

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 21 SEP 1994

APPLICATION NUMBER: 22 of 1994.

APPLICANTS:

RESPONDENTS:

To. M.C. Leelavathi

v/s. Union of India, M/o. Labour, N Delhi
and four others.

1.

Sri.M.Raghavendra Achar,
Advocate, No.1074 & 1075,
Banashankari First Stage,
Mysore Bank Colony,
Opp:Raghavendra Nursing Home
Main Cross, Sub-Cross No.4,
Bangalore-560050.

2.

Sri.M.Vasudeva Rao, Addl.C.G.S.C.
High Court Bldg, Bangalore-560001.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 05-09-94.

Issued on
21/9/94 B

[Signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: :BANGALORE

ORIGINAL APPLICATION NO.22/94

MONDAY, THE FIFTH DAY OF SEPTEMBER, 1994

Shri V.Ramakrishnan, ..Member (A)

Shri A.N.Vujjanaradhya, ..Member (J)

Between

M.C.Leelavathi,
W/o K.M.Bheemaiah,
Major, Senior Stenographer,
Foreman Training Institute,
Tumkur Road,
Bangalore-560 022.

...Applicant

By Advocate Shri M.R. Achar.

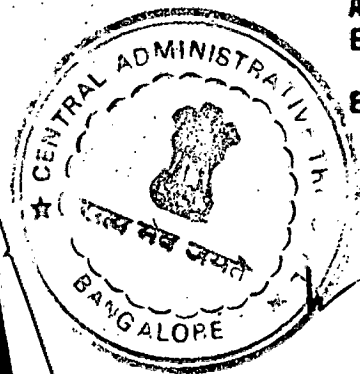
Versus

1. The Union of India,
Ministry of Labour,
New Delhi.
2. The Director General
of Employment and Training,
New Delhi.
3. The Director,
Foreman Training Institute,
Tumkur Road,
Bangalore-560 022.
4. The Director,
Apex Hitech Institute,
Bangalore.
5. Shri T.Ramaiah,
Office Superintendent,
Apex Hitech Institute,
Bangalore.

...Respondents

By Advocate Shri M.Vasudeva Rao, Addnl. C.G.S.C.
for R1 to R4.

.....2/-



O R D E R

Shri A.N.Vujjanaradhya, Member (J)

The applicant is aggrieved by the order of promotion of Respondent No.5 Shri T.Ramaiah and rejection of her representation seeking promotion to the post of Office Superintendent. Her case in brief is as below:

2. The applicant who joined as Stenographer was promoted to the cadre of accountant and then to the cadre of Sr. Grade Stenographer on 02.4.1990 in the pay scale of Rs.1400-2600/-. The next promotion is the Office Superintendent. There are three posts of Office Superintendants in the three Institutions namely Foreman Training Institute, Tumkur Road, Bangalore; Regional Vocational Training Institute, Hossur Road, Bangalore and the Apex Hitech Institute, Bangalore. All these three institutions are considered as one unit for the purpose of recruitment and transfer. The vacancies will be filled up under the Chairmanship of the Director of Foreman Training Institute (FTI for short). The first post of Office Superintendent created and sanctioned at FTI on 01.10.1969 and the second vacancy was created on 07.3.1977 at Regional Vocational Training Institute (RVTI for short) and the third vacancy was created in May, 1991 at Apex Hitech Institute (AHI for short) Bangalore. As per the roster of the broucher issued by the Govt. of India for the purpose of filling ^{up} of posts, the relevant extract of roster being at Annexure A4, if there is only one vacancy in the cadre and in the recruitment year happens to be

~~reservation~~ ^{representation} that should be treated as unreserved and next vacancy should be treated as reserved. The vacancy which ~~has~~ occurred at AHI is the third vacancy as could be seen from Annexure A5. As per roster point second vacancy should be reserved for member of SC/ST. But without de-reservation as per rule, the post of Office Superintendent was filled up by other community candidate and till today the reserved second point had not been de-reserved. The third vacancy which is sought to be reserved to the member of SC is illegal and bad in law and that vacancy cannot be reserved contrary to the roster as per broucher. The applicant is thus denied of her promotion. Her representation in this regard was rejected and R5 was promoted as per Annexure A6 dated 6.8.93. Therefore, the applicant challenges the said promotion and seeks to strike ^{down} the same as illegal and as a consequence thereof direct to consider the promotion of the applicant as Office Superintendent at AHI Bangalore.

3. The respondents opposes the application and plead that though there were 3 posts of Office Superintendents, the one at FTI was in a lower cadre of pay scale of Rs. 425-700 and it was a single vacancy, whereas the other two at RVTI and AHI were in the scale of Rs.550-750 and therefore the first vacancy which was reserved for SC, the one in the scale of Rs.550-750 and not the one in the scale of Rs.425-700 which was a single vacancy. Therefore, they further contend that the first vacancy that had occurred cannot be considered as such and actually the first vacancy was the one which was filled up in RVTI



in 1987 and therefore the vacancy which occurred at AHI was the second vacancy which was to be considered for reserved candidate and not the one in RVTI.

4. The short point that arises for consideration in this application is whether the vacancy of O.S. in FTI was the first vacancy as contended by the learned counsel for the applicant so as to treat the vacancy that occurred in RVTI as second vacancy.

