

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated:- 25 AUG 1994

APPLICATION NUMBER: 640 of 1994.

APPLICANTS:

RESPONDENTS:

Sri. Shankar Chandrashekar Lalsangi v/s. Senior Divisional Personnel Officer, S.C. Railway, Hubli and Other.

1. **Sri. U. Panduranga Nayak, Advocate,
No. 7, Upstairs, Sreerampuram 4th Cross,
Bangalore-560 021.**
2. **Sri. N. S. Prasad, Advocate,
No. 29, Fifth Main,
Gandhinagar, Bangalore-9.**

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 04-08-94.

*Copy issued
on 25/8/94*

S. Shankar
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

as reserved and dealt with, it seems to us that the instant application is totally irrefutable either on fact or on law. Even so, Mr. Prasad, learned Standing Counsel invites our attention to the administrative instructions contained in the brochure^{chure} brought out by the Railway administration from time to time in Chapter-VII. We do not think it necessary to advert to all of them in the light of the authoritative pronouncement of the Supreme Court referred to hereinbefore.

In the result, therefore, this application succeeds and is allowed. We direct the Railway administration to treat the post of Ferro Printer as an unreserved post and deal with the entitlement of the applicant to the said post in accordance with the Rules governing such selection. No order as to costs.



Sol-
MEMBER(A)

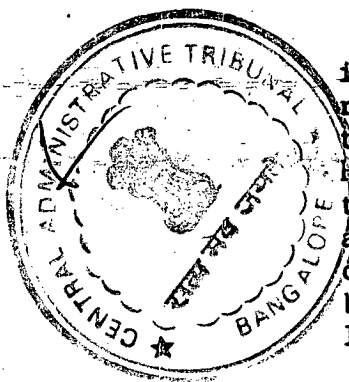
Sol-
✓ VICE-CHAIRMAN.

TRUE COPY

Se Shauhar
SECTION OFFICER 25/8
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

SC 179). We do not think the aspect decided in Arati Ray Choudhury's case has any bearing in the instant case and even otherwise so much is stated in the decision in Dr.Chakradhar Paswan's case supra. After adverting specifically to the decision in Arati Ray Choudhury's case their Lordships have clearly laid down the dicta enumerated in para 16 extracted supra.

From the above it becomes clear that the question herein is an aspect totally distinct from the case arising in the matter of reflecting the carry forward rule affecting the career prospects of a particular employee or employees. We are not here to consider the impact of the carry forward rule. What precisely arises for consideration is whether a single post can be reserved and the answer following the decision of the Supreme Court in Dr.Chakradhar Paswan's case is that such a post cannot be treated as a reserved one. The law in this behalf has even marched further the latest in point being the decision again of the apex court in BHIDE GIRLS EDUCATION SOCIETY v. EDUCATIONAL OFFICER, ZILA PARISHAD, NAGPUR AND OTHERS (1993 Supp.(3) SC 527). There again the decision in Arati Ray Choudhury's case is considered and distinguished. This is what their Lordships have stated in para 6 -



6. In our view, the decision given by this Court in Dr. Chakradhar Paswan case concludes the controversy raised in the case before us. It is admitted position that there is only one post of Headmistress in the High School run by the appellant-society and as such there cannot be any reservation on such post. We accordingly allow this appeal, set aside the judgment of the High Court and quash the communication addressed by respondent-1, the Education Officer - to the appellant-society dated 7-5-1987".

Reiterating once again the dicta in Dr.Chakradhar Paswan's case after taking note of the distinction between the dicta in Arati Ray Choudhury's case and the case on hand the Court making it very clear and obvious that a single post cannot be treated

decisions of the Supreme Court holding that where the post to be filled up is a single one in the category then everybody should be free to fill up the same irrespective of the caste badge subject ofcourse to the person whoever is in contention makes the grade and makes himself acceptable for the administration in other respects being suitably qualified.

It is not denied and that it is nobody's case that the applicant Shankar Chandrashekar Lalsangi was not qualified for the job, on the other hand some of the testimonials produced at Annexure-A4 etc. speak volumes his ability and work as a Ferro Printer. It appears he had been lauded by his superior officers in the administration and as a matter of fact the man has been doing the job of a Ferro Printer since the year 1989. But, for the issuance of the notification under Annexure-A8 confining the zone of selection only to a scheduled caste candidate, he is out of contention for the job.

Mr. N.S.Prasad, learned Standing Counsel appearing for the Railway administration who as usual having very well advised himself to the march of the law in this behalf and being aware of the position that when the post is only one such an isolated category cannot admit of reservation and is liable to be thrown open for every one irrespective of caste or creed, much less being cornered by the reserved category of scheduled caste.

He read to us the decision of the Supreme Court in Dr. CHAKRADHAR PASWAN v. STATE OF BIHAR AND OTHERS (AIR 1988 SC 959) where their Lordships after an extensive consideration of the law that obtained on the topic proceeded to lay down that where there is only one post in the cadre, there was no reservation for that post either for recruitment at the initial stage or for filling up a further vacancy in respect of that post. That



was a case which pertained to the filling of the post of Deputy Director (Homeopathic) and in that context their Lordships laid down that reservation was impermissible and stated -

"No reservation could be made under Article 16(4) so as to create a monopoly. Otherwise, it would render the guarantee of equal opportunity contained in Arts.16(1) and 16(2) wholly meaningless and illusory. If there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at the initial stage or for filling up a future vacancy in respect of that post. A reservation which would come under Art.16(4), pre-supposes the availability of atleast more than one post in that cadre".

