

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O.A. No. 91/2001
Tax No.

100

DATE OF DECISION 25.11.2003

Amra Ram Shelwal

Petitioner

Mr. S.K. Malik

Advocate for the Petitioner (s)

Versus

U.O.I. & ORS.

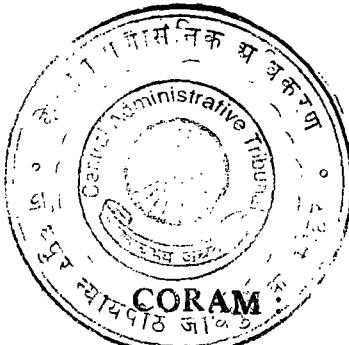
Respondent

Mr. N. M. Todha

Advocate for the Respondent (s)

No. 1 and 2.

Mr. R.S. Saluja, Advocate for the Respondent no 3



The Hon'ble Mr. J.K. Kaushik, Judicial Member

The Hon'ble Mr. G.R. Patwardhan, Administrative Member

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

(G.R. Patwardhan)
Administrative Member

Mr. Kaushik
(J.K. Kaushik)
Judicial Member

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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Original Application No. 91/2001
Date of Decision : this the 25th day of November, 2003.**

Hon'ble Mr. J.K. Kaushik, Judicial member
Hon'ble Mr. G.R. Patwardhan, Administrative Member

Amra Ram Shelwal S/o Sh. Chuna Ramji
By caste SC, aged 34 years,
R/o Quarter No.5, Type II,
Central Cattle Breeding Farm (CCBF)
Suratgarh, District Sri Ganganagar (Raj)
Presently working on the post of LDC
Under Director of CCBF, Suratgarh,
District Srigananagar (Raj)
(By Mr. S.K. Malik, Advocate, for applicant)

.....Applicant

versus

1. Union of India thr. the Secretary,
Ministry of Agriculture, Deptt. of Animal
Husbandry and Dairying,
Krishi Bhavan, New Delhi.
2. The Director,
Central Cattle Breeding Farm,
Suratgarh, Distt. Srigananagar (Raj).
3. Shri Subhash Chand Verma
S/o Sh. Jai Nrain Verma,
Accountant (Ad hoc)
Central Cattle Breeding Farm (CCBF)
Suratgarh, Distt. Srigananagar (Raj).

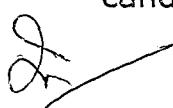
(By Advocate Mr. N.M. Lodha for respondents 1 and 2
By Advocate Mr. R.S. Saluja, for respondent No. 3)

.....Respondents.

ORDER

BY J.K. KAUSHIK :

Shri Amra Ram Shelwal has filed this application
challenging the action of the respondents in treating the post of
Accountant as un reserved and also for considering his
candidature on the said post on which respondent No. 3 has



been wrongly appointed at Central Cattle Breeding Farm (for short 'CCBF'), Suratgarh.

2. The brief facts of the case which are relevant for resolving the controversy involved are that applicant was initially appointed to the post of LDC on 4.8.1989 and was also promoted to the post of UDC w.e.f. 23.12.1993. He belongs to SC category. He has been working in the Accounts Section and looking after Cash and Accounts jobs.

3. The further case of the applicant is that a Notification came to be issued on 1.8.2000 for filling up one post of Accountant in the pay scale of Rs. 5500- 9000 from amongst the UDCs/Stenographer Grade D/Storekeeper/UDC-Store Keeper, with ten years of regular service in the CCBF and having undergone training in Cash and Accounts work in ISTM or equivalent. It was said to be a reserved post for SC category. Instead of considering a SC candidate i.e. the applicant, respondent No. 3 was promoted vide letter dated 4.8.2000 on permanent basis on the said post. It has also been averred that the post of Accountant was also reserved for ST community but, since no eligible candidate from ST category was available, the same was dereserved and carried forward in the year 1993. The applicant fulfills the requisite qualifications and also applied for relaxation of experience and training. His case ought to have been considered in view of 81 and 82 amendments of the Constitution as well as as per the Note No. 2 appended to the Recruitment Rule of 1993.