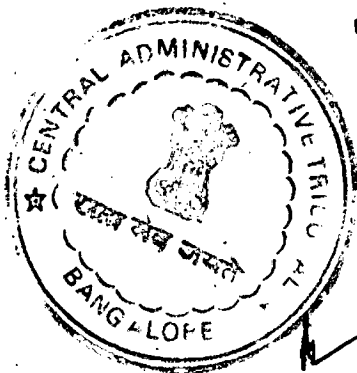
5. We have heard Shri M.R.Achar, the learned counsel for the applicant and Shri M.Vasudeva Rao, the learned Additional Central Government Standing Counsel for R1 to R4 and Shri T.Ramaiah, the 5th respondent, who argued in person. One Sethuraman was promoted as O.S. in FTI on 26.7.1979 in pay scale of Rs.425-700. Another Chandrasekhar was promoted as O.S. in RVTI during the year 1987 in the pay scale of Rs.550-750. 5th respondent Shri T. Ramaiah came to be promoted as O.S. in AHI, which was also of the pay scale of Rs.550-750 in the year 1993. Because the post of O.S. in the FTI was of the cadre carrying pay scale of Rs.425-700, it was a single vacancy and therefore, that vacancy was required to be filled up as if unreserved and accordingly Sethuraman was promoted and appointed as such during the year 1979. The vacancy of O.S. which was filled up in 1987 in the pay scale of Rs.550-750 by promoting one Chandrasekhar in RVTI thus happened to be the first vacancy and though it was reserved for SC candidate, it was treated as unreserved and filled up by unreserved candidate as per note below model roster as at Annexure A4, which reads thus:

"NOTE: If there are only two vacancies to be filled in a particular year, not more than one may be treated as reserved. If there be only one vacancy in a particular year which falls on a reserved point in the roster, it will be treated as unreserved in the first instance and filled accordingly but the reservation should be carried forward to subsequent year(s). In the subsequent year(s) of recruitment the reservation should be applied by treating the vacancy arising in that year as reserved even though there might be only a single vacancy in that subsequent year(s)."

Because of the fact that the post was filled by promoting Sethuraman happened to be of different and lower scale, it could not have been considered as first vacancy that had occurred so as to conclude that the post, which was filled up by promoting Chandrasekhar during 1987 was the second vacancy, which was required to be reserved for SC candidate as per above note.

6. Applicant's grievance is mainly because of the reason that the post to which Sethuraman was promoted was upgraded in view of the direction of this Tribunal in OA 1718/86 dated 4th February, 1987 which application was filled by Shri Sethuraman and wherein a bench of this Tribunal has directed that the applicant be given appropriate pay scale and posting as O.S. with due regard to his seniority in common gradation list of O.S. In pursuance of this direction, the post which Shri Sethuraman was holding, was upgraded on 26.5.1988, the relevant portion reads thus:

"The competent authority hereby allows the upgradation of the post of Office Superintendent Rs.425-700 (pre-revised) to that of 550-750 (pre-revised) in the office of Regional Vocational Training Institute, Bangalore with effect from 3.8.79 to the date Shri Sethuraman holds the charge of the post."



Because of such upgradation, the applicant now contends that Sethuraman was promoted to the first vacancy and second vacancy which was filled by promoting Chandrasekhar ought to have been de-reserved and ought to have been filled by promoting SC candidate and the third vacancy which is now filled by promoting Shri T. Ramaiah is illegal. The contention could have been upheld had it not been for the fact that the post at RVTI was filled up by promoting Chandrasekhar in January, 1987 by which time the post was not upgraded as per the Tribunal's order given on 04.02.1987. Therefore, in the pay scale of Rs.550-750 this post of O.S. in RVTI happened to be the first vacancy which was to be filled up by SC candidate but which was treated as unreserved is quite in accordance with law and cannot be challenged. Therefore, there was no question of de-reserving the said post. When the post of O.S. in RVTI was treated as unreserved the second vacancy which occurred at AHI was required to be treated as reserved and accordingly, it was filled by SC candidate namely R5 Ramaiah. Under the circumstances, the promotion of R5 to the post of O.S. at AHI is quite proper and in accordance with the model roster on which the applicant has relied upon.

7. When the first post of O.S. in FTI came to be upgraded after the Tribunal's order dated 04.02.1987, only then there existed three posts of O.S. of the same grade. But according to the applicant when the second vacancy was filled up, there was no question of de-reserving the same because it happened to be the first vacancy in the pay scale of Rs.550-750 and as such it

was treated as unreserved. Consequently the second vacancy filled up by promoting R5 Ramaiah cannot be faulted. In view of what is stated above, it is clear that the post of O.S. at FTI which was filled up in 1979 was not the first vacancy that has occurred in the same cadre, but it was a single vacancy and therefore, the applicant cannot hope to succeed in this application. Consequently, this application fails and the same is hereby dismissed with no orders as to costs.

Sd —

21/9/94

(A. N. VUJJANARADHYA)
MEMBER (J)



Sd —

(V. RAMAKRISHNAN)
MEMBER (A)

TRUE COPY

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

21/9/94