

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 225/89

Transfer Application No:

DATE OF DECISION: 12-4-94

Shri C. S. Gupta

Petitioner

Shri G. S. Walia

Advocate for the Petitioners

Versus

D B - Return after

Complaint Union of India & 4 Others Respondent

Shri A. I. Bhatkar

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M. R. Kolhatkar, Member (A)

The Hon'ble ~~xxx~~ Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

*JS
12/4*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

(12)

O.A.225/89.

Shri C.S. Gupta.

.. Applicant.

V/s.

Union of India & 4 Others.

.. Respondents.

Coram : Hon'ble Shri M.R. Kolhatkar, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

Appearances:

1. Shri G.S. Walia, Counsel for the Applicant.
2. Shri A.I. Bhatkar, Counsel for the Respondents.

JUDGMENT :

Dated : 12-4-94

¶ Per : Hon'ble Shri M.R. Kolhatkar, Member (A) ¶

The applicant was appointed as Hindi Typist on the scale Rs.260-400 w.e.f. 4.3.1986 to 31.5.1986 by Respondent No.1 vide exhibit 'A' Dated 14.3.1986. The order specifically stated : " The appointment is purely on ad hoc basis for a period mentioned above or till the candidate recommended by ^{Commissioner} Staff Selection/ is appointed whichever is earlier. His services are liable for termination without notice". The ad hoc appointment was extended from time to time. The last such extension was given by office order Dated 18.6.1987 which specified the date of termination ^{as} 30.6.1987 vide Exhibit 'C' collectively at P.19. The impugned order is Dated 8.8.1988 vide Exhibit 'D' which read as below :-

"I am directed to say that you were offered the post of Hindi Typist in AIIPMR Bombay on a purely ad hoc basis for a period not exceeding 90 days at a time against ~~vacancy~~ for SC. pending filling of the same by suitable SC candidate post can now been filled by a scheduled caste candidate. It is therefore stated that the decision of the Director AIIPMR, Bombay is correct."

2. The Applicant has sought the relief of reinstatement with full back wages and consequential benefits. He has taken several grounds for seeking the relief but the main and relevant ground which was ~~ended~~ ^{old} by way of amendment of the O.A. remitted on 27.7.1989 is that the Applicant belongs to General Community and the post in question has been wrongly filled up by ~~an~~ S.C. candidate by wrong application of reservation policy. There is only one post and according to rules, the same cannot be reserved as it will amount to violation of Art. 14, ~~15~~ and 16 of the Constitution. It is contended that Applicant has a right to continue in the post and of being considered for the post. He relies on ratio of Paswan's case and also Aarti Chaudhari's case.

3. The Respondents have resisted the claim of the Applicant. According to them, the appointment of the Applicant was purely ~~ad~~ hoc and he knew about the nature of the same. The post, having been filled on a regular basis through Staff Selection Commission, Applicant has no case. They have produced a copy of letter Dated 13.5.1985 which conveys the sanction of President for two posts of Hindi Typists with the Respondent No.1. Hence question of ~~isolated~~ post being reserved does not arise. Hence the ratio of Hon'ble Supreme Court in Paswan's case does not apply.

4. Coming to the case of Chakradhar ~~v. Paswan v. State of Bihar & Ors~~ 1988 SCC(L&S) 516, that was a case in which it was held that 50 point roster for reservation ~~actually~~ ^{ies} applies in relation to a cadre and that if there is only one post in the cadre there can be no reservation with reference to that post either for recruitment at the initial stage or for filling up a future vacancy in respect of that post. A reservation which would come under Article 16(4), presupposes the availability of at least more than one post in that cadre.

5. There is no dispute that the post of Hindi Typist constituted a cadre in the Institution in question. Since it is pointed out by the respondents that there are two posts Chakradhari Paswan's case does not apply.

6. When there are two posts in a cadre how to implement 50 point roster was examined in the case of ARATI RAY CHOWDHURY V. UNION OF INDIA & ORS. 1974 SCC(L&S), 73. Chandrachud J, as he then was, speaking for himself and four other judges of the Supreme Court pointed out 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, if there is 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 percent. But, if "on this account", that is to say, if on account of the requirement of 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.

7. The applicant has not brought to our notice any circumstances which indicates that action by the department was in violation of the principles laid down in ARATI RAY CHOWDHURY's case. What is clear is that there was a reserved vacancy which was held by the applicant on ad hoc basis and which he was required to vacate after the Institution made recruitment as per rules. Even assuming which that there was an unreserved vacancy to the applicant say a could/claim he should do so only as a candidate regularly selected through Staff Selection Commission. As an ad hoc appointee against the reserved vacancy any he had no claim to be considered for the position. In the result the application cannot succeed and we dispose of the application by passing the following order.

ORDER

Application dismissed. No order as to costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

M.R.Kolhatkar
(M.R.Kolhatkar)
Member (A)