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4. The respondents extended the date of submission of the applications as well as modified the type of post from reserved to unreserved. The applicant took recourse of availing the remedy of judicial review by filing OA No. 243/2000 before this Tribunal. His case came to be disposed of with a direction to the respondents to consider the representation of the applicant. Without deciding the representation the applicant was informed vide impugned order that he is neither eligible nor suitable for the post and on the same very date the respondent No. 3 was allowed to join on the promotional post of Accountant.

5. The O.A. has been filed on diverse grounds narrated in Para 5 and its sub paras of the O.A. and we shall be dealing with the same a little later in this order.

6. The respondents have contested the case. Separate reply has been filed on behalf of official and the private respondent. It has been averred by the official respondents that applicant is not possessing the requisite experience and the relaxation cannot be claimed as a matter of right. Certain mala fide has been alleged against the respondent No. 2 but, he has not been impleaded as a party by name in person. In the earlier years' vacancy based roster was applicable and as per the same, the first point of the post of Accountant was meant for SC category but, the same could not be filled in. The said post was filled up on 27.2.1975, in the year 1980, on 26.2.1990 and 17.5.1993 from general category candidates. Notification dated 1.8.2000 was issued in contravention to the post based roster issued vide OM dated

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2.7.1997. The applicant did apply for the post of Accountant but, he was not eligible since he did not have ten years experience and there was no infirmity in the order dated 21.9.2000. The representation of the applicant was duly considered and decided, therefore, the OA may be dismissed with costs.

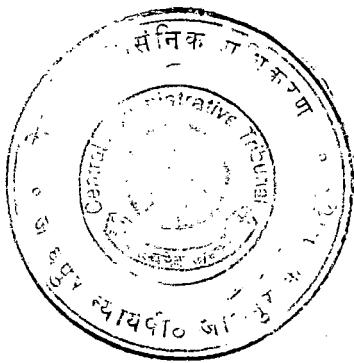
7. It has been averred that after coming into force of post based roster, it was the second point on which respondent No. 3 was appointed and the same could not have been assigned to SC category. A reserved post can be carried forward only for a maximum period of three years and not beyond that. The applicant did not fulfil the eligibility conditions. Annexure A/6 provides that ceiling of 50% will not apply to back log vacancies and does not provide that such vacancies can be carried forward for indefinite period. Specific instructions have been issued whereby requirement of qualifying marks or lesser standard of evaluation has been undone. The applicant has concealed the fact that he was promoted on regular basis as UDC from 21.11.1994 and, therefore, the O.A. deserves to be dismissed. A detailed rejoinder has been filed to the reply controverting the contents of reply and reiterating the facts taken in OA.

8. Certain additional submissions have been filed to rejoinder on behalf of official respondents and a counter affidavit on behalf of respondent no. 3. Such pleadings are not warranted as per rules in force and, therefore, these pleadings are not treated as part of the record of this O.A.

9. We have heard the learned counsel for the parties at a considerable length and have very carefully perused the records of this case.

10. The learned counsel for applicant has reiterated his pleadings and our attention was invited to impugned orders and other orders particularly the Circular dated 20.7.2000 (Annex.A/6) and 3.10.000 (Annex.A/7) . Our attention was also drawn towards the recruitment rules wherein, it has been indicated that there are seven posts of Accountant. He has also placed reliance to number of judgements which are as under :

1. 1995 (29) ATC 349
State of Bihar Vs. Bageshwari
2. 1997 (4) SLR 18 SC
State of Punjab Vs. G.S. Gill
3. 1997 SCC (L&S) 1044
S.E. Public Health UT Chand Vs. Kuldeep Singh]
4. 2001 (3) ATJ 374
R. Nageshwara Rao Vs. UOI & Anr.

