

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 30th day of November 2007.

Original Application No. 37 of 1999

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Kailash Narain, S/o Sh. Brij Nath, working as Store Attendant in Indian Grassland and Fodder Research Institute, Jhansi.

. . . Applicant

By Adv: Sri Amit Kumar & Sri A.D. Prakash

V E R S U S

1. Director Indian Grassland and Fodder Institute Jhansi.
2. Union of India through Indian Council of Agriculture Research, Krishi Bhawan, Government of India, New Delhi through the Secretary.
3. Sh Sanjai Kant Now posted - Sr Adm officer ICAR, New Delhi.
4. Ex. Senior Administrative Officer IGFRI, Jhansi.
5. Km. Shobhita Nair, D/o P.B. Nair, Jr. Clerk IGFRI, Jhansi.
6. Mr. Amit Kumar Singh, S/o Shri Munna Lal, Jr. Clerk, IGFRI, Jhansi.

. . . Respondents

By Adv: Sri N.P. Singh

O R D E R

By Hon'ble Mr. P.K. Chatterji, AM

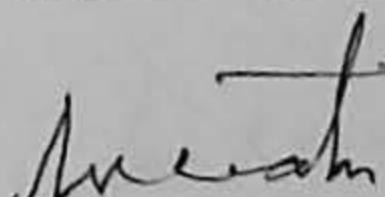
The applicant is working in Group 'D' cadre as Store attendant in Indian Grassland and Fodder Research Institute Jhansi under ICAR. The store attendants have the opportunity for promotion as junior clerk through 10% departmental quota after

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fulfilling the eligibility conditions. The applicant belongs to SC category.

2. On 24.02.1998 an advertisement for selection against one post of junior clerk in the pay scale of Rs. 3050-4590 was issued in the office of respondent No. 3. The applicant applied against the notification, but his grievance is that he was not selected although he belongs to SC/ST category (the respondents ignored the provision of reservation as per the roster and selected a person from the general category, whereas the post should have been filled up by a person for the reserved category), and although as a departmental candidate the respondents should have considered him in preference to an outsider. In support of this the applicant has stated that no departmental candidate was given promotion after 1991 DPC, and the respondents were filing up the cadre of junior clerks through direct recruitment without giving the scope to departmental candidates as per rules. As per rule the respondents are supposed to fill 10% of the post by promoting departmental candidates.

3. Not only that the applicant further states that while the notification declared a vacancy of one post, the respondents selected one Km. Shobhaita Nair for the post and also made a reserved list of one candidate namely Sri Amit Kumar who happened to be the



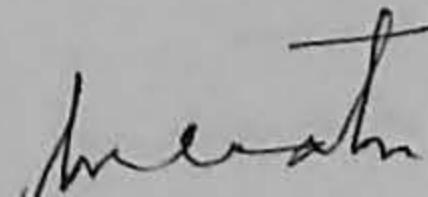
son of one Sri Munna Lal, an assistant in the recruitment section. This, the applicant says, is in clear violation of the rules for recruitment as well as some fundamental principles of recruitment as laid down by the Hon'ble Supreme Court in various judgments. This, according to the applicant was a clear case of nepotism and favoritism which should not be countenanced at all.

4. By submitting the above facts the applicant has prayed for the following reliefs:

- "a. Quash the selection and recruitment held under the impugned notification dated 24.2.98.
- b. Direct the respondents to consider promotion to the post of junior clerk against the departmental quota Group 'D' employees and also the quota reserved for SC candidate for the said vacancies.
- c. Direct the respondents to grant all consequential benefits of the service to the applicant.
- d. Issue any other direction or orders as deemed fit under the facts and circumstances of the applicant's case."

5. The grounds for which the orders mentioned above has been challenged are as follows:

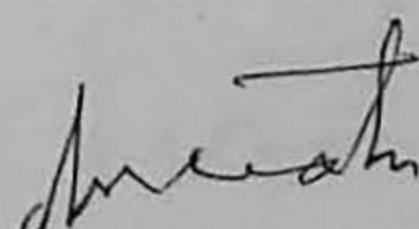
- "a. The respondents have ignored the quota reserved for departmental promotion from group 'D' category to junior clerk by holding the selection under notification dated 24.2.98.
- b. The respondents have also deprived the applicant from the benefit of reservation for SC candidate by not maintaining 40 points reservation roster.
- c. After selection of Vijai Bahadur in 1991 all the vacancies have been filled by direct recruitment and no DPO for departmental candidates have been held.
- d. The respondents have wrongly recruited two persons against the notification for one post by unfair means.



e. The applicant was the only SC candidate and also the only departmental candidate he had every chance of being selected if the respondents had complied with the quota or the SC and ST quota.

f. The applicant has been discriminated in illegal, unjust and unfair manners."

