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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.730 of 1989

DATE OF JUDGMENT: 10/5/AUGUST, 1992.

BETWEEN:

Mr. N. Madan Mohan .. Applicant

AND

1. Union of India represented by the Secretary to Government, Ministry of Home Affairs, New Delhi.
2. The Union Public Service Commission, represented by the Chief Secretary, Holpur House, New Delhi.
3. The State of Andhra Pradesh represented by the Chief Secretary, Hyderabad. ..

Respondents

COUNSEL FOR THE APPLICANT: Mr. G. Vedanta Rao

COUNSEL FOR THE RESPONDENTS: Mr. N. V. Ramana, Addl. CGSC

Mr. D. Panduranga Reddy, Special Counsel for the State of A.P.

CORAM:

Hon'ble Shri R. Balasubramanian, Member (Admn.)

Hon'ble Shri C. J. Roy, Member (Judl.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI C.J. ROY, MEMBER (JUDL.)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 for a relief to declare the action of the respondents in withholding the inclusion of the applicant in the select list of 1986, 1987 and 1988, as arbitrary, illegal, unconstitutional and mala-fide with a consequential direction to the respondents to treat the applicant as having been included in 1986 select list and grant the consequential benefits or seniority, difference of pay etc., and grant such other relief as the Tribunal deems fit and proper in the circumstances of the case.

2. The applicant who is a Scheduled Caste, was selected by the Andhra Pradesh Public Service Commission for the post of Deputy Superintendent of Police by direct recruitment in Group-I services in the year 1977. He was assigned II rank among 17 persons who were directly recruited by the Commission. The applicant was promoted as Addl. Superintendent of Police in December 1984. He states that under Regulation 5 of the Indian Police Service (Appointment by promotion) Regulations, 1955, an officer who had put in a minimum service of eight years as on 1st January of the year in the post of Deputy Superintendent of Police and who holds a substantive post in the State Police Service, is eligible for consideration for appointment to the Indian Police Service.

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3. The case of the applicant is that he being a Scheduled Caste officer, when he became eligible for consideration for IPS by promotion in the year 1986, he was not selected for no fault of his except that of his caste. Again when the applicant was considered by the Committee in the year 1987, he was not selected while as many as four of his juniors ~~exam~~ were selected. No Scheduled Caste officer could find berth in the select lists when his turn came for consideration in seniority. He states that Article 16(4) of the Constitution of India, read with Articles 14, 21, 38, 39, 41 and 46 of the Constitution of India, is mandatory but not directive and therefore the reservations for Scheduled Caste/Scheduled Tribes are to be provided in the Indian Police Service in the matter of recruitment by promotion of State Police officers. The absence of such reservation is constitutionally fraud. Non following the rule of reservation in respect of the posts in IPS, IAS and IFS ~~is~~ ultravires of Articles 16(4) and 14 of the Constitution of India. When the reservation is there for direct recruitment of IPS posts, denial of reservation by recruitment by promotion is clearly an hostile discrimination offending Article 14 of the Constitution of India. The case of the SCs and STs should be considered in their turn of seniority and they should be promoted unless one is condemned unfit to hold that post. The applicant states that his case was never considered in the light of ~~non-consideration~~ the reservation and therefore

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he suffered legal injury and there has been infraction of his fundamental rights under Articles 14, 16, 21, 38, 39 and 41 of the Constitution of India. Hence, he filed the present application for the above said relief.

4. No counter has been filed on behalf of the 1st and 2nd respondents. However, counter is filed on behalf of the Government of Andhra Pradesh viz., 3rd respondent herein.

5. In the counter filed by the 3rd respondent, it is stated that the applicant became eligible for consideration for inclusion in the select list only from 1986 onwards. Hence, the selection committee which met on 3.12.1986 considered the case of the applicant along with other eligible officers and he was shown as a "Scheduled Caste" candidate. In that select list, one officer viz., Shri P.Koteswara Rao, who was junior to the applicant in the seniority list was included in the select list for 1986 as he was assigned higher grading than the applicant. Similarly, in the select lists prepared for 1987 and 1988 the case of the applicant was considered but he was not included in the select list. The officers juniors to the applicant ~~xxxx~~ in the seniority ~~xxxxxx~~ list were included in the select list as they were assigned higher grading than him. The selection was done in accordance with the guidelines prescribed in para 3(5)(4) of the Regulations viz., classifying on the basis of 'Outstanding', 'Very

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Good', 'Good', or 'Unfit' as the case may be on an overall relative assessment of their services records. There is no provision in the Indian Police Service (Appointment by Promotion) Regulations for the assignment of a higher grading in the case of Scheduled Caste/Scheduled Tribe candidates. When the applicant has been considered along with other equally eligible officers, it cannot be said that Article 14 of the Constitution has been violated in this case. In view of the above, the 3rd respondent states that there are no merits in the application and it is liable to be dismissed.

6. This case was listed for final hearing on 29.6.92. Since none were present on that day, the case was ordered to be listed for dismissal on 31.7.1992. However, the case was listed for dismissal on 3.8.1992 and when the case was called on 3.8.1992, there was no representation from the applicant's side. We have heard Mr. V.Rajeswara Rao for Mr. N.V.Ramana, learned Additional Standing Counsel for the 1st and 2nd respondents and Mr. D.Panduranga Reddy, learned Special Counsel for the Respondent No.3. (State Government of Andhra Pradesh). During the course of the arguments, Mr. D.Panduranga Reddy stated that this case is squarely covered by a decision of this Bench dated 2.2.1988 in O.A.No.406/87.

