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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1767/91

New Delhi this the 6th Day of July, 1995.

Hon'ble Sh. N.V. Krishnan, Vice-Chairman(A)
Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Har Sarup C/o Sh. Shyam Lal,
185, Deen Dayal Upadhyay Marg,
New Delhi-110 001.Applicant

(By Advocate Sh. R.L. Sethi, though none appeared)

Versus

Union of India through:

1. The Secretary,
Ministry of Urban Development,
Deptt. of Publication,
New Delhi.

2. The Controller of Publications,
Deptt. of Publications,
Civil Lines,
Delhi-110054.Respondents

(By Advocate Sh. M.L. Verma, though none appeared)

ORDER (Oral)

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

When this case was called twice today, none appeared for either party. The matter has been on Board at least since 3.7.95. Hence, we are disposing it of on the basis of the pleadings.

2. The issue is fairly simple. The respondents issued a circular dated 26.4.89 (Annexure A-3) which is reproduced below :-

"Applications are invited from the persons who are desirous of being considered for the post of Clean Driver in this office. The scale of pay of the post is Rs.775-12-955-EB-14-1025/. The field of selection is open only to the employees who have been working in this Department in the pay scale of Rs.750-940/- for last 3 years or more and possessing a valid 'Driving Licence' for Motor Vehicles as well as practical experience of minimum 2(two) years in similar capacity.

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2. Applications from intending candidates should reach the Establishment Section by 4.5.89 at the latest.

3. The post is, however, reserved for Scheduled Tribe candidates only. In case no S.T. employee is available the vacancy will be filled from other categories."

The applicant, who was already an employee of the respondents from 2.1.81 as a labourer, applied for the post of Cleaner Driver. The applicant states he qualified in the test. Apparently, the post could not be filled up by any ST candidate. Accordingly another circular dated 22.7.91 (Annexure A-1) was issued, inviting applications for the post of Cleaner Driver.

This circular also reserved the post for ST candidates. It did not state, unlike the A-3 circular that if no ST candidate was available, general candidates would be considered.

3. The applicant's grievance is that if no ST candidate was available, he should have been appointed as he was selected on the basis of the first circular, and the second circular (Annexure A-1) ought not to have been issued. He, therefore, seeks a direction to the respondents "to offer the appointment to the post of Cleaner-cum-Driver trade tested and found suitable in pursuance to vacancy circular dated 26.4.89 in preference to those who are brought on the panel in response to vacancy circular dated 22.7.91".

4. The respondents have filed a reply. The only point made by them is as follows:-

"The vacancy is reserved for Scheduled Tribe Category and Shri Har Sarup belongs to un-reserved category. His claim for the post

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of cleaner Driver on the reserved point is contrary to the provision provided in the Constitution of India.

4.7. That the vacancy of cleaner Driver is reserved for Scheduled Tribe category and the applicant does not belong to Scheduled Tribe category."

5. Apparently the respondents have not acted according to the standing instructions on the subject. These are contained in the "Brochure on Reservation for Scheduled Castes & Scheduled Tribes in services" (Seventh Edition), a Government of India Publication of 1987. As seen from the A₁ and A-3 circulars, the post is to be filled up by direct recruitment otherwise than through examination. In such a situation, the instructions contained in sub-para (a) and (b) of para 8.1 of the instructions in the above Brochure in Chapter 8 "Procedure for filling reserved vacancies in recruitment through UPSC or by advertisement" will apply. They are reproduced below :-

"The following procedure should be followed while sending requisitions to the UPSC or issuing of advertisements for filling the reserved vacancies (in posts filled through advertisement as the primary source of recruitment) :-

"8.1 Advertisement of reserved vacancies for posts filled by direct recruitment otherwise than through examination :

(a) First advertisement :

Where direct recruitment (otherwise than through examination) is to be made to a vacancy or vacancies reserved for Scheduled Castes or Scheduled Tribes only (and not to any unreserved vacancy/vacancies as well), advertisement on the first occasion will be issued inviting applications only from the candidates belonging to the Scheduled Castes, and/or the Scheduled Tribes, as the case may be, and not from general candidates.

(b) Second advertisement :

If, after advertisement as in sub-para (a) above, the required number of Scheduled Caste or Scheduled Tribe candidates are not selected for the reserved vacancy or vacancies the remaining reserved vacancy/vacancies will be readvertised but, on this occasion general candidates would also be eligible to apply. The general candidates would, however, be considered only if no suitable Scheduled Castes or Scheduled Tribe candidates, as the case may be, are still available for appointment to the vacancies reserved for them. This may be clarified in the advertisement. [M.H.A. O.M. No. 1/1/70 - Estt (SCT) dated 31.7.70]"

6. It will be seen that the first advertisement A3 is contrary to the instructions in sub-para (a). It should not have ^{inv} invited application from general candidates. Likewise, the second advertisement Annexure A-1 is also irregular as it did not invite application from general candidates also.

7. As none is present before us today, we are of the view that the only order that we can pass today is ^{ce} ~~that~~ to declare that on the second occasion, when Annexure A-1 was issued, general candidates should have been permitted to apply. In case the post has still not been filled up ^{bar} so by a ST candidate, the respondents are directed to issue a fresh advertisement in conformity with sub-para (b) of the standing instructions reproduced in para 5 above and proceed to make recruitment in accordance with law. OA disposed of as above. No costs.

(Smt. Lakshmi Swaminathan)
Member(J)

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