

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

O.A. No. 854/93

Smt. Indira Shridhar Nair ..Applicant

V/s.

1. Union of India & two others. ..Respondents

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

Appearance:

Mr. S.H. Iyer
counsel for the applicant

Mr. M.G. Bhangade
counsel for the respondents nos.1&2

Mr. A.A.Gawai
Respondent no.3 in person

JUDGMENT:
(Per: P.P. Srivastava, Member(A))

DATED: 21.07.1995

The applicant joined service as Junior Technical Assistant (Publication) on 23.6.1987. The next promotional post for the applicant is Senior Technical Assistant (Publication) in the scale Rs.1640-2900. This is a non-selection post and the post is 100% by promotion through Departmental Promotion Committee (DPC) from the cadre of Junior Technical Assistant with five years service in that grade. The applicant is the seniormost Junior Technical Assistant (Publication). One post of Senior Technical Assistant (Publication) fell vacant on 12.4.93. The Respondent No.1 has treated this vacancy reserved for Scheduled Caste (S.C.) on the ground that that was a carried forward vacancy. The applicant represented vide her letter dated 23.4.93 against the resergation of the post in the light of judgment in INDRA SAWHNEY Vs. UNION OF INDIA, AIR 1993 SC 477. The applicant also requested that the vacancy should be treated as

unreserved and filled accordingly. Afterwards the applicant gave many reminders but the representations of the applicant were turned down vide letter dated 13.5.93 stating that the judgment of the Supreme Court cannot be operated unless there are administrative orders. The applicant further submitted an appeal to the Secretary (Mines) on 17.5.93, however, there is no reply to this appeal. The respondents 1 and 2 have thereafter promoted Shri A.A. Gawai, Respondent no.3 treating the post of Senior Technical Assistant (Publication) as reserved post. Shri Gawai is junior to the applicant and belongs to the Scheduled Caste. The order promoting him is dated 7.7.1993, and aggrieved by this order the applicant has preferred this O.A.

2. Counsel for the applicant has argued that there cannot be reservation when there is only one vacancy in a particular recruitment year and the selection is being conducted for one vacancy and this Tribunal has already held this view after considering the Supreme Court decision in INDRA SAWHNEY (supra) case as well as the recent judgment of the Supreme Court in R.K.SABHARWAL & ORS. Vs. STATE OF PUNJAB AND ORS., (1995) 2 SCC 745. Counsel for the applicant has argued that in the case of B.S.GAUR Vs. UNION OF INDIA & Ors., O.A. No.354/93 decided on 18.7.95, this Bench of the Tribunal has held that a single vacancy could not be treated as a vacancy to which reservation can be made applicable.

3. Ld. Counsel for the respondents Mr. M.G. Bhangade has argued that in the absence of any administrative instructions after the decision of the Supreme Court in INDRA SAWHNEY's case the respondents are bound to follow the roster system and according to the present roster system

there is a backlog of one S.C.point. At present the three posts in the cadre are held by one Shri B.S. Gour from 3.6.92 who is Scheduled Tribe candidate and was appointed by direct recruitment; the second post was held by N.U. Kadu who is a general candidate and the present selection has been conducted keeping in view the backlog of S.C. point and the one vacancy has been treated as reserved for Scheduled Caste and Respondent no.3 A.A.Gawai has been promoted on that post on 7.7.93.

4. Respondent no.3 A.A.Gawai has appeared in person and has submitted his arguments. He has argued that his case is covered by para 107 of the judgment of the Supreme Court in INDRA SAWHNEY wherein the Supreme Court has observed that the reservation shall continue in operation for a period of five years from this date i.e., 16.11.1993. He has also relied on the judgment of J.C. MALLIK's case which was decided by the Allahabad High Court and he mentioned that the Allahabad High Court judgment in MALLIK's case does not stipulate that for working out of the representation of the S.C. & S.T. it should be combined together.

5. We have considered the arguments of both sides. We are satisfied that the question being considered in this case is the one which has been already considered by us in O.A.No.354/93 S.G.GAUR Vs. UNION OF INDIA and we have held therein that in terms of the Supreme Court decision in INDRA SAWHNEY's case a single vacancy cannot be treated as a vacancy to which reservation can be made applicable. We, therefore, hold that the promotion of Respondent No.3 vide order No.230 dated 7.7.93 which has been made by treating the single vacancy as reserved for Scheduled Caste is against the law and is liable to be quashed.

6. We quash the Office Order No.230 dated 7.7.93 issued by Respondent No.1 appointing Mr. A.A.Gawai to the post of Senior Technical Assistant. We further direct that the vacancy in the cadre of Senior Technical Assistant may be filled in by keeping it unreserved according to the rules and procedure of selection as applicable to the post. We direct that the candidature of the applicant should be considered for this unreserved post of Senior Technical Assistant (Publication) according to the rules and if found suitable she should be promoted to that post. The selection and the promotion should be completed within a period of two months from the date of receipt of this order. There would be no order as to costs.

(P.P.Srivastava)
Member (A)

(M.S.Deshpande)
Vice Chairman

No. EAT/BOM(N)/1185-1186.

dt: 25.7-95.

Copy to :

- ① Sri M. G. Bhargave Counsel
for Respondents 1 & 2.
- ② Sri A.A. Lawai, R.S.

Applicant served by hand
on 21.3.95.