

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 680/89
 XXXXX

198

DATE OF DECISION 17.6.1991

Miss. Rahel Sunitra Gaikwad Petitioner

XXXX Dr. Kulkarni Advocate for the Petitioner(s)

Versus

Dy. Director, C.G.H.S., Respondent

Shri R.K. Shetty. 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?


 (U.C. SRIVASTAVA)
 VICE-CHAIRMAN.

(3)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Original Application No. 680/89

Miss Rahel Sunitra Gaikwad. ... Applicant.
V/s.

Deputy Director
Central Government Health Scheme ... Respondent.

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

Appearance:

Applicant by Dr. Kulkarni.

Respondent by Shri R.K. Shetty.

Oral Judgement

Dated: 17.6.91

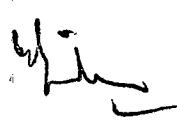
(Per Shri U.C. Srivastava, Vice Chairman)

The applicant was appointed as Staff Nurse under Central Government Health Scheme by the order dated 28th April, 1989. The post was a temporary post and the appointment was made after her name was sponsored by the Employment Exchange. The respondents requested the Employment Exchange to send the name of one Nurse for one temporary post which is likely to be continued. The age for reserved candidates was mentioned within 20-35 and for un-reserved 20 -30 relaxable in suitable cases and vide letter dt dated 6.2.1989 the requisition was sent for a staff nurse to the Employment Officer and under the letter it was mentioned that a suitable candidate who fulfills the required qualification as mentioned in the requisition may be sponsored to this office on 16.2.1989 and if candidates of reserved categories are not available candidates from general category may be sent and in case no suitable candidates are available a non-availability certificate to that effect may please be issued to this office. This indicate that the

post was available in the month of February, 1989 and the process of appointment had already started prior to April, 1989 and there was no clear cut demand for member of Schedule Caste community and it was not also mentioned that the post is reserved for SC community and it appears that the name of the applicant was sent and she was found fully qualified and that is why she was appointed. She joined her duties on 10.5.1989. On 10.5.1989 she was served with an Office Order wherein it was stated that she will be on a probation for a period of two years from the date of her appointment. However vide order dated 25th August 1989 her services were terminated.

2. The respondents in their written statement have stated that they have appointed a SC candidate in place of the applicant and they have also stated that the services of the applicant were terminated as per the directions of the Department of Personnel & Training vide Memorandum dated 26th May, 1989 which was received in the office on 20th July 1989. The memorandum has put a ban on 1.6.1989 on dereservation of post even if a suitable candidate was not available from the reserved category. The Ministry of Personnel & Training on 19.6.1989 directed the office to fill up the backlog vacancy reserved for SC/ST, by 31st August, 1989 and that is why a member of SC community was appointed. As indicated earlier there was only one post, so far as one post is concerned it is not reserved. It has not been indicated in the counter affidavit that this is a post for member of SC community, but it was being carried over from year to year. However, the appointment process had already been started in the month of February, 1989 as the vacancy existed before the Government of India 's order dated 1.4.1989 came into existence, subsequent to the start of appointment process. The O.M. dated 28th April, 1989 states that,

where sufficient number of candidates belonging to SC/ST are not available, the vacancy reserved for them shall not be filled by candidates not belonging to the community. In other words, there will be a ban on de-reservation, this will come into effect from 1.4.1989. It is further clarified that this ban will apply not only to vacancies which arise after 1.4.1989 but also vacancies reserved for SC/ST community earlier which have not yet been filled up by other community cannot be de-reserved. As has been indicated earlier there is no averment in the written statement that this vacancy belongs to Member of the SC community and was being carried over from year to year and in the absence of any such reservation, obviously the services of the applicant should not have been terminated. In case another vacancy has arisen thereafter it should have been given to a member of SC/ST community and the appointment could not have been made by change of a person who has already been appointed in the service without there being any deficiency whatsoever at the time of appointment that the sword of Democles is standing over him/her head and her services can be terminated in case even thereafter a member of SC community is available. The termination order of the applicant is obviously bad. Accordingly, the application is allowed and the termination order of the applicant is quashed. However, it is being made clear that our order should not be treated to mean that another member of SC community who has been appointed should be thrown out from service but the applicant shall be also accommodated immediately by finding a post for her. No order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(U.C. SRIVASTAVA)
VICE CHAIRMAN