

(5)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No. 5 of 1987

Parmanand Prasad ... Applicant

Versus

Union of India & Others ... Respondents

Hon. S. Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

3/

1. In this application an order No. 752-E/82-III Ea dated 25.7.86 issued by the General Manager, Northern Railway on the subject of selection to form a panel for promotion to Class II service for one post of Assistant Statistical Officer on the Northern Railway which has been declared as reserved for Scheduled Caste has been challenged. The petitioner's case is that he is working as a senior Statistical Inspector on the Northern Railway and is eligible for promotion as Assistant Statistical Officer in Group 'B' Service. According to him there being only one post of Assistant Statistical Officer, Railway Board's letter of 18.11.1986 directing the Northern Railway Administration to finalise the selection by treating the vacancy as reserved for Scheduled Caste on the ground that the first single vacancy is treated as un-reserved and the ^{3rd} ~~one~~ ^{second} single vacancy is to be treated as reserved and since the vacancy that occurred in 1977-78 was treated as un-reserved, The vacancy that occurred in 1982

3 ✓

which should have been treated as reserved, but, was not so treated, ^{or} The vacancy arising now should be treated as reserved for Scheduled Caste. This decision according to the petitioner will cause him irreparable loss and injury and is discriminatory. He has, therefore, sought relief that the General Manager's order dated 25.7.86 treating this selection as only for reserved community candidate be treated as void and the Administration be directed to finalise the selection for which written test has already been held on 15.1.86 treating the post as un-reserved. According to him, if this post is treated as reserved, it will amount to 100% reservation ^{or be} which will, in violation to the judgement delivered by the Allahabad High Court in Writ Petition No. 1809 of 1972, J.C. Malik and others Vs. Union of India where the Hon'ble High Court has ^{or} observed that the reservation can be made in respect of the post and not to the vacancy. According to him this decision of the Railway Board also hits Article 16 (1) of the Constitution, and the power conferred by Article 16 (4) cannot be exercised in a manner as to make the reservation excessive. And also because the principle of carry forward is not applicable to vacancies in Group 'B' posts in terms of Railway Board's letter No. 82-E(SCT)41/6 dated 5.5.1982. According to the applicant the Rules regarding single vacancy cannot be applied to a post which is a lone post. It applies in cases where there are number of posts.

2. In their reply the respondents have said that a selection for a single vacancy of Assistant Statistical Officer was held in the year, 1979 and the single vacancy went to un-reserved candidate. The next vacancy occurred in 1982, but, the same was again filled by a general candidate. Further when the single vacancy again occurred and was not treated as reserved in 1985, the matter was agitated by Scheduled Caste candidates and they wanted the vacancy to be treated as reserved for Scheduled Caste candidates, As the two previous vacancies had gone to unreserved community. On their representation the Board decided to treat the single present vacancy as reserved for Scheduled Caste. They have further said that the present vacancy ³⁴ ~~was~~ reserved for Scheduled Caste ³⁴ ~~by~~ ³⁴ ~~Shri~~ ³⁴ ~~Sain Das Superintendent Statistical, Northern Railway and therefore, the rights of Shri Sain Das will be directly affected by the decision in this petition and as such, he is most necessary party in the present petition and since he has not been impleaded, the petition is liable to be dismissed. They have further gone to say that in 1979, 6 senior most eligible candidates were called for the single post. Four persons appeared in the test and one person was placed on the panel. At that time no Scheduled Caste was among the candidates ³⁴ ~~to~~ ³⁴ ~~called~~ ³⁴ ~~to~~ appear. In the year, 1982, 5 senior-most candidates were called, out of which 2 belonged to~~

:: 4 ::

Scheduled Caste community, and one general community candidate who qualified, was placed on the panel. In the year, 1985 selection, 5 candidates were called for their selection, out of which 2 were Scheduled Caste and one Scheduled Tribe and the applicant was amongst the general candidates. The results of the written test of the selections have not been declared, because in the meantime the Railway Board issued the instruction to treat this vacancy as reserved for Scheduled Caste. According to them, as per standing orders single vacancy in any recruitment year is treated as un-reserved, but in the subsequent years, the single vacancy would be treated as reserved and since no carry forward is permissible in the case of two or more ^{or more} vacancies, the single vacancy is carry forward to only one subsequent selection year. Since the vacancy in 1979 went to un-reserved candidate, the 1982 vacancy should have gone to the Scheduled Caste candidates, but the same was filled by a general community candidate, and when the vacancy occurred in 1985, the Railway Board rightly passed the order dated 24.4.1986 treating the vacancy reserved for Scheduled Caste. They have further said that the issue whether the reservation is applicable to the posts or vacancies, is subjudice before the Hon'ble Supreme Court in J.C. Malik case, ^{According to} and the Railway Board's order No.74-E-SCT/15/20 of 9.7.75 and 12.2.76, The single vacancy, if occurred during the subsequent

years in Group 'B' service is to be treated reserved for Scheduled Caste/Scheduled Tribe candidates. The selection done in 1982 were erroneously done. Therefore, for the selections for 1985, it had been decided to treat the vacancies reserved for Scheduled Caste candidates

3. We heard the learned Counsel for both sides. The learned Counsel for the applicant submitted that since it was a single post, reservation could ^{be not} be made for the same. Because, it will tantamount 100% reservation. And that, even if, ^{the respondents have} the reservation ~~has~~ committed the error, in 1982, it cannot result in the reservation being brought forward to subsequent years as it was against the Rules. While the contentions raised on behalf of the respondents were that an erroneous selection was made in 1982 when the vacancy should have been reserved for Scheduled Caste, ^{as} has been corrected by the order of the Railway Board by which this vacancy has now been reserved for Scheduled Caste candidates. We have gone through the case file also.

