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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 701/89

DATE OF JUDGEMENT: 16-8-199

Between

K. Venkata Rao

.. Applicant

and

1. The Director
Central Research Institute
for Dryland Agriculture
Santoshnagar
HYDERABAD-500 659

3. Smt. A. Prema Kumar
Supernintendent
Central Research Institute
for Dryland Agriculture
Santoshnagar
Hyderabad 500 659

2. The Sr. Administrative Officer
Central Research Institute for
Dryland Agriculture
Santoshnagar
HYDERABAD 500 659

.. Respondents

Counsel for the Applicant

Mr MN Naresinha Reddy

Counsel for the Respondents

Mr E Madanmohan Reddy

CORAM:

HON'BLE SHRI A.B. GORTHI, MEMBER (ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

T. C. R.

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JUDGEMENT OF THE DIVISION BENCH DELIVERED BY

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDICIAL.)

Applt. Verbal ^{Resp. Press Kumar}

This application is filed under Section 19 of the Central Administrative Tribunals Act, to direct the respondents to fill up the post of Superintendent by promotion, following the rule of reservation and roster as per the Brochure of the Ministry of Home Affairs, Government of India and to set aside the order of promotion of Respondent 3 dated 11.9.89 promoting R3 as Superintendent and pass such other order or orders as may deem fit and proper in the circumstances of the case.

2. The facts so far necessary to adjudicate this OA in brief, are as follows:

3. The ^{Research} Central Institute for Dry Land Agriculture, Hyderabad is a constituent unit of Indian Council of Agricultural Research (ICAR) which follows Govt. of India rules mutatis mutandis. The rules and orders of the Government of India regarding reservation of posts for SC and ST are applicable to ICAR. The applicant herein was appointed as Jr. Stenographer in the year 1975 in the said Institute and was promoted as Stenographer in June 1977 and is continuing in the same post since then. The applicant belongs to Scheduled Caste.

4. The next promotional avenue for the Stenographer is that of Superintendent. As per the revised recruitment rules, for the post of Superintendent at Research Institutes under the Indian Council of Agricultural Research, Govt. of India, 66.2/3% of posts of superintendent are by promotion from among the Assistants who have rendered five years of service in the

grade of Assistant and 33 1/3% of posts shall be filled by way of Limited Departmental Competitive Examination confined to Assistants and Stenographers in the scale of Rs.1400-2300 of the concerned institutes, having not less than three years service in the grade of Assistant/Stenographer as on 1st January of the year, in which the examination is held. In case, however, no eligible departmental candidate qualifies in the examination, the post may be filled up by deputation from other institutes.

5. As per the SC/ST Brochure, if there be only one vacancy in a particular recruitment year which falls on a reservation point in the roster, it will be treated as unreserved in the first instance and filled accordingly. But the reservation would be carried forward to subsequent years. In the subsequent years of recruitment, the reservation ^{new} _{new} should be applied by treating the vacancy arising in that year as reserved.

6. Initially there was one vacancy that arose in the year 1985 and the same fell on reserved point in the roster. The applicant being the Scheduled Caste candidate, was eligible to be considered against the said reserved vacancy in the year 1985 itself. But as only one vacancy arose in the year 1985, the same was treated unreserved in the year 1985. After carrying forward the vacancy of the Superintendent meant for Scheduled Caste to the next recruitment year, and after de-reservation, the said post was filled up by one Sri B. Prabhakara Rao who is a open candidate under Limited Departmental Competitive Examination Quota in the year 1985.

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7. In the year 1989, one more vacancy arose. As per the reservation roster maintained by the respondents, the present vacancy fell against the carry forward reserved vacancy of SC point. Even though the respondents invited applications for the filling up the present reserved vacancy, which was a single vacancy, permitted all eligible candidates to sit for the Limited Departmental Competitive Examination for the post of Superintendent. The applicant herein, who was the sole SC candidate appeared in the said examination but failed in that examination. Subsequently, the third respondent (candidate) herein was ultimately selected to the post of Superintendent, and had been appointed as per the orders of the respondents dated 11.9.89. After appointment of the third respondent against the said vacancy of Superintendent, the said vacancy had been carried forward to the next recruitment year. It is the grievance of the applicant that carrying forward the vacancy of the post of Superintendent that arose in the year 1989 to the next recruitment year is not in accordance with law, and, hence the action of the respondents in carrying forward the said vacancy of Superintendent that arose in the year 1989 to the next recruitment year is unconstitutional and the same is liable to be set aside and that, a suitable direction is liable to be given to the respondents to fill up the said post of Superintendent by promotion following the rule of reservation and roster as per the Brochure of the Ministry of Home Affairs Government of India, for which relief, the applicant had filed the present OA.

