pursuant to S.R.D. The advertisement sets out the eligibility qualifications including the educational qualification and has given six weeks period for receipt of the applications. The aforesaid period is to be computed from the date of publication of the advertisement. Circular dated 8/10th May, 1990 (Annexure 'D') in respect of the posts of Peons was circulated to the applicant as also to

another Water-man who was also working in the Ministry.

Out of the aforesaid two candidates, Shri Surinder Singh has been selected.

3. According to the respondents five candidates had been selected out of more than 3800 applicants. The candidature of the applicant and Shri Surinder Singh were also considered by the Three-Member Selection Committee headed by a Deputy Secretary. Five candidates including Shri Surinder Singh were recommended by the Selection Committee. Applicant had been considered, but his name had not been recommended by the Selection Committee for appointment.

4. Applicant's case is that he fulfilled the eligibility qualifications; he had submitted all his particulars, certificates, testimonials etc. when he applied for the post; he was entitled to be appointed and the respondents could not have advertised the posts on 12th June, 1990. Parties have also joined issue on the timely submission of the certificates including the certificate about the applicant being a member of the Scheduled Tribe. Applicant's case is that he had submitted such certificate prior to 12th June, 1990, whereas, the respondents' case is that this was done on 10-7-90.

5. The salient grounds pleaded by the applicant are that he had every right to be appointed to the reserved post in enforcement of his fundamental right guaranteed under Articles 15(4) and 16(4) of the Constitution; the respondents have violated the rules and administrative instructions and have negated the very scope and purpose and the basis and genesis of SRD; the respondents have violated the principles of natural justice as they are not even responding to the communications of the applicant and are making all out efforts to locate ST candidates

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(b)

being
in the open market, when the applicant is a ST candidate, belongs to their office and has already put in more than 6 months in the post of Water-man; the respondents have acted illegally and unconstitutionally in that they cannot advertise posts for reserved categories without making known the total number of posts and the respondents have indulged in discrimination and favouritism in appointing a similarly situated person in preference to the applicant.

6. Respondents' case, in brief, is that the recruitment to the posts of Peons is to be made as per the Rules and so far as the SRD is concerned, ^{also} in accordance with the instructions contained in Annexure R/B. The casual workers are to be considered for regular appointment to Group 'D' posts, if otherwise eligible and if they have put in 2 years of service as casual worker with 206 days of service during each year in the organisations observing 5 days work as per the instructions contained in Memo No. 49014/19/84-Estt. (C) dated 26th October, 1984 (Annexure R/C) issued by the Govt. of India, Department of Personnel & Administrative Reforms. Applicant's application was stated to have been received without certificates or copies thereof pertaining to educational qualifications, date of birth and ST certificate. The applicant was asked to submit attested copies of the certificates within 7 days for which Memo No. Q/PE/578/11/87 dated 12.6.90 was issued. Applicant submitted ST and educational qualification certificates under his letter dated NIL received by the respondents on 10.7.90 (Annexure R/E) and that copies of certificates at Annexures 'F' and 'G' were not received. It has been further stated that the vacancies were correctly notified, applicant was duly considered by the Selection Committee alongwith thousands of other applicants, but his name was not recommended by the Selection Committee for appointment.

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7. We have heard the fairly elaborate arguments addressed by the learned counsel for the parties and have perused the pleadings, the records and with due care and amplitude.

8. The ground of discrimination and favouritism urged by the learned counsel for the applicant is based on the sole premise that Shri Surinder Singh, who was also working as a Water-man on daily wages had been selected, whereas, the applicant who also possessed the eligibility qualifications had not been selected. Respondents have categorically averred vide paragraphs 4(9) and 4(12) of their counter that applications of the two Water-men belonging to Scheduled Tribe including the applicant were kept pending for consideration of their candidature at the time of direct recruitment through Employment Exchange/Advertisement and the cases of both the Water-men including the applicant were duly considered alongwith those of others. The Three-Member Selection Committee headed by a Deputy Secretary, recommended 5 candidates out of which applicant had not been recommended. The applicant has not given the particulars on the basis of which allegations of favouritism and/or of discrimination could be sustained. Mere selection of one candidate and non-selection of another candidate out of thousands of candidates is wholly insufficient to sustain the plea of discrimination or that of favouritism. We may also add that the fundamental right is only of consideration and there is no fundamental right to be appointed.

