

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 9TH DAY OF FEBRUARY, 1989.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And

Hon'ble Mr. P. Srinivasan,

.. Member(A).

APPLICATION NUMBERS 2025 AND 2037 OF 1988

R. Gopi,
S/o P. Raghavan,
Aged about 32 years,
Workshop Attendant,
Vocational Rehabilitation Centre
for Handicapped, No. 22, Hosur Road,
Bangalore-560 029.

.. Applicant.

(By Sri M. Raghavendrachar, Advocate)

v.

1. Superintendent,
Government of India,
Ministry of Labour (DGE&T),
Vocational Rehabilitation Centre
for Handicapped, No. 22, Hosur Road,
Bangalore-560 029.

2. The Secretary,
Ministry of Labour,
Director General of Employment
and Training, No. 2A/3, Kundan Mansion,
Asaf Ali Road, NEW DELHI-2.

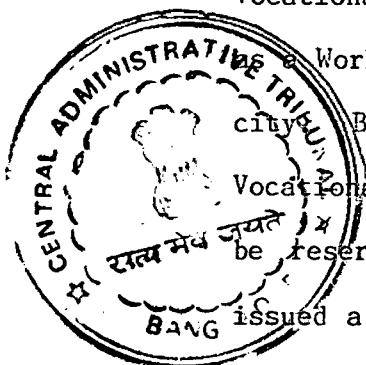
.. Respondents.

(By Sri M. Vasudeva Rao, Standing Counsel)

These applications having come up for hearing this day, Hon'ble Member(A) made the following:

ORDER

The applicant in both these applications joined service in the Vocational Rehabilitation Centre for Handicapped ('VRC') at Bangalore as a Workshop Attendant in 1980 and he is still working in that capacity. By a notification dated 14-11-1987 VRC advertised a post of Vocational Instructor ('VI') (General Mechanic) which was stated to be reserved for Scheduled Tribe category. Again on 12-3-1988 VRC issued a notification calling for applications for the post of Vocational Instructor (Metal), this time reserved for Scheduled Caste



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Category.

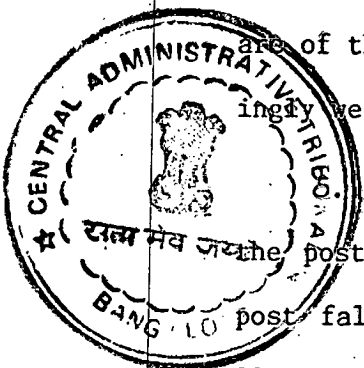
We are told that there are 13 posts of Vocational Instructors in VRC under various disciplines. The applicant's grievance is that the reservation of vacancy of VI (General Mechanic) for a ST candidate and the vacancy of VI (Metal) for a SC candidate were illegal. He prays that both these notifications be quashed so that he, being a person belonging to one of the other communities could apply for these posts.

2. When the matter came up for hearing Sri M.Raghavendra Achar, learned counsel for the applicant, submitted that the post of VI in each discipline constituted a separate post for the purposes of reservation. Even though there are 13 posts of VIs they are in different disciplines and for applying ^H the reservation, the number of posts in each discipline should be taken separately. If that was done, there was only one post of VI (General Mechanic) and one post of VI (Metal). Where there is only one post in a cadre, there can be no reservation.

3. Sri M.Vasudeva Rao, learned Standing Counsel appearing for the respondents, submits that all posts of VIs, to whatever discipline they may relate have to be considered as one cadre. Since, there were 13 posts of VIs the respondents were right in making reservations for SC and ST candidates.

4. We are inclined to agree with Sri Rao that the posts of VIs irrespective of the discipline, should be taken as one unit for applying the Rules regarding reservation. All the posts of VIs carry the same pay scale with same status and being in one institution, we are of the view that all the posts must be taken ^{as one} into unit and accordingly we uphold the stand of the respondents in this regard.

At this point the serial number in the 40 point roster of the posts advertised was checked up and it was found that the first post falls at Sl.No.14 and the second at Sl.No.15. Sl.No.14 is a SC point and the advertisement for one of the posts of VIs stated



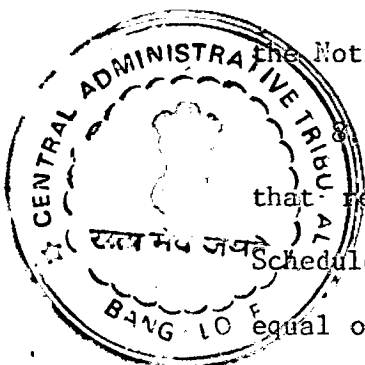
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that it was reserved for SC category. In view of this, the applicant can have no grievance against the notification dated 12-3-1988 by which the post of VI (Metal) was declared to be reserved for a SC candidate. We, therefore, reject the applicant's contention challenging the validity of the notification dated 12-3-1988.

6. Sri Achar next contends that the reservation of the post of VI (General Mechanic) for a ST category in the notification dated 14-11-1987 was illegal. According to the respondents this was a carried forward vacancy. The first recruitment to the posts of VI was made in 1982. 9 posts were filled up in that year. Sl.No.4 in the 40 point roster is a ST vacancy. But no person belonging to a ST was appointed in 1982. In 1983, 1984, 1986 and 1987 one post each of VI was filled up. The instructions on the subject allow carry forward of a reserved vacancy to 3 calendar years in which recruitment is made succeeding the year in which the vacancy arises. Here, the vacancy arose first in 1982. Recruitments were made in the calendar years 1983, 1984, 1986 and 1987 and no ST candidate was appointed in those years. What the respondents were trying to do were, therefore, to carry forward the reserved vacancy to the 5 succeeding calendar years in which recruitment had to be made. This was not permissible in terms of para 11.1 in Chapter II at page 185 of the Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Services (Seventh Edition) ('Brochure').