8. Counter is filed by the respondents opposing this OA.

9. The following facts are not in dispute in this OA.

The applicant is a scheduled caste candidate. In the year 1985

one vacancy of Superintendent arose which fell in the reserved point in the roster and the applicant was eligible to be considered for the said reserved vacancy, but could not be considered as the same was de-reserved and the same vacancy was carried forward as a sole vacancy cannot be filled up treating the same as reserved. In the year 1989 one more vacancy of the post of Superintendent had arisen. As the earlier vacancy had been brought forward, the 1989 vacancy fell under reserved vacancy meant for scheduled point. The respondents without filling up the vacancy of Superintendent by promotion following the rules for reservation and roster as per the Ministry of Home Affairs, Govt. of India instructions, had filled the said vacancy by throwing the same to open candidates and ultimately the ~~six~~ said vacancy had been filled up by a third respondent who ~~was~~ ^{is a} open candidate. Now the question that has got to be considered is, whether the action of the respondents in ~~mixing~~ throwing open the said vacancy to the open candidates is valid in law?

10. In this context, we may straightaway refer to a decision reported in AIR 1974 SC 532 Arati Ray Choudhury Vs Union of India wherein the facts of the case are as follows:

Shrimati Arati Ray Choudhury, petitioner before the Supreme Court ~~—~~ was a permanent employee in the South Eastern Railway- a Government of India undertaking which runs two Higher Secondary Schools for girls one at Adra and the other at Kharagpur. The question before the Supreme Court was whether the vacancy in the post of the Headmistress of the Kharagpur School could be treated as being reserved for a scheduled caste candidate, a question which depended for its decision both on the interpretation and the validity of the "carry forward" rule. The petition assailed that rule and contended that the vacancy was open to all

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candidates while respondent no.8 before the Supreme Court who belonged to a Scheduled Caste contended for a contrary position. After considering the impact of Devadasan's case and the new carry forward rule, Chandrachud J. speaking for the Supreme court further observed in para 22-

"Though each year of recruitment is to be treated separately and by itself, a reserved vacancy has to be carried forward over 2 years, if it is not filled in by the appointment of a reserved candidate. The open class ~~xx~~ reaped a benefit in 1966-67 when ~~xx~~ a reserved vacancy was treated as unreserved by the appointment of an open candidate. Smt. Gita Biswas. If the carry forward rule has to be given any meaning, the vacancy shall have to be carried forward for the benefit of scheduled castes and scheduled tribes until the close of the financial year 1968-69. The Kharagpur vacancy was to be filled in on Jan 1 1969 and hence, it cannot go to the petitioner who, admittedly, does not belong to the reserved class. The construction sought to be put on the rule by the petitioner would perpetuate a social injustice which has clouded the lives of a large section of humanity which is struggling to find its feet."

So in view of the above decision of the Supreme Court, there was a legal duty cast on the respondents to make every attempt to fill ~~xx~~ up the post of Superintendent by promotion following the rules of reservation roster and if any candidate belonging to Scheduled Caste was not found fit to fill up the said post, then the respondents should have carried forward the vacancy of the year 1989 to the next recruitment year. But the records disclose that the respondents have never made an attempt to fill up the said post by following the rules of reservation roster as per the brochure of Min. of Home Affairs.

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Govt. of India. So, there cannot be any doubt about the fact that the action of the respondents in not filling up the post of Superintendent by ~~fixing~~ promotion following the rules of reservation roster as per the Min. of Home Affairs, Govt. of India instructions. ^{is not valid in law} By throwing the said vacancy open and getting it filled up by a open candidate (3rd respondent herein) the respondents have committed a serious illegality and so the action of the respondents is liable to be set aside.

11. It is contended on behalf of the respondents that for the vacancy that arose in the year 1989 which was a reserved ~~for~~ vacancy for scheduled caste, excepting the applicant herein there were no other SC candidates and as there was no other SC candidates other than the applicant conducting an examination would have been non-competitive and so \rightarrow the vacancy of the post of Superintendent had been thrown open and hence ~~the~~ action of the respondents has got to be held ^{valid}. If the contention of the respondents is accepted, namely, the applicant was the sole SC candidate and as there would not be proper competition to fill up the said post, the same problem would arise even in the next recruitment year also as there may not be required number of SC candidates available for consideration to fill up the said vacancy. It is quite possible in the ^{next} ~~year~~ recruitment year also, the applicant might be the sole candidate for the said vacancy which was reserved for Scheduled caste. So, will there be justification in going on de-reserving the vacancy meant for scheduled caste candidates on the ground that more than one candidate is not available, without testing and ascertaining the suitability of the sole candidate that is available? Certainly, our answer is 'NC'. It is the duty of the respondents to test the suitability of the ~~candidate/s~~ that is ^{one} available whether it is SC, ^{or} ~~vacancy~~ or a vacancy for open category. By the by, we clarify ~~one~~ saying, that when required number of candidates are available, it will not be, lawful to test