9. Coming to the ground relating to the infraction of fundamental rights guaranteed by Articles 15(4) and 16(4) of the Constitution, we may notice the aforesaid provisions:-

Article 15(4) lays down that nothing in this Article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of

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citizens or for the Scheduled Castes and the Scheduled Tribes.

Clause (4) of Article 16 provides that nothing in this Article shall prevent the State from making any provision for the appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

These provisions do not confer any right to be appointed in favour of a member of the backward classes for whom reservation in the public services has been made. This ground raised in the Application is, therefore, groundless. Equally groundless is the ground pertaining to the infraction of principles of natural justice. We are not aware of any principles of natural justice which comes in the way of the State from making efforts to locate suitable ST candidates. As a matter of fact, it is any time desirable that the State should try to locate suitable candidates by widening the field of selection as has been done in this case, so that the deserving candidates belonging to the reserved categories including scheduled tribes are selected. This would be consistent with the maintenance of efficiency in the public services.

insistence

10. Applicant's ^{insistence} that he must be appointed prior to resorting to recruitment by advertisement as he was working in the Ministry, ~~applicant's insistence~~ seems to be clearly mis-conceived. What the applicant seeks is a special dispensation for the reason that he was working in the Ministry. Such a special dispensation could be granted only if the applicant's case falls within the purview of Annexure R/C. Applicant's case is not covered by the aforesaid instructions. Nor have the respondents violated any of the guidelines contained in Annexure R/B. As has been clearly brought out by the respondents, candidature of the applicant had

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been duly considered by the Selection Committee. We have no reason to dis-believe this averment and have instead no hesitation in accepting the same as correct. The ground pertaining to the alleged violation of the administrative instructions/guidelines contained in Annexure R/B, therefore, also falls to the ground.

11. The learned counsel for the applicant strenuously urged that the applicant had submitted all the documents including the documents pertaining to the applicant's being a member of the S.T. well in time. In this connection, the learned counsel invited our attention to the certificate dated 19-5-90 as also to the factum of applicant's registration with the Employment Exchange being well within the knowledge of the respondents. According to the learned counsel, there is a very strong probability of the applicant's having submitted these documents well in time and that respondents' contention to the contrary is not tenable. The learned counsel for the respondents stated that the applicant could not conceivably submit the S.T. certificate dated 19-5-90 at the time he filed the application i.e. on 10th May, 1990 (Annexure R/D) and that Applicant's communication dated 21/6/90 (Annexure '3') unmistakably shows that he submitted the same subsequent to 12th June, 1990. The learned counsel for the respondents also placed reliance on Annexure R/E, which goes to show that the S.T. Certificate and School Leaving certificates were submitted on 10-7-90. The assertion of the applicant to the contrary is clearly untenable and is held to be so. Placing reliance upon the full Bench decision of Karnatka High Court rendered in 'Raj Kumar v. Gulbarga University', the learned counsel next urged that it is imperative on the part of the respondents to have specified ~~xxx~~ the number of vacancies in the advertisement. This submission is of little avail to the applicant in that the number of vacancies i.e. 4 were clearly

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specified in the advertisement Annexure 'M'. That apart, the facts of the instant case are far dis-similar to those obtaining in Raj Kumar (supra) and the ratio therein does not improve the applicant's case in any wise. In support of his submission, the learned counsel also pointed out that respondents were trying to fill 5 vacancies instead of 4. The learned counsel for the respondents explained by stating that an additional vacancy had arisen ^{subsequently} for which the recommendations had been made by the Selection Committee. Extending the number of vacancies from 4 to 5 would not have the effect of rendering the selection invalid or of making good applicant's claim who had been considered and had not been found suitable by the Selection Committee.

12. In view of what has been said and discussed hereinabove, the Application merits rejection and the same is hereby rejected at the admission stage. The interim order issued in this case is hereby vacated. No order as to costs.

(P.C.JAIN)
AM

B.S. Sekhon
(B.S. SEKHON)
VC

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