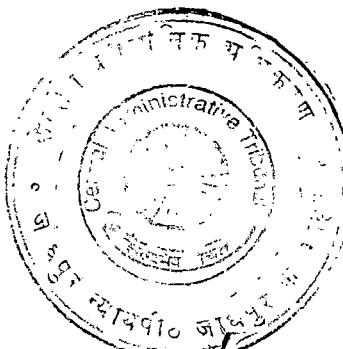


He has also placed reliance on various provisions compiled in Swamy's Compilation on reservation and concession. He has stressed that the post of Accountant was meant for SC category and was carried forward from earlier years, the same cannot be dereserved. The candidature of the applicant has not been considered and the action of the respondents has been against the constitutional mandate in respect of reservation.

11 On the contrary, learned counsel for the official respondents has been very brief and has submitted that no doubt, as per the vacancy based roster, the applicant would have a good claim but, after the change in the policy vide OM

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dated 2.7.1997, the post based roster was applied and no doubt that seven posts have been cadered but, these are cadered in all the CCBFs and at Suratgarh, there is only one post of Accountant. As per the post based roster, 'L' type roster is required to be applied since the cadre strength at Suratgarh is less than 13. As per the 'L' type roster, it is only at 6th replacement point which is to be filled from SC whereas, the vacancy in question was only replacement point No.1. Thus, there has been no post against reserved category point on which the case of the applicant could have been considered. He has also submitted that even the question regarding relaxation of qualification does not come in the way since the case of the applicant cannot be considered against the point meant for reserved category and he is also not otherwise eligible even as a general candidate.

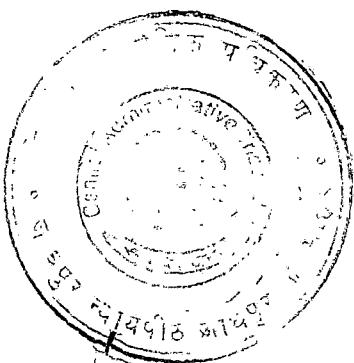


12. On the other hand, the learned counsel for the private respondent has submitted that there can be no reservation against a single post and in this respect he has placed reliance on a judgement of Hon'ble the Supreme Court in 1998 SCC (L&S) 961 - Post Graduate Institute of Medical Education & Research, Chandigarh Versus Faculty Association and Ors. And a batch. In this view of the matter, the applicant can have no claim. He has also submitted that the respondents have not committed any irregularity in the appointment of the private respondents as no cause of complaint could be entertained by this Tribunal in such a situation.

Dr.

13. We have considered the rival submissions raised on behalf of the parties. The primary issue in this case is in regard to as to whether, the post in question was a reserved post or it was meant for general category. There is hardly any dispute that there is a single post of Accountant at Suratgarh.

14. Before advertiring to the facts of this case, we would like to take judicial notice of certain legal developments having direct bearing on this case. The Hon'ble Supreme Court decided the case of R.K. Sabhawal and Ors. Vs. State of Punjab and Ors. (AIR 1995 SC 1371-Constitution Bench), wherein their Lordships were dealing a case relating to reservation for the SC/ST communities and other related issues and have held as under :-



"10. A Division Bench of the Allahabad High Court in J.C. Malik and others vs. UOI & Ors. (1978) SLR 844) interpreted Railway Board's circular dated April 20, 1970 providing 15% reservations for Scheduled Castes. The High Court held that the percentage of reservation is in respect of the appointment to the posts in a cadre. On the basis of the material placed before the High Court it reached the conclusion that if the reservation is permitted in the vacancies after all the posts in cadre are filled then serious consequences would ensue and the general category is likely to suffer considerably. We see no infirmity in the view taken by the High Court."

15. There was complete change in the reservation policy and as per the law declared by the Apex Court in Sabharwal's case (supra) and in case of J.C. Mallick Vs. Ministry of Railways, the reservation should apply to posts and not to vacancies. In implementation thereof, the Department of Personnel and Training issued vide O.M. dated 2.7.1997 Revised Instructions relating to the reservation policy and maintenance of roster.

