

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 307/92 & 303/92 ~~120~~

DATE OF DECISION 22.3.93

D.Babu _____ Applicant (s) in O.A.307/92
P.Balakrishnan _____ Applicant in O.A 303/92

Mr.K.K.Balakrishnan _____ Advocate for the Applicant (s)
in both the O.As.

Versus
Union of India represented by
Secretary, Scientific Adviser to _____ Respondent (s)
Reksha Manthri, Director General,
Defence Research and Development Organisation,
Sena Bhavan, 'B' Block, New Delhi-110 011 and five others.

Mr.A.A.Abul Hassan, ACGSC _____ Advocate for the Respondent (s)
in O.A 307/92
CORAM Mr.C.Kochunni Nair, ACGSC _____ in O.A 303/92

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.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? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *W*
4. To be circulated to all Benches of the Tribunal? *W*

JUDGEMENT

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

Since common questions of law, facts and reliefs are involved in these two applications they were heard together and are being disposed of by a common judgment as follows.

2. The applicants are working as Scientist Gr.C in the Naval Physical & Oceanographic Laboratory under the Research and Development wing of the Ministry of Defence. Both of them belong to the Scheduled Caste community. They have challenged the Defence Research and Development Service (Amendment) Rules, 1990 notified on 10th August, 1990 (Annexure A2) and the Department of Personnel O.M dated 23rd June, 1975 (Annexure A3) and the Ministry of Home

...2

Affairs O.M dated 2nd November 1963 at Annexure-A4 in which reservation order in favour of Scheduled Castes/Scheduled Tribes have been made inapplicable in case of appointments to posts for conducting, organizing, guiding and directing research. They have also challenged the order dated 7th February, 1992 in case of the first applicant and the order dated 20.1.92 in case of the second applicant at Annexure (in both the files) A1 by which their representation^s for earlier promotion to Scientist Gr.C were rejected. The applicants' case is that no adverse remarks had been communicated to them and their supersession by general candidates without protecting their interests as Scheduled Caste candidates, is unconstitutional. They have challenged Annexure A4 order as discriminatory against Scheduled Caste/Scheduled Tribe candidates working in the field of Science and Technology. On the same grounds they have challenged the O.M at Annexure A3. They have also argued that fixing 50% marks for interview by the Assessment Board, is also arbitrary. They have urged that under Art. 335 of the Constitution, Scheduled Castes and Scheduled Tribes have a constitutional right for reservation in promotions.

3. In the reply statement the respondents 1 to 4 have stated that the applicants have not exhausted the departmental remedies available to them, that they have challenged the O.Ms of 2.1.63 and 23.6.75 without impleading the Union of India through the Secretaries of these Departments. They have indicated that in accordance with the rules under the 'flexible complementing scheme' promotions from Gr.B to Gr.C of Scientists are made ^{in situ} irrespective of the availability of the vacancy, on the basis of the performance and merits of the Scientists. The post itself is ungraded in case the applicant is found suitable for being given higher pay scale. Thus the O.M of the Department of Personnel and Training dated 10th March, 1989 is not applicable as

applicable as there was no promotion involved from one post to another. In accordance with the ^{Recruitment} Rules, Scientists with 5 years service are eligible for consideration for promotion along with Scientists with 3 years with all 'outstanding' reports and Scientists with 4 years service with all 'very good' reports. The selection is made by a duly constituted Assessment Board irrespective of seniority. The eligible candidates are first considered by the Internal Screening Committee before they are sent up to the Assessment Board which interviews the candidates with equal weightage to the marks obtained in the Assessment Interview and the A.C.R marks awarded by the Internal Screening Committee and based on the total marks they are recommended as fit or not yet fit. They have indicated that the applicant in the first application (OA 307/92) was duly considered for promotion from Gr.B to Gr.C in 1987 but he was not considered to be fit by the Assessment Board. When he was ~~and~~ so found fit, he was promoted to Scientist 'C' with effect from 1.7.86. For promotion from Gr.C to Gr.D the Internal Screening Committee did not find him suitable for Assessment interview. The applicant in the ^{second} ~~first~~ ^(OA 303/92) case was considered for promotion from Gr.B to Gr.C in the year 1984 as soon as he fulfilled the eligibility criteria but he was assessed as 'not yet fit' by the Assessment Board and thus could not be promoted in 1984. He was promoted only with effect from 1.7.85 after he was found 'fit' for promotion by the Assessment Board in 1985. He was also not found 'fit' for promotion from Gr.C to Gr.D by the Internal Screening Committee.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents with anxious consideration. The question of reservation and its various ramifications have been elaborately gone into by a nine Judge Bench of the Hon'ble Supreme Court in Indra Sawhney and Ors.Etc.Etc. vs. Union of India and Ors.Etc. Etc., Judgment Today 1992(6) S.C.273 . The constitutionality of

exempting certain specialised Engineering and Scientific etc. posts in the context of Article 335 of the Constitution was also considered in detail by the Bench. By a majority judgment it was held that certain Defence Services posts, technical posts in establishments engaged in Research and Development, Teaching posts of Professors and above and posts in super-specialities in Medicine, engineering and other scientific and technical subjects, posts of pilots etc. should be advisedly kept out of the application of the rule of reservation because reservation therein may not be consistent with "efficiency of administration" contemplated by Article 335. The following observations made in the majority judgment will be pertinent:-

