

6
IV

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO.159 of 1987.

Date of decision : December 9, 1987.

Bhri Bimal Prasad Mohanty son of
Gopal Charan Mohanty, Teacher Grade I,
S.E.Railway Mixed Higher Secondary School,
At Khurda Road, P.O.Jatni, District-
Puri.

Applicant.

Versus

1. Union of India through the General
Manager, S.E.Railway, Garden Reach,
Calcutta 43.

2. Divisional Railway Manager,
S.E.Railway, At Khurda Road,
P.O.Jatni, District-Puri.

3. Chairman,
Railway Recruitment Board,
B 13, & B 14, IRC Village,
At Nayapally, P.O. Bhubaneswar,
District-Puri ...

Respondents.

For the Applicant ... Mr.G.A.R.Dora, Advocate.

For the Respondents ... Mr.L.Mohapatra, Standing Counsel
(Railways)

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to
see the judgment ? Yes.

2. To be referred to the Reporters or not ? Yes

3. Whether Their Lordships wish to see the fair
copy of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the advertisement published calling for applications from suitable candidates to fill up a post of Teacher Grade I- Botany in the Mixed Higher Secondary School, Khurda Road, P.O.Jatni vide Annexure-A/5 is under challenge and sought to be quashed.

2. Shortly stated, the case of the applicant is that he had obtained Post-graduate degree in Botany and had passed the B.Ed. examination and also M.A. examination in Political Science. The applicant joined the South Eastern Railway Mixed High School, Khurda Road, P.O.Jatnias Grade II Science Teacher on 28.7.1970 and the said appointment was regularised on 19.9.1975 by the Selection Board. The said High School was upgraded to Mixed Higher Secondary School in December, 1983. A Grade I post carrying higher scale of pay was newly created after such upgradation. The applicant having possessed the required qualification, experience and being the seniormost was promoted to Grade I post on ad hoc basis on 10.9.1985 and he joined the said post on 12.9.1985. Though the applicant was advised to be in readiness to appear at the Viva voce test for regularising his Grade I ad hoc promotion yet he was not called to stand the test like that of teachers of Zoology, Oriya and Economics because he was informed that the post in question was categorised to be a reserved one and advertisement was published calling for applications from open market to fillup the said post vide Annexure-A/5 which is under challenge and sought to be quashed.

3. In their counter, the respondents maintained that according to 40 point roster the post in question has been reserved for Scheduled Caste/Scheduled Tribe candidate as the authorities decided that the roster should be worked out according to the medium and not according to subject. The authorities having taken such a decision a single post available for Botany subject was reserved for the members of the S.C./S.T. candidates, and hence there is no merit in the case of the applicant as he is not entitled under the Rules framed for reserving the post for S.C./S.T. communities. Further case of the respondents is that the applicant has not been confirmed in the said post and the applicant having been given the promotion post purely on ad hoc basis he has no right to lay any grievance before this Bench praying for interference. In a nut-shell the case of the respondent is that the application being devoid of any merit, is liable to be dismissed.

4. We have heard Mr G.A.R Dora, learned counsel for the applicant and Mr L. Mohapatra, learned Standing Counsel for the Railway Administration at some length. We have also perused the relevant documents forming subject matter of different annexures of this case. In our opinion, the following issues are material for the present purpose to be decided.

(i) Whether it is justifiable on the part of the competent authority to have posts reserved mediumwise and if not medium wise, should then reservation be made subject-wise or as a whole, considering the creation of 12 posts for the school mentioned above ?

Ans (ii) In case, it is held that the reservation should

be made medium wise- eventually this Bench has to give a finding as to whether the School is being governed by English Medium or Oriya Medium or Telgu medium or mixed medium.

- (iii) If reservation is not to be made according to medium wise, then should it be made subject-wise ?
- (iv) If it is subject-wise - admittedly one post having been created for the subject- Botany- should it go to a general candidate or could be reserved for S.C./S.T.candidates ?