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Special instructions have been issued in respect of the cadres having up to 13 posts. An extract of the relevant portions is extracted as under :-

"5. At the stage of initial operation of a roster, it will be necessary to adjust the existing appointments in the roster. This will also help in identifying the excesses / shortages, if any, in the respective categories in the cadre. This may be done starting from the earliest appointment and making an appropriate remark - "utilized by SC/ST/ OBC/ Gen.", as the case may be, against each point in the rosters as explained in the explanatory notes appended to the model rosters. In making these adjustments, appointments of candidates belonging to SCs/STs/OBCs which were made on merit (and not due to reservation) are not to be counted towards reservation so far as direct recruitment is concerned. In other words, they are to be treated as general category appointments.

6. Excess, if any, would be adjusted through future appointments and the existing appointments would not be disturbed.
9. These orders shall take effect from the date of their Issue. However, where selections have already been finalized, they need not be disturbed and the necessary adjustments in such cases may be made in future. In other cases, recruitment may be withheld till the revised rosters are brought into operation and recruitment effected in accordance with these instructions.

Explanatory Note :

12. In the case of small cadres (up to 13 posts), all the posts shall be earmarked on the same pattern as in the model post-based rosters. Initial recruitment against these posts shall be by the category for which the post is earmarked. Replacement of incumbents of posts shall be by rotation as shown horizontally against the cadre strength as applicable. While operating the relevant roster, care will have to be taken to ensure that on no occasion the percentage of reserved category candidates exceed 50%. If such a situation occurs at any time, the relevant reserved point occurring as a result of rotation will be skipped."

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Model Roster for cadre strength upto 13 posts :
Cadre Initial Replacement Points

Strength	Rec	1 st	2 nd	3 rd	4 th	5 th	6 th	7 th	8 th	9 th	10 th	11 th	12 th	13th
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1.	UR	UR	UR	UR	UR	UR	SC	UR	UR	UR	UR	UR	UR	ST
2.	UR	UR	UR	UR	UR	SC	SC	UR	UR	UR	UR	UR	UR	ST
3 to 13.	xxx	xxx												

16. Now, adverting to the crux of the matter and applying the aforesaid instance. As on 2.7.1997, as per the procedure for operating new roster, the incumbent available would have been placed at point No. 1 and thereafter, it is the first replacement which fell due and against which the promotion has been made. This point is clearly meant for unreserved category. Thus we are of the firm opinion that vacancy in question could not have been reserved and, therefore, action of the respondents in declaring the same as unreserved is in consonance with the rules in force and does not suffer from any infirmity.

17. We also hasten to add here that there is no fundamental right to reservation and the Article 16 (4) of the Constitution is only an enabling clause and empowers the State to make special provision for reservation in respect of certain classes and in its wisdom, the O.M. dated 2.7.97 was issued. The reservation could be provided only as per the rules and according to which applicants' case can not be covered as elucidated above. We are not impressed with the contention of the learned counsel for applicants. In our opinion, the action of authorities in issuance of the impugned order, does not fall foul of the aforesaid provisions but can be safely said to be fair, reasonable and apposite.



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18. Certain other grounds have been stressed as regards the relaxation of qualification and also the eligibility of the applicant etc. The question of relaxation to SC/ST category candidates would only arise if there is any vacancy meant for SC/ST candidate which is not in the present case. Thus, we do not find any need to examine the same in this O.A.

19. In the backdrop of above analysis, the legal and factual position which has come to be crystallized, we find no merit and substance in the instant O.A. The same stands dismissed. The Registry is directed to take notice of Para 8 of this order and should adhere to the rules in force in future.

18. No orders as to costs.

→ R
(G.R.Patwardhan)
Adm.Member

J.K.Kaushik
(J.K.Kaushik)
Judl.Member

jrm

*Par. I Santos handed
for Mr. Laddha Achar
4/12/07*

Part II and III destroyed
in my presence on
under the supervision of
section officer () as per
order dated...../...../.....

Section officer (Record)