"859. Having said this, we must append a note of clarification. In some cases arising under Article 15, this court has upheld the removal of minimum qualifying marks, in the case of Scheduled Caste/ Scheduled Tribe candidates, in the matter of admission to medical courses. For example, in State of M.P. v. Nivedita Jain (1982(1) S.C.R.759) admission to medical course was regulated by an entrance test (called Pre-Medical Test). For general candidates, the minimum qualifying marks were 50% in the aggregate and 33% in each subject. For Scheduled Caste/Scheduled Tribe candidates, however, it was 40% and 30% respectively. On finding that Scheduled Caste/ Scheduled Tribe candidates equal to the number of the seats reserved for them did not qualify on the above standard, the Government did away with the said minimum standard altogether. The Government's action was challenged in this court but was upheld. Since it was a case under Article 15, Article 335 had no relevance and was not applied. But in the case of Article 16, Article 335 would be relevant and any order on the lines of the order of the Government of M.P. (in Nivedita Jain) would not be permissible, being inconsistent with the efficiency of administration. To wit, in the matter of appointment of Medical Officers, the Government or the Public Service Commission cannot say that there shall be no minimum qualifying marks for Scheduled Caste/Scheduled Tribe candidates, while prescribing a minimum for others. It may be permissible for the Government to prescribe a reasonably lower standard for Scheduled Castes/Scheduled

Tribes/Backward Classes - consistent with the requirements of efficiency of administration - it would not be permissible not to prescribe any such minimum standard at all. While prescribing the lower minimum standard for reserved category, the nature of duties attached to the post and the interest of the general public should also be kept in mind.

" 860. While on Article 335, we are of the opinion that there are certain services and positions where either on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit as explained hereinabove, alone counts. In such situations, it may not be advisable to provide for reservations. For example, technical posts in research and development organisations/departments/institutions, in specialities and super-specialities in medicine, engineering and other such courses in physical sciences and mathematics, in defence services and in the establishments connected therewith. Similarly, in the case of posts at the higher echelons e.g., Professors (in Education), Pilots in Indian Airlines and Air India, Scientists and Technicians in nuclear and space application, provision for reservation would not be advisable.

861. As a matter of fact, the impugned Memorandum dated 13th August, 1990 applies the rule of reservation to "civil posts and services under the Government of India" only, which means that defence forces are excluded from the operation of the rule of reservation though it may yet apply to civil posts in defence services. Be that as it may, we are of the opinion that in certain services and in respect of certain posts, application of 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-pilots) in Indian Airlines and Air India. The list given above is merely illustrative and not exhaustive. It is for the Government of India to consider and specify the service and posts

to which the Rule of reservation shall not apply but on that account the implementation of the impugned Office Memorandum dated 13th August, 1990 cannot be stayed or withheld.

"862. We may point out that the services/posts enumerated above, on account of their nature and duties attached, are such as call for highest level of intelligence, skill and excellence. Some of them are second level and third level posts in the ascending order. Hence, they form a category apart. Reservation therein may not be consistent with "efficiency of administration" contemplated in Article 335."

(emphasis added)

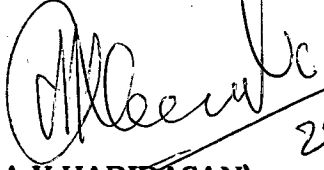
As a matter of fact, the Hon'ble Supreme Court in the same judgment by majority view ruled that Article 16(4) of the Constitution does not permit provision for reservation in the matter of promotions, though they quashed this ruling with the direction that this decision shall operate only prospectively and shall not affect promotions already made. Such promotions were allowed to remain in operation for a period of five years from the date of judgment within which period it would be open to the appropriate authorities to revise, modify and re-issue the relevant rules to ensure the achievement of the objective of Article 16(4).

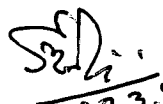
5. In view of the clear verdict given by the Hon'ble Supreme Court, we are convinced that the impugned orders at Annexures -A2, A3 and A4 are absolutely constitutional and the rejection of the representations of the applicants at Annexure-A1 cannot be faulted. In that light it is not material whether any of the members of the Assessment Board is or is not ^a member of Scheduled Caste. As regards weightage being given to the interview, we have held in L.Mony vs. Union of India and others, 1992(2) SLJ 525 that the various rulings of the Hon'ble Supreme Court and others that 25% and above marks allotted for interview is excessive and vitiates the selection, applies only to direct recruitment and not to promotions. There is nothing to show that the members of the Internal Screening Committee or the Assessment Board had any animus or prejudice against the applicants. The mere fact that they did not have any adverse marks, does not mean that they have a right to promotion.

.7.

First sentence
in para-6 removed
on 19-8-93 in
R.N. No. 89/3
Regd.
corrected copy
issued

6. Though we do not agree that under the Flexible Complementing Scheme there is no promotion involved and therefore, there can be no reservation, yet in view of the clear ruling of the Hon'ble Supreme Court, we cannot find fault with the impugned orders. In the above light, we see no force in the application and dismiss the same without any order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


22.3.93
(S.P. MUKERJI)
VICE CHAIRMAN

njj