

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 1702/92

Date of decision 31/8/92 (8)

Shri S.B. Verma .. Applicant

v/s

Union of India .. Respondents
and Others

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Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

Hon'ble Member Shri I.P. Gupta, Member (A)

For the Applicant .. Shri S.K. Sawhney, Advocate

For the Respondents .. Shri B.K. Aggarwal

1. Whether Reporters of local papers may be
allowed to see the Judgement ?

✓ 2. To be referred to the Reporter or not ? Yes.

JUDGEMENT

Delivered by Hon'ble Shri I.P. Gupta, Member (A)

In this application filed under Section 19 of the Administrative Tribunal Act, 1985, the applicant has sought for the relief that the orders dated 19.6.1992 (Annexure AB) and dated 25.6.1992 (Annexure A1) should be quashed and the applicant promoted against the existing vacancy of Pharmacist Grade I (550-700), the applicant being the senior-most eligible employee and further direct the respondents to make further promotion to the post of Pharmacist Grade I as per the seniority of Pharmacist Grade II. The impugned orders dated 19.6.1992 (Annexure AB) are from the Railway Board to the General Manager and the extracts

therefrom is reproduced below :-

" The points raised by your Railway has been covered in para (ii) vide Beard's letter No. 89-E(SCT)1/49/5(pt) dated 16th June, 1992, wherein it has been laid down that while calculating the number of reserved posts, fraction of 0.5 and above should be rounded off to one and less than 0.5 be ignored. In the instant case it is seen that there are total 5 posts in the cadre of Senior Pharmacist and as such one post can be reserved for Scheduled Caste."

2. An extract from the impugned order dated 25.6.1992 (Annexure A1) is also reproduced below :-

' It is, therefore, requested to promote the senior-most Scheduled Caste Senior Pharmacist (grade Rs 1400-2000) as a Chief Pharmacist (grade Rs 1640-2900)'.

This letter is from the Office of General Manager, Northern Railway to the Chief Hospital Superintendent, Northern Railway.

3. The Learned Counsel of the applicant contended that on restructuring of cadre with effect from 1.1.1984, the number of Pharmacists Grade I (1640-2900) in the Central Hospital where the applicant is working was increased from two to five. The seniority list of Pharmacists Grade I, Grade II and Grade III in the Central Hospital had become a separate seniority unit as enclosed at Annexure A4. One post out of total strength of five Pharmacists in the centralised cadre of Pharmacists of Northern Railway was already allotted to Scheduled Caste candidate prior to decentralisation and the scheduled caste employees were not entitled to reservation of any further post in the cadre of

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Pharmacists Grade I which had a total strength of only five and 15% of the total strength would be less than one post.

4. The Learned Counsel for the applicant further argued that earlier the Office of General Manager, Northern Railway had held the view, as is evident from their letter dated 25th March 1991 to the Railway Board that in implementing the percentage meant for SC & ST the Northern Railway had decided that fraction of ^a point should be ignored to avoid the contempt of Supreme Court as decided in the case of ^{so as} Girdhari Lal Kohli v/s Union of India ^{not to} increase the representation of SC & ST to more than 15% and 7½% respectively. Similar view had been reiterated in the letter from the Office of General Manager, Northern Railway to the Railway Board dated 19.11.1991.

5. The main thrust of the argument of the Learned Counsel for the applicant was that in working out the number of posts for reservation on the basis of prescribed percentages the fraction should be ignored irrespective of the fact whether it was more than 0.5 or less than 0.5. In this connection he cited the judgement of the Apex Court dated 21st December 1984 in W.P. Nos. 17386 to 17393 of 1984 [Girdhari Lal Kohli & Others v/s Union of India & Ors.] The Apex Court had passed the following order :-

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" Pending notice, the promotions which may be made hereafter will be strictly in accordance with the judgement of the High Court in Civil Writ Petition No. 1809 of 1972 and if any such promotions have been made otherwise than in accordance with the judgement of the High Court, such promotions shall be adjusted against the future vacancies".

6. In the above order, reference has been made to the judgement of the High Court in CWP No. 1809 of 1972.

This is regarding the case of J.C. Malik and Others v/s Union of India and Others decided by the High Court at Allahabad. The following extract from that judgement is reproduced below :-

" In view of the above discussion, we are of the opinion that the Railway Board's circular letter dated 20th April, 1970 made reservation to the extent of 15% in favour of Scheduled Castes in respect of appointment to the posts and not to the vacancies which may occur in the cadre of posts. Admittedly, respondents nos. 4 to 8 have been selected by the Selection Committee and appointed to the posts of A Grade Guards on the basis of an erroneous interpretation of the Railway Board's circular letter. If the circular was correctly followed and if the reservation quota was confined to the posts in that event respondents nos. 4 to 8 could not have been considered or selected for appointment to the posts of A Grade Guards. In our opinion, their selection was not in accordance with law as their selection has been made in excess of the 15% fixed for Scheduled Castes candidates."

