

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

Dated: 5th November, 1993.

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. S.R. Adige, Member (A)

O.A.No. 328 of 1991.

Bhagwan Dass s/o Shri Sukha Ram,
age about 46 years working as Photographer
in J.P.N. Hospital, New Delhi & resident of
2333/116, Pili Bldg., Ajmal Khan Road,
Kareal Bagh, New Delhi-110005.Applicant.

Versus

1. Union of India through
Secty. (Medical), Union Territory of Delhi,
Delhi Admn., Sham Nath Marg, Delhi.
2. The Estate Officer,
Technical Recruitment Cell Maulana Azad
Medical College, New DelhiRespondents.

For the applicant: Shri P.L. Minocha, counsel.

For the respondents: Shri Vinay Sabharwal, counsel.

O.A.No. 2304 of 1989

1. Shri T.S. Kapoor
(Trilok Singh Kapoor)
s/o Shri Nanak Chand,
r/o 1988, Sector IV,
Urban Estate, Gurgaon,
Haryana.
2. Shri Girja Shanker Singh,
s/o Shri Bharat Singh,
r/o 262, Timarpur, DDA Flats,
Delhi -7Applicants.

Versus

1. Maulana Azad Medical College,
Bahadurshah Zafar Marg,
New Delhi -110002 (through its DEAN)
2. Delhi Administration,
5, Alipur Road, Delhi
(through its chief Secretary)Respondents.

Applicant Shri T.S. Kapoor is in person.

Shri Vinay Sabharwal, counsel for the respondents.

JUDGMENT (ORAL)

(By Hon'ble Mr. J.P. Sharma, Member (J).)

Both these applications have been taken up
together as a common question of fact and law is
involved in these applications.

O.A.No. 2304/89

2. Applicants Shri T.S. Kapoor and Shri Girja Shanker
Singh at the relevant time had been working as



Photographers with the respondent no.1. There was one post of Senior Photographer to which the applicant no.1 Shri T.S.Kapoor asserted a claim on the ground that he is the seniormost and further that the respondents have wrongly considered that post as a reserved post since all the ^{previous} years, the said post of photographer has been a post of unreserved category. The applicants have prayed for;

- i) quashing the circular dated 11.9.89 whereby the Maulana Azad Medical College invited the applications from the staff working in the various medical institutions of Delhi Administration for filling up one post of Senior Photographer reserved for Scheduled Caste in the pay scale of Rs.1640-2900/- under a direct quota;
- ii) a direction to the respondents not to fill up the post of Senior Photographer in pursuance of Circular dated 11.9.89;
- iii) a further direction to the respondents to declare the third post of Senior photographer open and to fill the same in accordance with the rules;
- iv) a direction to the respondents to consider the applicants and other general candidates for promotion to the post of Senior Photographer against the post vacated by Shri D.P.Malha.

3. A notice was issued to the respondents who contested the application and in the reply, they stated that the existing one vacant post of Senior Photographer is a reserved post for SC candidate. In the 40 Point Roster maintained in the Technical Recruitment Cell at S.L.No.9/25 at page 221, the vacant post is reserved for SC candidate. It has been denied that the post is to be filled by promotion as per recruitment

70

-3-

a copy of which has been annexed to the counter at Annexure-R1. There is no ground to quash the circular. There were two posts of Senior Photographers in September, 1977 and Shri D.P. Melha and Shri R.C. Sharma were selected for the posts but the appointment of Shri Sharma remained under dispute. One Shri K.S. Jelly, who was also in the panel, filed a writ petition in the Delhi High Court and vide judgment dated 20.4.88 delivered by CAT, Principal Bench, in T.A. No. 484/85, Shri K.S. Jelly was deemed to have been appointed to the post of Senior Photographer w.e.f. 14.2.78 with consequential benefits. There are only two posts of senior photographers and there is no third post as averred in the application. Regarding reservation, the respondents have pointed out that the reservation is required to be made on the basis of vacancy position from time to time and the 40 Point Roster prescribed for the purpose and not on the basis of percentage. Thus, according to the respondents, the applicants have no case. The respondents have also annexed the extract of register where at serial no. 25, there is an entry of Senior Photographer showing the post as of reserved category. The application was filed by the applicants on 19.11.89. There is an interim order passed by the Bench on 8.12.89 that no appointment will be made before the next date of hearing, passed on the statement of the then counsel of the respondent Shri M.M. Sudan.

