

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

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O.A. NO: 176/91

199

T.A. NO: -----

DATE OF DECISION 31-12-1991

Shri S.U.Thakur

Petitioner

Mr.G.S.Walia

Advocate for the Petitioners

Versus

Union of India and three others.

Respondent

Mr.R.K.Shetty

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice 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 ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

MD

*u/p*  
(M.Y. PRIOLKAR)

mbm\*

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O.A.176/91

S.U.Thakur,  
C/o.Shri G.S.Walia,  
Advocate High Court,  
Office No.65, 1st Floor,  
Prabhat Centre,  
Near Fire Stn.,  
Near Kokan Bhavan,  
New Bombay - 400 614.

.. Applicant

vs.

1. Union of India  
through  
Director General of  
Employment & Training,  
Shramshakti Bhavan,  
Rafi Marg,  
New Delhi - 110 001.
2. Director,  
Advance Training Institute,  
V.M.Purav Marg, Sion,  
Bombay - 400 022.
3. M R.M.Bhagwane,  
Assistant Store Keeper/  
Tool Store In charge,  
Advance Training Institute,  
V.M.Purav Marg, Sion,  
Bombay - 400 022.
4. D.M.Somkumar,  
Director,  
Advance Training Institute,  
V.M.Purav Marg, Sion,  
Bombay - 400 022.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,  
Vice-Chairman

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

Appearances:

1. Mr.G.S.Walia  
Advocate for the  
Applicant.
2. Mr.R.K.Shetty  
Advocate for the  
Respondents.

JUDGMENT:

(Per M.Y.Priolkar, Member(A))

Date: 31-12-1991.

The applicant in this case is employed  
as a Lower Division Clerk in the Advanced Training  
Institute, Sion, Bombay. The next promotion post is  
Assistant Store Keeper/Tools Store in-charge, which

is to be filled up by promotion failing which by other methods. One Rajeshkumar Mangwana was appointed to that post on compassionate grounds on 16-7-1986 and the applicant along with another employee had challenged Shri Mangwana's appointment by filing O.A.No.432 of 1988. The Tribunal by its order dtd. 22-1-1990 set aside Mangwana's appointment and directed the respondents to consider the applicant along with other eligible candidates in accordance with rules. An SLP filed by Shri Mangwana against the Tribunal's judgment was dismissed by the Supreme Court. Subsequently the respondents filled up the said post by appointing one Shri R.M.Bhagwane (Respondent No.3) on 7-6-1990 treating it as reserved for Scheduled Caste.

2. The grievance of the applicant now is that this appointment of Shri Bhagwane has not been made in accordance with the rules as directed in the Tribunal's judgment and order dtd. 22-1-1990. According to the applicant, there being only two posts of Assistant Store Keeper/Tools Store in-charge, none of the posts can be reserved for scheduled caste, as even if one post is reserved, it would exceed the prescribed 15% reservation for them. Secondly, it is contended on behalf of the applicant, that since Shri Mangwana's appointment to this post was set aside by the Tribunal, only those persons who were eligible for promotion to the said post on 6-5-1987, i.e. the date when the DPC had met, should have been considered, and Respondent No.3, being eligible for promotion only on 21-6-1987 should not have been considered at all. The reliefs prayed for in this application are for a direction to the respondents to convene a fresh DPC only for considering candidates eligible for promotion as on

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6-5-1987 and that respondent No.4 against whom the applicant has alleged malafides, should not sit as a member of that D.P.C.

3. The respondents have submitted in their written reply that this application is liable to be dismissed on grounds of principles analogous to the principle of Res-Judicata, since the present applicant was also one of the applicants in the earlier O.A. No.432 of 1988 and Contempt Petition No.21 of 1990, in which substantially the same issues were raised and decided against the applicant, It is however, seen that in the earlier proceedings, the respondents had not raised the plea that the post in question was reserved for Scheduled Caste candidates. The Tribunal's order in the earlier case was to consider the present applicant along with other candidates who would be eligible according to rules. While the respondents' decision not to consider the applicant on the ground that the post is reserved for scheduled castes will not constitute contempt of the Tribunal's order as already held by the Tribunal, the applicant's submissions that the selection was not done in accordance with the rules, as directed by the Tribunal, would deserve consideration.

