

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
(CAMP: NAGPUR)

Original Application No: 354/93

Transfer Application No:

DATE OF DECISION: 18.7.95

B.S. Gaur

Petitioner

Mr. P.C. Marpakwar

Advocate for the Petitioners

Versus

U.O.I. & 2 ors.

Respondent

Mr. M.G.Bhangade

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

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

1. To be referred to the Reporter or not ? *yes.*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

[Signature]
V.C.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GILESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY -1
CIRCUIT SITTING AT NAGPUR

O.A.NC. 354/93

B.S. Gaur

..Applicant,

V/s.

Union of India & 2 ors.

..Respondents

Coram: Hon. Shri Justice M.S. Deshpande, V.C.
Hon. Shri P.P. Srivastava, Member (A)

Appearance:

Mr. P.C. Marpakwar
counsel for the applicant

Mr. M.G. Bhangade
counsel for the respondents

ORAL JUDGMENT:

DATED: 18.9.95

(Per: M.S. Deshpande, Vice Chairman)

By this application the applicant seeks a direction to the respondents to promote him to the post of Assistant Editor (Publications) in the post reserved for Scheduled Tribe (S.T.) category by quashing and setting aside the order dated 11.2.93 and the order dated 12.4.93 and to promote the applicant with effect from 12.4.93 and not to promote the respondent no.3.

2. The applicant was appointed as Lower Division Clerk on 29.12.70 in the office of the Controller General, Indian Bureau of Mines, Nagpur. He was promoted on 10.5.82 to the post of Upper Division Clerk and later to the post of Junior Technical Assistant (Publications) on 17.8.82. He came to be selected for the post of Senior Technical Assistant (Publication) on 3.6.86.

The next promotional post from the post of Senior Technical Assistant (Publications) is that ^{of} Assistant Editor in the pay scale of Rs. 2000-3500. There are three posts of Assistant Editor and the vacancy which was to occur with effect from 30.12.91 consequent upon the promotion of M.M.Dabri as Editor would be covered by the roster point which is applicable to the S.T. Category to which the applicant belongs. The applicant therefore, brought the present O.A. for a direction to the respondents not to promote the respondent no.3 who belongs to the open category but grant the promotion to the applicant on the basis that he belongs to the S.T. category for which the vacancy would be reserved.

3. The respondents filed their written statements admitting that as per the roster register the vacancy falls at point 4 which is reserved for S.T. category and that the applicant was senior to the other candidates who could be considered and that by letter dated 11.2.93 (Annexure R-1) the single vacancy falling on a reserved point for S.C./S.T. would be treated as unreserved and reservation would be carried forward in accordance with the DOPT OM dt. 4/12/63 and 2/9/65 as a single vacancy in the initial recruitment year falling on a reserved point should be treated as unreserved and the reservation is to be carried forward to three subsequent recruitment years but if in the subsequent recruitment year also there is again a single

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vacancy, it should be reserved against the carry forward reservation, and since this was a single vacancy arising in the year of recruitment it could be dereserved and could be filled by a general candidate and the reservation would be carried forward to three subsequent recruitment years for being filled in by the reserved candidate. The applicant thereafter amended the application challenging the order dated 11.2.93 together with the order dated 12.4.93. The applicant filed a rejoinder urging that the vacancy which occured was not a single vacancy because there are three posts and only one of the vacancies was to be filled. The first post was created on 24.8.59 and thereafter two posts were created on 14.7.72. The manner in which the posts of Assistant Editor came to be filled from 1969 to 1993 was also mentioned in the rejoinder.

