

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.125/97

FRIDAY, THE 31st DAY OF MARCH, 2000.

C O R A M

HON'BLE MR. A. M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

V.K. Kamalakshy, Head Clerk
Integrated Fisheries Project,
Kochi-16

...Applicant.

By Advocate Mr. Vellayani Sundararaju

Vs

1. Union of India represented by the Secretary,
Ministry of Agriculture & Cooperation,
Krishi Bhavan, New Delhi.
2. The Director
Integrated Fisheries Project,
Kochi-16
3. C.A. Mukunthan,
Senior Store Keeper (Provisional)
Integrated Fisheries Project,
Kochi-16

.. Respondents

By Advocate Mr. Govindh K. Bharathan, SCGSC for R 1 & 2

This application having been heard on 9.3.2000, the
Tribunal delivered the following on 31.3.2000.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant-a Head Clerk in the Integrated Fisheries Project (IFP for short)-aggrieved by A1 office order dated 15.11.96 issued by the second respondent by which the third respondent was granted promotion to the post of Senior Store Keeper provisionally, has filed this application under section 19 of the Administrative Tribunals' Act, 1985.



2. According to the applicant, she belonged to Scheduled Caste community. She entered service on 16.8.1971 under the second respondent. In 1988 she was promoted as Upper Division Clerk. She filed O.A. Nos. 806/93 and 1357/93 earlier as she was not promoted as Head Clerk. By A2 order dated 8.3.94 in O.A.No.1357/93 this Tribunal directed the second respondent to consider the applicant to the post of Head Clerk which arose on 1.2.93. By A3 order dated 15.9.94 the applicant was given promotion as Head Clerk with effect from 1.2.93. The applicant claimed that the third respondent who was given promotion as Senior Store Keeper provisionally by A-1 order dated 15.11.96, was much junior to the applicant in service as Head Clerk as he was given regularisation as Head Clerk only w.e.f. 5.10.96 by A4 order dated 8.10.96. According to the applicant there were 3 posts of Accountants, one post of Senior Store Keeper and one post of Senior Office Superintendent available in the IFP and all the above posts were clubbed together and regulated by a single Recruitment Rule falling in Group-B (Non Gazetted Cadre). According to the applicant the post of Senior Store Keeper became vacant due to the superannuation of the incumbent Sri N.A. Vasudevan who belonged to Scheduled Caste. She filed A-8 representation dated 12.12.96 to the second respondent with a request to revert the third respondent and promote her against reserved vacancy meant for S.C. In response to A-8 the second respondent issued a memo to the applicant stating that she was not eligible to be considered for that post. According to the applicant, the third respondent was not



entitled to get promotion to the post of Senior Store Keeper vacated by a S.C and for filling up a reserved post meant for S.C/S.T. in the absence of eligible candidates from the reserved category, prior approval from the Ministry was necessary even for temporary appointment as per O.M.No.36013/5/78 Estt.(SCT) dated 19.12.78 of the Government of India, Department of Personnel & Administrative Reforms regarding dereservation of vacancies reserved for Scheduled Castes and Scheduled Tribes. The second respondent had not obtained any permission from the competent authority before issuing A1 order. Hence the promotion granted to the third respondent against a post meant for S.C. was highly illegal and unsustainable. Further, his promotion against a post meant for S.C. was against the direction of the Hon'ble Supreme Court in AIR 1995 SC 1371. According to the applicant there were 5 posts sanctioned in the IFP in Group "B" (Non-Gazetted) and as per the prescribed 40 Point Roster which has to be followed strictly by the second respondent while effecting promotions, points No.1 and 4 were meant for S.C. and S.T. respectively. Applicant referring to the Constitution Amendment (Seventy Seventh Amendment) Act, 1995 pleaded Reservation in promotion in service of S.C. and S.T. was a fundamental right in the light of A-9 O.M. dated 27.7.95 and therefore the second respondent was duty bound to follow the orders on reservation in promotion for S.C. and S.T. It was submitted that the post of Senior Store Keeper which fell vacant in the month of November, 1995 was downgraded to that of Head Clerk and operated by promoting one P.K. Mohanan on adhoc basis and thereafter the third



respondent was granted provisional promotion after reviving it. According to the applicant for making temporary or provisional or adhoc promotions only seniority in the immediate feeder category was the criteria. She further submitted referring to A5 to A7 that seven Head Clerks were given promotion as Accountants in which five were juniors to the applicant in service as Head Clerk and when enquiries were made the applicant was told that she would be granted promotion as Senior Store Keeper since that post was held by a S.C. But it was denied to her. Accordingly, she sought the following reliefs:

"(i) To quash Annexure A1 order.

