

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.89 of 1989.

Date of decision: April 23, 1990.

Surendra Kumar Nayak ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. L. Mohapatra  
D.K. Misra, Advocates.

For the Respondents 1 to 3.. Mr. Ganeswar Rath,  
Sr. Standing Counsel (Central)

For the respondent No.4. M/s. C.M.K. Murty,  
S.K. Rath, Advocates.

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C O R A M:

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

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

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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

N. SENGUPTA, MEMBER (J) The facts material for this Case, put in brief, are as below.

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2. Admittedly, the applicant was appointed as a Floor Assistant in Doordarshan Kendra, Cuttack. On 1.2.1988 he was given ad hoc promotion and appointed as a Floor Manager. In 1988, one post of Floor Manager fell vacant for which

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an advertisement was made and in that advertisement the post was shown as unreserved (copy of advertisement at Annexure-2). Against that advertisement of the year 1988, Respondent No.4, Sankar Charan Behera, filed Original Application No.236 of 1988 in this Tribunal for a direction for reserving the post of Floor Manager for Scheduled Tribe person. In that case, i.e. O.A.236 of 1988 a prayer for interim order was made, this Tribunal did not grant the interim prayer but observed that the result of that application would govern the future benefits of the applicant of that O.A.236 of 1988. On 30.11.1988 the applicant in this case was reverted to his original post of Floor Assistant. Thereafter Respondent No.3, i.e. the Director, Doordarshan Kendra, Cuttack, issued an advertisement showing the post of Floor Manager to be reserved for Scheduled Tribe candidate (copy of the advertisement is Annexure-5 to the application). The case of the applicant is that the advertisement is in violation of the orders of this Tribunal in O.A.236 of 1988, while dealing with the prayer for interim relief and the reservation is bad inasmuch as it amounts to cent percent reservation, there being only one post. The applicant has further alleged that the post of Floor Assistant is treated as feeder cadre for promotion to the post of Floor Manager and if that post is treated as reserved, there would be a stagnation of persons in the cadre of Floor Assistants and that would amount to infringement of the principles enshrined under Articles 14 and 16 of the Constitution of India. Making these

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allegations the applicant has prayed for quashing the advertisement (copy at Annexure-5) and for a direction to allow him to continue as Floor Manager till the regular appointment is made.

3. The respondents 1 to 3 in their counter have pleaded that infact the post of Floor Manager is not a promotional post nor is the cadre of Floor Assistants a feeder cadre for Floor Manager. In 1988 the post was inadvertantly advertised as unreserved but the mistake was corrected in 1989 by issuing the advertisement, copy of which is at Annexure-5 to the application. The advertisement in 1989 declaring the post of Floor Manager as reserved for a Scheduled Tribe person was done in accordance with the reservation roster point Rules. Apart from these facts, the applicant not being within prescribed maximum age limit for appointment as Floor Manager, is not entitled to the reliefs that he has claimed and the ad hoc appointment by its very nature cannot confer any right on the appointee. Pleading thus, Respondents 1 to 3 have asked for dismissal of the application.

4. We have heard Mr. D.K. Misra, learned counsel for the applicant, Mr. Ganeswar Rath, learned Sr. Standing Counsel (Central) for Respondents 1 to 3. The main question that arises for consideration in this case is whether the post of Floor Manager would be treated as reserved one. At the hearing some controversies arose with regard to the number of posts of Floor Managers in Doordarshan Kendra, Cuttack and for that reason we called for relevant

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registers. On going through the register of Sanctioned Posts for T.V. Unit in Doordarshan Kendra at Cuttack it is found that in 1987 two temporary posts of Floor Managers were created and from the notings in that Register it is found that the tenure of those two posts of Floor Managers were extended upto 28.2.1989. The respondents have filed a copy of the notification dated 2.8.1989 of the Ministry of Information and Broad-casting, Government of India, from which it would be found that a ~~Feeder~~ cadre of Floor Managers with 76 posts since 1987 was made. As this notification was made after filing of the present application, the notification cannot have any application. From this notification it is found that 50 per cent of posts of Floor Managers are to be filled up by promotion from amongst the Floor Assistants and the rest 50 per cent by direct recruitment. As in the present case, we are not called upon to decide whether the applicant is entitled to promotion under the 50 per cent quota, we express no opinion in that regard and we would like to repeat that as the notification came into being after the filing of the present application, and as general rule is to determine the rights of the parties at the date of commencement of the litigation, we are not required to go into the question of the quota rule. The grievance of the applicant is that there being only one post it cannot be treated as reserved but as has been stated above, since 1987 two posts of Floor Managers were created under Cuttack Doordarshan Kendra. Therefore, the contention of the applicant that reservation

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of the post advertised under Annexure-5 amounts to cent per cent reservation is not sound.

5. Under the reservation Rules, it is permissible to group a number of posts carrying similar duties or same scale of pay for the purpose of roster point of reservation. From the Register produced by Respondents 1 to 3 we find that 11 posts in the pre-revised scale of pay of Rs425-750/- were grouped together for the purpose of determining the roster point of reservation, and the post of Floor Manager is in that scale of pay. It would be found that roster point 17 to which appointment was made in the year 1985 was to go to Scheduled Tribe candidate. But a person of general category was appointed. Under the carry forward Rules reservation could be carried for the next three recruitment years. The recruitment year means the year in which the recruitment is actually made. In the year 1988 no recruitment was made. Therefore, it was permissible to carry forward the Scheduled Tribe reservation point till upto 1989 and advertisement, copy of which is Annexure-5, was made in 1989. Therefore, the administration had authority to treat the post of Floor Manager falling in that group and vacant in the year 1989 as reserved for Scheduled Tribe. In this view of the matter we do not find any infirmity in advertising the post of Floor Manager in 1989 as reserved for Scheduled Tribe.

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From the successive advertisements for recruitment to the post of Floor Manager, it would be found that the maximum age limit for direct recruitment is 30 years. From the verification made by the applicant, it would be found that the applicant was aged 36 years in February 1989. Therefore, he would have been aged 35 years in February, 1988 when he was promoted on ad hoc basis. The applicant by then was overaged. Therefore, he cannot have a claim to be appointed in 1988.

7. For the reasons mentioned above, this application stands dismissed but without costs.

*[Signature]* 23.4.90  
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Vice-Chairman



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Member (Judicial)