

RESERVED

Central Administrative Tribunal Lucknow Bench Lucknow

O.A. NO. 550/2005

This, the 24th day of February, 2010

Hon'ble Mr. Justice A. K. Yog, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)

Raj Kumar Kashyap aged about 44 years, son of Late Kamman Prasad, R/o House No. 19, Type-II, Akanksha, Jankipuram, Lucknow.

Applicant

By Advocate Sri Sandeep Dixit.

Versus

1. Union of India through the Secretary, Ministry of Information and Broad Casting, New Delhi.
2. Director General, Directorate of Field Publicity, Ministry of Information and Broad Casting, New Delhi.
3. Regional Officer, Office of the Joint Director, U.P. (C.E.) Region, Kendriya Bhawan, IIInd Floor, Hall No. 3, Sector-H, Aliganj, Lucknow.
4. Sri Raj Kumar, Lower Division Clerk (Cash), Regional Field Publicity Directorate, Kendriya Bhawan, IIInd Floor, Hall No. 3 Sector H Aliganj, Lucknow.

Respondents

By Advocate Sri Ganga Singh/Sri R. P. Singh.

ORDER

Delivered by Dr. A.K. Mishra, Member (A)

The applicant has challenged the action of the Official Respondents in promoting Respondent No. 4, on the post of UDC (Upper Division Clerk) in the month of March 2004 and then subsequently on the next higher post of Accountant on 5.10.2005 by treating the UDC post as reserved for candidates of scheduled caste category. He seeks quashing of the order dated 17.3.2004 (it should be 16.3.2004) by which respondent No. 4 was promoted as

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UDC and the order dated 5.10.2005 by which he was promoted on the post of Accountant and further for a direction to the official respondents to consider his case for promotion on these posts.

2. At the time of hearing, the sole point which was canvassed by the learned counsel for the applicant was that the promotional posts of UDC and Accountant were solitary posts in their respective cadres and could not have been reserved. According to rule, LDCs belonging to a Region of the Field Publicity Organization having 8 years of experience would be eligible for promotion on the post of UDC, which is to be filled up 100% by promotion. The respondents have admitted in their counter affidavit that there was only one post each of UDC and Accountant in the UP Region of Field Publicity Organization. The undisputed fact is that the applicant was senior to Respondent No. 4 as LDC. His position in the seniority list issued on 16.10.2001 was at Serial No. 3, whereas the name of the respondent No. 4, who admittedly belongs to SC category, finds place at serial No. 8.

3. Both the counsel for Official Respondents as well as the Private Respondent argued that the post of UDC was reserved for candidates of SC category and the Respondent No. 4, who was found fit was promoted by the competent authority on the recommendation of regular Departmental Promotion Committee (DPC). According to them, this was the 7th vacancy caused since the creation of UP as a separate region during December 1977- January



1998. According to the official roster, the 7th vacancy is reserved for SC candidates. Therefore, there was no irregularity in promoting Respondent No. 4 in supersession of the claims of the applicant on the post of UDC and then subsequently on the next higher post of Accountant.

4. The applicant has rebutted the factual position that it was the 7th vacancy arising since the creation of UP as a separate region. In his application, he has mentioned that 4 promotions namely of Sri D.S. Manral, Sri P.P. Verma, Sri K.C. Chandra, and Sri S.N. Tiwari had preceded before the fifth vacancy was filled up on promoting the respondent No. 4 during March 2004. Therefore, even on facts, the contention of the respondents is not substantiated.

5. The respondents have placed reliance on the Office Memorandum issued by the Department of DOP&T on 2.7.1997 which conveyed the decision taken in line with the law laid down by the Supreme court that the practice of maintaining vacancy-based rosters should be replaced by post-based rosters. It gives detailed instructions as to how the post-based rosters are to be maintained. It does not say that the reservation principle will apply while filling up a solitary post in a cadre, nor does it say about rotating the reservation following roster points as and when vacancies arise from time to time. The issue of applying reservation principle on a single post cadre was considered by the Supreme Court in many cases and held to be unconstitutional. We are mentioning



below some of the rulings of the Supreme Court in a few cases.

(i) Dr. Chandra Paswan Vs. State of Bihar and others (1988) 2 SCC-214. The observations of their Lordship are as follows:

" 9. Another serious infirmity in the argument of the learned counsel for the applicant is that it overlooks the basic principle that if there is only one post in the cadre, there can be no reservation under Article 16 (4) of the Constitution. The whole concept of reservation for application of the 50 point roster is that there are more than one post, and the reservation as laid down by this Court in M.R. Balaji case can be up to 50 per cent. The government cannot, for instances, declare that the post of the Director of Indigenous Medicines shall be reserved for candidates belonging to Scheduled Castes...".

(ii) The Five Member Constitution Bench ruled in the case Postgraduate Institute of Medical Education and Research Vs. Faculty Association and others (1998) 4 SCC-1 that reservation in a single post cadre is not permissible within the constitutional framework. Their observations are as follows:

" 34. In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent percent reservation for the backward classes is not permissible within the constitutional frame work. The decisions of this Court to this effect over the decades have been consistent.

35. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with the device of rotation of roster in a single post cadre is bound to create 100% reservation of such post

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whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that, on some occasions there will be complete reservation and the appointment to such post is kept out of bounds to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society".

(iii) In the case of S.R. Murthy Vs. State of Karnataka and others (1999) 8 SCC 176, applying the ratio of the judgment of the constitution bench in the case of Postgraduate Institute of Medical Education and Research (Supra), the Apex Court ruled that the application of roster for the purpose of promotion in respect of the single post was not permissible.

(iv) In the case of R.S. Garg Vs. State of U.P. and others (2006) 6 SCC 430, the Supreme Court held that in the event of any conflict between the percentage of reservation and the roster, it is the former which would prevail and if the reservation exceeds, the percentage fixed by the state for a particular category by applying roster point system, then the roster is to be made inapplicable. Their observations are as follows:

"40. We are not concerned with the reasonableness or otherwise of the percentage of reservation. 21 % of the posts have been reserved for the Scheduled Tribe (sic Caste) candidates by the State itself. It, thus, cannot exceed the quota. It is not disputed that in the event of any conflict between the percentage of reservation and the roster, the former shall prevail. Thus, in the peculiar facts and circumstances of this case, the roster to fill up the posts by reserved

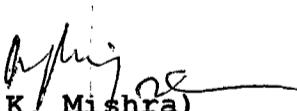
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category candidates, after every four posts, in our considered opinion, does not meet the constitutional requirements."

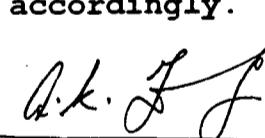
6. In view of the law laid down by the Supreme Court and the fact that a solitary UDC post was available in the UP Region, we find that it could not have been reserved for S.C. category. Therefore, the action of the official respondents in promoting respondent No. 4 on the post of UDC treating it as reserved for SC candidate and then subsequently promoting him to the next higher post of Accountant can not be sustained in the eyes of law.

7. In the result, this application succeeds. The orders dated 16.3.2004 and 5.10.2005 of the respondent authorities in promoting respondent No. 4 on the post of UDC and Accountant are hereby quashed. The competent authority is directed to consider the case of the applicant along with others for promotion to these posts and treating them to be unreserved.

8. The application is disposed of accordingly. No costs.


(Dr. A. K. Mishra)

Member (A)


(Justice A.K. Yog)
Member (J)

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