

43
Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration T.A.No.563 of 1987 (C.M.Writ Petition
No.3765 of 1980)

Jugal Kishore Misra ... Petitioner

Vs.

Union of India and 4 others ... Respondents.

Hon.G.S.Sharma, JM
Hon.K.J.Raman, AM

(By Hon.G.S.Sharma, JM)

In this writ petition under article 226 of the Constitution of India received on transfer from the High Court of Judicature at Allahabad u/s.29 of the Administrative Tribunals Act XIII of 1985, the Petitioner has prayed that the orders dated 30.11.1979 and 28.10.1980 promoting the Respondent nos. 4 and 5 respectively as Upper Division Clerks and the notification dated 27.11.1972 issued by the Cabinet Secretariat (Department of Personnel) providing reservation for Scheduled Castes and Scheduled Tribes (for short SC/ST) in the appointments made by promotion be quashed.

2. The case of the Petitioner is that he was appointed as Lower Division Clerk on 6.1.1975 in Ordnance Factory Kanpur in non-industrial employees' cadre. The Private Respondent nos. 4 and 5, namely, Ram Lal Kureel and Uma Shankar, who belong to SC community were also appointed as LDC in the said factory and in the gradation list of LDCs, the Petitioner was shown at sl.no.30 while Respondent nos. 4 and 5 were placed below him at sl.nos.38 and 39 respectively. According to O.M. issued by Govt. of India on 14.2.1957 (copy annexure 1), the promotions to non-selection posts are made on the basis of seniority. The Ministry of Defence vide its memo dated 11.7.68, copy annexure,2 had stated that no reservat-

ion on promotion posts, would be made. The Ministry however, issued another letter dated 27.11.1972 (copy annexure 3) making reservations even on promotional posts, and 40 point roster was approved and by virtue of this reservation undue preference has been given to SC/ST candidates even on promotional posts. On the basis of the recommendation of the Departmental Promotion Committee, which had met in 1979 for the promotion of LDCs to the cadre of UDCs the Respondent no.4 was promoted as UDC vide order dated 30.11.79, copy annexure 4 and the Respondent no.5 was promoted as UDC vide order dated 28.2.1980 copy annexure 5. Had these promotions been made on the basis of seniority-cum-fitness, the Petitioner would have been promoted earlier than the Respondent nos. 4 and 5 and without amending the statutory rules no provision for reservation of SC/ST candidates could be made by the Ministry and the notification dated 27.11.1972 as well as the promotions of Respondent nos. 4 and 5 on its basis are, therefore, null and void and discriminatory and they being hit by Articles 14,15 and 335 of the Constitution, are liable to be set aside.

3. The writ petition has been contested on behalf of the Respondents and in the Counter Affidavit filed on their behalf by the Dy.General Manager, Small Arms Factory Kanpur, it has been stated that initially reservation for SC/ST community candidates was enforced to the extent of 15 and $7\frac{1}{2}$ per cent respectively in class III and IV where promotions were made on selection basis vide order dated 11.7.68 issued by the Ministry of Home Affairs. However, vide Cabinet Secretariat (Department of Personnel) O.M. dated

27.11.1972 reservation in class III and IV posts has been enforced even where promotions are made on the basis of seniority subject to fitness and in order to give effect to the said order, 40 point roster was promulgated and after judging suitability of the SC/ST candidates a separate list of eligible candidates of these communities is now maintained. It was admitted that the Petitioner would have got promotion before the Respondent nos. 4 and 5 if there would have been no reservation. There has been no supersession of the Petitioner and the Respondent nos. 4 and 5 had been given the promotion merely on the basis of the provision for reservation and the Petitioner has not been able to make out any case for interference.

4. In the rejoinder filed on behalf of the Petitioner, he reiterated the pleas taken by him in his petition for challenging the notification dated 27.11.1972 and the impugned orders of promotion of the Respondent nos. 4 and 5 and maintained that they are discriminatory and illegal.

5. It is not in dispute in this case that initially there was no reservation for SC and ST candidates for promotional posts on seniority-cum-fitness basis and the O.M. dated 11.7.68 had provided for such reservation only for selection posts. The validity of the said O.M was upheld by the Hon. Supreme Court in G.M Southern Railway Vs. Rangachari (A.I.R.1962 SC-36). In the State of Punjab Vs. Hiralal (A.I.R. 1971 S.C-1977) it was held that reasonable reservation on appointments for posts in the upper grades is permissible under the provisions of ^{Article} ~~Article~~ 16(4) of the Constitution. In Triloki Nath Tikoo Vs. State

of Jammu and Kashmir (A.I.R.1969 SC1) it has been held that the reservation contemplated by Art.16(4) of the Constitution in favour of SC and ST employees can be done not only by regulations and rules but also by executive orders. The Petitioner has not been able to lay his hands on any decision of the Hon. Supreme Court in his favour and in view of the case laws discussed above, we are of view that O.M. dated 27.11.1972 was issued by the Cabinet Secretariat and there was no need to amend any rule or statute for making the reservations for promotion in non-selection posts and this O.M. is not invalid or contrary to the provisions of law or Constitution on the grounds alleged by the Petitioner. The promotions of Respondent nos. 4 and 5 have been made on the basis of rule of reservation provided by the said O.M and in this way the validity of their promotions can also not be challenged by the Petitioners. In our opinion, the Petitioner has thus failed to make out any case for our interference.

6. The Petition is accordingly dismissed without any order as to costs.

kmam

MEMBER (A)

Dated: August 8, 1989
kkb

sharma

MEMBER (J)