

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 293 199 2

DATE OF DECISION 24.5.93

S. Nalinakshan _____ Applicant (s)

Mr. Sasidharan Chempazhanthiyil Advocate for the Applicant (s)

Versus

The Chief General Manager, Respondent (s)
Kerala Telecom Circle Thiruvananthapuram and others

MR.K.A. Cherian, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. DHARMADAN JUDICIAL MEMBER

The Hon'ble Mr. R. RANGARAJAN ADMINISTRATIVE 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? Yes
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN JUDICIAL MEMBER

The applicant is working as Instructor, C.T.T.C.

Trivandrum by virtue of an interim order passed by this Tribunal on 17.2.92. He is forced to file this application under section 19 of the Administrative Tribunals' Act because of the failure of the first respondent to comply with the direction of this Tribunal in an earlier judgment in O.A. 488/91 dated 14.8.91 (Annexure-III) filed by the same applicant for getting reliefs.

2. Applicant is a member of the Scheduled Caste community having 13 years of service in the cadre of Senior Assistant Engineer. He was appointed as Instructor/Lecturer CTTC, Trivandrum on provisional basis w.e.f. 5.12.90. He

has got past experience in instructional duties as shown below:

- "1. Worked as Jr. Engineer Instructor in CTTC, Trivandrum during the period from 17.8.72 to 12.10.73
- 2. Worked as Junior Engineer Instructor in CTTC Trivandrum during the period from 5.3.78 to 19.4.78.

The applicant has also undergone training for the following courses:

<u>Specified topics in which trained.</u>	<u>period</u>	<u>place where trained.</u>
1. Cross-Bar Technics	16 weeks	Madras
2. Cross Bar Maintenance Technics	6 weeks	Jabalpur
3. Net Work Planning	3 weeks	New Delhi
4. Traffic Theory and Engineering	4 weeks	-do-
5. Management (MIS)	2 weeks	-do-
6. Material Management	2 weeks	-do-
7. P.T.C.C.	23 days	Bangalore
8. Instructional Technics	2 weeks	TTC Jabalpur

3. There are 44 Instructor/Lecturer posts in the two training centres at Trivandrum. These posts are filled up by transfer on deputation from suitable Assistant Engineers.

The post carries a special pay of 30% of the basic pay.

When the applicant was appointed as Instructor/Lecturer at CTTC, Trivandrum on 5.12.90 on a provisional basis, there were only two Instructor/Lecturer who have been found suitable for the post. Others were appointed provisionally; some of whom were continuing in that post after absorption under old rules when there was no suitability test. A Committee constituted for conducting the suitability test for appointment to the post of Instructor/Lecturer conducted

the test on 18.3.91. Twentyfive Assistant Engineers were found suitable for appointment and Annexure-II list dated 10.4.91 was issued. The applicant was not included. The first respondent appointed 17 other Assistant Engineers who were not found successful in the test so as to enable them to draw special pay @ 30% of the basic pay per month. Applicant alone was denied this facility. Hence, he filed O.A. 488/91 for a direction to the respondents to appoint him also as Instructor/Lecturer, CTTC, Trivandrum. That O.A. was allowed. The relevant portion of the judgment are extracted below:

"This constitutionally protected right of the Scheduled Castes and Scheduled Tribes should be respected by all employers including the Government of India. The Supreme Court in K.C. Vasanthakumar v. State of Karnataka AIR 1985 said as follows:

"The Scheduled Castes the Scheduled Tribes and the other socially and educationally backward classes all of whom have been compendiously described as "the weaker sections of the people, have long journeys to make society. They need aid, they need facility, they need launching, they need propulsion. Their needs are their demands. The demands are matters of right and not of philanthropy. They ask for parity and not charity. The days of Dronacharyas and Ekalavya are over. They claim their constitutional right to equality of status and of opportunity and economic and social justice. Several bridges have to be erected so that they may cross the rubicon. Professional education and employment under the State are thought to be two such bridges. Hence, the special provisions for advancement and for reservation under Articles 15(4) and 16(4) of the Constitution.

(emphasis supplied)

In the light of the constitutional mandate and the decisions of the Supreme Court pertaining to the rights of the SC/ST candidates we can only observe that the failure of the respondents to set apart at least one post out of the 44 Lecturers in RTTC/CTTC is not in consonance with the spirit and policy underlying the Constitution of India and policy of the Government in this behalf.

