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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2559/2004

New Delhi, this the ^{20th} day of April, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)

Sumit Kaur
18/B, Old Survey Road
Dehradun – 248 001
Uttaranchal. Applicant
(By Advocate: Mrs. Rani Chhabra)

Versus

1. Govt. of India, through its Secretary
Ministry of Personnel
Public Grievance & Pensions
Department of Personnel & Training
North Block
New Delhi.
2. Union Public Service Commission
Through its Chairman
Dholpur House
Shahjahan Road, New Delhi. Respondents
(By Advocate: Sh. Madhav Paniker for R-1 and None for R-2)

O R D E R

By Mr. Justice V.S. Aggarwal:

Applicant (Sumit Kaur) is a victim of polio of form PPRP lower limb. In the year 2003, in pursuance of the advertisement, she had taken the Civil Services Examination. She had qualified the preliminary examination, the main test and participated in the interview. When the results were declared, the rank of the applicant shown was 384.

2. There were four vacancies - two were for the Un-reserved category and two for the reserved category candidates.

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3. The applicant contends that she was informed that her case was being considered for allocation to a service/post. But in August 2004, she was informed that her candidature could not be considered due to non-availability of vacancy in the Physically Handicapped quota. She had submitted a representation, which has since been rejected.

4. By virtue of the present application, she seeks to quash the impugned order of rejecting her candidature being contrary to law and reservation policy and a direction to Respondent No.1 to allocate to a service to her.

5. The application is being contested.

6. According to Respondent No.1, the applicant was declared to be a successful candidate and was assigned the Rank No.384. She was recommended on a relaxed standard, i.e., below the general cut off mark approved by the Union Public Service Commission. The applicant could be considered only for those services/posts earmarked for the Physically Handicapped candidates. She should not be considered for services/posts earmarked for non-Physically Handicapped General category. She could not even be considered for Physically Handicapped & Non-Physically Handicapped Scheduled Caste category, Physically Handicapped & Non-Physically Handicapped Scheduled Tribe category and Physically Handicapped & Non-Physically Handicapped OBC category. The respondents plead that keeping in view the rank and the fact that the applicant was a General

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category candidate, she could not be allocated to a service in the reserved quota and, therefore, the claim was rightly rejected.

7. We have heard the parties' counsel and have seen the relevant record.

8. At the outset, we take liberty in referring to the celebrated decision of the Supreme Court in the case of **Indra Sawhney vs. Union of India** (Civil Writ Petition No. 97/91 & Others decided on 16.11.1992), reported in 1992 (Suppl.) (3) SCC 217. The Supreme Court held:

"We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes (under Article 16(4) may be called vertical reservations whereas in favour of physically handicapped (under clause (i) of Article 16 can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservation - what is called inter-locking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (i) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments....."

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Thus, since it is a horizontal reservation, the applicant could only seek reservation pertaining to the same being a General candidate.

9. On behalf of the applicant, it was contended that once her name was in the list of the selected candidates, the appointment could not be refused. Reliance by the learned counsel was placed on the decision of the Supreme Court in the case of **PREM PRAKASH & OTHERS v. UNION OF INDIA AND OTHERS**, AIR 1984 SC 1831. In the cited case, the facts were that the Delhi High Court had issued an advertisement to hold the examination for recruitment of officers to the Delhi Judicial Service. The advertisement stated that total number of vacancies was 16 out of which 2 were reserved for Scheduled Castes and 1 for Scheduled Tribes. In addition, according to the advertisement, there were 2 carry forward vacancies for members of Scheduled Tribes. In case of non-availability of Scheduled Tribe candidates, those vacancies were liable to be transferred as reserved vacancies for Scheduled Caste candidates. A competitive examination was held. The applicant therein had passed through the relaxation of the minimum standard. Selection Committee approved certain names. Only 7 open candidates and 4 Scheduled Caste candidates qualified the test. The name of the applicant was at Sl. No.11 in the list. The question for consideration was as to whether he could seek appointment or not. The Supreme Court allowed the petition holding:

“15. It is clear from this notification that if selected candidates are available from the previous list there should

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either be no further recruitment until those candidates are absorbed or in the alternative vacancies which are declared for the subsequent years should take into account the number of persons who are already in the list of selected candidates who are still awaiting appointment. The notification further shows that there should be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies. Once a person is declared successful according to the merit list of selected candidates the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name is included in the list of selected candidates.

