

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.137 of 1989.

Date of disposal : 18-2-93

Keshab Chandra Sahoo and others ... Petitioners

Versus

Union of India and others ... Opp.Parties.

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For the Petitioners ... M/s. M.M.Basu,  
S.D.Swain,  
Advocates.

For the Opp.Parties ... M/s. Bijan Pal and  
O.N.Ghosh,  
Sr.St.Counsel;  
(Railway).

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CORAM:-

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN

&

THE HONOURABLE MS. USHA SAVARA, MEMBER (ADMN.)

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1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? No
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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J U D G M E N T

K.P.ACHARYA,V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioners (seven in number) pray for a direction to the Opposite Parties to confine promotion to the post of Station Superintendent, Deputy Station Superintendent Station Master and Assistant Station Master applying 22½% reservation or 40 point roster, strictly to the total number of posts or vacancies and not to the occasional number of vacancies falling vacant from time to time and it is further prayed to direct the Opposite Parties to consider the promotion already made on illegal basis and accordingly order fresh promotion to the petitioners keeping in view the guidelines indicated in the judgment.

2. Shortly stated the case of the petitioners is that ,petitioners 1 and 2 are Station Superintendents in the scale of pay Rs. 2000-3200/- .Petitioners 3 and 4 are Deputy/Superintendents in the Pay scale of Rs.1600-2600/- and the petitioners 5 to 7 are station Masters in the pay scale of Rs.1400-2300/- .The Petitioners are posted at different stations under the Administrative control of Opposite Party No.2. The Posts of Station Superintendents/Deputy Station Superintendents/ Station Masters and Assistant Station Masters belong to operating Department and to one common cadre.

V.N.

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According to the directive issued by the Government of India from time to time, 22½% of the vacancies shall be reserved for the Scheduled Caste and Scheduled Tribe candidates. Grievance of the Petitioners is that the concerned authority while giving appointments/ promotions has exceeded the quota of 22½% and therefore, members of the Scheduled Tribe and Scheduled Caste are ~~occupied~~<sup>occupying</sup> more number of ~~vacancies~~<sup>posts</sup> in higher grades than ~~are~~ earmarked for them, especially because the concerned authority having wrongly interpreted the directions by adhering to the reservation made in the posts lying vacant from time to time, whereas the reservation has to be applied for the total number of vacancies or posts and not against posts falling vacant from time to time. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the reservation ~~policy~~<sup>policy</sup> has been strictly adhered to according to the directions given by the Government of India and therefore, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. M.M. Basu learned counsel appearing for the petitioners and Mr. Bijay Pal learned Senior Standing Counsel (Railway) for the Opposite Parties at a considerable length.

5. Before we pass on <sup>to</sup> the merit of the case, it is worthwhile to mention that vide order dated 14th February, 1992, the stay order passed by this Bench on 12th November, 1991 stood vacated subject to the condition that the result of this application would govern the future service benefits of the

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petitioners.

6. After hearing learned counsel for both sides and in view of the pleadings of the parties, the present case lies within a very short compass. The Petitioners do not challenge the order passed by the competent authority in pursuance to the directions given by the Government to reserve 22½% of the promotional posts for Scheduled Caste and Scheduled Tribe candidates, namely 15% has to be reserved for the members of the Scheduled Caste and 7½% to be reserved for the members of the Scheduled Tribe candidates. The only challenge is directed against the manner of implementation of the reserved quota. According to the petitioners, such reservation is not made <sup>in regard to</sup> ~~in~~ the total number <sub>of</sub> vacant posts in the cadre of Station Superintendents, Deputy Station Superintendent, Station Masters and Assistant Station Masters during a particular recruitment year but the reservation quota is being applied at all points of time whenever vacancies ~~is~~ ~~being~~ ~~occurred~~, Thus, resulting in reduction of posts for the general candidates and thereby exceeding the reservation quota which is unconstitutional. In this connection, there has already been a judgment of this Bench passed in Original Application No.200 of 1989 on 16th May, 1991 (P.R.N.Rao and Ors.Vs.Union of India and Others). In the said case, the Division Bench observed that a roster register has to be maintained and reservation of posts for Scheduled Caste and

✓ Scheduled Tribe candidates has to be confined to 15%

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and 7½% respectively making a total of 22½% of the total number of posts and further that at no point of time the reservation would exceed this percentage. It was further observed that the cadre strength of a particular service also includes the leave and deputation reserve posts. Hence the reservation posts and unreserved posts has to be calculated according to the total cadre strength. This judgment was passed by the Division Bench following the view taken in Original Application No.630 of 1988 passed by the Hyderabad Bench and Original Application No. 387 of 1988 and T.A. No.77 of 1987 passed by this Bench and also the judgment of the Allahabad Bench and that of the Hon'ble Supreme Court.

7. In T.A. No.77 of 1987, disposed of by this Bench on January 29, 1991 (in which grievance of the petitioners in the said Transferred Application was exactly same as that of the petitioners in the present case), it was observed as follows:

"The Plaintiffs do not challenge, possibly they cannot, reservation of 15% and 7½% in favour of the SC and ST candidates. But their case is confined to the question whether the reservation would be posts or on the basis of vacancies that arise from time to time. Before the Madhya Pradesh High Court an identical question arose for consideration in the case of G.C.Jain and others Vs. Divisional Railway Manager, and others. The answer to the question before  
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the Madhya Pradesh High Court was given on the basis of the decision of the Supreme Court reported in AIR 1981 SC 298 (Akhil Bhartiya Shoshit Karmachari Singh Vs. Union of India) and some of the earlier decisions of the said Hon'ble Supreme Court, specific reference to which need not be made. Their Lordships also referred to the case of J.C. Walmik and others Vs. Union of India and others decided in Allahabad High court and they were of opinion that the decision of the Allahabad High Court covered the question that now we face. The Madhyapradesh High Court was of the view that the reservation can only be made of the posts and not of the vacancies as and when they arise. We respectfully agree with this view of the Madhyapradesh High Court because if reservation of vacancies as and when they arise is made, often it would lead to a result of more than 50% of the posts at a particular time being treated as reserved for the SC and ST candidates. The Hon'ble Supreme Court in unambiguous language has ruled that since Article 16 (4) provides for a reasonable exception to the Rule of equality of opportunity in the matter of employment, it cannot extend to reserving a majority of the posts available".

In conclusion the Division Bench held as follows:

"Accordingly, we would say that the reservation must be in the promotional grades of the posts and not of the vacancies and to that extent the Railway Board's Circular letter dated 29.4.1970 is invalid and the Plaintiffs succeed to this extent."

8. The facts constituting the above mentioned cases being exactly the same in nature with that of the present case, we find no justifiable reason to make a departure from the view already taken. Therefore, we would direct that <sup>in</sup> ~~in~~ this case 15% of the total number of posts (and not vacancies) be reserved for Scheduled Caste and 7 and  $\frac{1}{2}$  per cent of the total number of posts (and not vaca<sup>ci</sup>es) be reserved for Scheduled Tribe and the authority should not under

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any circumstances exceed 22½% while giving promotion to the Reserved community and the rest of the posts must go to the general candidates. Accordingly the promotions already given be revised and ~~and~~ those who are found to be suitable be given promotion <sup>to</sup> according to the quota indicated above.

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

*N. Lavare*  
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MEMBER (ADMINISTRATIVE)

*[Signature]*  
18/2/93  
.....  
VICE CHAIRMAN

Central Admn. Tribunal,  
Cuttack Bench/K. Mohanty.

18.2.93