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a sole candidate without testing the other qualified candidates
 as that will amount to denial of equality of opportunity.
 But the case on hand is not of such nature where ~~more than one~~
 qualified candidate was available for filling up the post
 of Superintendent by Limited Departmental Competitive Examina-
 tion, ~~xxxxxxxxxxxx~~. It is not in dispute in this OA that
 the applicant, who was the sole ~~xxx~~ SC candidate, was eligible
 to be considered for the said vacancy of Superintendent
 as it was a reserved vacancy. The fact, when a reserved
 Vacancy is available meant for Scheduled Caste or Scheduled
 Tribe candidate, that only either SC or ST candidates
 for whom the reservation is meant alone can be examined and
 tested. So, we are unable to understand, how it was open
 for the respondents to bring Open candidates for a reserved
 vacancy and test the suitability of the applicant herein
 along with the open candidates. This goes to show that a
 reserved vacancy had been thrown open to the open candidates
 which ought not have been done. Even though the applicant
 was the sole candidate for competing the said vacancy
 to the post of Superintendent, the applicant had a right to
 be considered for the said vacancy. ~~Ofcourse~~ Ofcourse,
 if the applicant was not found suitable because he did not
 come up to the expected standards, it was open for the respon-
 dents not to select him on the ground that he ~~xxxx~~ not fit.
 But such a course had not been followed by the respondents. It
 is sought to be argued that for a competition at least
 there must be 5 candidates to be considered for filling up
 one vacancy. So, for want of required number of candidates(5)
 that the action of the respondents has got to be justified.

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in throwing it open to all the candidates of all categories. When the required number of candidates to fill up a vacancy are not available, there is nothing wrong in testing the available candidate(s) for the said vacancy. Unless this is done, the right of candidates to be considered for the said vacancy (ies) will be defeated if they are not tested and considered for the said vacancy(ies). As a matter of fact, by not considering the qualified candidate (s) when the required number of candidates are not available for filling up certain posts, the action of the competent authority cannot be supported as the opportunity in the matters of appointment, which infringes Article 16 of the Constitution of India. So, we are unable to agree with the contention of the respondents that the applicant being the sole SC candidate was not tested. As a matter of fact, this appears to be a case where the applicant had been denied his right for consideration to the post of Superintendent for the reserved vacancy meant for Scheduled Caste.

12. For the examination that was held for the vacancy in the year 1989 for the post of Superintendent, as already indicated, the applicant had also appeared along with open candidates but failed in the same. His failing in the said examination that was conducted in the year 1989 for filling up the post of Superintendent, does not preclude the applicant from questioning the action of the respondents in throwing open the reserved vacancy of the post of Superintendent to the Limited Departmental Competitive Examination candidates. Nor the action of the respondents which is illegal in throwing the said vacancy open to all the candidates would ~~not~~ become legal due to the participation of the applicant in the said examination, and in filling up the same, by a candidate belonging to open category. As already pointed out, the action of the

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respondents, → in testing the suitability of the applicant along with open candidates cannot be justified. In view of this position, it becomes necessary to give appropriate direction to the respondents in the interests of justice and to protect the interests of the applicant who belongs to Scheduled Caste community.

13. In the result, the action of the respondents in carrying forward the vacancy of the year 1989 of the post of Superintendent which is ~~xxxx~~ meant for Scheduled Castes, to the next recruitment year, is hereby set aside and the respondents are hereby directed to fill up the said post of Superintendent that arose in the year 1989 by promotion by following the rules of reservation roster as per the Brochure of Ministry of Home Affairs, Government of India, and in accordance with rules and regulations and in the light of the observations in this Judgement. The directions in this Judgement shall be implemented within three months from the communication of the same. OA is allowed with the above said directions. Parties shall bear their own costs.

Sd/-

(HTCSR)

M(E)

CERTIFIED TO BE TRUE COPY

Sd/-
(HABG)

M(A)

Date.....

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Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad

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Copy to:-

1. The Director, Central Research Institute for Dryland Agriculture, Santoshnagar, Hyderabad-659.
2. The Sr. Administrative Officer, Central Research Institute for Dryland Agriculture, Santoshnagar, Hyderabad-659.
3. One copy to Sri. M.N.Merasingha Reddy, advocate, 9 Law Chambers High Court Building, Hyderabad.
4. One copy to Sri. E.Madan Mohan Rao, SC for CRIDA, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy

10/9/19
B/1/3/23

Md. No. 2882/93.

Reg: R.P.

- 1) The consent of the previous counsel on record should be obtained.
- 2) R.P. is incomplete
- 3) Copy of the suit is not submitted.
- 4) one more recent copy of R.P. should be submitted.
- 5) The original copy is to be sent in the suit file.

Process
15 PPS
100/-



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amendment
will
be

HYDERABAD DISTRICT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL OF A.P., AT HYDERABAD.

Rev. M.A. No. of 93.

in
701
O.A. No. 2882/89



REV. M.A. GROUNDS.



C. J. M.
For M. N. Narayana
23-9-93
Received

Received
23-9-93
For B. Madan Mohan
S. C. Chidkara
Not be filed
23-9-93

M. S. K.G. KRISHNA M
BURRA SRINIVAS
COUNSEL FOR APP