5. We would now propose to give our findings on the above mentioned issues in its chronological order. We have carefully gone through the averments made in the counter filed on behalf of the respondents. We have also carefully gone through the annexures appended to the counter. We have not been able to find out a single scrap of paper to indicate that there have been Rules framed or guidelines/executive instructions given to fix 40 point roster mediumwise. As a matter of fact, 12 posts have been created for different subjects and the case in hand is confined to the subject- Botany. Therefore, in our opinion, in case there would have been more than one post in the subject- Botany the 40 point roster for reservation of posts for other communities should be subjectwise and not mediumwise. As stated earlier, so far as the case of the applicant is concerned, the post in question being Botany, reservation if any, should have been made for the posts created in the subject- Botany. We are unable to accept the contention put forward by Mr.L.Mohapatra, learned counsel appearing for the Railway Administration that the orders passed by the concerned authority in fixing the post to be reserved for Scheduled caste/scheduled tribe should be mediumwise and finding no merit in this contention we do hereby reject the same.

6. The next question arises whether there is any justifiability on the part of the competent authority for ordering the post to be reserved for S.C./S.T.candidates in view of the fact that a single post is available in the subject-Botany. In this connection it was contended by Mr.Dora that in view of the fact that only one post is available in the subject-Botany - under the Rules and keeping in view the Judge-made-laws it cannot be reserved for S.C./S.T.candidates. In this connection, reference may be made to the Notes appended to Annexure I of the Resolution of the Ministry of Home Affairs O.M.No.7/2/55-SCT dated 14th October, 1955 found at page 44 of the Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Services (Seventh Edition), 1987, published under the authority of the Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training which runs thus :

" If there are only two vacancies to be filled in a particular year not more than one may be treated as reserved and if there be only one vacancy it should be treated as unreserved. "

Mr.Dora placed reliance on a judgment of Hon'ble Supreme Court reported in 1974(1) SLR 659 (Arati Ray Choudhury v. Union of India and others). At paragraph 20 of the judgment, Hon'ble Mr.Justice Chandrachud (as my Lord then was) speaking for the Court was pleased to observe as follows :

" Secondly, and that is directly relevant for our purpose, if there be only one vacancy to be filled in a given year of recruitment, it has to be treated as unreserved irrespective of whether it occurs in the Model Roster at a reserved point. "

Following the dictum laid down by Their Lordships of the Supreme Court in the above mentioned judgment and applying the same

to the facts of the present case, we cannot but hold that there being a single post available for the subject -Botany- it cannot be reserved for S.C./S.T. candidates. It is bound to be treated as unreserved and therefore, we direct that the post in question be treated as unreserved which has to go to a general candidate.

7. Now, coming to the question whether the applicant would be entitled to have this promotional post in view of his services rendered in the said post, we may say at the risk of repetition that the applicant has been given promotion purely on ad hoc basis and therefore, he cannot claim the promotional post as a matter of right. His suitability for holding the post on regular basis has to be adjudged by the competent authority. As stated earlier, it should also be noted that suitability of the applicant could not be adjudged as he was not called to the test due to the fact that the post in question was categorised as reserved one. Having already found that the post in question is an unreserved one, the moot question which now needs determination is whether it should go to an incumbent of Grade II Teacher or recruitment should be made from the open market. Needless to repeat that Annexure-A/5 calling for applications from the open market is under challenge. In this connection, Mr. Dora placed strong reliance on matters covered under Annexure-A/6. In paragraph 2 of Annexure-A/6 it has been mentioned as follows:

" On receipt of Railway Board's latest instructions, it has been decided that preference will be given to the departmental candidates first for promotion in case, there is no such candidate with requisite qualification, the candidates from open market may be recruited as per procedure. "

Q The settled position of law is that instructions issued by the

12 X

Railway Board have statutory force vide AIR 1978 SC 284.

Rightly and fairly the settled position of law was not disputed at the Bar. Therefore, we would hold that calling for applications from open market is not permissible without finding that suitable candidate from the feeder post was not available. Without adjudging his suitability or otherwise, it is unfair, improper and unjust to publish an advertisement calling for applications from open market. Therefore, we do hereby quash Annexure-A/5 calling for applications from open market and we would direct that within two months from the date of receipt of a copy of this judgment, the suitability or otherwise of the applicant should be adjudged by the competent authority and in case, the applicant is found to be unsuitable, other candidates available in the feeder post should also be considered, and if there is no suitable candidate available from the feeder post, the competent authority shall then be at liberty to take resort to open market candidates. While considering the suitability of the applicant and other incumbents in the feeder post, the competent authority will also follow the procedure as per Rules.

8. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

.....
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.

.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
December 9, 1987/S.Sarangi.