4. In regard to reservation for Scheduled Caste/Scheduled Tribe in services, the single vacancy arising in recruitment year, the Department of Personnel and Administrative Reforms vide their OM No.1/9/74-Estt(SCT) dated 29.4.75 addressed to all the Ministries said so in para 4:

" 4. In this Department's OM No.10/37/74-Estt.(SCT), dated 3rd February, 1975, it has been clarified that, although in the case of promotions by selection from Class III to Class II, within Class II and from Class II to the lowest rung or category

:: 6 ::

in Class I there is no carry forward of reservation from year to year, when a vacancy falling on a reserved point in the roster is treated as unreserved due to its being the only vacancy during the year of promotion, the reservation so due against the reserved point should be carried forward to the subsequent three recruitment years. These orders would continue to apply to the promotion to the post mentioned therein, and in conjunction with the instructions contained in para 2 of this O.M. the single vacancy occurring in the year, subsequent to the initial year of recruitment should be treated as reserved even though it may be a single vacancy in that year. In other words, the reservation carried forward on account of there being only one vacancy during the initial year of promotion should be adjusted by treating the vacancy arising in the subsequent year(s) as reserved, even though there might be only a single vacancy. In that subsequent year(s).

34/ This makes it clear that in spite of their being no carry forward of reservation from year to year when a vacancy falls on, ^{34/} as reserve point in the ^{34/} roster ^{34/} and is treated as unreserved due to a single vacancy. The reservation so due against the reserve point is carried forward to subsequent 3 recruitment years. The orders on the subject being very clear, the contention of the Learned Counsel for the applicant that there is no carry forward of promotion in Class III to Class II is based on wrong premises and cannot be accepted.

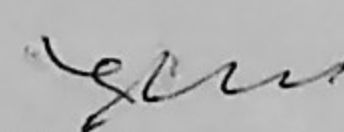
5. In his re-representation dated 8.5.86 which is placed at page 18 of the paper book, the applicant has admitted that in the second selection, which was held in 1982 a candidate from Scheduled Caste community was to be selected and placed on panel, but, due to administrative failure in the second selection a candidate from unreserved community was placed on the panel. He has however,

taken a ground that since the quota remained unfilled in the second selection, it should be treated ^{as} ~~lapse~~ ³. Because the Scheduled Caste quota is carried forward only to one subsequent selection in the case of promotion of Class II and he has relied on a letter No. 74-E/SCT-15/20 dated 9.7.75. This point has also been considered in the Department of Personnel's O.M. quoted above. In 1974 it was clarified that a recruitment year during which a single vacancy arose and hence ³ ~~get~~ ² treated as unreserved, need not be counted as an effective year towards the period for which the reserved vacancy is to be carried forward. The year in which no vacancy arises in such case ³ ~~continued~~ ^{is} to be ignored for counting the effective years, towards the period of carry forward. Thus, if the selection in 1982 was erroneous we find there was nothing wrong in the respondents deciding to carry forward the reservation which was not given in 1982 ³ ~~to the year~~ ² to 1985. This cannot be treated as a reservation having been carried forward beyond the ³ ~~stipulated~~ ² period.

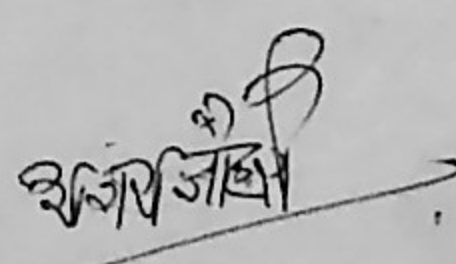
6. As far as the contention regarding application of reservation to a single post resulting in its becoming 100% reservation is concerned, the ³ ~~very~~ ² idea of considering the first vacancy which according to the roster falls in the reservation category as unreserved looks after this aspect. It cannot be

claimed that a single post always remains outside the purview of the roster or thereby reservation. The reservation has to be applied to all promotions according to the rules and they will be applicable to single post also. There is ~~no~~ such rule, ^{that} has been brought to our notice which has been ^{made} ~~made~~ by the Government to say that for a single post reservation will not apply. It will be violative of the provisions of Article 16 (4) of the Constitution under which reservations have been made in matters of recruitment and promotion. On the above considerations we do not think that there is any force in the petition and therefore, it fails.

7. We, therefore, dismiss the petition.
Parties will bear their own costs.


Vice Chairman.

Dated: January 21, 1988
S.N. Shukla


Member (A)