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Having considered the facts and circumstances of the case and after careful consideration of the matter, we are of the view that interest of justice will be met in this case if this application is disposed of with the direction that the applicant should be interviewed once again by a properly constituted special selection committee in terms of Annexure R-4 to assess his suitability to be absorbed as Lecturer in accordance with law. The respondents should thereafter pass necessary orders about his appointment. This shall be done by the respondents within a period of three months from the date of receipt of a copy of this judgment. Till final orders are passed pursuant to the above direction the interim order already passed in this case on 1.4.91 will continue."

4. According to the applicant, the Selection Committee which^b ~~xxx~~/found the applicant unsuitable was not properly constituted in accordance with the Annexure-IV instructions. Hence, he has stated that all the 25 Instructors who were selected by the Committee are unsuitable to hold the post. Since these persons were not parties in the earlier O.A., the Tribunal did not strike down their selection. The true copy of the judgment was served on the first respondent. He has also^b produced Annexures V & VI (Annexures VII & VIII in O.A. 488/91) containing the policy statement of the Government of India granting certain benefits to SC/ST candidates and method/ constitution of selection board/DPC while considering the promotion of candidates belonging to SC & ST. After the judgment, second respondent issued Annexure-VII to the applicant calling upon him to appear for interview before the Committee on 10.2.92. Accordingly, he attended the interview but he was not selected. In the selection board there was no SC/ST Member as provided in Annexure-V. Shri J. N. Misra, though was included as Member of the Committee, was not present at the time of interview of the applicant.

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Shri Uppal, DDG (Pers.) who was member of the previous Committee who interviewed applicant on 18.3.91 was present. Since he it was presumed that he has got illwill towards the applicant, he influenced other members of the committee so as to deny the applicant the benefit of selection. Applicant underwent course of Instructional Technics and came out successful and Annexure -VIII is the certificate. He further submitted that sixteen Assistant Engineers, who are now retained in CTTC as Instructor/Lecturer are not qualified for the post. One Shri VHK Sharma who failed in the test conducted on 18.3.91 is even now working in the post of Instructor/Lecturer post in the CTTC, Trivandrum and getting special pay. When the first respondent initiated steps to relieve applicant from the post of Instructor/Lecturer, CTTC, in view of his non-selection by the Committee in the interview held on 10.2.92, the applicant filed this O.A. and obtained an interim stay.

5. Having heard learned counsel for both parties in detail, this Tribunal passed a detailed order on 27.8.92.

It is extracted below:

"In the course of the argument, it is brought to our notice that when the applicant came earlier with identical grievance, we passed a detailed judgment apprising the constitutional obligation of the employer to encourage the persons belonging to SC/ST community in the matter of fillingup of posts in the Department even if there is no rule reserving posts for SC/ST. We issued specific directions to the respondents directing them to assess the suitability of the applicant to be selected as a Lecturer in accordance with law, taking into account the observations in the judgment. We also fixed a time limit.

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The applicant's complaint is that without passing any final order, 2nd respondent is attempted to terminate the services of the applicant after conducting an interview on 10.2.92. The applicant was not interviewed by constituting a Selection Committee with a SC/ST Member and found him unsuitable for posting as Lecturer. No order has been passed so far. The applicant also brought to our notice the appointment of one Shri Sharma who failed in the earlier selection but was appointed by the same officer who has filed reply in this case. Even now he is allowed to continue and earn additional training allowance. This statement was denied by the Assistant General Manager, Administration in the reply statement. But Annexure R-XI order shows that the posting order was issued to Shri Sharma, Sr. Assistant Engineer to perform instructional duties in addition to his normal duties with immediate effect. Shri Sharma is even now continuing even though he failed in the Departmental selection. But considering our observations the respondents should have endeavoured to post one SC/ST candidate when 44 appointments in the post of Lecturer in the RTTC/CTTC were made accepting the repeated policy statements issued by the Government of India in this behalf.

It is also pertinent to note in this connection that in spite of our observations in the judgment, the respondents are relying on the official circular stating that principles of reservation is not applicable in the appointment of Lecturers. These circulars were not accepted by us when we pronounced the judgment. The statements in the reply indicate that they have not carefully read and understood the judgment already pronounced in this case. It appears that the respondents have not given due weightage to the observations in the judgment. They have not even constituted a Committee with a SC/ST member for conducting the selection as per our earlier directions. There is thorough failure on the part of the respondents in the discharge of constitutional obligation in encouraging and in giving appointments to the members belonging to the Scheduled Castes/Scheduled Tribes to the extent possible within their reach.