16. We must record our dissatisfaction at the fact that the Rules of the Delhi Judicial Service have not been amended so as to bring them in conformity with the administrative instructions and notifications which have been issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms from time to time. The situation is virtually chaotic for which we must clarify the High Court of Delhi cannot be blamed. It is surprising that though 13 years have gone by since the Delhi Judicial Service was established no attention whatsoever has been paid to a matter which concerns the future of a large number of young men and women who aspire for posts in the Judiciary. The instant case and the cases of Ajai Singh and Ram Swarup show that the worst sufferers of this inaction are members of the Schedules Castes and Scheduled Tribes. Sooner the Rules are amended easier will it be for the High Court to administer and superintend the affairs of the subordinate Judiciary with the object of achieving the ideals enshrined in Arts. 16 (4), 38 and 46 of the Constitution.

17. Though the Rules ought to be amended that does not mean that administrative instructions can be ignored by the High Court until that is done. The Assistant Registrar says in paragraph 9 of his counter-affidavit that "administrative instructions cannot be allowed to prevail over the statutory rules." That would be correct provided that the administrative instructions are contrary to the statutory rules. In this case R.28 itself says that "Appointment made to the service by competitive examination shall be subject to order regarding special representation in the service for Scheduled Castes and Scheduled Tribes issued

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by the Central Government from time to time." Therefore far from their being any inconsistency between the statutory rules and the administrative instructions it is clear that the two have to be read together."

It is obvious from the peculiar facts that it is confined to the facts that were in department before the Supreme Court. The Supreme Court has not laid as a general principle, ^{that} the reservation has to continue even for the next examination that may be held. In the present case, there were 2 vacancies for General candidate in the Physically Handicapped quota. Once the same were filled up as would be noticed hereinafter, and the applicant could not lay the claim, the said argument must fail.

10. At this stage, it is relevant to mention that the Supreme Court in the case of **SHANKARSAN DASH v. UNION OF INDIA**, 1991 SCC (L&S) 800 has emphatically held that the successful candidate on the penal does not get an indefeasible right to be appointed. However, it does not mean that the respondents can act in an arbitrary manner.

11. In the present case before us, as we have referred to above, there were 4 Physically Handicapped candidates. One Physically Handicapped candidate Shri Bheda Priyesh Kishore (Rank 273) was allocated the service against the Un-Reserved quota. The next candidate was Shri Saravana Moorthy C (Rank-383) and he was a OBC candidate and was allocated a service.

12. It has to be seen that out of 3% reservation, there is a further deviation effected and 1% reservation is made available to Visually Handicapped, one to those who suffer from hearing

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impairment and one to those who are Orthopedically Handicapped. The other reservation for General Category was for hearing impaired persons while the applicant was suffering from Locomotor Disability. It is in this backdrop that she could not be given the post reserved for Physically Handicapped. We find that this is in accordance with the principles that have been so drawn and there is nothing arbitrary about it.

13. Our attention was drawn towards the Department of Personnel & Training's OM No.36035/4/2000-Estt.(Res.), dated 13.6.2001. It provides that reservation can be exchanged with other category but the total reservation for the handicapped should not exceed 3% of vacancies. In the facts of the present case, when reservation was to be given as per the vacancy position and the nature of the handicapped, the applicant cannot insist to exchange to other category to the detriment of another person. It has to be remembered that the other person who has been offered the post even has not been made party before this Tribunal.

14. Taking totalities of the facts and circumstances, the OA being without merit must fail and is accordingly dismissed.

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(S.K.Naik)
Member (A)

V.S.Agarwal
(V.S.Agarwal)
Chairman

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