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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: O.A. No.179/88

Transfer Application No:

DATE OF DECISION

25-11-93

N. Balakrishnan & ors. Petitioner

Mr. S. Natarajan Advocate for the Petitioners

Versus

U.O.I. Respondent

Mr. R K Shetty Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M Y Priolkar, Member(A)

The Hon'ble Shri Mrs. Lakshmi Swaminathan, M(J)

1. whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *yes*
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? *No*

Lakshmi Swaminathan
Member (J)

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(8)

IN THE CENTRAL ADMINISTRATIVE TRBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
BOMBAY 400001

OA NO. 179/88

N Balakrishnan & ors.

APLICANTS

V/S

UNION OF INDIA & ORS.

RESPONDENTS

CORAM: Hon. Shri M Y Priolkar, Member(A)
Hon. Mrs. Lakshmi Swaminathn, Member (J)

APPEARANCE:

Mr. S Natarajan
counsel for applicant

Mr. R K Shetty
counsel for respondents

JUDGMENT:
(Per:Lakshmi Swaminathan,Member[J])

DATED: 28th Nov. 1983

The applicants are working as Economic Investigators in the office of the Textile Commissioner, Bombay. Being aggrieved by the inclusion of a junior person viz., Shri R B Patel, a Scheduled Tribe candidate, in the panel for selection to the promotional post of Assistant Director Gr.II for the year 1987 they have filed this application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicants have challenged the validity of the carry forward rule in the DPO&AR's OM dated 3.2.1975 by which the earlier OM dated 20.7.1974 has been modified. The OM dated 20.7.1974 provides for reservations at 15% for Scheduled Castes and $7\frac{1}{2}$ for Scheduled Tribes in promotions made by selection from Class III to Class II, within Class II and from Class

II to the lowest rung of Class I in which the element of direct recruitment does not exceed 50%. According to para 2(V) of the 1974 OM, in such promotions there will be no carry forward of reservations from year to year in the event of an adequate number of SC/ST candidates not being available in any particular year. The question as to whether any exception should be made in this regard in respect of cases where a vacancy falling on a reserved point in the roster is treated as unreserved due to the fact that there is only one vacancy in the year of promotion, had been considered by the Government. It was decided vide Dept. of Personnel & A.R. OM dated 3.2.1975 that in partial modification of para 2(V) of the OM dated 20.7.1974, in the case of promotions to which the orders in the said OM apply, when a vacancy falling on a reserved point in the roster is treated as unreserved due to its being the only vacancy during the year of promotion, the reservation so due against the reserved point should be carried forward to the subsequent three recruitment years.

3. According to the applicants, the two vacant posts of Assistant Director Gr.II under consideration in this case did not fall in the reserved quota point in the 40 point roster required to be maintained by the Department. Admittedly, when the post of Assistant Director Gr.II fell vacant in 1981, there was no ST candidate available as none had been recruited then. The learned counsel for the applicants has, therefore, submitted that according to the OM dated 20.7.1974 as modified by OM dated 3.2.1975, the question of carry forward of the vacancy arises only if there is a SC/ST candidate actually available within the zone of consideration at the time when the single vacancy arose viz., in 1981. Another argument advanced on behalf of applicants was that since paragraph 2(V) of the OM dated 20.7.1974 did not provide for any carry forward of reserved posts from year to year in the event of an adequate number of SC/ST candidates not being available in any particular year, where there was more than one

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vacancy, it would lead to an anomalous situation, if as in the present case, a single point vacancy is to be carried forward for a period of three recruitment years as provided in the OM dated 3.2.75. They have also relied on the judgments of the Supreme Court in ARATI RAY CHOWDHURY V. UNION OF INDIA & ORS. AIR 1974 SC 532 and DR. CHAKRADHAR PASWAN V. STATE OF BIHAR AND ORS. 1988 SCC(L&S) 516 to support their plea that where there is only one post in the cadre, there can be no reservation in favour of SCs/STs.

4. The learned counsel for the respondents has urged that under the relevant OMs referred to above, the argument that there can be no carry forward of the reserved vacancy in case SC/ST candidate is not available will go against the long established and accepted reservation policy of the Government. The respondents in their reply have stated that the vacancy which arose in 1981 in the post of Assistant Director Gr.II was a reserved vacancy meant for a Scheduled Tribe person. Therefore, as per the aforesaid rules/OMs the same had been treated as unreserved and the single post vacancy had to be carried forward to three subsequent 'recruitment years' after which it could be processed for de-reservation. The vacancy which arose in 1983 had also been filled by a general candidate due to non availability of any ST candidate and the vacancy had, therefore, to be carried forward to two subsequent 'recruitment years'. Thereafter, there was no recruitment till 1987, in which year against the two vacant posts, the Departmental Promotion Committee which met on 9.7.1987 had to consider the only ST candidate available i.e., Shri R B Patel who was working as Economic Investigator since 10.2.82. The eligibility criteria for consideration for promotion from Economic Investigators was five years service in that post. The respondents, therefore, contend that the inclusion of Shri Patel in the panel has been rightly done in accordance with the rules/instructions, against the

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backlog of the vacancy belonging to the reserved category for ST which had been carried forward right from the year 1981. Since the vacancy arising in 1987 was within the carry forward period of three 'recruitment years', the reservation of one of the posts in favour of a Scheduled Tribe candidate was in order.