6. The respondents denied the allegations completely. It is stated by the respondents at paragraph No. 4 of the CA that 12 sanctioned vacancies for the post of junior clerk were available in the department. Out of 12 posts 09 were already filled up and out of the 03 vacancies advertisement was made for selection of one candidate as per the notification dated 24.02.1998. It was a proposal for direct recruitment under 85% quota in the general category. The applicant, it is stated by the respondents applied for selection by direct recruitment against the post which was for the general category. Accordingly, he submitted his application form. The DPC vide their order dated 10.03.1998 selected one candidate i.e. Km. Nair and kept Sri Amit Kumar Singh in the reserved list. For justifying the reserved list the respondents have stated that after declaration of the advertisement it was found necessary for filling up another post of junior clerk due to exigency of work. The respondents have strongly refuted the allegation of the applicant that making a reserved list was in contravention of the recruitment rules. It is stated by the respondents, according to ICAR letter No. 1-2/88/PR.IV dated 31.07.1989 the respondents are well within their rights to prepare a reserved list to take

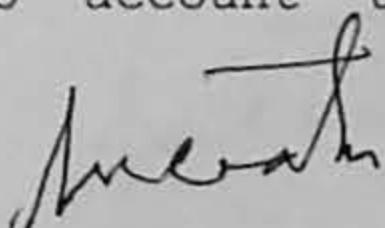


care of exigencies of service. The respondents have quoted the relevant provision of the aforementioned circular of the ICAR which is as follows:

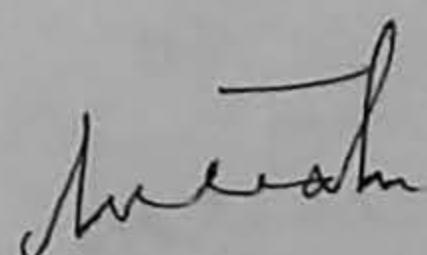
"The vacancies of a particular category may sometimes arise in quick succession. If fresh advertisements are issued in such cases, there will be considerable delay in recruitment. In case of vacancies to be filled up through Direct Recruitment and Limited Competitive Examination. Keeping this position in view, the matter has been considered again and it has decided that the 'Reserve List' may remain valid for a period of one year from the date of the interview of declaration of result. If there is only a competitive written examination so that if a few vacancies arise within one year of the date of interview they may be filled up without delay, in the larger interest of the work of the Council."

7. The respondents have also formally denied the allegation that after Vijai Bahadur no departmental candidate has been given promotion after 1991. It is stated by the respondents in para 9 of the CA that Vijai Bahadur sri Kailash Chandra at Sl. No. 4 and Smt. Shakun at Sl. No. 5 were considered for promotion and the DPC promoted them to the post of Junior Clerk. Therefore, there is no lopsidedness in the representation of candidates from different groups in the selection of Junior Clerks.

8. The respondents have also strongly refuted that no roster was being maintained to ensure fair representation of the reserved categories in the selection of junior clerk. It is stated by them at para 27 of the suppl. CA that one post of junior clerk under direct recruitment which was reserved for SC category was surrendered on 25.09.1999. This was due to internal restructuring taking into account the



actual work content for junior clerks. By saying this the respondents have strongly denied the allegation that the respondents were not giving fair representation to the candidates belonging to the reserved category. The respondents have strongly refuted the claim of the applicant by saying that all these questions are irrelevant for the simple reason that the applicant had volunteered to participate in direct selection to the post of junior clerk as an outsider candidate against the vacancy earmarked for the general category candidates. He was given a chance to take part in the selection but he could not qualify in the written test. Therefore, all these questions which are being raised now for giving him appointment under 10% quota for departmental candidate, and for filling up the vacancy from the reserved category are beside the point. During the arguments the learned counsel for the respondents cited from some relevant judgments from the Apex Court to say that having participated in the selection willingly as an outsider candidate without any protest he cannot challenge the same notification after failing in the test. The learned counsel has also stated that the charges regarding nepotism etc were figments of imagination. If some one having some relation with an official who is working gets selected on merit, there is no departmental rule which would come in the way. But it does not automatically lends

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credibility to the allegation of nepotism and malpractice.

