

(35)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD.

O.A.NO. 326/89

DATE OF JUDGMENT: 28-4-95

BETWEEN:

L. Pramod Kumar : Applicant

and

1. Union of India, rep. by  
Secretary to Govt., Dept. of Home Affairs  
Dept. of Personnel & Admn. Reforms  
New Delhi

2. Secretary to Govt. of India  
Min. of Steel & Mines  
D/o Mines, New Delhi

3. The Director General  
Geological Survey of India  
4, Chouringhee Lane  
Calcutta 7000016

4. The Dy. Director General  
Geological Survey of India  
Southern region, 5-5-449  
Manoranjan Bldg., Mukhramjahi Road  
Hyderabad 500 001 : Respondents

COUNSEL FOR THE APPLICANT: SHRI V. Venkateswara Rao, Advocate

COUNSEL FOR THE RESPONDENTS: SHRI N.R. Devaraj,  
Sr./Addl. CGSC

CORAM:

HON'BLE SHRI JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON'BLE SHRI R. RANGARAJAN, MEMBER (ADMN.)

CONTD.....

O.A.No.326/89.

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Date: 24/4/95

J U D G M E N T

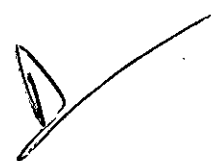
X as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

Heard Sri V.Venkateshwara Rao, learned counsel for the applicant and Sri N.R.Devaraj, learned Standing Counsel for the respondents.

2. This OA is filed praying for a declaration that filling up the posts of Superintendent in the grade of Rs.1600-2660 in the Southern Region, Geological Survey of India, Hyderabad by the candidates belonging to Scheduled Castes/Scheduled Tribes (SCs/STs) in excess of reservation of 22½% in the cadre on the basis of 40-point roster is illegal, arbitrary and unconstitutional and to quash the 40-point roster being violative of Articles 14 & 16 of the Constitution of India by holding that the applicant is entitled for promotion to the post of Superintendent leaving 22½% towards reservation for SCs/STs in the total number of posts in the cadre as and when they arose with all consequential benefits such as seniority, promotion, arrears of salary and allowances etc.

3. An interim order dt. 20.4.1989 has been passed giving a direction that during the pendency of this OA the vacancies available from time to time in regard to filling of the posts of Superintendent in Geological Survey of India, Southern Region, Hyderabad will be filled up

...3/-



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in accordance with 40 point roster system subject to the condition that the posts held by the members of Scheduled Castes and Scheduled Tribes do not exceed 15% and 7½% respectively at any given point of time and that if a person belonging to the SC or ST is promoted on his own merits and not in a reserved vacancy then for the purpose of this interim order such appointment will be excluded while computing the required percentage.

4. The facts which give rise to this OA are stated hereunder:-

(i) The applicant who is an O.C. joined Geological Survey of India (GSI for short) as Lower Division Clerk in January, 1961 and later he was promoted as U.D.C. and Assistant in March, 1974 and June, 1979 respectively. The next higher post on promotion is Superintendent which is a selection post.

(ii) It is stated that the cadre of strength of Superintendent is 15 out of which 12 posts are already filled in the following manner:-

(a)	O.C.	-	8	
(b)	S.C.	-	3	(against 15% quota)
(c)	S.T.	-	1	(against 7½% quota)
(d)	Vacant	-	3	

...4/-



It is further stated ~~by~~ by the applicant that out of the cadre strength of 15 there should be only 2 S.Cs. against the reservation of 15% for them and one S.T. against the reservation of 7½% quota for them. But, actually three posts are held by SCs which is in excess of two posts and the quota of S.T. is filled as they are occupying one post in that cadre.

(iii) The applicant relies on the Judgment of Allahabad High Court in J.C.Mallik's case reported in [ 1978(1) SLR 844 ] wherein it was held that the quota of 15% & 7½% are only in the posts but not in the vacancies and hence the promotion of SCs/STS cannot be made against reserved points if the SC/ST candidates exceed the quota prescribed in the promotional posts. As in the cadre of Superintendent, the SC quota is exceeded and S.T. quota is full as per the percentage applicable to them, <sup>and hence</sup> the three vacant posts in that cadre has to be filled only by OC candidates. <sup>it is stated</sup> The respondents/are proposing to fill up the three vacant posts, one by SC, one by S.T. and another by OC candidate. Aggrieved by the above proposal of filling up the three vacant posts, he has filed this OA for the relief as above.

