

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 490 of 1993

DATE OF DECISION 23.3.1993

N. Chandrasekharan Nair Applicant (s)

Mr. P. V. Narayanan Nambiar Advocate for the Applicant (s)
through Mr. Arevindakshan
Versus

Addl. Dte. General, Dte. General Respondent (s)
Org. Army H.Q. Delhi and others

Mr. T. K. Venugopalan, ACGSC Advocate for the Respondent (s) 1 to 4

CORAM :

The Hon'ble Mr. S. P. Mukerji, Vice Chairman
and

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Hon'ble Mr. S. P. Mukerji, Vice Chairman)

We have heard the learned counsel for the applicant.

The applicant is working as Office Superintendent Grade-I in the Defence Security Corps (Records), Kamur. He has sought the following reliefs:-

- (i) call for the records connected with the case;
- (ii) declare that the applicant is entitled to be promoted to the post of Civilian Gazetted Officer (CGO) with effect from the date of promotion of the 5th respondent who is junior to the applicant;
- (iii) declare that the reservation is applicable only in the entry point and the promotion will be based purely on merit and suitably/fitness;
- (iv) direct the respondents 1 to 4 to promote the applicant with effect from the date of promotion of the 5th respondent as CGO and deeming him to have been promoted with retrospective effect for the purpose of monetary benefit and seniority;
- (v) direct the respondents 1 to 4 to disburse to the applicant the difference of salary and arrears as allowances, are admissible to the CGO's post w.e.f. the date of promotion of the 5th respondent;
and

- (vi) pass such other orders as are deemed just fair and necessary in the circumstances of the case."


2. The learned counsel for the applicant has agreed that the 5th respondent though junior to the applicant is a member of the Scheduled Caste community while the applicant is a general ^{non-SC/ST} candidate. The 5th respondent was promoted as a Civilian Gazetted Officer (CGO) on the basis of the 40 point roster against ^a reserved vacancy. The applicant's contention is that since he is retiring very shortly he should have been promoted instead of the 5th respondent, that already against the CGOs 50 per cent of the posts are being filled by SC/ST communities and therefore, the 40 point roster should not be applied and that reservation should not be made applicable for ^{further} promotion once this ^{is} applied at the entry point.

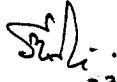
3. The points raised by the applicant before us have been gone into in great detail by a ^{nine} Judge Bench of the Hon'ble Supreme Court in the celebrated Mandal Case judgment in Indra Sawhney and others etc.etc. Vs. Union of India and others etc.etc. JT 1992(6) SC 273. By a majority judgment the Hon'ble Supreme Court decided that reservations are applicable to yearwise vacancies and not to the ^{totality of the posts} as such. Accordingly

the fact that 50 per cent of the posts of CGOs are being held by SC/ST Communities ^{cannot be} ~~is not~~ a ground for not applying 40 point roster ^{to} ~~in~~ yearwise vacancies.

~~As regards~~ As regards reservation for promotion even though the Hon'ble Supreme Court in that very judgment observed that there can be no reservation for promotion, they nonetheless directed that for the next 5 years even for promotions reservations should be followed.

4. In the above light and in view of the fact that the applicant and the 5th respondent belong to two independently different categories, we see no force in the application and dismiss the same under Section 19(3) of the Administrative Tribunals Act.


(N. DHARMADAN) 23.3.93
JUDICIAL MEMBER


23.3.93
(S.P. MUKERJI)
VICE CHAIRMAN

23.3.93

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