

(1)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1482 OF 2003

New-Delhi, this the 5th day of January, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. NAIK, ADMINISTRATIVE MEMBER

R.S. Verma
S/o Shri Moolchand
R/o E-588, Gali No.20,
Ashok Nagar, Shahdara,
Delhi-110093.

....Applicant

(By Advocate : Dr. K.S. Chauhan with Sh.Chand Kiran
and Shri V.K. Burman)

Versus

1. Union of India
Through its Secretary,
Department of Personnel & Training,
North Block,
New Delhi-110001.

2. Union Public Service Commission,
Through its Secretary,
Dholpur House,
Shahjan Road,
New Delhi-110011.

.....Respondents

(By Advocate : Shri R.N. Singh for Shri R.V. Sinha)

ORDER (ORAL)

SHRI JUSTICE V.S. AGGARWAL:-

In the Govt. of India, there is a cadre of Section Officers. The mode of recruitment/promotion to the posts of Section Officer is 20% by Civil Services Examination conducted by Union Public Service Commission, 40% by promotion quota on the basis of seniority-cum-fitness from Assistants' grade of CSS and 40% by limited departmental competitive examination conducted by Union Public Service Commission from the Assistants of CSS and Stenographers Grade 'C' of Central Secretariat Stenographers' Service. It is asserted that one Shri Vijay Kumar, who is a Scheduled Caste candidate, took

As Ag

the exam., but was selected on his own merit rather than in the reserved quota meant for Schedule Caste. The grievance of the applicant is that he has been placed in the percentage of reserved post of Scheduled Caste and in this process, it has affected the rights of the applicant.

2. By virtue of the present application, the applicant seeks a direction that the name of said Shri Vijay Kumar should be placed in the category of general category candidate because he has qualified on its own merits and thereupon the list of the scheduled caste category candidates should be extended.

3. The petition is being contested.

4. On the helm of the respondents, two objections have been taken, namely, (a) the person who is likely to be affected has not been made a party and (b) after the result was declared, the matter was referred to the Union Public Service Commission, who has advised that as per condition No.8 of the examination, Shri Vijay Kumar cannot be treated as a general category candidate. As per the limb of the same plea, it has further been asserted that the Office Memorandums relied upon by the applicant, particularly, one of 1st July, 2002 is prospective and not retrospective in nature.

5. We have considered the relevant submissions of the parties.

As Ag 

6. So far as the contention raised that the persons likely to be affected, in case the applicant is included in the list of the successful candidates is concerned, have not been arrayed as a party, We find that the same is totally without any merit. We are conscious of the fact that if any matters like seniority or such like matter, the position should have been that certain private individuals should ordinarily be made parties, because their valuable rights are likely to be affected. However, where a policy decision as such is challenged or there is decision taken contrary to the rules or the law, in that event those persons who may or may not be affected need not be arrayed as party. In this backdrop, therefore, we find that this contention, so much thought of, is without any merit.

7. Reverting back to the main dispute, we remind ourselves from the decision rendered by the Constitutional Bench of the Apex Court in the case of Indra Sawhney and Ors. etc. etc. Vs. Union of India and ors. etc. etc., 1992, SUPP. 2 S.C.R. 454, ^{that} if the persons belonging to Scheduled Caste ~~to~~ ^{they are not} get selected on merit will be counted against the quota reserved for Scheduled Caste candidates. The Supreme Court in this regard held :-

"In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota

As Ag —————

reserved for Scheduled Castes; they will be treated as open competition candidates."

Same — was the view expressed by the another Constitutional Bench of the Apex Court in the case of R.K. Sabharwal and others Vs. State of Punjab and others, (1995) 2 Supreme Court Cases 745. In other words, we must take it as settled principle of law that a member of schedule castes, who is selected on his own merit, should not be placed in the category of reserved quota of posts.