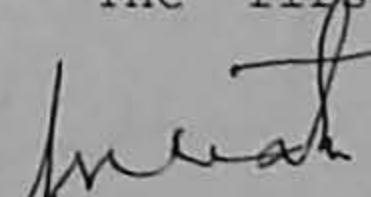
9. During the arguments the applicant's counsel cited from different judgments of the Apex Court/High Court regarding the scope of appointment beyond the notification i.e. the question of filling up more posts than what is notified. The applicant has cited from different judgments but the one which is relevant on this point is the judgment of the Apex Court in ***State of UP and others Vs. Raj Kumar Sharma and others : 2006 (3) SCC 330*** which is as follows:

"Filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights granted under Articles 14 and 16 of the Constitution."

10. The other case cited is ***Ram Avtar Patwari Vs. State of Haryana JT 2007 (11) SC 456***

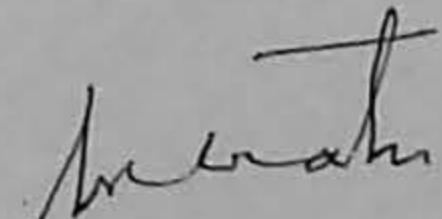
"Public employment - Advertisement calling for filling up 1248 posts of Patwars - Selection Board selecting 2395 candidates - Persons left out challenging the selection by filing a writ - High Court justified the selection of more candidates on the ground of the promise made by the State Chief Minister of appointing one from every family as Patwar - However, court holding the selection process to be improper on account of the mark allocation in the interview and directing fresh selection - Valid. Held High Court erred in relying on the speech of the Chief Minister for justifying selection of more candidates than the number of advertised posts. Further in holding the appointment to be inequitable so far as the petitioners were concerned the court failed to consider several details and records and the distinguishing features noted by the Supreme Court in Satpal Singh's case (1995) 3 SCR 787. Matter remitted for fresh consideration by the High Court."

11. We have gone through the pleadings and also heard the counsel. We decided that before anything else it would be worthwhile to concentrate on the grounds upon which the application has been filed. The first



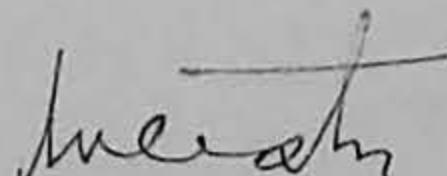
ground relates to ignoring the quota for departmental promotion for the post of junior clerk and the second ground relates to ignoring the provisions of reservation. We have already stated the position taken by the respondents in the matter. We are satisfied with the explanation and we have also taken note of the point that if any time was appropriate for making such allegation it was immediately after the notification was made and not after taking part in the process of selection with full knowledge of the fact that it was a selection against a vacancy for general category and through direct recruitment. Obviously the applicant cannot come to the Tribunal after making use of the opportunity for direct selection.

12. The other point regarding no vacancy being filled up after Vijai Bahadur in 1991 has also been convincingly replied to by the respondents. This leaves us with the other questions whether the respondents had committed any error in keeping one candidate in the reserved list. The respondents have defended their action in terms of the circular of the ICAR of 1989 and stated also that the applicant has not impugned this circular. The counsel for the applicant, however, stated emphatically that this act of keeping a reserved list should be struck down in terms of the judgment of the Apex Court in the case of **State of UP and others Vs. Raj Kumar Sharma and others** (supra).

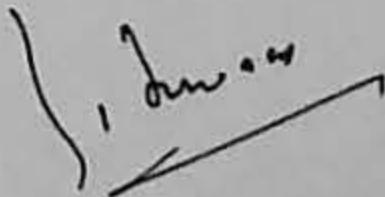


We have considered the matter closely. The learned counsel for the applicant however could not satisfy us as to how invalidating the selection of the second candidate Sri Amit Kumar helps the applicant in getting the relief he has prayed for. Obviously it doesn't. We are also aware that this selection had taken place 8 years before and there are umpteen number of Apex Court's decision which have pronounced that arrangements which have continued for a long period, although by an act of error, but which is not attributable to the person benefiting from such act of error, need not be unsettled. A judgment to this effect is that of **Nilofar Insaf Vs. State of MP (1991) 4 SCC 279**. We, therefore, do not see any sensibility in striking down the appointment of Sri Amit Kumar after 8 years from his selection. In any case this does not help the applicant in so far as the relief he has prayed for is concerned.

13. On the basis of the aforesaid reasons and considerations we do not find any merit in this OA which is therefore, dismissed. No cost.



Member (A)



Vice-Chairman

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