The learned counsel for applicant submitted that the respondents have in fact not obeyed the directions of the judgment and thereby they committed contempt

However, we are of the view that the respondents should be given further time to explain as to why they have not strictly complied with the directions of the earlier judgment and why they have come with a reply with identical stand which they had taken in the earlier original petition filed by the applicant."

6. In spite of specific direction to implement the policy statement of the Govt. of India and consider the claim of the applicant in the light of the same, the respondents

have failed to comply with the same. In the reply, they have stated as follows:

"the previous judgment of this Hon'ble Tribunal did not contain specific direction to the Department of Telecom to reserve posts of lecturers for SC/ST. This department is always following the guidelines issued by the Department of Personnel and Training from time to time in this regard. No instruction in this behalf has been received by this Department from them till now."

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"He (applicant) has been considered by the duly constituted selection committee. He was not found fit to be a lecturer. Others mentioned in the list are working as lecturers after their selection made earlier, are working against posts on adhoc basis only till selected candidates become available."

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"No reservation is provided for SC/ST in the rules for selection for lecturers from amongst Group-B officers..... It is to be mentioned that the circular of the Ministry of Home Affairs as quoted in Annexure A-X of the O.A. relates to selection of candidates in case some vacancies have been reserved for SC/ST candidates. So it is not applicable in the present case since the post of Lecturers in CTTC are not divided under 'reserved' and 'unreserved' categories."

7. In this connection, it is pertinent to extract some of the observations from the recent judgment of the Supreme Court in *Indra Sawhney v. Union of India*, AIR 1993 4 only to support our earlier view on reservation. SC 4774. Justice Pandian in his separate judgment observed as follows:

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"Though fortyfive years from the commencement of the Indian independence after the end of British paramountcy and fortytwo years from the advent of our Constitution have marched on, the tormenting enigma that often nags the people of India is whether the principle of 'equality of status and of opportunity' to be equally provided to all the citizens of our country from cradle to grave is satisfactorily consummated and whether the clarion of equality of opportunity in matters of public employment' enshrined in Article 16(4) of the Constitution of India has been called into action? With a broken heart one has to answer these questions in the negative."

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" Notwithstanding a catena of expository decisions with interpretive semantics, the naked truth is that no streak of light or no ray of hope of attaining the equality of status and equality of opportunity is visible."

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" I venture to articulate without any reservation, even on the possibility of any refutation that it is highly deplorable and heart-rending to note that the constitutional provision, namely, clause (4) of Article 16 proclaiming a 'Fundamental Right' enacted about 42 years ago for providing equality of opportunity in matters of public employment to people belonging to any backward class has still not been given effect to in services under the Union of India and many more States."

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" There are various Constitutional provisions such as Articles 14, 15, 16, 17, 38, 46, 332, 338 and 340 which are designed to redress the centuries old grievances of the scheduled castes and scheduled tribes as well as the backward classes and which have come for judicial interpretation on and off. It is not merely a part of the Constitution but also a national commitment."

8. In the judgment written by Justice B.P. Jeevan Reddy on behalf of himself and Chief Justice M.H. Kania and Justice M.N. Venkatachaliah, and A.M. Ahmadi, it was stated as follows, in the same case referred to above:

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"... It would, therefore, follow that until a law is made or rules are issued under Article 309 with respect to reservation in favour of backward classes it would always be open to the Executive (Government) to provide for reservation of appointments/posts in favour of Backward Classes by an executive order."

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"... Be that as it may we are of the opinion that in certain services and in respect of certain posts, application of the rule of reservation may not be advisable for the reason indicated hereinbefore. Some of them are (1) Defence Services including all technical posts therein but excluding civil posts. (2) All technical posts in establishments engaged in Research and Development including those connected with atomic energy and space and establishments engaged in production of defence equipment (3) Teaching posts of Professors and above if any. (4) Posts in super-specialities in

Medicine, Engineering and other scientific and technical subjects (5) Posts of pilots (and co-pilot) in Indian Airlines and Air India. The list given above is merely illustrative and not exhaustive."

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"...By now, it is well settled that reservations in educational institutions and other walks of life can be provided under Art. 15(4) just as reservations can be provided in services under Art. 16(4). If so, it would not be correct to confine Art. 15(4) to programmes of positive action alone. Article 15(4) is wider than Art. 16(4) inasmuch as several kinds of positive action programmes can also be evolved and implemented thereunder (in addition to reservations) to improve the conditions of SEBCs, Scheduled Castes and Scheduled Tribes, whereas Art. 16(4) speaks only of one type of remedial measure, namely, reservation of appointments/posts."

