

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE THIRTEETH DAY OF SEPTEMBER
1986

Present : Hon'ble Justice K.S. Puttaswamy, ... Vice-Chairman

Hon'ble Shri P. Srinivasan ... Member(A)

Application No. 1535/86 (T)

B.K. Hutchaiiah,
S/o Kalaiah,
W.C. Grade No.I
(P&T Civil Circle),
Bangalore-1.

... Applicant

(Shri V. Lakshminarayana .. Advocate)

vs.

The Director General
C.S.E. Section P&T Dte.,
Sanchar Bhavan,
New Delhi - 110 001.

The Superintendent Engineer,
P&T Circle,
No.9, Pushkar Bhavan,
Infantry Road,
Bangalore-560 001.

Smt. S.Nalina,
O/O Executive Engineer,
P&T Electrical Division,
S.C. Road,
Bangalore - 560 009.

... Respondents

(Shri D.V. Shailendra Kumar .. Advocate)

The application came up for hearing before Court on
17th September, 1986, Hon'ble Member (A) made the following:

ORDER

In this application received on transfer from the High
Court of Karnataka, the question for determination is as to
whether the rules governing the reservation of posts to Scheduled
Castes and Scheduled Tribes have been correctly implemented.

In the original petition as filed before the High Court, there
were two petitioners but learned counsel for the applicant,
Shri V. Lakshminarayana confined the application to the second
petitioner therein who has become the applicant before us.

P. S. Srinivasan

According to the applicant who belongs to a Scheduled Caste, Respondents 1 and 2 have not implemented the reservation policy correctly and as a result he has been denied a promotion due to him. Shri Lakshminarayana, learned counsel for the applicant and Shri D.V. Shailendra Kumar, learned counsel for the respondents have been heard.

2. The applicant is working as Works Clerk (WC) Grade I in the office of the second respondents, viz., the Superintending Engineer, P&T Civil Circle, Bangalore. In the channel of promotion, a WC Grade I can become a Selection Grade Works Clerk (SGWC) Grade I and from that post he can be promoted as Head Clerk (HC). Prior to 1976, a WC Grade I could be promoted to the post of HC. In 1976, Selection Grade posts of WC Grade I were created for the first time by the Director General (Posts and Telegraphs) (DG, P&T for short). The selection grade posts were to carry a higher responsibility than that of WC Grade I and were to be utilised for supervisory or supervisory cum clerical work at the discretion of the competent authority. It was further clarified in 1977, again by the DG (P&T), that the senior most SGWC Grade I would be appointed as HC. Therefore, after 1976 the position was, as stated earlier, that only a person working as SGWC Grade I could become HC and not a person working as WC Grade I. The original rules of recruitment were modified to this extent from 1977 onwards.

3. We pause here to consider whether the amendment to the rules of recruitment referred to above was a valid one. It is not clear whether it was made under Article 309 of the Constitution. Assuming that the post of SGWC Grade I was created only by an administrative order by the DG (P&T) and interposed in the channel of promotion between WC Grade I and HC, can it be said

P. J. G. 52

to be valid? We may, in this connection, refer to the ruling of the Supreme Court in Union of India v. K.P. Joseph in 1973 SCC (L&S) 133 at page 135 -

"Generally speaking, an administrative Order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in Sant Ram Sharma v. State of Rajasthan and another, that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service."

Applying this dictum here, we find that when the post of SGWC Grade I was created in 1976, it immediately produced a gap in the rules as to where this new cadre should be fixed in the hierarchy of posts. This gap was sought to be filled in by an administrative order to the effect that promotion to the newly created grade would be from WC Grade I and the newly created grade itself would become a feeder for the post of HC. Therefore, on the assumption that the promotional channel was changed by an administrative order it would have to be upheld as filling up a gap in the rules or as a supplement to the rules which was in no way inconsistent with the rules already framed.

