

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 764/1992

(13)

New Delhi the 21th Day of December, 1993

Hon'ble Mr. N.V.Krishnan, Vice Chairman(A)
Hon'ble Mr. B.S. Hegde, Member(Judicial)

Sh.Virendra Kumar Sharma
R/o Burhi Mata,
Chandausi, Distt., Moradabad

... Applicant

(By Advocate Sh. G.D. Bhandari)

Versus

1. Chief Controller Export & Import
Ministry of Trade & Commerce,
New Delhi-110001
2. Joint Chief Controller Export & Import,
Ministry of Trade & Commerce, 4th Floor,
Vikas Manzil, Gulzarimal Dharamshala Marg,
Moradabad-244001.

... Respondents

(By Advocate Sh.P.P.Khurana)

ORDER(ORAL)

(Hon'ble Mr. N.V.Krishnan, Vice Chairman(A))

The applicant was a casual labourer under the second respondent, Joint Chief Controller Export and Import, Ministry of Trade and Commerce. He is aggrieved by the fact that, instead of regularising him on the group 'D' post, this respondent has disengaged him from 21.1.1992.

2. The facts of the case are as follows:-

- 2.1 There are four class-IV posts in this office.
- 2.2. When he was engaged for the first time on 13.1.1989

as a casual labourer, two general candidates
Kuldeep Kumar and Gajinder Singh, were already working
as casual labourers from 17.5.1988.

2.3. In addition, one Surinder Kumar Banger, a scheduled
Tribe candidate, was also employed in that office,
he having been transferred from Jaipur to this
office. He was thereafter transferred, in October,
1990 to Kanpur.

2.4 One Scheduled caste candidate, Vijay Pal Singh, was
also engaged in July, 1991.

2.5. Thus, on this date i.e. July, 1991 4 casual labourers
were engaged against the four posts viz., the
two general candidates Kuldeep Kumar and Gajinder
Singh, the Scheduled caste candidate Vijay Pal
Singh and the applicant.

2.6. One Prem Pal Singh (Scheduled Tribe) was appointed on
21.1.1992 against the vacancy on the transfer of
Surinder Kumar Banger, and consequently, ^u the
applicant was disengaged.

2.7. According to the 40 point roster the 5th vacancy
should have been filled by a General candidate. As
is clear from 2.5. above, 4 vacancies had been filled
up and the vacancy caused ^u by Banger's transfer is the
fifth vacancy. Hence, the respondents should have

15

regularized the applicant on this vacancy and not disengaged him.

2.8 In these circumstances, he has filed this application for a direction/be issued to the respondents to engage him and to regularised his services and also give back wages for the period of forced absence.

3. Respondents have filed reply denying his claims.

They have contended as follows:-

3.1 Recruitment to the post of Group-IV staff was decentralised by the Annexure-B circulars collectively, circular dated 9-8-1990 reads as follows:-

Govt. of India
Ministry of Commerce

Office of the Joint Chief Controller of Imports and Exports (Central Licensing Area) Peerless Bhawan.

F.No. 5(124)/90/CLA-Adan/571

Dated 9/08/1990

To

- (1) The Jt. CC I&E, Kanpur/Lucknow/Jaipur/Varanasi/Moradabad.
- (2) The Dy. CC I&E, Exhibition Ground, Jammu.
- (3) The ACC I&E, Amritsar/Chandigarh.

Subject:- Decentralisation of appointment in Group (D) posts.

Sir ,

I am directed to say that the issue regarding appointment of Group 'D' employees in various Regional offices has been considered and it has been decided to decentralise the appointment of Group 'D' employees to various Regional Offices headed by DCs and above. As a result thereof, the Communal Roster shall be maintained by the respective offices making the appointment. To

16

16

sort out the present issue of non-regularisation of existing adhoc Group 'D' employees while ordering decentralisation of appointment of Group 'D' employees, JC Kanpur and JC Varanasi offices may themselves regularise the existing adhoc Group 'D' employees against the available posts. After regularisation of these employees, JC Kanpur/ Varanasi offices should send the proposal for the inclusion of names of such regularised official in the combined seniority list of Group 'D' employees of the CLA zone.

