

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 560/87

~~XXXXXX~~

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DATE OF DECISION

9-7-1991

Shri Vasant Dnyandeo Salunke, Petitioner

Mr. G. K. Masand Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Mr. V. S. Masurkar Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. U.C. SRIVASTAVA, Vice-Chairman

The Hon'ble Mr. M.Y. PRIOLKAR, Member(A)

1. Whether Reporters of local papers may be allowed to see 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 ?

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

ORIGINAL APPLICATION NO:560/87

SHRI VASANT DNYANDEO SALUNKE,  
Residing at Ashirwad Society,  
Vikas Mandal Samrat Ashok Nagar,  
Behind Barrack No.1081,  
Ulhasnagar-3.

.... Applicant

Vs.

Union of India  
and others

.... Respondents

CORAM : Hon'ble Shri U.C.Srivastava, Vice-Chairman  
Hon'ble Shri M.Y.Priolkar, Member (A)

Appearance:

Mr.G.K.Masand, Adv,  
for the applicant

Mr.V.S.Masurkar, Adv,  
for the Respondents

JUDGMENT

DATED: 9-7-1991

(PER : U.C.SRIVASTAVA, Vice-Chairman)

The applicant <sup>who</sup> is working as a Lower Division Clerk in the Office of the Director of Supplies (Textiles) at Bombay since 8.1.1979 after Graduation in <sup>now</sup> ~~Hours~~ from Pune University, has approached this Tribunal praying to issue an order directing the Respondents to promote the Applicant to the post of U.D.C. in the Scale of 1200-2040, in the Office of Respondent No.3 i.e. The Director of Supplies (Textiles) Bombay with effect from July, 1986 when the results of the Limited Departmental Competitive Examination were notified and issued. The applicant in that Competitive Examination has secured 283 out of 300 marks,

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but instead of him one Mr.A.S.Bhalerao, who secured 107 marks out of 300 marks has been subsequently appointed on the ground that he was a member of Scheduled Casts Community. The said Bhalerao is not required to be impleaded as party as his application for impleadment has already been rejected by this Tribunal on the ground that he was not a necessary party to the same.

2. The limited Departmental Competitive Examination for Lower Division Clerks for promotion to the grade of U.D.C. to the extent of 12½% was held on 8-9th February 1986. This examination was for direct recruits of Lower Division Clerks grade for the promotion to the grade of Upper Division Clerk. Those L.D.Cs who had completed 3 years of service in the grade on 1.10.1985 were eligible to appear in the said examination. According to the applicant, he did not know that the one post assigned to this office was meant for members of Scheduled Caste Community, and the same also was not mentioned in the notification. The notification dated 4th November 1985 provided for the rules for selection. The selection was to be made from six Regional Offices, out of which one was in New Delhi, One at Calcutta, Three at Bombay and One at Jamshedpur. In the notification same it was mentioned that it was competitive examination and not qualifying examination. Instruction No.7 of the same provided that on the result of the examination separate lists of successful candidates

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arranged in order of merit for each regional office from among the staff of that office will be prepared wherefrom the candidates will be offered appointment subject to the number of available vacancies, out of which reservation will be made for members of the Scheduled Castes and Scheduled Tribes as would be necessary under the orders of the Government from time to time.

3. - The applicant got first rank in his office, but the applicant was not promoted and coming to learn that respondent No.3 was contemplating to promote one Shri A.S.Bhalerao belonging to the Scheduled Caste Community, he made representation and mentioned therein that in the result declared, the name of Shri Bhalerao did not appear at all, And that it was only a competitive examination and was not qualifying examination. And that there was no reservation quota for the post of UDC against Limited Departmental Competitive Examination quota, and in accordance with the percentage of reservation in which 10 out of 45 posts of UDC would be promoted against quota meant for SC/ST candidates however, 12 posts were held by the members of this community which was more than quota prescribed for them, and thus their quota was full. It was also brought to the notice of the respondent, that one person had filed an application and interim orders had been passed by this Tribunal i.e. in the case of Transfer Application No.280/1986 (T.V.Warrier and ors V.Union of India and ors) and that if Mr.Bhalerao is promoted it will be contempt of Court.

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The applicant subsequently prayed that he may be promoted to the post of UDC, as he obtained maximum marks in the said Competitive Examination. But he was not promoted and the said Mr. Bhalerao received promotion order 2.7.1987 and retrospective effect was given to the promotion with effect from 24.6.1987. Thereafter the applicant filed contempt application before this Tribunal. On 13.8.1987 the learned counsel for the respondents in respect of said Bhalerao, stated that Mr. Bhalerao has been reverted, no order for promotion of applicant was issued and that is why the applicant approached this Tribunal with the relief mentioned above.

4. In the written reply on behalf of the respondents No.1,2, and 3 it has been stated that the applicant's name was sent from the Bombay Office, and he had appeared on 25th July 1986. No candidate belonging to SC/ST qualified in the same and a letter was sent on 25.7.1986 stating that the question of age relaxation and minimum qualifying standard was under consideration. And that the Director General had the powers to relax the minimum qualifying marks in case of SC/ST employees. And in the exercise of that power, the Bhalerao was declared qualified on 24.6.1987. It is further stated that 3 persons have already been promoted in General Category and Shri Bhalerao has been promoted as fourth person against carry forward post since 1984 and even then the promotion is subject to outcome of the J.C. Malik's case pending in the Supreme Court of India.