4. In February 1983 or thereabout, a vacancy arose of a SGWC Grade I due to the promotion of an incumbent of that post to the post of HC. In the roster maintained for ensuring proper representation of Scheduled Castes and Scheduled Tribes candidates in the promotional post of SGWC Grade I, the post which fell vacant

P. S. V.

occurred at point 4 which was reserved for a Scheduled Tribe candidate, the earlier three points having been already filled up in accordance with the roster. No Scheduled Tribe candidate was available in the feeder grade of WC Grade I. Initially the applicant was promoted as a SCWC Grade I in that vacancy on the assumption that a Scheduled Tribe vacancy could be given to a Scheduled Caste candidate in the absence of a Scheduled Tribe candidate. Later the Department obtained clarification from the Commissioner of Scheduled Castes and Scheduled Tribes to the effect that the Scheduled Tribe vacancy having occurred for the first time it should be carried forward to three subsequent recruitment years and only if no Scheduled Tribe candidate was available in any of the three years could the vacancy be thrown open to a Scheduled Caste candidate and not earlier. In the light of this clarification, the filling up of the said vacancy which was a Scheduled Tribe vacancy by the applicant who belonged to a Scheduled Caste was found to be irregular. The applicant was duly reverted and respondent 3, the senior most WC Grade I who was a non Scheduled Caste/Scheduled Tribe candidate was promoted to that post on an ad hoc basis. Proposals were duly sent for getting the vacancy dereserved and to regularise the promotion of respondent 3. That proposal is said to be still pending. Thereafter in February 1984 a post of HC fell vacant. Respondent 3 who was working as a SCWC Grade I was again promoted in that vacancy as a HC on ad hoc basis.

5. The applicant's grievance is that he should have been promoted as SCWC Grade I in February 1983, and to the post of HC in February 1984 instead of respondent 3. This claim is based on the contention that the post of SCWC Grade I which occurred at point 4 in the roster was reserved for a Scheduled Tribe candidate and in the absence of a Scheduled Tribe candidate it should have been converted onto a Scheduled Caste vacancy and offered to the applicant.

P. S. Go

Respondents 1 and 2, in their reply, have stated that a Scheduled Tribe vacancy is not to be converted into a Scheduled Caste vacancy immediately when it arises. The rules on the subject provide that such a vacancy should be carried forward for three recruitment years after the year in which it occurs and if no Scheduled Tribe candidate is available in any of those three years and only then could it be converted into a Scheduled Caste vacancy. Therefore, the vacancy in question here having arisen for the first time it could not be converted into a Scheduled Caste vacancy straightway and offered to the applicant. The procedure in such a case was to get it reserved and offer it to the seniormost person in the feeder grade while carrying forward the vacancy to the next three recruitment years and this was exactly what was done.

6. We have perused the rules on the subject and we find that the correct position is as contended by respondents 1 and 2. The post of SGWC Grade I to which the applicant lays claim represented a Scheduled Tribe vacancy which occurred for the first time in 1983. It could not straightway have been changed into a Scheduled Caste vacancy. It ^{had} to be carried forward to three successive recruitment years and could be converted only in the last of the three years if no Scheduled Tribe candidate was still available. The action of the respondents in not agreeing to convert the post into a Scheduled Caste vacancy was, therefore, in order.

7. As we have mentioned earlier, after 1977 only persons working as SGWC Grade I could be promoted as HC. When the post of HC fell vacant in February 1984 the applicant was not working as SGWC Grade I and was, therefore, not eligible to be promoted as HC. His claim for promotion as HC in 1984 has also to be rejected.

P. L. K.

8. A point has been raised in the application as to whether the ad hoc appointment of a non Scheduled Tribe candidate before obtaining approval for dereservation of the post was proper. We are not concerned with this question here because what we are required to decide here is whether the applicant had a rightful claim to promotion which had been wrongly denied to him. If the procedure adopted for filling up the post is irregular but that irregularity was not the cause for the applicant's claim to the post being denied, we do not think it necessary to give any opinion thereon. It is for the authorities concerned to go into this. As we have already said, the applicant can have no claim to the post of SCWC Grade I or to that of HC for entirely different reasons.

9. In the result the application is dismissed. Parties will bear their own costs.

Ms. Inuacay
VICE CHAIRMAN
20/9/86

P. J.
MEMBER
20/9/86

bey