(ii) To declare that the applicant is eligible to be considered for promotion as Senior Store Keeper on regular provisional basis from the date of occurrence of that vacancy, i.e. from 29.11.95 as it was a post held by a Scheduled Caste person and no non scheduled caste like the 3rd respondent has have any claim or right to be considered against that post in the light of the direction of the Hon'ble Apex court reported in AIR 1995 SC 1371 and also on the basis of the seniority of the applicant as Head Clerk. Hence direction may be given to the 2nd respondent to promote the applicant in that post with all consequential benefits including arrears of salary and seniority as per rules.

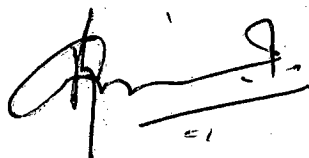
(iii) Grant such other reliefs as deem fit by this Hon'ble Tribunal on facts and other circumstances of the case.

(iv) Grant costs of this Original Application."

3. Respondents 1 & 2 filed reply statement resisting the claim of the applicant. According to them the appointment to the post of Senior Store Keeper was by selection. The qualification was 5 years regular service in the grade of Head Clerk failing which 10 years of combined regular service in the grades of Head Clerk and



Upper Division Clerk /Junior Stenographer. The vacancy in the post of senior Store Keeper arose on 31.10.95 with the retirement of Sri N.A. Vasudevan, a Scheduled Caste. Before an appointment by promotion to that vacant post could be made one Sri P.M. Varkey filed O.A. 1534/95 before this Tribunal claiming that he too was entitled to be considered. R1(a) order was passed by the Tribunal on 2.12.95 in that O.A. stating that the promotions if any made to the post of Senior Store Keeper would be provisional and subject to the orders in that O.A. They submitted that the Departmental Promotion Committee which met on 7.11.96 to consider the selection to the post of Senior Store Keeper recommended only the 3rd respondent. The appointment of the third respondent was however, made provisional in reference to R1(a) order of this Tribunal in O.A. No.1534/95 dated 12.12.1995.. They submitted that the allegation that the 3rd respondent was junior could not succeed because seniority among the Head Clerks was not the real criteria. What was relevant was possession of 5 years of regular service in the grade of Head Clerk failing which ten years of combined regular service in the grades of Head clerk and Upper Division Clerk/Junior Stenographer which the third respondent had and the applicant did not have. The applicant was not eligible to be considered for promotion as per the Recruitment Rules. As regards the second ground that in view of the judgment of the Hon'ble Supreme Court in Sabarwal's case, the vacancy that arose on account of the retirement of Sri N.A. Vasudevan had to be filled by another Scheduled Caste, it was stated that the same could not also succeed since the judgment in the Sabarwal's case



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did not contemplate relaxation of essential qualification. The respondents provided a comparative chart indicating the service particulars of the applicant and the third respondent. They denied that the applicant was overlooked for promotion as Senior Store Keeper in spite of she being senior. They also denied that the applicant was given to understand that she would be promoted to the post of Senior Store Keeper. They submitted that A1 order was issued after following all the relevant rules. They submitted that the applicant would be considered for promotion when she became eligible for consideration as per rules and regulations. They prayed that the O.A. may be dismissed with costs.

Applicant filed rejoinder reiterating the points made out in the O.A.

4. The third respondent did not enter appearance in spite of notice.

5. Heard learned counsel for the parties. Learned counsel for the applicant mainly relied on the provisions of the Recruitment Rules and the law laid down by the Hon'ble Supreme court in Sabarwal's case for the claim of the applicant.

