

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 524/91
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DATE OF DECISION 29.5.1992

Shri K. Ramachandran Applicant ~~(s)~~

Shri M.R. Rajendran Nair Advocate for the Applicant ~~(s)~~

Versus

Director, Doordarshan Kendra, Respondent (s)
Trivandrum & 2 others

Shri N.N. Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan - Administrative Member

&

The Hon'ble Mr. A.V. Haridasan - Judicial Member

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

JUDGEMENT

(Hon'ble Shri N.V. Krishnan, Administrative Member)

The applicant is a Senior Engineering Assistant in the Doordarshan Kendra, Trivandrum. He is aggrieved by the fact that in the selection of Assistant Engineers on the basis of the competitive examination held on 18th, 19th and 20th November, 1988, he has not been promoted as AE, while he claims that he is entitled to be considered for promotion in preference to his juniors. He also seeks direction to the respondents to communicate the marks obtained by the applicant in each paper and to entertain the application for re-checking and revaluation of each

paper in a proper manner and to take up further follow up action.

2. The respondents have stated that there are 54 vacancies of AEs and as per the 40 point roster maintained by them to watch promotions to reserved categories of SC and ST, there are 12 vacancies reserved for SC & ST. It is stated that the name of the applicant appeared at Sl No.74 of a list of 90 candidates who passed the examination. Among them, there are 20 eligible SCs and STs, including the applicant, who belongs to a SC. As there were only 11 vacancies for SC and as the applicant's name appeared at Sl No.12 below the other 11 candidates who were promoted, the applicant could not be promoted at all. In other words, out of 54 vacancies, 42 were filled up from general candidates 11 from SC and one from ST. The applicant, in terms of service seniority, being the 12th eligible SC candidate could not be promoted. The respondents, therefore, contend that the application is devoid of merit.

3. When the case was taken up on an earlier occasion, the learned counsel for the applicant argued that if any of the SC had been selected on merits, his appointment could not be counted towards the 11 vacancies reserved for SC. In other words, he contended that in addition to any SC who qualified on the basis of his merit alone, 11 SC candidates should normally be appointed against the reserved posts. He, therefore, wanted a verification as to whether out of 11 SC candidates anybody has scored more marks than the junior-most

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(i.e. 42nd) general candidate. When such a direction was given to the learned counsel for the respondents, he brought to our notice that the instructions on this point are quite contrary. The relevant Departmental instructions are contained in Swamy's Compilation of Reservations and Concessions for SC and STs (2nd Edition corrected upto November, 1989) at pages 60 to 62. These instructions make it clear that the reservation will be necessary only to the extent SC candidates do not get the prescribed quota of representation in employment, on their own merit. In other words, to the extent SC candidates get employment on their own merit, the need for reservation will get reduced.. Hence, it was rightly contended that the information sought regarding marks will be of no avail to the applicant.

4. When this line of reasoning did not help the applicant, a contention was raised that irrespective of that position, the appointment has to be made on the basis of a 40 point roster and if there is a point reserved in the roster for SC, it has to be filled up by only a SC candidate. Therefore, it is contended in the rejoinder filed by the applicant, that if there are 54 vacancies, there ought to be 13 reserved vacancies of SC and ST on the basis of a 40 point roster. This is indeed true if the roster commences from Sl No.1 of the 40 point roster. When this ~~was~~ contention was raised the learned counsel for the respondents sought time.

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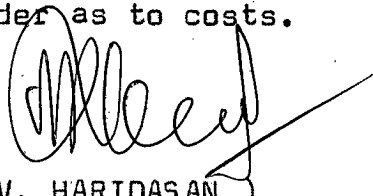
5. Today, when the case was taken up for final hearing, it was submitted by the learned SCGSC appearing for the respondents on the basis of instructions received by him, that in 1988, the 5th cycle of the 40 point roster was in operation. 16 points had been filled up earlier. The 54 vacancies to be filled up in the 1988 selection meant filling up points 17 to 40 in the 5th cycle of the roster and points 1 to 30 in the 6th cycle of the roster. The scheme of the 40 point roster is given at page 197 of Swamy's Compilation referred to above. A verification therefrom shows that in the 5th cycle there would be only 5 reserved vacancies from Sl No.17 to 40 and similarly, in the 6th cycle from Sl No.1 to 30 there will be 7 reserved vacancies. Hence the total number of vacancies given by the respondents as 12 is absolutely correct. The question of a 13th reserved vacancy existing does not arise.

