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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.994/93

Date of Order: 27.9.1993

BETWEEN :

N.Narasimha Rao

.. Applicant

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1. Workshop personnel Officer,
Wagon Workshop,
Guntupalli.
2. Deputy Chief Mechanical Engineer,
Wagon Workshop, Guntupalli.
3. Chief Personnel Officer,
South Central Railway,
Rail Nilayam,
Secunderabad.
4. Sri K.Rama Rao, S.C.Rly.,
Head Clerk, Rayanapadu.
5. L.Babu Rao, Head Clerk,
S.C. Rly., Rayanapadu.

.. Respondents.

Counsel for the Applicant

.. Mr.V.Rama Rao

Counsel for the Respondents

.. Mr.N.R.Devraj

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN

HON'BLE SHRI P.T.THIRUVENGADAM : MEMBER (ADMN.)

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, Vice Chairman)

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

2. The applicant is now working as Headclerk in the scale of Rs.1400-2300 (RSRP) at Wagon Workshop, Guntupalli, South Central Railway. The avenue of promotion from the post of Head clerk is to Office Superintendent Grade II in the scale of Rs.1600-2660.

A vacancy had arisen in the cadre of OS Grade II in Wagon Workshop, Guntupalli. It is not in dispute that as per the Roster this Vacancy is at Point 15 to 40 Point Roster System and it is intended for OCs. The case of the applicant is that he is eligible to be promoted to the post of OS Grade II and he is not being considered for the said promotion by treating it as a reserved Point for SC. Hence, this OA was filed praying for a direction to R-1 to R-3 to fill up the latest vacancy in OS Grade II in Stores Department / WWS / Guntupalli by Open Competition after quashing the orders vide letter No.GR:P.608/5/1 dated 9.7.1993 by declaring it void, illegal, arbitrary and against the Constitution.

3. No one is present for R-4 & 5, the SC candidates in the cadre of Head Clerk, even though notices in this OA were served. Counter is filed for R-1 to R-3. The case of the latter is as under :

The 14th Point as per the 40 Point Roster is reserved for SCs. When the earlier vacancy in the cadre of OS Grade II had arisen, the same was filled up by OC and not by SC by relying upon the Full Bench judgement in OA.759/87 for at that point of time, there was already one SC in the cadre of OS Grade II in this unit which is having only seven posts of

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OS Grade II. After filling up the vacancy in the post of OS Grade II in this Unit at Point No.14, the SC candidate in OS Grade II was removed from service by way of punishment. Thus, by the time of consideration of vacancy as against Point No.15 as per the Roster, there is no SC candidate in OS Grade II and hence the present vacancy is treated as reserved as per the impugned proceeding dated 9.7.1993 even though as per the Roster it is for OC.

4. Hence, the question which arises for consideration in this OA is as to whether in view of the circumstances the present vacancy as against Point No.15 which is for OCs as per 40 Point Roster has to be filled up by Open Competition as contended for the applicant or whether the same has to be treated as vacancy for being filled up by reserved candidates only.

5. The 40 Point Roster is formulated for implementing the reservation of 15% for SCs and 7½% for STs, as the question had arisen as to which of the vacancies had to be filled up by SC or ST or OC candidates. In order to have uniformity in the matter, the vacancies at the relevant points out of 40 were reserved either for SC or for ST. It is needless to say that in view of the reservation, the junior belonging to the particular reserved caste/to be preferred for promotion to those senior candidates who belong to OC or other reserved community. In working out the 40 Point formula, various questions had arisen from time to time. One of the points which had arisen is as to how a vacancy had to be filled up if the candidate belonging to that reserved category was not available at the time of consideration for promotion. Then a circular was issued to the effect that the said vacancy may be de-categorised and the vacancy may be carried forward. It means, that the vacancy which was intended to be filled up

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by particular reserved category had to be filled up by Open Competition after de-reserving it and following OC vacancy has to be filled up by promoting the reserved candidate if available to make up the deficiency. In case of non-availability of reserved candidate even then, it may be considered in the next or 3rd recruitment year depending upon availability of reserved candidate. Then it was noticed that by following that rule, the filling up of more than 50% posts in the following recruitment years by reserved candidates had arisen. So the rule of carrying forward was modified whereby it is stated that not more than 50% of the total vacancies in any of the recruitment years should be filled up by reserved candidates in regard to the carrying forward and/or existing vacancies.