6. We have given careful consideration to the submissions made by the learned counsel for the parties and the pleadings of the parties and have also perused the documents brought on record.

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7. The applicant has filed another Original Application- O.A. No. 1658/98 -aggrieved by the promotion of the third respondent in that O.A.- Smt. Vijayalakshmi- as Accountant in the DPC held on 21.11.98. At the request of the learned counsel for the applicant that O.A. was listed along with the present O.A. and both the O.As were heard together. However, after considering the submission of the learned counsel for the third respondent in that O.A. separate orders are being made in respect of the two OAs.

8. The learned counsel for the applicant submitted that the vacancy of the Senior Store Keeper having occurred due to the retirement on superannuation of Sri N.A. Vasudevan w.e.f. 30.11.95 and as Sri N.A. Vasudevan belonged to S.C. the vacancy should be filled by an employee belonging to S.C. as per the law laid down by the Hon'ble Supreme Court in R.K. Sabharwal and Others Vs. State of Punjab and Others reported in AIR 1995 SC 1371. The third respondent not belonging to SC could not have been promoted against this vacancy. The second ground advanced by the learned counsel for the applicant was that the applicant being a Head Clerk having been promoted w.e.f. 1.2.93 was senior to the third respondent who had been promoted on regular basis as Head Clerk only w.e.f. 5.10.96. According to the respondents, seniority among the Head Clerks was not the real criteria for filling up the post of Senior Store Keeper and what was relevant was 5 years regular service in the grade of Head Clerk failing which 10 years combined service in the grade of Head Clerk and UDC/ Junior Stenographer. According to



them this was fulfilled by the third respondent and was not fulfilled by the applicant and therefore, the applicant was not eligible to be considered for promotion.

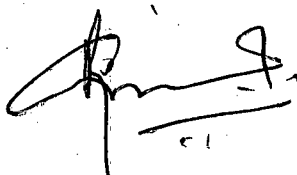
As regards the plea of applicability of the judgment of the Supreme Court in Sabharwal's case, it was submitted that the judgment in Sabharwal's case did not contemplate relaxation of essential qualification.

9. In R.K. Sabharwal's case the Hon'ble Apex Court held as follows in paras 6, 9, 10 and 11.:

"6. The expressions 'posts' and 'vacancies' often used in the executive instructions providing for reservations, are rather problematical. The word 'post' means an appointment, job, office or employment. A position to which a person is appointed. 'Vacancy' means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a 'post' in existence to enable the 'vacancy' to occur. the cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation.

9. A Division Bench of the Allahabad High court in J.C. Malik Vs. Union of India interpreted Railway Board's circular dated 20.4.70 providing 15% reservations for the 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 a 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.

10. We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100 point roster, 14 posts at various roster points are filled from amongst the Scheduled Caste/Scheduled Tribe candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general



category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by 31.12.94, Thereafter, in the year 1995, 25 general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. again in the year 1996, 25 more persons belonging too the general category retire. The position which would emerge would be that the Scheduled Castes and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in the cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the event of non-availability of reserve candidate at the roster point it would be open to the State Government to carry forward the point in a just and fair manner.

11. We therefore, find considerable force in the second point raised by the learned counsel for the petitioners. We however, direct that the interpretation given by us to the working of the roster and our findings on this point shall be operative prospectively.

The above judgment having been decided on 10.2.95 the dictum laid down therein will operate prospectively. There is no dispute that the cadre strength of Accountant/Senior Store Keeper/Sperintendent Group "B" (non gazetted) was five. On the basis of the prescribed per centage of reservation of 15% for S.C. and 7.5% for S.T., no post can be earmarked for Scheduled Caste and Scheduled Tribe in this cadre having only five posts. We find from the pleadings and A-8 representation of the applicant that she is basing her claim for the post of Senior Store Keeper on the premise that in the cadre of 5 posts of Group "B" (non-gazetted) roster points 1 and 4 are reserved for SC and ST respectively and Shri N. A. Vasudevan- an S.C.- vacating the post of Senior Store Keeper on superannuation, that post should be filled up by