5. The Supreme Court has upheld the validity of the carry forward rule where there was only vacancy in the particular year of recruitment in ARATI RAY CHOUDHURY's case (supra). In this case the Court held:

"The model roster accompanying the letter of the Railway Board dated January 16, 1964 is designed to meet the requirements of the new situation arising out of the rules framed in deference to the judgment in Devadasan's case (1964) 4 SCR 680. Both the letter and the Note appended to the roster state expressly that if "there are only two vacancies to be filled on a particular occasion, not more than one may be treated as reserved and if there be only one vacancy, it should be treated as unreserved". The words "on a particular occasion" were substituted on September 2, 1964 by the words "year of recruitment". Thus, in the first place each year of recruitment is directed to be considered separately and by itself as laid down in Devadasan's case so that if there are only two vacancies to be filled in a particular year of recruitment, not more than one vacancy can be treated as reserved. Secondly, and that is directly relevant for our purpose, if there be only one vacancy to be filled in a given year of recruitment, it has to be treated as unreserved irrespective of whether it occurs in the model roster at a reserved point. The appointment then is not open to the charge that the reservation exceeds 50% for, if the very first vacancy in the first year of recruitment is in practice treated as a reserved vacancy, the system may be open to the objection that the reservation

not only exceeds 50% but is in fact cent per cent. But, if "on this account" that is to say if on account of the requirement that the first vacancy must in practice be treated as unreserved even if it occurs in the model roster at a reserved point, "a reserved point is treated as unreserved" the reservation can be carried forward to not more than two subsequent years of recruitment. Thus, if two vacancies occur, say, within an initial span of three years, the first vacancy has to be treated as an unreserved vacancy and the second as reserved.

"... The first point in this roster is a reserved point and therefore the Adra vacancy was strictly a reserved vacancy. But there being only one vacancy in the particular year of recruitment, it had to be treated as unreserved and therefore, the appointment went to Smt. Biswas, an open, not a reserved candidate. This, however, had to be compensated for by carrying forward the reservation, though not over more than two subsequent recruitment years. For the purposes of Services under the Railway administration 'recruitment year' means the 'financial year' and the Adra appointment having been made in the financial year 1966-67, it was permissible to carry forward the reservation till the close of the financial year 1968-69. There was no vacancy in 1967-68. The vacancy in the post of the Headmistress of the Kharagpur school occurred in the financial year 1968-69 by the retirement of Smt. Bina Devi with effect from December 31, 1968. This vacancy, indubitably, had to be treated as a reserved vacancy and since from amongst the 4 Assistant Mistresses, respondent no. 8 was the only candidate belonging to the scheduled

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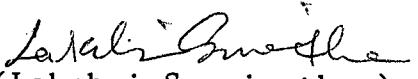
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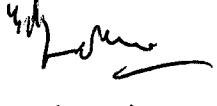
caste, she was entitled to be considered for selection to the post of the Headmistress, to the exclusion of the other 3. The claims, if any, of the petitioner who is not a reserved candidate have to be postponed, though in the normal course it may be quite some years before she gets her turn. The Adra Headmistress and respondent no.8 would seem to have a long tenure in their respective offices."(emphasis added)

6. The Supreme Court in DR. CHAKRADHAR PASWAN's case held that where there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at any stage or for filling up any future vacancy in respect of that post and distinguished ARATI RAY CHOUDHURY's case on the facts.

7. The facts in the case before us are on all fours with the facts in ARATI RAY CHOUDHURY's case. Therefore, following the decision of the Supreme Court in this case, we find that the respondents have rightly treated one of the two vacant posts arising in the year 1987 in the cadre of Assistant Director Gr.II as a reserved vacancy, which post has been carried forward from the year 1981. Against this vacancy the DPC could consider Shri R B Patel, who had become eligible for consideration to the promotional post on 10.2.1987. The other argument that in the case of a single vacancy which fell on a reserved point it can be carried forward only if there was a SC/ST candidate available at that time does not appear to be valid, as this would be obviously against the letter and spirit of the carry forward rule given in the OM dated 3.2.1975. Accordingly, the claim of the applicants, who are not in the reserved category, to be considered for promotion against one of the two reserved posts falling vacant in 1987 is rejected.

8. The application is dismissed. There shall be no order as to costs.


(Lakshmi Swaminathan)
Member (J)


(M Y Priolkar)
Member (A)