

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 602/93

T.A. NO.

DATE OF DECISION 4-7-95

Manojkumar R Shah

Petitioner

Mr. P.K. Handa

Advocate for the Petitioner (s)

Versus

Union of India & Anr.

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel

: Vice Chairman

The Hon'ble Mr. K. Ramamoorthy

: Member (A)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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Manojkumar R Shah
 27-B, Govindrao Park,
 Outside Pani Gate,
 Ajwa Road,
 Vadodara

.. Petitioner

(Advocate : Mr.P.K. Handa)

Versus

1. Union of India,
 Ministry of Communication,
 Department of Posts,
 (to be served through the
 Director General, Dak Bhavan)
 Sansad Marg, New Delhi).

2. Post Master General,
 Vadodara Region,
 Pratapganj,
 Vadodara

.. Respondents

(Advocate : Mr. Akil Kureshi)

Dt. 4-7-95

OA/602/93

J U D G M E N T

Per : Hon'ble Mr. K. Ramamoorthy, member (A)

The present application has been filed against the applicant's non-selection at the time of regular appointment on the plea that the post was meant for a reserved category.

2. The short facts of the case are as under :-

The applicant was appointed to the post of Pharmacist in 1989 after a selection process which included interview. However, it was made clear at

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that very time that the appointment was purely on ad-hoc and temporary basis and the appointment was also on daily wage basis against a scale of Rs.1350-2200. The post had been continued on this basis till his services were orally terminated in 1993.

3. It is the plea of the respondents that the applicant's appointment was purely on a temporary basis since the respondents were continuously in search of regular appointments for an ST candidate since the post has fallen within the reserved category. It is the contention of the respondents that the post of Pharmacist was part of a common cadre of Pharmacists and Storekeeper and the department was on the look out for filling in the post by reserved category candidate. Till then, to carry on the work of the dispensaries, the department was compelled to appoint persons on an ad-hoc basis. In 1993 as a result of their efforts, it was possible for the department to secure the services of an ST candidate and therefore the ST candidate had to be given the regular appointment resulting in the discharge of the present applicant.

4. The applicant himself had approached this ^{and} Tribunal earlier in 1993 vide O.A.No.362/93, ^{of} this Tribunal had directed the department to consider any representation that the applicant might make in this regard. The department has duly considered this matter also as required by the Tribunal in its order dated 30.6.1993 on this O.A. and by virtue of their speaking order dated 4.10.1993, it has been held that the applicant was not a regularly

appointed Pharmacist. The post of Pharmacist is reserved for a candidate of ST community and the ad-hoc appointment was to last only till the appointment of a regularly appointed candidate. With the availability of ST candidate, the ad-hoc employee has necessarily to give place to the regularly appointed person.

5. We have heard the counsel for both the applicant and the respondents at length. The applicant has made the following three points :

- i) While mentioning that his appointment was ad-hoc, it had nowhere been specifically stated in the appointment order that he was being appointed against a reserved post and that he will have to vacate the post as and when reserved candidate becomes available.
- ii) His own selection in the department has been through a valid selection procedure, his name having been obtained through an Employment Exchange and his having been selected after the interview. As the applicant had been working continuously in the department since 1989, the mere fact of his having put in more than an year of service should entitle him to be continued in service and his appointment regularised.

iii) He has also questioned reserving this post at this particular point for the ST community since the post had become available consequent to the dismissal of one Shri M.K. Saiyad from service.

The first two points are not very material in this case where the applicant has been specifically and all along been informed that his appointment was on an ad-hoc and on a temporary basis and he was also on a daily wage basis. The present candidate has been specifically informed that he was not liable for permanent absorption and vide office letter No. Staff.A/72-13/RDV dated 18-10-1989 he was also informed that he would be discharged at any time without any notice. The particular reason for the ad-hoc nature has not to be specifically stated in the appointment order and the non-mention of the fact that the particular post was a reserved post cannot be said to have caused any particular prejudice. As regards the ~~order~~^{other} point regarding the candidate acquiring some right by virtue of the fact that he had worked for some period of time though on an ad-hoc basis, this again is also not a valid argument specifically in the case of appointments made as a stop-gap arrangements pending a regular appointment.