7. Sri Rao defended the action of the respondents and submitted that the post of ST was rightly carried forward and advertised in the Notification dated 14-11-1987.

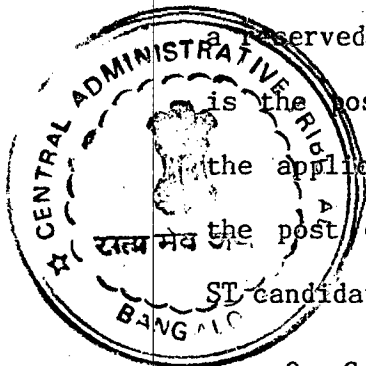
8. We have considered the matter carefully. It may be mentioned that reservation of posts in Government for Scheduled Castes and Scheduled Tribes is an exception to the normal rule of equality and equal opportunity to all citizens for Government service. The exception is written into the Constitution in Article 16(4). Since this



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is an exception to the normal rule, it is settled law that it has to be interpreted strictly. Reservations for Scheduled Castes and Scheduled Tribes is not embodied in any Rules framed under Article 309 of the Constitution or in any statute. They are governed by executive instructions issued by the Government from time to time. Where rules do not exist, conditions of service can be regulated by executive orders which can be treated as Rules for this purpose. We have to see what the Rules are and apply them strictly when they relate to an exception. As pointed out by Sri Achar, out of the 9 posts of VIs which were filled up in 1982 the post at Sl.No.4 should have gone to a ST candidate. If no candidate was available, it could be ^{carried} forwarded to the next three recruitment years meaning the calendar years in which recruitment is made. The next recruitment year in this case was 1983 followed by 1984 and 1986. Thus, 1983, 1984 and 1986 represent three successive recruitment years after the year in which a ST vacancy arose and was not filled up by a ST candidate. Para 11.1 of the Brochure allows a reserved vacancy which cannot be filled up by a candidate of the reserved category to be filled by a general category candidate and the reservation to be carried forward "to subsequent three recruitment years". We are not concerned with the exception in that paragraph. As we have mentioned, since the reservation itself is an exception to the normal rule, we cannot extend the reservation beyond the period _____

for which it is allowed by the Rules. Thus, carrying forward of a reserved vacancy cannot be allowed beyond three years. Since this is the position, we have no choice but to accept the contention of the applicant and quash the notification dated 14-11-1987 by which the post of VI (General Mechanic) is stated to be reserved for a ST candidate.



9. Sri Achar challenged the notification dated 14-11-1987 on another ground also. There was only one post advertised in the notification. Under the Rules in force where only one vacancy arises

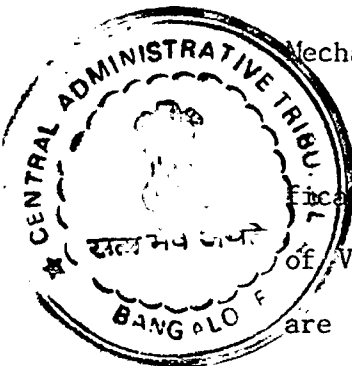
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in a particular year, ⁰¹ and even if that vacancy relates to reserved ^M post in the 40 point roster, it has to be treated as open to all candidates and the reservation carried forward to the subsequent year. Sri Achar referred in this connection to the Note below Appendix-I at page 310 of the Brochure. That being so, since there was only one vacancy of VI advertised in the notification dated 14-11-1987 it should not have been treated as reserved for a ST candidate ^{if even} if it occurred ^{at M} on the ST point in the 40 point roster. Actually this was the 14th vacancy that arose and as such even in the normal course not an ST point.

10. Sri Rao submitted that the post of VI (General Mechanic) was not the only post in the Department. There were 13 posts of VIs and so the question of not treating the post advertised as a ST post did not arise.

11. Having considered the rival contentions, we are inclined to agree with Sri Achar. The note beneath Appendix-I at page 310 of the Brochure referred to by Sri Achar is very clear in its import. It does say that where only one vacancy arises, even if it ^{M is} a reserved vacancy, it has to be treated as unreserved carrying forward the reservation to the subsequent year. Sri Achar is right when he says that the post advertised in the order dated 14-11-187 falls at No.15 of the 40 point roster and does not therefore constitute a ST point. For this reason also we have no option but to quash the notification dated 14-11-1987 in so far as it treats the post of VI (General Mechanic) as a post reserved for ST candidate.

12. In the view we have taken above, we quash the impugned notification dated 14-11-1987 to the extent that it describes the post of VI (General Mechanic) as a post reserved for ST. The respondents are directed to issue a fresh notification throwing open the post



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of VI (General Mechanic) to all communities.

13. Applications are disposed of in the above terms leaving

the parties to bear their own costs.



Sd/-

VICE-CHAIRMAN.

9/2/89

Sd/-

MEMBER(A)

9/2/89

TRUE COPY

[Signature]
DEPUTY REGISTRAR (JDL)

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