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Out of these 45 post 41 posts were filled on the basis of competitive examination and reservation policy is applicable to that quota also. A limited Department Competitive Examination was held in 1983, there was no SC/ST candidate who passed in the examination and the post was carried forward from 1984 to 1986. In 1986 no SC/ST candidate could qualify and as such in terms of the relaxation provided in the Ministry of Home Affairs Order No.O.M.36021/10/76-Estt (SCT) dated 21.1.1987, Mr. Bhalerao was declared passed on 24.6.1987. It has also been stated that the contempt application has now been decided. The said Bhalerao was reverted to his substantive post of LDC vide Office order dated 12.8.1987 and the promotion order was kept in abeyance vide corrigendum dated 13.8.1987.

5. NOW O.M. dated 21.1.1977 on which relaxation has been placed reads as under:

" The undersigned is directed to refer to this Department's Office Memorandum No.8/12/69-Estt(SCT), dated 23rd December, 1970 in which it has been provided that in promotion made through departmental competitive examinations and in departmental confirmation examination, if sufficient number of Scheduled Casts/Scheduled Tribe candidates are not available on the basis of the General standard to fill the vacancies reserved for them, candidates belonging to these communities who have not acquired the general qualifying standard should also be considered for promotion/confirmation provided they are ;

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not found unfit for such promotion/confirmation. A question has been raised whether relaxation in qualifying standards should be granted to Scheduled Casts and Scheduled Tribes candidates, on the same basis, in promotions on the basis of seniority subject to fitness, where fitness is decided on the basis of qualifying examination. The matter has been carefully considered and it has not been decided that in promotions made on the basis of seniority subject to fitness in which there is reservation for Scheduled Casts and Scheduled Tribes in accordance with this Departments Office Memorandum No. 27/2/71-Estt(SCT), dated the 27th November, 1972 and where a qualifying examination is held to determine the fitness of candidates for such promotion, suitable relaxation in the qualifying standards in such examinations should be made in the case of ST/ST candidates. The extent of relaxation should however, be decided on each occasion whenever such examination is held taking into account all relevant factors including(i) the number of vacancies reserved, (ii) the performance of SC/ST candidates as well as general candidates in that examination, (iii) the minimum standard of fitness for appointment to the post, and also(v) the overall strength of the cadre and that of the Scheduled casts and Scheduled Tribes in that cadre.

2. The Ministry of Finance etc, are requested to bring the above decision to the notice of all authorities concerned.

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The said notification indicates that the promotion is to be made on the basis of seniority subject to fitness, and makes reference to the earlier notification dated 27th November 1972 that qualifying examination be held to determine the fitness of candidates for such promotion. Relaxation in the qualifying standard should be made in the case of ST/ST candidates. The relaxation should <sup>be</sup> decided on each occasion taking into account all the relevant factors like carry forward number of vacancies reserved, performance of the ST/SC as well as General candidates in the examination, and the minimum standard of the fitness for appointment to the post, over all strength of the cadre and that of the Scheduled Castes and Scheduled Tribes in that cadre. Surprising to say that this notification has been completely violated. As a matter of fact it was a Departmental Competitive Examination for the posts on merits, but was not a promotion subject to seniority -cum-fitness, and there was no qualifying examination. It was not a case of qualifying examination for the purpose of promotion, as a matter of fact it was a competition examination. So far as the qualifying marks are concerned, from the documents and from the written statement filed, it has been nowhere stated that at any point of time it was decided as to what should be taken to be qualifying marks. So far as this



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examination is concerned, now it is also to be noticed that it was nowhere notified that any post, or a number of posts were reserved for SC community except that it was provided that the Government orders in this behalf were to be applied. May it be that it is not from the direct quota but from the competitive examination promotion quota, that quota was full and rather was more than full and Government order provides consideration of over all the strength of the cadre. But it appears that over all strength of the cadre was not considered. The documents filed before us indicate that the position amongst the Five SC candidates, the position of Mr. Bhalerao was number five and nothing has been said about the position at No.4, viz Mr.N.H.Khandara. Before the Tribunal a statement was given that on 12.8. 1987 Mr.Bhalerao has been reverted but, it was not brought to the notice, that subsequently, on the next date, corrigendum was issued, that the post is kept in abeyance. Obviously, that is a wide margin between marks of the applicant and marks of Mr.Bhalerao. It appears that, deliberately it has not been indicated as to what was the qualifying minimum marks or relaxation. So far as the qualifying marks are concerned it has not been mentioned. No notification or no order has been produced before us which may indicate that if any more cadre posts are reserved for promotion and few posts are for direct recruitment, in case the quota of SC community is full, even then post from direct quota reservation will also be made available from the direct quota. It may be that the post was carried over from

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the previous year but even then if, there was no suitable candidate, the post should ~~have~~ have been carried over for another year. The examination has taken place in the year 1986 and Mr.Bhalerao after the appointment was again reverted as there was no occasion for appointing him with reference to the applicant. Admittedly, the applicant had topped in the examination and it has not been stated as how the other candidates of the General community had been appointed. Apparently, the applicant has been wrongly deprived of his promotional post. As such, we direct that the applicant shall be appointed by the respondents against this promotional post expeditiously say within a month, but however we make it clear in view of the fact, that if Mr.Bhalerao has already been promoted, he may be allowed to continue in the next cadre post and the post kept for adjustment, if necessary in future. There is no order as to costs.

  
(M.Y.PRIOLKAR)  
Member(A)

  
(U.C.SRIVASTAVA)  
Vice-Chairman