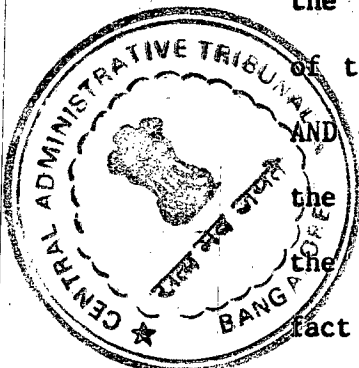
(emphasis supplied)

The aforesaid dicta is more emphatically reflected in para 16 of the judgment which reads -

"16. It is quite clear after the decision in Devadasan's case that no reservation could be made under Article 16(4) so as to create a monopoly. Otherwise, it would render the guarantee of equal opportunity contained in Arts.16(1) and 16(2) wholly meaningless and illusory. These principles unmistakably lead us to the conclusion that if there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at the initial stage or for filling up a future vacancy in respect of that post. A reservation which would come under Art.16(4), pre-supposes the availability of atleast more than one post in that cadre".

(emphasis supplied)

In the light of the decision supra we thought there was no room for any argument that even in regard to a post in an isolated category the reservation formula was attracted and the same can still be reserved. However, Sri Prasad spelling out to the contrary relied in this connection on the earlier decision of the Supreme Court in ARATI RAY CHOUDHURY v. UNION OF INDIA AND OTHERS (AIR 1974 SC 532) which really does not lead us to the proposition advocating something contrary to the dicta of the Court in the later decision cited above. As a matter of fact the said decision actually turned on the question pertaining to the carry forward rule decided in Devadasan's case (AIR 1964



by calling volunteers belonging to 'SC' community or otherwise. The applications from willing Peons/-Lascars/Khalasis attached to Divisional Office may be obtained in the enclosed proforma and forward to this office, so as to reach on or before 10-09-1993 for further necessary action at this end.

The application along with caste certificate duly attested may be forwarded to this office duly indicating whether any SPE/DAR/Vig. cases are pending/-proposed to be initiated against them."

The notification supra makes it very clear that the post itself is reserved for a scheduled caste candidate and therefore invites volunteers belonging to scheduled caste community and qualifies it further by mentioning others can also apply and will merit selection only if the scheduled caste candidate is not available.

We are told that a number of scheduled caste candidates applied to man this post along side the applicant Shankar Chandrashekar Lalsangi who does not belong to that category. It transpires, however, that the applicant Shankar Chandrashekhar Lalsangi has been actually doing the job of a Ferro-Printer right from the year 1989 as could be seen from the testimonials issued by his superior officers at Annexures A4, A5, A6 etc. But, in the light of the notification at Annexure-A8 which virtually bars consideration of his case for appointment to man the post

of Ferro Printer he is naturally and seriously aggrieved by the taboo enjoined under the job notification Annexure-A8 making

it very apparent and clear that at the first step only the scheduled caste candidates would be considered and if none of them qualify for the slot then only a general candidate like the applicant Shankar Chandrashekar Lalsangi can probably hope to aspire for the post. On his behalf it is contended by Shri

U.Panduranga Nayak, learned counsel that the scheme envisaged at Annexure-A8 apart from being wholly unjust is against the



CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE BENCH

ORIGINAL APPLICATION NUMBER 640 OF 1994

THURSDAY, THIS THE 4TH DAY OF AUGUST, 1994.

Mr. Justice P.K. Shyamsundar, .. Vice-Chairman.

Mr. T.V. Ramanan, ... Member(A)

Shankar Chandrashekar Lalsangi,
S/o late Chandrashekar Lalsangi,
Aged about 34 years,
Occ: Ferro Printer,
D.R.M. Works, S.C. Railways,
Hubli.

.. Applicant.

(By Advocate Shri U. Panduranga Naik)

v.

1. Senior Divisional Personnel
Officer, South Central Railways,
Hubli.

2. Sri Dasharath,
Chinna Peddanna,
Peon, BRM Works Office,
Hubli, S.C. Railways.

.. Respondents.

(By Standing Counsel Shri N.S. Prasad, for R1)

ORDER

Mr. Justice P.K. Shyamsundar, Vice-Chairman:-

The short question that arises for consideration here is whether the respondents/railway administration could have treated a single vacancy in the post of Ferro Printer as available for being filled up exclusively by the reserved category viz., the scheduled caste. The facts are these: The post of a Ferro Printer available for being filled up by insiders was notified for appropriate response as per Notification (Annexure-A8) dated 25-8-1993 which runs:



Sub: Filling up of the post of Ferro Printer
- Engineering Department.

It is proposed to fill up one post of Ferro Printer (Reserved for SC) in scale of Rs. 210-290 (RS)/Rs. 800-1150 (RSRP) of Engineering Department