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7. We have perused the Judgment dated 2.2.1988 passed in O.A.No.406/1987. The Hon'ble Division Bench of this Tribunal observed-

"It is true that in all the cases referred to by the learned counse, the question for consideration was validity of the orders/ rules issued providing reservation/relaxation of standars for the Scheduled Castes/ Scheduled Tribes Members. There is however no case where the Supreme Court directed that the principle of reservation be applied to specific posts to which the applicant belonging to the S.C./S.T. laid his claim. Even in BSH Kalyan Parishad Vs. Union of India, the Supreme Court considered the Presidential Order against certain letters issued by the Ministry of Steel which sought to withdraw the concession given to the Members of the Scheduled Castes/Scheduled Tribes by the Presidential directive. It was not a case where the court directed the reservation be made to a particularpost. It would, therefore, follow that any reservation made or relaxed standards applied to posts in a higher category by a rule/order/or instruction, cannot be questioned. But it will not be open for this Tribunal to give a positive direction to the Government to make such reservation as sought

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for by the applicant when the Government has not chosen to make such a reservation. It is open to the Government of India to provide for relaxed standards for promotion to All India Services in respect of Scheduled Castes/Scheduled Tribes but in the absence of any such reservation/relaxed standard, it is not for the Tribunal to issue any such direction. The question whether such reservation/relaxed standard is to be given, is a matter of policy to be determined by the State having regard to considerations of efficiency and other relevant factors. We are supported in this view by the observations of the Supreme Court in AIR 1963 SC 649 (M.R.Balaji Vs. State of Mysore) wherein Gajendragadkar J. observed, "it is necessary to emphasise that Article 15(a) like Article 16(4) is an enabling provision, it does not impose an obligation, but merely leaves it to the discretion of the appropriate Government to take suitable action, if necessary". The legal position was reiterated with greater emphasis in AIR 1968 SC 507 (C.A.Rajendran Vs. Union of India) wherein it was held, "our conclusion therefore is that Article 16(4) does not confer any right on the petitioner and there is no constitutional duty imposed on the Government to make a reservation for Scheduled Castes and Scheduled Tribes, either at the initial stage of recruitment

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or at the stage of promotion. In other words Article 16(4) is an enabling provision and confers a discretionary power on the State to make a reservation of appointments in favour of backward class of citizens which in its opinion is not adequately represented in the services of the State. It was sought to be contended by Shri Vedantha Rao that after the decision in State of Kerala Vs. N.M.Thomas (AIR 1976 SC 490) the Supreme Court has departed from the earlier decisions and directed that the State is duly bound to take affirmative action for implementing the policy of reservation to Scheduled Castes and Tribes. We are unable to find any such positive direction in Thomas's case. On the other hand there are several expressions in the judgment that twin considerations of backwardness and efficiency must be satisfied to uphold reservation on the basis of classification. Further the question whether reservation is to be made would depend on the facts and circumstances of each case and observations of Krishna Aiyer J. in Thomas's case in this regard are opposite:-

"165. We need not tarry to consider whether Art.16 applies to appointments on promotion. It does. Nor need we worry about administrative calamities if test qualifications are not acquired for a time by some hands. For one thing, these tests

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Copy to:-

1. The Secretary to Government, Ministry of Home Affairs, Union of India, New Delhi.
2. Chief Secretary, Union Public Service Commission, Dholpur House, New Delhi.
3. Chief Secretary, State of A.P., Secretariat, Hyd.
4. One copy to Sri. G.Vedantha Rao, advocate, 4-3-410, Bank Street, Köt, Hyd.
5. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd-bad.
6. One copy to Sri. D.Panduranga Reddy, Spl. counsel for the State of A.P.
7. One copy to Hon'ble Mr.C.J.Roy, Judicial Member, CAT, Hyd.
8. One spare copy.

*to be filed
Rsm/-*

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are not so telling on efficiency as explained earlier by me. And, after all, we are dealing with clerical posts in the Registration Department where alert quilldriving and a smattering of special knowledge will ~~will~~ make for smoother turn-out of duties. And the Government is only postponing, not foregoing, test qualification. As for the bearing of 'tests' on basic efficiency, everything depends on the circumstances of a case and the post."

We are, therefore, unable to agree with the contention of the learned counsel for the applicant that the Circular referred to above would apply to All India Services also."

8. In view of the observations ^{made} supra by the Hon'ble Bench of the Tribunal, and in view of the averment of the respondents that the case of the applicant has been considered in his turn from time to time and he being not assigned the higher grading than the officers who were selected and not being included in the select lists, we see no reason to interfere with the selection ^{made} by the respondents.

9. In the result, the application is liable to be dismissed and is accordingly dismissed. In the circumstances of the case, there is no order as to costs.

R. Balasubramanian
(R. BALASUBRAMANIAN)
Member (Admn.)

W.S. Roy
(C.J. ROY)
Member (Judl.)

Dated: 10th August, 1992.

D. Raghunath (Jadh)

TIPIED BY

COMPARED BY

CHECKED BY

APPROVED BY

THE HON'BLE MR.

V.C.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
MEMBER (JUDL)

AND

THE HON'BLE MR. C.J. ROY : MEMBER (JUDL)

Dated: 16/8/1992.

ORDER / JUDGMENT

R.A./C.A./M.A. No.

O.A. No.

T.A. No.

(W.P. No.)

Admitted and interim directions
issued

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/Rejected.

No order as to costs.

Central Administrative Tribunal

DESPATCH

14/8/1992

HYDERABAD BENCH