an employee belonging to SC following the dictum laid down by the Hon'ble Apex Court in the above case. We are unable to accept the plea of the applicant as roster points No.1 and No.4 were reserved for SC and ST on the basis of 40 point roster which was to operate on the basis of occurrence of vacancies. The Hon'ble Apex Court having held that reservation had to be on the basis of the cadre strength, the above 40 point vacancy based roster had no validity after 10.2.95. Further, accepting the applicant's plea would mean that in the cadre of five Group "B" (non-gazetted posts) two posts will be reserved resulting in 40% reservation as against 22.5% prescribed for SC/ST. Moreover, there is no dispute to the fact that Sri N.V. Vasudevan though an S.C. was not promoted against a reserved point of SC in the 40 point roster which was prevalent at the time of his promotion. The above referred judgment also provides that in case of non-availability of reserved community candidate at the roster point, the Government can carry forward the same. In the additional reply statement filed in O.A. No. 1658/98 respondents submitted that the 8th point in the 40 point roster reserved for Scheduled Caste, was filled in 1996 by a general candidate since no eligible Scheduled Caste, was available and the point was carried forward. This action of the respondents was in line with the law laid down in the above judgment.

10. Now let us examine the second plea of the applicant that she is senior to the third respondent as Head Clerk and therefore she should be promoted instead of the third respondent. We have examined R1(b) Recruitment Rules. On



the basis of the Recruitment Rules we find that for filling up the post of Senior Store Keeper/Accountant/Superintendent, Head Clerks with five years regular service and Head Clerks with combined ten years of regular service as Head Clerks and Upper Division Clerk/Junior Stenographer are eligible. Admittedly the applicant did not have five years of regular service as Head Clerk having become a Head Clerk with effect from 1.2.93 on the date of occurrence of vacancy i.e. 1.11.95. She also did not complete 5 years of regular service as Head Clerk on 15.11.96- the date of promotion of the third respondent as Senior Store Keeper. We find that the applicant was also not fulfilling the alternative eligibility criteria of ten years of combined regular service of Head Clerk and Upper Division Clerk as she was promoted as Upper Division Clerk only on 18.8.98. Thus, we are unable to accept this plea of the applicant that because she was senior to the third respondent as Head Clerk she should be promoted.

11. Another plea put forth by the applicant is that when the post is filled up on provisional basis, seniority subject to suitability should be the sole criterion for promotion and the question of considering employees who fulfil the eligibility conditions as per Recruitment Rules did not arise. According to the applicant she being the seniormost Head Clerk should have been promoted to the post on provisional basis subject to suitability. We are unable to accept this plea as in R1(a) interim orders of the Tribunal there was no such direction. Hence, we



cannot find any infirmity in the respondents filling up the post in accordance with the eligibility criteria laid down in the Recruitment Rules.

12. In view of the foregoing, this Original Application is devoid of merits and is dismissed. No costs.

Dated the 31st March, 2000.


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER

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List of Annexures referred in this Order

- A1 True copy of the order No.178/96 dated 15.11.96 issued by the 2nd respondent to the 3rd respondent.
- A5 True copy of office order No. 43/94 dated 26.3.94 issued by the 2nd respondent promoting Shri M.A. Gafoor, Shri V. Govindan and Shri K. Chandrasekharan Pillai as Accountants.
- A7 Truecopy of office order No. 90/96 dated 10.6.96 issued by the 2nd respondent to Shri K.V. Raghavan & Shri M.V. Gopinathan Nair promoting them as Accountants.
- A8 True copy of the representation dated 12.12.96 of the applicant to the 2nd respondent.
- A9 True copy of OM No. 36012/37/93-Estt.(Res) dated 27.7.95 issued by the Department of Personnel, Public Grievances & Pension of the Govt. of India.
- R1(a) True copy of order of Tribunal dated 12.12.95 in O.A. No. 1534/95
- R1(b) True copy of Recruitment Rules
- A2 True copy of order in O.A. No.1357/93 dated 8.3.94 of this Tribunal.
- A-3 True copy of office order No.148/94 ated 15.9.94 issued by the 2nd respondent to the applicant.
- A4 True copy of office order No.157/96 dated 8.10.96 issued by the 2nd respondent to 3rd respondent.