

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

OA No.254/87

G Viswambaran,

: Applicant

-Vs-

1 Union of India rep.
by Secretary to Government
Ministry of Agricultural &
Cooperation, Deptt. of
Agrl. & Rural Development
Krishi Bhavan, New Delhi-110 001

2 The Director, Fishing Survey
of India, Bottanala Chambers
Sir Phirosha Mehtha Road
Bombay- 400 001

3 The Zonal Director
Fishing Survey of India
Kochangadi, Cochin-2

: Respondents

M/s Sukumaran & Usha

: Counsel for Applicant

Mr PV Madhavan Nambiar, Sr CGSC

: Counsel for Respondents

CORAM

Hon'ble Shri P Srinivasan, Administrative Member

and

Hon'ble Shri G Sreedharan Nair, Judicial Member

(Order pronounced by Hon'ble Shri P Srinivasan,
Administrative Member)

O R D E R


The applicant who belongs to one of the
Scheduled Castes was selected along with four
others for appointment to the post of Bosun(C)
in the Fishing Survey of India (FSI) on the
basis of interviews held on 16.8.84 and 17.8.84.
He was posted as Bosun(C) at the Cochin Base of
FSI with effect from 22.9.84 by order dated

P. Srinivasan

[Signature]

19.2.86 issued by the Director, FSI (Respondent No 2). The order narrated that the appointment was to a temporary post of Bosun(C) on regular basis. It further narrated that he would be on probation for a period of two years with effect from 22.9.84 and that the seniority in the post would be fixed in accordance with the rules. However, by a subsequent order dated 26.2.86 Respondent No.2 terminated the services of the applicant " with immediate effect for want of vacancy". It is this order that the applicant is challenging in this application.

2 ~~Shri Sukumaran~~ ^{The} learned counsel for the applicant made the following submissions: The post to which the applicant was selected and appointed was reserved for a candidate belonging to a Scheduled Caste and therefore, when one post of Bosun in FSI became surplus, the applicant's services should not have been terminated. Further, as on 1.1.84 there were 29 persons working as Bosun(C) of which only four belonged to Scheduled Castes. According to the roster prescribed for the purpose, appointment to posts in a cadre at points 1, 7, 13, 20 and 25 ^{is} ~~are~~ reserved for Scheduled Caste candidates. Therefore, in the 29 posts

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that stood filled up as on 1.1.84, five should have been manned by Scheduled Caste candidates. Thereafter, selection was made to five posts to one of which the applicant was selected and appointed. Point No. 32 in the roster should again have gone to a Scheduled Caste candidate. In other words, upto and inclusive of the five posts to which selections were made when the applicant was selected i.e. out of 34 posts, six should have gone to Scheduled Caste candidates. As against this, only four were in position as on 1.1.84 and the applicant was appointed to the fifth vacancy. Thus by terminating the services of the applicant, the representation of Scheduled Caste candidates in posts of Bosun (C) was reduced below the required number of six. When retrenching persons on account of vacancies having become surplus, Scheduled Caste candidates, though junior most, who possess the requisite educational qualifications and have been classified as "outstanding" or if not outstanding as fit for permanent retention have to be retained in preference to candidates belonging to other communities so classified till the total number of Scheduled Castes retained in service reaches the required percentage of reservation for Scheduled Castes. The applicant, therefore, should have been retained because his discontinuance

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would reduce the number of Scheduled Caste candidates retained below the requisite percentage. ^{for the applicant} One more point urged ~~by Shri Sukumaran~~ was that the applicant was not the junior most in the cadre of Bosun(C) when his services were terminated. Thus, on this ground also the termination of his services was not right.

3 Shri PV Madhavan Nambiar, the learned Sr. CGSC appearing for the respondents submitted on the other hand, that the applicant was indeed the junior most in the cadre of Bosun (C) when his services were terminated. A post of Bosun(C) had to be abolished because some fishing vessels belonging to FSI had been de-commissioned. The applicant had been appointed to a temporary post on probation and his services could be terminated within the two year period of probation which would expire on 22.9.86 without assigning any reason. When a post of Bosun(C) had to be abolished, the applicant as the junior most person in that cadre was liable to have his services terminated. Shri Nambiar also pointed out that when the services of the applicant were terminated, 27 persons were actually working as Bosun(C). Of these posts, 15% reservation for Scheduled Caste candidates worked out to four posts. There were already four persons belonging

P. S. *[Signature]*

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to Scheduled Caste ~~candidates~~ working as Bosun(C).