Therefore, the Learned Counsel for the applicant stressed the point that since no reservation in excess of 15% could be allowed for SC, in case of five posts of Pharmacist Grade I, there should be no reservation for Scheduled Caste because even if one post was reserved the percentage would exceed 15%.

7. The Learned Counsel for the respondents contended that prior to decentralisation the post of Pharmacist Grade I on the entire Northern Railway was five and

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out of five posts one post of SC and one post of ST were reserved according to 40^{point} roster but ^{only} one SC candidate was available. In the restructuring scheme, the posts of Pharmacist Gr.I were increased from 5 to 52 on the entire Northern Railway. Out of 52 posts of Pharmacist Gr.I, 5 posts were given to the Central Hospital, New Delhi. Out of these five posts, four posts were filled and only one vacancy exists. He clarified that there was no SC/ST candidate appointed against any of these 5 posts. Against the fifth post, reservation has been done on the basis of 40^{point} roster, since the vacancy is to be filled at the stage in the roster where the post is reserved for scheduled caste.

8. The Learned Counsel for the respondents further argued that the clarification, to the effect that while determining the number of allowable reserved posts by applying the percentage of 15% for scheduled castes and 7½% for scheduled tribes the fraction of 0.5 and above should be rounded ^{off} as one and less than 0.5 ignored, was issued by the Railway Board to all the General Managers keeping in view the interim orders passed by the Hon'ble Supreme Court in Malik's case, ~~as interpreted by the Apex Court~~ ^{in the} ~~benefit of the tribunal~~. The interim order of the Apex Court in JC Malik's case reads as follows :-

'We clarify our order dated 24.2.1984 by directing that the promotions ~~to~~ which may be made hereafter will be strictly in accordance with the judgement of the High Court and such promotions will be subject to the result of the appeal. If any promotions have been made after February 24, 1984 otherwise than in accordance with the judgement of the High Court such promotions will be adjusted against the future vacancies. CMP is disposed of accordingly'

A reference to the judgement of the High Court in the above

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order relates to the order of the Allahabad

High Court in Writ No. 1809 of 1972

[J.C. Malik and Others versus Union of India] and the extract from this judgement has earlier been produced by us in this order.

9. Analysing the facts and the legal issues involved in this case we observe at the outset that the order of Allahabad High Court in J.C. Malik's case is the ~~the~~ ruling order at present. The reservation to the extent of 15 per cent in favour of scheduled caste has to be done in respect of appointments to posts and not to the vacancies which may occur in the cadre posts.

10. The full Bench of the Tribunal in the case of A. Lakshminarayanan and Others versus Union of India and Others [O.A. 759/87], decided on 27th February, 1992 at Hyderabad.

Bench observed, inter-alia, as follows :-

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" The Principal Bench of the Central Administrative Tribunal considered the rules regarding reservation for SC & ST explained the term posts¹ and² vacancy³ in the context of reservation even after Mallick's case in S.P. Jain Vs. Delhi Administration and others, ATR 1000(2) CAT 353). The Tribunal observed as follows:-

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" With due deference to the learned Judges of the Punjab and Haryana High Court we are unable to subscribe to the view taken by them in the aforesaid case. It is for the simple reason that the O.P. in question talks of vacancies occurring in a particular year and not of vacancies in a cadre. It is no doubt true that in Arati Ray's case there were two posts in the cadre but that circumstance did not weigh with their Lordships of the Supreme Court while laying down the above rule. The O.P. explicitly lays down that under the carry forward rule if a single vacancy occurs for the second time or third time it should be treated as reserved against the reservation carried forward and a SC/ST candidate, as the case may be, should be appointed against the vacancy in spite of the fact that the vacancy happens to be the only vacancy in that recruitment year. Obviously, the emphasis is on the vacancy and not on the cadre as such. This is precisely what was observed by their Lordships of the Supreme Court in Arati Ray's case (supra) where only a single vacancy occurred in the subsequent year i.e. 1968-69 and despite the argument that it being the only vacancy occurring in a particular recruitment year should be treated as unoccupied their Lordships repelled the contention with the observation that⁴ such a construction is a bane to the Rule of its prime significance and will render the carry forward provision illusory.⁵ The Arati

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Lordships concluded by saying that:-

"The construction sought to be put on the Rule by the petitioner would perpetuate a social injustice which has clouded the lives of a large section of humanity which is struggling to find its feet. Such a construction is a contravention to the plain language of the letter of the Rly. Board, the intention of the Rule and its legislative history".

