

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 1107 OF 1999

DATE OF ORDER : 5.9.2000

Between:-

M. Radha Krishnan

...Applicant

AND

1. The Director, Central Tobacco Research Institute, Rajahmundry.
2. The Director General, Indian Council of Agricultural Research, Krishi Bhavan, New Delhi.
3. Union of India, rep. by the Secretary, to the Ministry of Agriculture, New Delhi.

...Respondents

Counsel for the applicant : Mr K. Venkateswara Rao

Counsel for the respondents : Mr N.R. Devraj, CGSC

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THE HON'BLE JUSTICE SHRI D.H. NASIR : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (A)

(Order per Hon'ble Shri R. Rangarajan, Member (A))

(Order per Hon'ble Shri R. Rangarajan, Member(A)).

Heard Mr K. Venkateswara Rao learned counsel for the applicant and Mr N.R. Devraj learned counsel for the respondents.

2. The applicant in this OA is an LDC working in the respondents department. In 1995 , a vacancy had arisen in the cadre of UDC in the department which was to be filled up by an ST candidate . The applicant submits that because there are no ST candidates available, his case should be considered for posting against that vacancy by de-reservation of that post. If the post is not de-reserved, ~~after~~ 3 years exchange of vacancies can be done and hence, in the year 1998 he should have been posted against the exchanged post of ST as he belongs to SC.~~only~~.

3. The applicant submitted a letter dated 20.4.99 for posting him against the ST post by de-reservation or by exchange and that was rejected by the impugned Order No.F.9(14)/00-Admn.I dated 5.6.99 (A.I).

4. This OA is filed for setting aside the impugned order dated 5.6.99 and for a consequential direction that the applicant is entitled for promotion as Senior Clerk by applying OM No. 36013/2/79-Estt(SCT) dated 2.4.79 issued by the Government of India, Department of Personnel Administrative Reforms or alternatively by applying the 40 point roster In Appendix V to Swamy's compilation on reservations and concessions for SC and STs.



5. A reply has been filed by the respondents. The point for consideration in this OA is whether the applicant is eligible to be posted against the ST post ~~even~~ if there are no ST candidates available, by de-reservation or by exchanging the post with SC, after a period of 3 years. This has to be seen in the light of the judgement reported in 1995(1) Scale 138(R.K.Sabharwal Vs State of Punjab).

6. As per the Sabharwal case reservation is post basis and not vacancy basis. The 40 point roster is to be closed, if in a cadre the representation of reserved community candidates namely SC/ST is to the extent of 15% or 7½%. The decision of the Hon'ble Supreme Court came into being on 10.2.95. Therefore, that ruling should be applied later in all the departments on the basis of the reported judgement.

7. In 1995, when the vacancy for ST candidates arose, the Sabharwal's judgement was in existence. At that time, no de-reservation was applied as the department might have felt it not necessary to de-reserve the post and they might be of the view that the post may be filled by an eligible ST candidate. Hence, in 1995 the applicant has got no right to demand the post against the vacancy reserved for ST. However, in the year 1998, after a lapse of 3 years, whether the vacancies of ST candidate can be exchanged with SC candidate is another point for consideration. In 1998, as stated earlier, the department themselves have issued instructions in 1997 following the Supreme Court's judgement. Hence, in that circular, there is no mention in regard to exchange of vacant posts between SC/ST. After a lapse of 3 years, even though the learned counsel for the applicant submits that the circular issued in 1997 is silent about the exchange, the applicant is entitled for the exchange and

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hence, he should be posted against that vacancy. When there is no mention regarding exchange, it may not be right to presume that the earlier rule still continues. Even presuming that the said rule continues even after the issue of the circular in the year 1997, the applicant keeps a right for consideration of his case against the exchange point only if he is the senior most SC amongst the SCs in the feeder cadre of the department. The learned counsel for the respondents submitted that the applicant is third in the Select List among the SCs in the cadre of LDC. Hence, the applicant can have no chance to get promoted as UDC against the exchange point.

8. Even if the applicant contention is that his position will improve if any of the senior most SCs were considered and posted, this Tribunal is expected to consider the case on individual grievance and not otherwise. When the senior-most SC employee has not come to the Tribunal for the relief, there is no need to consider the case of the applicant even if he is going to improve his position, as stated by him. In that view, we find that the applicant has got no merit in his case.

9. In view of what is stated above, in all force, the applicant has no right to demand for his promotion as LDC against the ST quota in the vacancy exchange. However, the applicant is to be considered for promotion to the post of UDC if there is shortage of SC in the cadre when his turn comes against the reserved quota.

10. The OA is disposed of with the above observations. No costs.


(R.RANGARAJAN)
MEMBER (ADMN.)


(D.H.NASIR.j)
VICE CHAIRMAN

DATED: 5th September, 2000
Dictated in the open court.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH:HYDERABAD

COPY TO:-

1ST AND 2ND COURT

1. HON. JUDGE TYPED BY CHECKED BY
COMPARED BY APPROVED BY

2. HON. MEMBER

3. HON. MEMBER THE HON'BLE MR. JUSTICE DR. NASIR
VICE - CHAIRMAN

4. D.R. (ADMN) THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN)

5. SPARE

6. ADVOCATE THE HON'BLE MR. B. JAI PARAMESHWAR
MEMBER (JUD)

7. STANDING COUNSEL

DATE OF ORDER 5-9-2000

MA/RA/CP.NO

IN

DA. NO. 1107/1999

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

6A DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
प्रेषण / DESPATCH

26 SEP 2000

हैदराबाद न्यायपीठ
HYDERABAD BENCH