6. It is contended by the respondents that as there were 12 vacancies out of which one was reserved for ST and as the applicant was only the 12th eligible SC candidate, he could not be promoted.

7. The learned counsel for the applicant argued that the respondents ought to have produced before us the 40 point roster to prove what has been averred above by the learned SCGSC for the respondents. We have carefully considered this aspect also. We are of the view that, unless a prima facie doubt is cast either on a statement made by the

respondent's counsel, it would not be necessary for us to call for the original records for verification. We are satisfied that there is nothing in this proceedings to indicate that the respondents have not come out with the full truth in this matter. In the circumstances, we are convinced that the applicant has no legitimate grievance to be redressed.

8. Hence, the application is dismissed. There will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(N.V. KRISHNAN)
ADMINISTRATIVE MEMBER

29.5.92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

R.A.No. 97/92 in
O. A. No. 524/91
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DATE OF DECISION 30.9.1992.

Shri K. Ramachandran, Review Applicant (s)

Shri M.R. Rajendran Nair Advocate for the ^{Review} Applicant (s)

Versus

The Director, DDK & others Respondent (s)

Shri N.N. Sugunapalan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. **NV Krishnan** - Vice Chairman

&

The Hon'ble Mr. **AV Haridasan** - 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? *No*
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 Shri NV Krishnan, VC)

The Original Applicant has filed this application seeking a review of the judgement dated 29.5.1992 by which the Original Application 524/91 was dismissed. We have perused the Review Application and we are satisfied that this can be disposed of by circulation and we proceed to do so.

2. The applicant points out that the Original Application was filed seeking the following two reliefs:-

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" (I) To declare that the applicant is entitled to be considered for promotion as Assistant Engineer on the basis of the results of the competitive examination held on 18th, 19th & 20th November 1988 in preference to his juniors, and to get a posting on that basis.

(II) To direct the respondents to communicate the marks obtained by the applicant in each paper and to entertain the application for re-checking and evaluation of each paper in a proper manner and to take up further follow up action on that basis etc."

The review applicant submits that while the judgement has disposed of the relief (1) claimed as above, it does not dispose of the relief (2) sought by him, as stated above.

3. We have perused the record. Para 4 (2) of the original application states that as per standing instructions, marks obtained in each paper are supplied to the unsuccessful candidates without any charge of fees. As the marks were not communicated to the applicant, he presumed that he had passed the examination. However, as he was not promoted, he suspected that he had failed. Therefore, he made the Annexure-5 representation dated 28/12/90, requesting for a re-checking of the totals of the answer papers and for a copy of the particulars ^{of} marks obtained by him in each paper, if he has failed.

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4. It is in context that relief (2) referred to above has relevance.

5. We notice that this issue also already stands disposed of by our judgement. In para 2, we have pointed out that the respondents have stated that 90 candidates have passed the examination, which includes 20 eligible SC and ST, candidates, including the applicant who belongs to SC. In other words, the respondents have, already admitted that the applicant has passed the examination. Therefore, the question of either re-totaling the answer papers or furnishing marks to him, does not arise.

6. As the relief (2) sought had become infructuous, no specific order was passed relating thereto. But, we dismissed the application which would also include a disposal of the second relief sought by the review applicant.

7. There is no merit in this application, for review. It is, therefore, dismissed.



(A.V. Haridasan)

Member (J)



(N.V. Krishnan)

Vice-Chairman

30.9.92