4. In O.A. No. 328/91, Bhagwan Dass has a grievance of non-consideration of the applicant for the reserved vacant post of Senior Photographer in the Maulana Azad Medical College and he has prayed for the grant of the relief that the respondents be directed to consider the case of the applicant for which he had already applied on 19.9.89 with a supplementary

application dated 30.4.90 in both ways as a departmental candidate as well as a direct recruit.

5. A notice was issued to the respondents who have stated that since another application No.2304/89 has been filed in the Principal Bench, CAT with regard to the relief of the promotion against the post of Senior Photographer, in view of this, the case of the applicant could not be considered. By an order dated 18.3.93, it was observed that D.A. No.2304/89 is a cross-application and be taken together. This application is, therefore, coming along with earlier application No.2304/89.

6. Shri Charya, learned counsel for the applicant is not present. The applicant Shri T.S.Kapoor is present. On 29.10.93, Shri Charya made a request for adjournment which was granted with a direction that the matter shall remain on daily board. The matter is thereafter coming on Board on every working day of the Bench.

7. We have heard Shri T.S.Kapoor who gave a statement that during the pendency of the original application, another post of Senior Photographer has since fallen vacant due to the retirement of Shri K.S.Jolly, Senior Photographer on 31.10.93. He also stated that he has no grievance if he is considered along with other general/^{category} candidate for the said post which is of general category as per available material on record.

8. Shri P.L.Mimreth, learned counsel for the applicant Shri Bhagwan Dass argued that the applicant has been denied his legitimate promotion irrespective of the fact that one of the posts for which the circular was issued in September, 1989, was a reserved category post. The respondents have filed

the extract of the register maintained in 40 Point Roster showing at serial No.9/25 on page 221 the vacant post as a reserved post for SC candidate. Shri B.S.Charya is not present and we have waited for him for a long time. The applicant is also satisfied if the applicant no.1 is considered for the second post which has fallen vacant due to the retirement of Shri K.S.Jolly on 31.10.93.

9. We have gone through the pleadings of D.A.No.2304/89 and the averment made in the application is that when the last time the post of Senior Photographer in 1977 fell vacant, both these posts were filled up by framing a panel of general category candidates. In view of this, it is averred that the post of Senior Photographer has never been during all the years a reserved post. However, we cannot be oblivious of the fact that under the reservation policy adopted by the Government exhibited in various DGP D.Ms, a 40 Point Roster is to be maintained to fill up certain posts on the basis of prescribed reservation to the extent of 15% for SC and 7½% for ST candidates which was at the relevant time. Thus, there is no merit in the contention of the applicants Shri T.S.Kapoor and Girja Shanker that the circular dated 11.9.89 inviting applications from the departmental candidates for filling up one vacant post of Senior Photographer reserved for SC is violative of any rules or that is arbitrary or discriminatory.

10. Regarding the other relief of creation of third post, claimed in D.A.No.2304/89, the respondents have clearly averred in their reply and it is also highlighted in the argument of the respondents that there are two posts of Senior Photographers. This point is not disputed by the applicant Shri T.S.Kapoor who is present.

97

11. Regarding the case of Shri Bhagwan Dass, if he is otherwise eligible either on promotion basis or a direct recruit, he should have a right to be considered along with the eligible scheduled caste candidates for the post of Senior Photographer.

12. In view of above facts and circumstances, we dispose of both the applications as follows:-

- i) D.A.No.2304/89 with regard to cancellation of the circular dated 11.9.89 inviting application as well as with regard to issue of a direction for creation of third post of Senior Photographer, it is for the administration and need no direction but the applicants shall be considered along with other eligible general category candidates according to the rules for any other post which may have fallen vacant as is revealed during the course of hearing by applicant no.1.
- ii) D.A.No.328/91 is allowed with a direction to the respondents to consider the case of the applicant both on the basis of promotion and direct recruitment along with the other eligible scheduled caste candidates for the post of Senior Photographer for the reserved category post.
- iii) The respondents are directed to comply with the above directions as expeditiously as possible.
- iv) Parties to bear their own costs.

A copy of the order is placed in the file.

S. R. ADIGE
(S. R. ADIGE)
MEMBER (A)

(J. P. SHARMA)
MEMBER (J)