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6. The argument regarding the particular roster point at the time of filling in the vacancy against which the applicant had been appointed has now to be considered.

7. The respondents have brought out in their reply that the roster for SC and ST is maintained by the office of the Chief Postmaster General, Ahmedabad who had in a specific communication No. STA/20-42/Meeting dated 4-9-1989 intimated that the particular post of Pharmacist is reserved for ST community. This was in reply to a specific query made by the Baroda office before taking action to fill in the post on a regular basis. The roster point is based on a model roster of 100 points as prescribed by the Govt. of India, Ministry of Personnel vide their O.M. No. 1/3/72-Estt. (SCT) dated 15.5.1974, O.M. No. 36013/4/85-Estt. (SCT) dated 24-5-1985 and 12-2-1986. In their reply dated 25-1-1994 the respondents have also specifically averred that the facts of the Pharmacist's post being a reserved post was also published in the local newspapers in the form of an advertisement for recruitment purpose wherein it was specifically stated that the post is reserved for a ST candidate.

8. We also perused the actual cadre position and it is found that out of a cadre of 14 persons

the department had not so far been able to secure even one reserved candidate and with the appointment of Shri K.N. Patel on 23-07-1994 only the first ST candidate for the post became available and the department chose to select and appoint him.

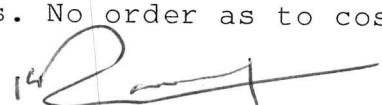
9. In our opinion, the specific point in the roster is not the overriding consideration in making the appointment specially in the case of reserved categories. The roster point as also the allocation of specific points for the reserved communities is a mechanism to ensure that the number of reserved posts in a particular cadre is determined. The specific vacancy point is not so material as the consideration of the first ST candidate becoming available within the cadre. The department was, therefore, well within its rights to appoint him. The Supreme Court in the case of State of Bihar & Others Vs. Bageshwariprasad and another reported in (1995) 29 ATC 349 has clearly laid down the proposition that even though first, third, sixth and seventh vacancies may be shown as unreserved, and if the earlier reserved vacancies had been filled by general candidates since SC & ST were not then available, when the sixth vacancy had arisen, and claim of a reserved candidate was available, then the authorities are enjoined to consider the claim of the reserved candidate. The Supreme Court has reiterated the above spirit of the reservation policy in its judgment in the case of P. Sheshadri Vs. Union of India reported in (1995) 29 ATC 640 also. In this case, though the matter pertained to the question of operating the roster system for promotions, the basic principle

of providing for a reserved candidate if available, has been reiterated even if the candidate in question was placed lower down in the promotion selection list. In this particular case, there were 22 vacancies and an ST candidate was placed at Sr.No.26. The Supreme Court still insisted that in view of the fact of non-availability of a single ST candidate, the candidate at Sr.No.26 should be provided for in the promotion list and the Supreme Court had made the following remarks:

"Having regard to these facts and circumstances the appellant having been selected by the Departmental Promotion Committee and he being the only eligible officer belonging to the Scheduled Tribe community should have been promoted to the higher post/grade of Deputy Director/Executive Engineer and the respondents committed a serious error and illegality in not doing so."

10. The specific nature of the roster point has to be thus seen in the context of the availability of candidates in the cadre. The Tribunal, therefore, has not gone into the question as to the serial number at which this particular vacancy has arisen to determine the reservation point and in this particular cadre position, it has not therefore been considered necessary to go behind the *General* certificate issued by the Chief Postmaster on the 'reserved' category of the particular vacancy.

11. In view of the above reasoning, the petition fails. No order as to costs.


(K. Ramamoorthy)
Member (A)


(N.B. Patel)
Vice Chairman