

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: ---

Transfer Application No: 188/87

DATE OF DECISION 30.4.93

Vithal s/o. Zingaraji Deshmukh Petitioner

Applicant in person.

Advocate for the Petitioners

Versus

U.O.I. & Ors.

Respondent

Mr.Ravi Shetty for Mr.R.K.Shetty

Advocate for the Respondent(s)

CORAM:

The Hon'ble Ms.Usha Savara, Member(A)

The Hon'ble Shri V.D.Deshmukh, Member(J)

1. Whether Reporters of local papers may be allowed to see *Y* the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

J
60.

U. Savara
(USHA SAVARA)

M

NS/

(18)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Tr.188/87

Vithal s/o.Zingaraji Deshmukh .. Applicant
V/s.

1. The Union of India
through
The Secretary,
Ministry of Home Affairs,
New Delhi.
2. Secretary,
Ministry of Defence,
New Delhi.
3. Engineer-in-Chief,
New Delhi
4. The Chief Engineer,
Southern Command,
Pune. .. Respondents

Coram: Hon'ble Ms.Usha Savara, Member(A)

Hon'ble Mr.V.D.Deshmukh, Member(J)

Appearances:

1. Applicant in person.
2. Mr.Ravi Shetty
for Mr.R.K.Shetty
Counsel for the Respondents.

JUDGMENT: (Per Usha Savara, Member(A))

Date: 30.4.73

This Writ Petition was filed in the High Court at Bombay and numbered as 2708 of '79. In view of Section 29(1) of the Administrative Tribunals Act,85, it has been transferred to the Tribunal and listed as TR 188/87.

2. The applicant who belongs to the general category had been appointed by the respondents as L.D.C. in Garrison Engineer Project,Pulgaon by order dt. 28-10-1963.

He has challenged the promotion order dtd. 12.10.79 by which the respondents promoted LDCs to the post of U.D.Cs. He challenges the promotions of the scheduled castes and scheduled tribes - in particular on the ground of discrimination, and on the ground that the quota fixed by the Govt. for reservation had been exceeded. It is the applicant's case that as per Annexure-D the respondent No.1 had reserved $12\frac{1}{2}\%$ for S.C. and 5% for S.T. But, while making the promotion orders, the reservation has been increased to 15% for S.C. and $7\frac{1}{2}\%$ for S.T. The reservation in promotional post is also in violation of clause 1 to Article 16 of the Constitution which ensures equality of opportunity to all citizen in matters, relating to employment to any office under the State. Though clause (4) of the said Article confers powers on the State to make reservations in the matter of appointment in favour of SC/ST and other backward classes, such power cannot be exercised so as to deny reasonable opportunity of promotion to members of other community. It is also the applicant's case that the reservation is only meant for recruitment only and not that there will be reservation even at the time of promotion. Several juniors of the applicant have become senior to him, thereby violating the principles of Article 14 & 16 of the Constitution.

3. Reply has been filed on behalf of the respondents. Admittedly the vacancies in the post of U.D.C. are filled up by 100% promotion from Lower Division Clerks as per recruitment rules. Promotion orders in respect of 70 L.D.Cs

including SC/ST personnel were issued on 12-10-79. The reservation of 15% for S.C. and 7½% for S.T. is to be made in the matter of promotion made on the basis of seniority subject to fitness. This is in accordance with Cabinet Secretariat office Memo dated 27-11-72. There is no contravention of the Constitutional principles nor has ~~any~~ ^{any} injustice been done to any candidates. Shri Ravi Shetty learned counsel for the respondents relied upon the latest judgment of the Hon'ble Supreme Court in the case of Mandal Commission.

4. We have heard the learned counsel and perused the documents as well as the judgment referred to above. There is no doubt that the Hon'ble Supreme Court has held that reservations in employment in favour of backward classes are not intended either to be indiscriminate or permanent. The moment the State comes to the conclusion that the backward classes are adequately represented in the services, this class would cease to be a beneficiary. But the Hon'ble Supreme Court held that further promotions must be governed by common rules applicable to all employees of the respective grades, "as Article 16(4) does not permit provision for reservations in the matter of promotions. But this rule shall have only prospective operation, and shall not affect the promotions already made. It is further directed that wherever reservations are already provided in the matter of promotion- be it central services, or state services, such

(21)

- : 4 :-

reservations may continue in operation for a period of 5 years from this day.*

5. In view of the above, we are of the opinion that there is no merit in the application and accordingly it is dismissed but with no order as to costs.



(V.D.DESHMUKH)
Member(J)


(USHA SAVARA) 30.4.93
Member(A)

M