4. Though the Id. Counsel for the respondents urged that the vacancy which is the subject matter of this petition was a single vacancy in the initial year of recruitment, it is apparent that there were three posts in existence and that the rules regarding which recruitment came to be amended had bearing only on the question of the mode of recruitment. In para 2 of the additional reply filed by the respondents it is mentioned that the recruitment rules for the post of Assistant Editor in the Indian Bureau of Mines as amended in the year 1985, provided that the posts should

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be filled 50% by promotion and 50% by direct recruitment. These rules were amended in 1991 and in the amended rules the percentage of vacancies for Assistant Editor had been changed and now it is provided that vacancies should be filled in 33-13% by promotion and 66-2/3% by Direct Recruitment. After these rules came into force on 9.3.91 the first vacancy for the post of Assistant Editor arose on 13.12.91 due to the promotion of M M Dabri, Assistant Editor to the post of Editor and this being the first vacancy after the amended recruitment rules came into force, although as per 40 point roster it is reserved for S.T. it has to be treated as unreserved as the first vacancy in the year <sup>and</sup> the first respondent directed the second respondent by letter dated 11.2.93 to treat the vacancy as unreserved and fill it by the general candidate and reservation be carried forward to three subsequent recruitment years for being filled by the reserved candidates.

5. Considering the factual position in the present case it is difficult to accept the contention that the vacancy which arose on 13.12.91 would be the first vacancy. The rules for recruitment may have been amended but the position remains that there are three posts and one of the posts had to be filled up under the amended rules. It cannot be accepted that the vacancy which was covered by the recruitment rules would be the first vacancy or the initial vacancy which shall have to be

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regarded as unreserved because this was not a case of a single post since there were three posts already existing.

6. The position in this respect is clear in view of the observations in para 6 of R.K. SABHARWAL & ORS. Vs. STATE OF PUNJAB AND ORS., (1995)2 SCC 745, where it has been pointed out that the expression 'posts' and 'vacancies', often used in the executive instructions providing for reservations, are rather problematical. The word 'post' means an appointment, job, office or employment. A position to which a person is appointed. 'Vacancy' means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a 'post' in existence to enable the 'vacancy' to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation. The contention, therefore, that there was initial vacancy which must be deemed to be unreserved in the present context cannot be accepted.



7. That, however would not be of much assistance to the applicant here. In INDRA SAWHNEY Vs. UNION OF INDIA & Ors., AIR 1993 SC 477 it was pointed out in para 94(a) page 566 as under:

"... the irresistible conclusion that follows is that the reservations contemplated in clause (4) of Article 16 should not exceed 50%".

At the end of para 96 after giving an illustration <sup>as to</sup> ~~of~~ how the proposition should be applied the Court observed as under:

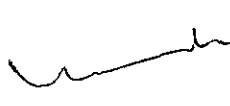
"This may take quite a number of years because the number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by clause(1) is to each individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit, as the case may be."

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This is again emphasised at the end of para 98 by stating that the same position would apply in case of carry forward rule as well and that a year should be taken as the unit or basis, as the case may be, for applying the rule of 50% and not the entire cadre strength.

8. Though we are not impressed by the argument that this was an initial vacancy and therefore the reservation would not be permissible, it is apparent that taking a year as the unit the reservation could be 50% and since there was a single vacancy allotting that vacancy to the reserved category would be against the law laid down by the Supreme Court and this single vacancy which arose on 30.12.91 could not be reserved. Though it is not possible for us to accept the reasoning behind the order dated 11.2.93 and 12.3.93, the decision taken in respect of the present applicant in consonance with the principles laid down by the Supreme Court in the above case and only because some different reasons were given the final order cannot be faulted. The two decisions to which we have made reference had not been rendered when the DOPT OM Dated 4.12.63 and 2.9.65 were issued.

9. It is not disputed that the applicant was considered while filling the vacancy which occurred on 30.12.93 and he was not found suitable according to the





standard applicable to the filling up the vacancy from the open category. The applicant's grievance that he should have been considered on the basis of being a ST candidate because reservation applied and he should have been selected on that basis is not acceptable because that vacancy could not be treated as a vacancy to which reservation was applicable.

10. In the result we see no merit in the petition, it is dismissed. There would be no order as to costs.



(P.P. Srivastava)  
Member(A)



(M.S. Deshpande)  
Vice Chairman