5). The Judgment of the Allahabad High Court in J.C. Mallik's case had already been appealed against in the Apex court and that the said case is pending. In the <sup>a Five Member</sup> ~~meantime the~~ Constitution Bench of Apex court had an occasion to consider the instructions dt. 4.5.1974 issued by the Punjab Government whereby reservation was provided @ 14% for the S.C. and 2% for the Back-ward classes in promotions to ~~and~~ within Class-I and II services under the Punjab State Government, which was reported in [ 1995(1) SCALE 685 - R.K.Sabharwal & Others Vs. State of Punjab and Ors.]

In that Judgment, the Apex Court had observed that there is no infirmity in the view taken by the Allahabad High Court in J.C.Mallik's case. It was further held by the Apex Court in the Judgment dt. 10.2.1995 in Sabharwal's case as follows:-

"that the percentage of reservation has to be worked out in relation to the number of posts to which form the cadre strength. The concept of vacancy has no relevance in operating the percentage of reservation. ....  
When all the roster points in a cadre are filled, the required percentage of reservation is achieved. Once the total cadre has full representation of the SCs/STs and Back-ward classes in accordance with the reservation policy, then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong. Thereby there will not be any excess or short-fall in regard to unreserved or reserved category in the promotion cadre at any time. But if the SC/S.T. is promoted for unreserved vacancy on the basis of seniority, he should not be shown against reserved category."

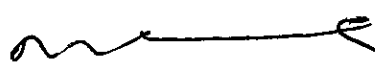
It was also observed by the Apex Court in the above Judgment that the interpretation given <sup>operate only</sup> shall prospectively.

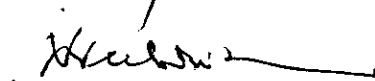
6. Following the above Judgment of Supreme Court in T.A.No.872/86 (WP No.1871/85) was disposed of by this Bench on 20.4.1995. The said T.A. relates to reservation/ in promotions in the vacancies ~~for promotion~~ in the category of SMS/ASMs/ Yard Masters/Traffic Inspectors following 40-point roster. In that case also the applicants therein challenged the promotions given in various promotional categories to SCs/STs where reservation had already full or exceeded to the <sup>prescribed</sup> extent of 15% and 7½% respectively. The above said TA was disposed of following the Judgment of the Apex court referred to above.

The said TA was dismissed as the interpretation given by the Apex court in the above referred judgment shall operate only prospectively. As the reservations in that case were prior to 10.2.1995 i.e. prior to the date of delivery of the Judgment by the Apex court in Sabharwal's case, the rules then in existence prior to 10.2.1995 cannot be challenged and hence the said TA was dismissed for the reasons stated therein.

7. In the result, the interim order as extracted in para-3 above is made final in regard to promotions made upto and inclusive of 10.2.1995 to the posts of Superintendents in Geological Survey of India, Southern Region, Hyderabad. The promotions to the above said posts after 10.2.1995 will be governed by the Supreme Court Judgment in Sabharwal's case referred to above.

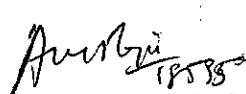
8. The OA is ordered accordingly. No costs./

  
(R. Rangarajan)  
Member (Admn.)

  
(V. Neeladri Rao)  
Vice Chairman

Dated 26th April, 1995.

Grh.

  
DEPUTY REGISTRAR (J)

To

1. The Secretary to Govt., Dept. of Home Affairs, Dept. of Personnel & Admn. Reforms, New Delhi.
2. The Secretary to Govt. of India, Min. of Steel And Mines, D/o Mines, New Delhi.
3. The Director General, Geological Survey of India, 4 Chouranghee Lane, Calcutta - 700 016.
4. The Dy. Director General, Geological Survey of India, Southern Region, 5-5-449, Manoranjan Building, Mukharamjahi Road, Hyderabad - 500 001.
5. One copy to Mr. V. Venkateswar Rao, Advocate, CAT, Hyderabad.
6. One copy to Mr. N. R. Devraj, J. r. CGSC, CAT, Hyderabad.
7. One copy to Library, CAT, Hyderabad.
8. One spare copy.

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TYPED BY  
CHECKED BY

COMPARED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH

*V. Neeladri Rao*

THE HON'BLE SHRI ~~A. V. HARIDASAN~~ MEMBER (J)

AND

~~THE HON'BLE SHRI A. B. GORTHY~~ MEMBER (J)

DATED 28-4-85

ORDER/JUDGMENT

M.A.NO/R.P.NO./C.P.NO.

in

O.A.NO. 326/89

Admitted and Interim directions  
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default

Rejected/Ordered.

No order as to costs.

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