8. Reliance on behalf of the applicant is being placed on the instructions issued by the respondents, particularly, the instructions of 2nd July, 1997, a copy of which is annexed as Annexure A-5. Relevant portion of which reads :-

"2. The Court also held that persons belonging to the reserved categories, who are appointed on the basis of merit - and not on account of reservation - are not to be counted towards the quota meant for reservation."

And also the instructions of 1st July, 2002 in which paragraph 2 of the same reads:-

"(ii) If an unreserved vacancy arises in a cadre and there is any SC/ST candidate within the normal zone of consideration in the feeder grade, such SC/ST candidate cannot be denied promotion on the plea that the post is not reserved. Such a candidate will be considered for promotion alongwith other candidates treating him as if he belongs to general category. In case he is selected, he will be appointed to the post and

ls Ag —————

will be adjusted against the unreserved point."

These instructions make the position clear that candidates belonging to scheduled caste categories, who are selected on their own merit, have to be placed alongwith general category candidates. It is true that these instructions would be prospective in nature and not retrospective. However, the decision rendered by the Supreme Court, which we referred to above, has already laid the position of law, which is binding on all of us, even if the present examination was held in the year 2001. In this backdrop, this particular argument will not come to the help of the respondents' learned counsel.

9. As regard the plea that the Union Public Service Commission had not acceded to the request because of paragraph 8 of the rules/instructions pertaining to the said examination, we take liberty by reproducing the said paragraph 8 pertaining to the said examination which reads:-

"8. After the examination, candidates will be arranged by the Commission in the order of merit as disclosed by the aggregate marks finally awarded to each candidate; and in that order so many candidates as are found by the Commission to be qualified at the examination shall be recommended for inclusion in the Select List for each category upto the required number.

Provided that candidates belonging to the Scheduled Castes or the Scheduled Tribes may, to the extent of the number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes that cannot be filled on the basis of the

U. Ag—e

general standard, be recommended by the Commission by a relaxed standard to make up the deficiency in the reserved quota subject to the fitness of these candidates for inclusion in the Select List for each category irrespective of their ranks in the order of merit at the examination.

Note. - Candidate should clearly understand that this is a competitive and not a qualifying examination. The number of persons to be included in each Select List on the result of the examination is entirely within the competence of Government to decide. No candidate will therefore have any claim for inclusion in the Select List on the basis of his performance in this examination as a matter of right."

It clearly shows that paragraph 8 is in two-fold. Firstly, the Union Public Service Commission has to draw the merit list of each candidates. The person who qualifies on merit list has to be placed above others. Provision to the same explains that those who are from Scheduled Caste community can be adjusted against the number of vacancies reserved for Schedule Castes though they may not be fulfilling the general standard prescribed.

10. So far as Shri Vijay Kumar is concerned, he had been selected on his own merit as per the result declared. Therefore, even as per paragraph 8 of what we have reproduced above, he has to be taken as a general category candidate. He has wrongly been counted in the scheduled caste category candidates regarding which the quota has to be filled up even if they do not fulfil certain standard prescribed by the Govt. :-

As Ag

11. Secondly, to contend that, unless the such instructions/rules are amended, Shri Vijay Kumar has to be treated as Schedule Caste candidate is not correct. We have already reproduced above the instructions/rules which make it clear that the Commission has to draw a merit list as per the marks secured. Once Shri Vijay Kumar had been successful despite being a Scheduled Caste, he should have been placed in the merit list of general candidates. Seemingly, there has been a mistake in this regard.

12. Accordingly, we allow the present Original Application and direct (a) Shri Vijay Kumar should be treated as a general category candidate and not as a scheduled caste category candidate; and (b) necessary steps should be taken to correct/amend the list pertaining to Scheduled Castes candidates, as a result of Shri Vijay Kumar being treated as general category candidate. There shall no order as to costs.



(S.K. NAIK)
ADMINISTRATIVE MEMBER



(V.S. AGGARWAL)
CHAIRMAN

/ravi/