Hence, the vital question in a situation like this is the number of vacancies occurring in particular year and not the posts comprised in a cadre. That being so, we are of the considered view that the vacancy in question has to be filled in by appointment of a reserved class(SC/ST) candidate under the rule of ~~carry~~ ^{se} very forward".

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In this connection it is pertinent to note that some of the High Courts have taken a view consistant with the view taken by the Allahabad High Court in Malik's case notwithstanding the fact that preponderance of authorities are against the principles relied on by that Court and not consistant with the policy adopted by the Govt and approved by the Supreme Court.

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However, as indicated above it is not prudent to go into controversy any further and give our considered view on the conclusions of the Allahabad High Court in Malik's case because the Apex Court is seized of the matter.

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Under these circumstances though we have discussed the contentions urged before us by the parties based ^{on} the arguments advanced by them we

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accept the request of the learned Additional Solicitor General. Sri V.R.Reddy, who appeared on behalf of the Railway and refrain from expressing our final conclusions on the issues arising in this case, which shall await the decision of the Supreme Court in Malik's case."

10. In our view there is nothing wrong or illegal about the respondents' stand that in determining the number of reserved posts fraction of 0.5 and above should be rounded off to one and less than ~~to~~ 0.5 ignored. In the case of JC Malik v/s Union of India and Ors. what the Hon'ble High Court observed was that the reservation was with reference to posts and not with reference to vacancies which may occur in the cadre of posts. While laying down this ratio the Court observed that if the reservation quota was confined to posts in that event respondents No. 4 to 8 could not have been selected and, therefore, the selection was not in accordance with the law as their selection had been made in excess of 15% quota. From this alone one cannot conclude that fraction ~~even greater~~ ^{less} than 0.5% is to be ignored and that ^{would tend} ~~intend~~ to exceed the quota of 15%. The respondents have ^{clearly} ~~merely~~ brought out that out of five posts of Pharmacist Grade I there is no scheduled caste at the moment. There is no SC/ST at the moment. The 40 point roster is with reference to posts. [The Brochure of Reservation for SC/STs in Services - p.48 refers] It is called 40 point since it is possible to get a whole number out of 40 while working out percentages for reservation on the basis of 15% and 7½% (i.e. 6 + 3). No other number ^{smaller} ~~would give out a whole number~~ if 15% or 7½% is to be taken out. In this roster, points are fixed for SC & ST. When out of 5 posts some posts, say 3, fall vacant, it is difficult to say which of the three out of identical 5 posts have fallen vacant. The roster helps in relating the vacancies to posts. The roster is a running account from

year to year. For example if recruitment in a year stops at point 6 of the cycle, recruitment in the following year will begin at point 7. In our view the 40-point roster is not inconsistent with the judgement of the Allahabad High Court that reservation is with reference to posts and not vacancies. If the reservation is related to vacancies, the reservations in the posts might exceed 15% considerably. For example, if we assume that 4 vacancies in a cadre of 10 occur every year for 5 years. Out of 4 vacancies, one, (15% of 4 is 0.6 rounded off to one) will then have to be reserved for SC and thus in 5 years 5 vacancies will get reserved out of 10 posts. A fraction rounded off to one will in such cases lead to absurdities. But rounding off fractions to one and relating the reservation to points in the 40-point roster for posts will not lead to such absurdities. If on the other hand fractions greater than 0.5 are not rounded off and the reservation is with reference to number of posts alone, a situation may arise where in a cadre of 14 posts, no post will ever go to a S.T. on the basis of 7% calculation. For all times the S.T. will be deprived from having a reserved post in that cadre. That also would not have been intended by the Constitution Makers. The roster comes to aid in avoiding such situations. It gives a harmonious interpretation of the complex situation regarding working out reserved points on prescribed percentages. Article 16 of the Constitution very aptly described that 'nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in any favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services of the State'. The words used are 'appointments' or 'posts'.

Rounding off fraction greater than 0.5 to 1 and relating the point to roster point to determine whether the post should be treated as reserved or not cannot be said to be inconsistent with judgements of the Apex Court in the case of Girdhari Lal (Supra) or in the case of Areti Ray (Supra). The decision of the Full Bench (Supra) is not conclusive in nature yet. Out of 5 posts of Pharmacists Grade I, there is no SC/ST in this case and the respondents are reserving one post for SC. This is in order on the basis of 15% and the provisions of Article 16.

11. We, therefore, are of the opinion that the relief sought in the O.A. cannot be acceded to. As regards manner of filling the posts, it is the prerogative of the respondents to lay down whether a post should be a selection post or a post to be filled according to seniority subject to suitability and also frame recruitment rules, unless this has been done already, under Article 309 of the Constitution. The prayer in the O.A. cannot be acceded to. This O.A. is, therefore, dismissed with no order as to costs. The interim order stands vacated.

I.P. Gupta
(I.P. GUPTA) 31/8/92
MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN (J)