It was, therefore, not necessary to retain the applicant in service to ensure the representation of Scheduled Castes upto the required percentage. On this count also the applicant had no case for being retained in service.

4 We have considered the rival contentions carefully. When the applicant was selected for appointment alongwith four others he was ranked No.5, that is last among all the five candidates who were selected. A copy of the proceedings of the interview conducted by the Selection Committee on 16.8.84 and 17.8.84 has been furnished by the respondents which shows the applicant's rank at No.5. It is common ground that thereafter there was no recruitment to the post of Bosun(C). Thus, it is clear that the applicant was the junior most incumbent in the post of Bosun(C) when his services were terminated. The reference made on behalf of the applicant to the list of persons holding the posts of Bosun(C) as on 1.1.84 is neither here nor there for the present purpose. That list shows the names of 29 persons appointed between 1971 and 1981. This does not in any way help in ascertaining whether the roster points for Scheduled Castes were duly filled in while making appointments in the past

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because some persons selected against the roster points earlier might have left service. Moreover, it is not the applicant's case that he should have been appointed to one of the posts filled in between 1971 and 1981. Therefore, we have necessarily to confine our attention to the selection made when the applicant himself was appointed. Out of five posts to which selections were made, one post was reserved for Scheduled Castes and the applicant was duly selected. His rank in the list was No.5. Therefore, there is no doubt that he was the junior most in the cadre of Bosun(C). So far as the instructions protecting Scheduled Castes candidates from retrenchment is concerned, we have perused the third edition of the Brochure on reservation for Scheduled Castes and Scheduled Tribes produced by the applicant. The relevant provision is at page-42. This provision makes an exception to the rule that when posts are rendered surplus, the junior most will have to be retrenched. It provides that persons belonging to Scheduled Castes who are educationally qualified for the post and are classified either as "outstanding" or as "fit for permanent retention" in the post should be preferred for retention over those falling in the same category but belonging to other communities. Similarly, persons who may not

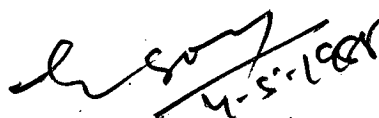
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be educationally qualified, but are still classified as "outstanding" or "fit for permanent retention" who belong to Scheduled Castes should be given preference for retention over persons belong^{ing} to other communities falling in the same category. This preferences, viz: retention of Scheduled Castes candidates is to be exercised "till they form such percentage among the direct recruits" as is prescribed for representation of Scheduled Castes. In other words, termination of the services of the junior most person belonging to a Scheduled Caste would be permissible only if the full percentage of the remaining posts reserved for Scheduled Castes ~~are~~^{is} held by persons belonging to Scheduled Castes. The respondents have asserted that after the termination of the services of the applicant, there were 27 persons working as Bosun(C), Out of whom four belonged to Scheduled Castes; 15 per cent of such posts which are to be reserved for representation of Scheduled Castes were thus fully manned by persons belonging to Scheduled Castes. The protection contemplated for Scheduled Caste persons against retrenchment as being the junior most was thus not available to the applicant. This being so, the applicant is not eligible to that protection either. Another point made ^{by Counsel for the applicant} ~~by Shri Sukumaran~~ was that posts reserved for Scheduled Tribes had not been filled up and they

should have been converted into Scheduled Caste vacancies and given to the applicant. This is really an objection against appointments made upto the time the applicant was selected. Since he was in fact selected and appointed in a vacancy reserved for Scheduled Caste, the question of releasing a post reserved for Scheduled Tribes to appoint him did not arise at that time. He cannot now be heard to say that he could not be retrenched from service because of the non conversion of vacant Scheduled Tribe points in the roster to Scheduled Caste points. This contention also, therefore, fails.

5 In the result the application is dismissed as devoid of merit. Parties to bear their own costs.


(G Sreedharan Nair)
Judicial Member
4.5.88


(P Srinivasan)
Administrative Member
4.5.88

Index: Yes/~~No~~