

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 34/92.

Date of Decision: 20.08.1997.

Madhukar Krishna Keni,

Applicant.

Shri S. R. Atre,

Advocate for  
Applicant.

Versus

Union Of India & Others,

Respondent(s)

Shri S.S. Karkera for Shri P.M.  
Pradhan,

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. B. S. Hegde, Member (J).

Hon'ble Shri. P. P. Srivastava, Member (A).

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other benches of the Tribunal?

  
(B. S. HEGDE)  
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 34/92.

Dated this Wednesday, the 20th day of August, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).  
HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Madhukar Krishna Keni  
Inspector Of Central Excise,  
Bombay-II Collectorate,  
7th Floor, Piramal Chambers,  
Parel, Lalbaug,  
BOMBAY - 400 012.

... Applicant

(By Advocate Shri S.R. Atre).

VERSUS

1. Addl. Collector Of Central Excise,  
Personnel & Vigilance,  
Bombay-II.
2. Collector,  
Central Excise,  
Bombay - II.
3. Addl. Collector Of Central Excise,  
Personnel & Vigilance, Bombay-I.
4. Collector Of Central Excise,  
Bombay-I.
5. Union Of India,  
Ministry Of Finance,  
Department of Revenue,  
New Delhi.

... Respondents.

(By Advocate Shri S.S. Karkera for  
Shri P. M. Pradhan).

: ORAL ORDER :

PER.: SHRI B. S. HEGDE, MEMBER (J)

Heard Shri S. R. Atre for the applicant and  
Shri S. S. Karkera for Shri P. M. Pradhan, Counsel for the  
respondents.

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2. The applicant belongs to O.B.C. and he has married a Scheduled Tribe women. The Counsel for the applicant draws our attention to the circular issued by the Government Of Maharashtra on 27.01.1970, wherein it is stated that - "a doubt has been raised whether a non-scheduled caste person would be eligible to the concessions granted under Government Resolution, Labour and Social Welfare Department No. SCW 2258-E dated 12th August, 1958, in respect of marrage between a Harijan and Non-Harijan, as he/she would not be declared as belonging to Scheduled Caste in accordance with the instructions accompanying Government circular dated 15th October, 1975." He further states that the issue relates to the concessions granted to the couple in respect of marriage between a Scheduled Caste person and a non-Scheduled Caste person. Though a person will not be eligible for the caste certificate, he/she will be eligible for the concessions granted under Government Resolution, dated 12th August, 1958.

The Learned Counsel for the applicant has also drawn our attention to the two circulars dated 12.08.1958 and 19.10.1959. In the case of Scheduled Tribe, it is clearly stated that the concession is admissible to a couple (one of whom is a person belonging to the Scheduled Tribes and the other a non-tribal woman) and their progeny. The contention of the Learned Counsel for the applicant is that, since the State Government has granted this concession, why the same should not be extended to the Central Government employees.

3. The respondents have sent their reply to the applicant's representation vide their letter dated Nil/November, 1991, which was communicated to the applicant on 02.12.1991. In their reply, it is stated as follows :

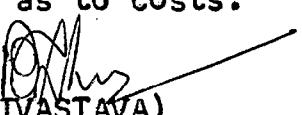
"The orders/circulars quoted by Shri Keni, Inspector, are applicable to Government Of Maharashtra and not to the Central Government Department.

As per Brochure on Reservation for Scheduled Caste and Scheduled Tribe issued by the Department of Personnel & Training, New Delhi incorporating Ministry of Home Affairs circular letter No. 35/1/72-RU (SCTV) dated 02.05.1975, clearly states that no person who was not a Scheduled Caste or Scheduled Tribe by birth will be deemed to be a member of Scheduled Caste or Scheduled Tribe."

Further, it is stated in the O.M. that "the guiding principle is that no person who was not a Scheduled Caste or a Scheduled Tribe by birth will be deemed to be a Member of a Scheduled Caste or a Scheduled Tribe merely because he or she had married a person belonging to a Scheduled Caste or a Scheduled Tribe." In support of his contention, the Learned Counsel for the respondents relied upon the decision of the Supreme Court in Mrs. Valsamma Paul V/s. Cochin University & Others reported at 1996 (1) ATJ 243 wherein the Apex Court has clearly held - "when a member is transplanted into the

Dalits, Tribes and OBC's, he/she must of necessity also undergo same handicaps, be subject to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in backward caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution."

4. In the light of the above, we do not see any merit in the O.A. and the same is dismissed with no order as to costs.

  
(P.P. SRIVASTAVA)  
MEMBER (A).

  
(B. S. HEGDE)  
MEMBER (J).

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