6. Later it was pleaded for the OC candidates that the percentage of 15 & 7½ in regard to SC & ST should be in regard to the posts in category for which promotion had to be made, and it should not be in regard to the vacancies therein. After considering the said contention, this Bench passed order in OA 759/87 on 16.5.1988 and Para-7 therein is relevant and it reads as under:

"We accordingly direct that the vacancies available from time to time in the Office Superintendents category will be filled up in accordance with 40 Point Roster system subject to the condition that the posts held by the members of the Scheduled Castes and Scheduled Tribes do not exceed 15% and 7½% respectively at any given point of time and if a person belonging to the scheduled Castes or Scheduled Tribes is promoted on his own merit and not in a reserved vacancy, then for the purpose of this interim order such appointment will be excluded while computing the required percentage. Any promotion that could be made in pursuance of this order will, however, be subject to the result of the main application."

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7. While expressing the above view, this Bench of the Tribunal referred it to the Full Bench as it is of large importance. The Full Bench approved the same by order dated 27.2.1992.

8. It is manifest from para-7 of the order in OA.759/87 that for filling up the vacancies available from time to time by way of promotion, the 40 Point Roster System had to be followed subject to the condition that at any given point of time, the ~~maximum~~^{number} of the SC & ST do not exceed 15 & 7½ per cent respectively in the cadre to which the promotion had to be effected. Hence it means that whenever vacancy / vacancies arise(s) for being filled up for promotion, it had to be seen as to whether the Point at which the vacancy had arisen is in regard to reserved candidate or OC. If it is in regard to reserved candidate, it is necessary to find out as to whether the per-centange of the relevant reserved category exceeds the quota fixed for them. If it exceeds their quota, then it should be filled up by not ~~treating~~ treating it as a vacancy for reserved candidate. But when the vacancy as per the point in the 40 Point Roster is for OC, the question of verification about the extent of per-centange in regard to the reserved candidates in the promotional category does not arise, for the same had to be filled up on the basis of seniority, or seniority-cum-merit as per rules. Then it is ~~as~~ ~~as~~ ~~as~~ a case of junior claiming promotion in preference to the senior, and when senior is claiming promotion, in his turn as per seniority list, he should not be subjected to any conditions unless there is any rule/circular to that effect. The learned standing counsel for R-1 to R-3 had not drawn our attention to any rule/circular or OM to the effect that the then-the earlier SC vacancy, was filled up by Open Competition on the ground that there were excess of reserved candidates on that they were upto quota in the promotion category, then for filling up the vacancy which next arises is the OC

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point, it is necessary to verify as to whether the reserved category had fallen short of their quota, and if so the following OC Point had to be treated as vacancy for being filled up by such reserved category. Even the order dated 27.2.1992 of Full Bench does not state that when earlier reserved vacancy had to be filled up by Open Competition, so as to be in conformity with the condition specified by them, then at the time of consideration of the following OC Point, it is necessary to find out as to whether the particular reserved category is within their quota or not. Thus, when Full Bench Judgement Judgement is not to that effect and when there is no rule/ circular/OM to treat the following OC Point as reserved point, we have to hold that the contention for the applicant had to be accepted and that of R-1 to R-3 had to be negatived.

9. Hence, the impugned order dated 9.7.1993 vide No.GR/P. 608/5/1 is set aside and the R-1 to R-3 are directed to fill up the vacancy in OS Grade II as against Point 15 in the Roster System by Open Competition.

10. The OA is ordered accordingly. No costs.

P.J. Thiru

(P.T.THIRUVENGADAM)
Member (Admn.)


(V.NEELADRI RAO)
Vice-Chairman

Dated : September 27, 1993.
Dictated in the Open Court.

To

1. The Workshop Personnel Officer,
Wagon Workshop, Guntupalli.
2. sk/ad The Deputy Chief Mechanical Engineer, Wagon Workshop
Guntupalli.
3. The Chief Personnel Officer, S.C.Rly, Railnilayam, Secunderabad.
4. One copy to Mr.v.Rama Rao, Advocate, Advocates Association
High Court of A.p.Hyderabad.
5. One copy to Mr.N.R.Devraj, S.C.Rly, CAT.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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