9. Justice Sawant also observed as follows:

"As regards point (ii) since the provisions of Article 16(4) are meant for providing adequate representation in the services to the backward classes, the representation has to be in all categories and grades in the services. The adequacy does not mean a mere proportionate numerical or quantitative strength. It means effective voice or share in power in running the administration. Hence, the extent of reservations will have to be estimated with reference to the representation in different grades and categories (See The General Manager Southern Railway v. Rangachari, 1962 2 SCR 5861 (AIR 1962 SC 36))."

10. In the instant case, admittedly there are 44 posts of Lecturers/Instructors in CTCC Trivandrum. Not a single post has been earmarked for SC/ST. When the applicant came earlier, this Tribunal found that there is patent irregularity in the matter of selection and we passed Annexure-III judgment indicating that the respondents ought to have set apart at least one post out of the 44 post of Lecturer/Instructor in the RTTC/CTTC for SC/ST candidate in the light of Statutory mandate and the decision of the Supreme Court. But they did not care to follow the

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principles to be observed in the matter of appointments in terms of Constitutional mandate and the decision of the Supreme Court and the direction of this Tribunal.

11. Even in regard to the constitution of the Committee for selection, respondents did not observe the direction in Annexure-V letter of the Ministry of Home Affairs dated 10.8.81. The relevant portion is extracted below:

"It has been suggested that Ministries/Departments may endeavour to the maximum extent possible to nominate a scheduled caste/scheduled tribe officer while considering the Department Promotion Committees, selection Boards, etc. for recruitment/promotion to posts/services under them. Particularly where a selection Board or a Departmental Promotion Committee has to make bulk selection for a large number of vacancies say for thirty or more at a time, no effort should be spared in finding a SC or ST officer for inclusion in the Selection Board/Departmental Promotions Committee."

Since the respondents have not included a SC/ST Member in the Selection Board, the interview conducted on 10.2.92 after the judgment Annexure-III is invalid and cannot be / sustained.

12. Respondents have taken the stand that no orders have been issued by the Government for reserving post of Lecturer/Instructor in the RTTC/CTTC in the Department of Telecommunications so as to enable them to earmark specific number of posts for SC/ST. It is the policy of the Government to reserve posts for SC/ST candidates in various cadres under the Ministries/Departments coming under Govt. of India and repeated instructions have been issued from time to time for strict observation of the orders for appropriate implementation of the principles contained in the orders issued by the Govt. from time to time. The

Government issued a number of instructions directing heads of Departments, etc. to strictly follow the procedure prescribed for filling up of posts so that they are filled up by candidates belonging to respective communities. The Government of India, Department of Personnel and A.R. O.M. No. 3611/5/75-Estt. (SCT) dated 3.5.75, O.M. No. 36011/1/76-Estt. (SCT) dated 6.3.76, O.M. No. 36022/20/76-Estt. (SCT) dated 8.9.76, O.M. No. 36011/7/80 Estt. (SCT) dated 1.11.80 states that the departmental heads should strictly observe the principles of reservation and representation of members belonging to SC and ST in service. On examination of various O.M.s pertaining to selection and appointment of SC/ST candidates in services we hold that it is the obligation of first respondent to take necessary steps for giving sufficient representation for SC/ST candidates and fill up sufficient number of posts with candidates belonging to such communities. In spite of the direction from this Tribunal in the earlier judgment, the first respondent did not care to consider the case of the applicant bearing in mind the principles stated in the judgment and followed by the Government of India in this behalf. This has been expressed in strong terms by this Tribunal in the earlier judgment as extracted above. It is not necessary to reiterate the same.

13. In the result, having regard to the facts and circumstances of the case, we set aside the selection conducted by the Committee on 10.2.92 and direct the

respondents to allow the applicant to continue in the present post as Lecturer/Instructor and ~~strictly~~ watch his performance for a period of six months. We further direct that he should be given all facilities to improve his performance if he is found lacking in any sphere of his activities in the discharge of duties as Lecturer/Instructor and he may be given regularisation in that post if he is found fit in all respects taking into account the policy statement of the Government of India to encourage reserved community candidates.

14. The application is allowed as indicated above.

15. There shall be no order as to costs.

on 24/5/83
(R. RANGARAJAN)
ADMINISTRATIVE MEMBER

N. Dharmadan 24.5.83
(N. DHARMADAN)
JUDICIAL MEMBER

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