

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

(13)

Date of order : 12.05.2000

O.A. No. 201/97

Mohd. Sayeed son of Shri Mohd. Ibrahim aged 28 years resident of Bomba Mohalla, Jodhpur.

... Applicant.

v e r s u s

1. Indian Council of Agricultural Research, New Delhi, through its Secretary.
2. Director, Central Arid Zone Research Institute, Jodhpur.

... Respondents.

Mr. Vijay Mehta, Counsel for the applicant.

Mr. V.S. Gurjar, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S.Raikote).

This application is filed by the applicant for quashing the Notification at Annexure A/1 dated 5.2.96 and also for a further direction restraining the respondents from making any further appointments in response to the advertisement at Annexure A/1 for the post of T.1 (Field Assistant). The applicant also prays for a direction to the respondents to issue fresh advertisement for filling up the said posts after making provision for reservation for OBC and they may be further directed to fill up the back log of OBC.

V

2. Applicant states that vide advertisement dated 5.2.96 (Annexure A/1), applications were invited regarding certain posts. He is concerned with only the post vide item No. 27 of the advertisement regarding T.1 (Field Assistant). He stated that there were 5 vacancies, out of that 3 were reserved for SC/ST and 2 were reserved for general candidates. But they have not made any reservation for OBC according to the roster point, therefore, this advertisement is illegal. His further grievance is that though only five posts were advertised, but ultimately, appointments were made for 15 posts. Therefore, excess appointments of 10 other posts without giving an advertisement is illegal. He further states that no provision is made for OBC in the alleged excess appointments of 10 posts. Therefore, the Notification vide Annexure A/1 and the appointments made thereafter may be quashed with a further direction to the respondents to reserve certain posts in favour of OBC on the basis of roster point.

3. By filing reply, the respondents have denied the allegations made by the applicant. They have stated that the applicant himself has not applied for the post of T.1 (Field Assistant) in pursuance of Annexure A/1, therefore, he cannot be allowed to challenge the appointment orders. They have also stated that so far as maintaining the roster point is concerned, they are following 200 point reservation roster and the posts like - Field Assistants, Observer, Computer, Mechanic, Draftsman etc. have been classified into one category for the purpose of maintaining the roster points. They have also stated that the roster point has been strictly followed and the said 200 point reservation roster was commenced from the year 1994 and according to the said roster, point No.5, 9, 11, 15, 19 and 23 were reserved for OBC and in the year 1996, the 5th and 9th points meant for OBC were filled up and at that time~~s~~ there was no post meant for OBC, it was not advertised. Regarding the excess appointments~~s~~ in addition to the advertisement vide Annexure A/1, it is stated that some appointments have been made on the basis of the anticipated vacancies and on the vacancies which arose by the retirement of some persons. They also



stated that the 5 appointments have been made in pursuance of Annexure A/1 and, therefore, there is no illegality in issuing Annexure A/1 or even in the selection process. They have also stated that for filling up other ten posts, applications were called for from the Employment Exchange and after following the procedure prescribed, that 10 posts have been filled up. Thus, there is no illegality in calling for applications.

4. On the basis of the pleadings as well as the arguments advanced at the Bar by the learned counsel for the parties, we have to see whether the impugned notification at Annexure A/1 is bad in law by not reserving the posts for OBC. The other points which arises for our consideration would be whether the department could make appointments on certain posts without issuing the Notification.

5. So far as the first point is concerned, the learned counsel for the respondents have placed before us the roster register for our perusal. From going through the register, we find that the 200 point roster reservation point was commenced from the year 1994. According to the said roster, point No. 5, 9, 11, 15, 19 and 23 were reserved for OBC and the posts at point No. 5 and 9 were filled up in the year 1995 before issuing the impugned advertisement vide Annexure A/1, calling for applications for the post of T.I (Field Assistant) vide item No. 27. But from the roster point register, we find that even on the date of advertisement during the year 1996-1997, point Nos. 11, 15, 19 and 23 were available for being filled up and if there would have been reservation to OBC, those posts should have gone in favour of OBC in terms of the said roster. The impugned Notification at Annexure A/1 is illegal for not making necessary reservation for OBC in Annexure A/1 on the basis of the posts available as per the roster. If the applicant himself had filed an application for appointment in any category in pursuance of Annexure A/1, the things could have been definitely *prima facie* in his favour. Since he has not filed application for any one of these posts vide Annexure A/1,

we cannot declare Annexure A/1 as illegal, more so when the selected candidates are not made parties to this application.

6. So far as the second point is concerned, it is admitted by the respondents that the other ten posts of T.1 (Field Assistant) were filled up without any advertisement, but it is their further stand that those posts were filled up on the basis of the applications called through Employment Exchange. Though on the second point also, the applicant has a *prima facie* case in the sense that these posts also should have been advertised so that the citizens, who are eligible, including the applicant, could have filed an application for the post in question. Article 16 of the Constitution provides equal treatment in respect of public appointments. But at the same time, the applicant has not made parties those persons who have been issued with the appointment orders. Since they have not been made parties in this case, it is difficult for us to pass any order against them. At the most we may direct the respondents not to resort to further appointments without any advertisement in future. As already pointed out by Hon'ble the Supreme Court, calling applications through Employment Exchange is one of the methods, in addition to the advertisement in leading newspapers, so that the persons who were not registered in the Employment Exchange also would be able to compete for the same.

7. In this view of the matter, we have no other option but to pass the order as under:-

"Application is dismissed. However, the respondents are directed not to fill up the posts either of this category or any other category without any advertisement and without following the procedure as prescribed under the rules. No costs."

Gopal Singh
(GOPAL SINGH)
Adm. Member

Rai
(B.S. RAIKOTE)
Vice Chairman

Lib.

Recd Coly

W. G. Laff

2/11

Copy for Sent. to Censored for -
Respondents wife.

No 1071

dt 22-5-2000

(B)

22/5/00

Part II and III destroyed
in my presence on 27/5/00
under the supervision of
Section Officer 23/5/00 as per
order dated 23/5/00

Section Officer 23/5/00
Section Officer (Record)