4. In support of his contention that there can be no reservation when there are only two posts, the learned counsel for the applicant cited the Supreme Court decision in the case of Dr.Chakradhar Paswan v. State of Bihar and others(AIR 1988 SC 959). It is observed in this judgment that the basic principle is that if there is only one post in the cadre, there can be no reservation under Article 16(4) of the Constitution and that the reservation as laid

down by the Supreme Court in M.R.Balaji's case (AIR 1963 SC 649) can be upto 50%. This judgment is, therefore, of no assistance to the applicant in the present case since, admittedly, there are two posts in this cadre. The Learned Counsel also relied on the judgment dated 27-5-1991 of a Full Bench of this Tribunal in the case of P.S.Grewal v. Union of India and others (1991(2)ATJ 270) in which it is held that when there is only a single vacancy available for the year under consideration, the principle of reservation cannot be invoked and that post has to be treated as unreserved. It is observed by the Full Bench that in the case of Smt/Rati Roy Choudhury v. Union of India(1974 SCC (L&S) 73), the Supreme Court has held that "when in a particular year a single vacancy arises, it cannot be filled by a reserved category candidate and it has to be treated as unreserved and filled accordingly, and the reservation carried forward to subsequent three recruitment years." The contention of the applicant in the present case is that the question of carrying forward of vacancy does not arise in this case as the vacancy earlier had been occupied by one Shri R.B.Bansode, who also belongs to Scheduled Caste. The respondents on the other hand, have stated that Shri R.B.Bansode was appointed as a direct recruit under the then prevailing rules and his name has, therefore, been reflected in the direct recruitment roster, while in the promotional roster for the post of Assistant Store Keeper the first point in the roster has been given to a general candidate Shri B.R.Patil and, therefore, the second vacancy is a carry forward S.C.vacancy and it is to be filled up only by a Scheduled Caste candidate. Shri Bansode had vacated the post on 5-8-1986 consequent on his promotion.

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The recruitment rules for the posts were amended in 1984 when the direct recruitment to the post ceased and, therefore, the direct recruitment roster became non-operational. The respondents have opened the promotion roster for the post from 1984 as required under the rules.


5. After going into the rival contentions, we do not find justification for the applicant's grievance that <sup>The</sup> post in question should not have been treated as reserved for scheduled castes. It is not the applicant's case that there is only one post in the cadre or that it is going to be so with the impugned order dated 7-6-1990. There is no evidence of malafides or of the documents being fabricated as alleged by the applicant. In our view, since there are two posts in the cadre, the vacancy has been rightly treated by the respondents as a carried forward vacancy for the scheduled castes in the circumstances explained by them in their written reply as briefly narrated above. The applicant's prayer for treating this vacancy as unreserved is therefore rejected.

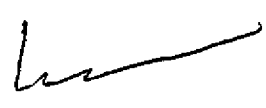
6. The other main contention of the applicant is that by quashing the appointment order of Shri Mangwana, the Tribunal in fact relegated the position of the post in question to the original date of vacancy when Shri Mangwana was appointed, namely 16-5-1987. Therefore, it is argued that only those persons who were eligible on the date when the D.P.C. was conducted, i.e. on 6-5-1987 should have been considered for promotion to the said post. It is alleged that Respondent No.3 was not eligible to be considered and promoted on 6-5-1987 as he had not completed the required period of service on the

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date when the DPC was held. Admittedly, however, respondent No.3 became eligible to be promoted on 21-6-1987. But there are administrative instructions under which it is permissible to consider in a D.F.C. meeting candidates who would be fulfilling shortly thereafter the eligibility conditions but promote such candidates prospectively only after they have done so. In any case, the ineligibility of respondent No.3 in 1986 is purely academic, since the D.F.C. meeting was held on 17-4-1990 and he was actually promoted from 7-6-1990. It is not, therefore, possible for us to accept the applicant's contention that the impugned promotion order dated 7-6-1990 is illegal and should, therefore, be quashed and set aside.

7. On the basis of the foregoing discussion, we do not think that this is a fit case for interference by this Tribunal. The application is, accordingly, dismissed as devoid of merit with no order as to costs.

  
(M.Y. PRIOLKAR)  
Member(A)

  
(U.C. SRIVASTAVA)  
Vice-Chairman

MD