This issue with the approval of JC(CLA)

Yours faithfully,

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Asstt. Chief Controller (Admin)

A clarification was issued to the second respondent on 23.5.1991 that on decentralisation of appointment of Group 'D' staff in basic category, he should maintain a 40 point communal roster according to which point 1 is reserved for Scheduled Caste points 2 and 3 are unserved and point 4 is reserved for S.T.

3.2 It is stated that the appointment by transfer of Surinder Kumar Banger in 1988 is of no consequence in this case because it was made before the Annexure-B order re; decentralisation was issued.

3.3. It is stated that two general candidates Sh. Kuldeep Singh and Gajinder Pal Singh were engaged on 17.5.1988 and after decentralisation both were regularised against group 'D' post in April, 1991. Vijay Pal Singh, a scheduled caste candidate, was engaged on 1.2.90 and was

also regularised with effect from 30.9.91

(17)

3.4. On the transfer of Banger, a vacancy arose which was been treated by the respondent as reserved for Scheduled Tribe. Respondent has appointed Sh. Prem Lal, Sch.Tribe candidate, whose name was sponsored by the employment exchange vide order dated 16.1.1992. Consequent upon his appointment, the respondent dis-engaged the applicant's service.

3.5. The contention of the respondent is that the applicant could continue only so long as a Sch. Tribe candidate was not available for regular appointment.

4. Learned counsel for the applicant submitted that on the appointment of Sh.Surinder Kumar Banger, the vacancy earmarked for a scheduled tribe candidate got filled up. Subsequently, three persons were regularised viz Kuldeep Kumar and Gajinder Singh - both general candidates- and Vijay Pal Singh. Thus vacancies 1 to 4 had been filled up. The transfer of Banger created ^{the} fifth vacancy which should be filled up by a general candidate. Even it is reserved for a Sch. Tribe candidate, he pointed out that as this was a single vacancy, it should have been filled up by Genl.candidate and the reservation carried forward to the subsequent year. He also points out that in an establishment of only 4 group 'D' persons, reservation cannot be made. It can be made after clubbing other similar posts as mentioned in chapter 5 of the

* Brochure of reservation for SC/ST in service-7th addition
- a publication of the Govt. of India.

5. Learned counsel for the respondents, however, submits that even in a small cadre reservation can be made. Instructions only state that, if possible, similar posts should be clubbed to form a larger group for reservation purposes. He contends that the appointment of Sh. Suresh Kumar Banger took place before decentralisation and before the operation of decentralisation roster. Therefore, only 3 regularisations were made after Ann.B decentralisation order was issued. Hence, the vacancy on which Sh. Prem Lal was appointed is the 4th vacancy, reserved for Sch. Tribe. Hence, his appointment was required to satisfy the instructions regarding appointments by roster. The applicant was therefore, disengaged correctly.

6. We are of the view, that appointment by roster for an establishment having a small group 'D' staff is no violation of the instruction of the Brochure. The Ann.B instructions issued in this case dated 9.8.90 and 23.5.91 have not been challenged. Against the four group 'D' posts only 3 appointments were made after decentralisation on 9.8.90 viz the two general candidates who were regularised in April, 1991 and the one Sch. Caste candidate who was regularised on 13.9.91. Admittedly, one more vacancy arose on the transfer of Banger. Against that

19

post, the applicant only worked as casual labourer. He could not be regularized on that post as it had to be filled up by a Sch. Tribe candidate. This was done by appointing Sh. Prem Lal. That naturally rendered the applicant ~~suffers~~ ^{u surplus} as there was no post against which the applicant's services could be continued as casual labourer. Therefore, the respondents have ^{u him} rightly disengaged ~~them~~. In the circumstances, we find that action of the respondents can not be faulted. Therefore, this application ^{u is} devoid of merit and is dismissed.

Abby
(B.S. Hegde)

Member (J)

N.V.Krishnan
21.12.93
(N.V.Krishnan)

Vice Chairman (A)

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