

Malkhan Singh

Vs

Union of India and Others

Slp (C) No. 3174 of 1995

(CJI A. M. Ahmadi, Sujata V. Manohar JJ)

07.01.1997

JUDGMENT

SMT. SUJATA V. MANOHAR, J. -

1. The petitioner is a practicing advocate of more than 21 years' standing. He applied for the post of an Additional District and Sessions Judge in the Delhi Higher Judicial Service in response to an advertisement which was issued in June 1985. The advertisement was in respect of four vacancies out of which two vacancies were in the general category, one was reserved for a Scheduled Caste candidate and one was reserved for a Scheduled Tribe candidate. The petitioner who belongs to a Scheduled Caste, applied for one of these vacancies. For the two vacancies which were reserved for general category candidates, one Mr Malhotra and one Mr Singh were appointed. As against the two vacancies which were reserved for Scheduled Caste and Scheduled Tribe candidates, three Scheduled Caste candidates were selected. No suitable Scheduled Tribe candidate was, however, available. The Select Panel was approved by the Full Court of the Delhi High Court. The three candidates on the Select Panel, in the order of merit were : (1) Padam Singh, (2) the petitioner and (3) L.D. Mual. Padam Singh who was at the head of the Select Panel was appointed against the vacancy which was reserved for a Scheduled Caste candidate. The petitioner who was at Serial No. 2 was not appointed in the vacancy which was meant for a Scheduled Tribe candidate and it was kept unfilled. There being no other vacancies, the petitioner and L.D. Mual were not given appointments.

2. Several vacancies have arisen thereafter, but the petitioner was not appointed. Hence he filed a writ petition in the Delhi High Court against his not being appointed. A Full Bench of the Delhi High Court has considered the case of the petitioner along with the cases of several other petitioners who had also challenged their non-appointment in respect of subsequent vacancies. In the case of the petitioner the Delhi High Court has held that he was not entitled to be appointed and has dismissed his petition.

3. In order to understand the claim of the petitioner it is necessary to examine the position regarding filling of vacancies in respect of Additional District and Sessions Judges from the year 1979 onwards. In 1979 there was one vacancy for the post of Additional District and Sessions Judge. For filling of vacancies in the Delhi Higher Judicial Service after giving due effect to reservations in favour of Scheduled Castes and Scheduled Tribes, under Rule 22 of the Delhi Higher Judicial Service Rules, 1970, reservations have to be made in accordance with the orders issued by the Central Government from time to time. Accordingly a roster is maintained. The vacancy in 1979 was at roster point 4 which is reserved for a Scheduled Tribe candidate. Since it was a single vacancy, it was treated as unreserved and it was filled by a general category candidate, Smt Usha

Mehra. Thereafter, in 1981 three vacancies arose. These vacancies were at roster points 5, 6 and 7. Since the vacancy at roster point 4 had been filled by a general category candidate, the reservation in favour of a Scheduled Tribe candidate was shifted to roster point 5. Roster point 6 was for a general category candidate. Roster point 7 was for a Scheduled Caste candidate. However, roster point 7 was treated as for a general category candidate, since out of three vacancies only one could be reserved. In other words, the three vacancies which arose in 1981 were considered as one for a Scheduled Tribe candidate and two for general category candidates. The two roster points 6 and 7 for general category candidates were filled after advertisement. However, the vacancy which was reserved for a Scheduled Tribe candidate could not be filled since no suitable candidate was available. It was, therefore, carried forward.

4. In 1983, one vacancy was advertised for a Scheduled Tribe candidate. To this vacancy roster point 5 was applied which was reserved for a Scheduled Tribe candidate and which had remained unfilled in 1981. Once again no suitable candidate was available. It was sought to be filled by a general category candidate and a proposal was made to the Central Government for dereservation of that vacancy.

5. The next recruitment was in 1985. Four vacancies were advertised. These were at roster points 8, 9, 10 and 11. All these roster points are meant for general category candidates. However, the reservation for a Scheduled Tribe candidate at roster point 4 had remained unfilled and had been carried forward in 1981 as well as in 1983. Hence roster point 8 was kept for a Scheduled Tribe candidate. Roster point 9 was kept for a Scheduled Caste candidate in view of the fact that in 1981, roster point 7 which was for a Scheduled Caste candidate, had been filled by a general category candidate. Hence the reservation at roster point 7 was transferred to roster point 9. Roster points 10 and 11 remained for general category candidates. These roster points 10 and 11 were filled by general category candidates. The roster point which was meant for a Scheduled Caste candidate (roster point 9) was filled by Padam Singh while roster point 8 for a Scheduled Tribe candidate once again remained unfilled.

6. It is the contention of the petitioner that this was the third recruitment year of carrying forward a vacancy meant for a Scheduled Tribe candidate. As per the relevant rules and instructions applicable to this roster, in the third year of carry forward, the Scheduled Tribe vacancy was exchangeable with a Scheduled Caste vacancy. Hence he being on the Select Panel in that year for a Scheduled Caste candidate, should have been appointed to the vacancy which was meant for a Scheduled Tribe candidate by exchanging it for a Scheduled Caste candidate.

7. In order to appreciate this submission it is necessary to refer to the relevant rules. The Brochure on Reservation for Scheduled Castes and Scheduled Tribes in services issued by the Government of India, Department of Personnel and Administrative Reforms, Ministry of Home Affairs contain orders and instructions issued by the Government of India from time to time on the question of reservation of vacancies for Scheduled Castes and Scheduled Tribes. Chapter 8 of this Brochure deals with the procedure for filling reserved vacancies in recruitment through UPSC or by advertisement. On the subject of a single vacancy arising in any given year which is meant for a reserved category candidate, the instructions of the Department of Personnel and Administrative Reforms OM. No. 1/9/74-Estt. (SCT) dated 29-4-1975 state that the matter has been considered in the light of the judgment of this Court dated 11-10-1973 in the case of Arati Ray Choudhury v. Union of India [(1974) 1 SCC 87 : 1974 SCC (L&S) 73 : AIR 1974 SC 532]. It has now been decided in partial modification of the earlier orders referred to there that

"where only one vacancy occurs in the initial recruitment year and the corresponding roster point happens to be for a Scheduled Caste or Scheduled Tribe, it should be treated as unreserved and filled accordingly and the reservation carried forward to subsequent three recruitment years as hitherto. In the subsequent year(s), even if there is only one vacancy, it should be treated as 'reserved' against a carried forward reservation from the initial recruitment year and a Scheduled Caste/Scheduled Tribe candidate, if available, should be appointed in that vacancy, although it may happen to be the only vacancy in that recruitment year ...".

It was in the light of this instruction that in 1979 when a single vacancy arose at roster point 4 which was reserved for a Scheduled Tribe candidate, it was filled by a general category candidate and the reservation was carried forward to the next three recruitment years. This also explains why in 1981 the carried forward vacancy for a Scheduled Tribe candidate remained unfilled and was carried forward to 1983 when once again the vacancy for a Scheduled Tribe candidate remained unfilled. A proposal, however, for dereservation was submitted for the purpose of filling it by a general category candidate. We are not concerned with this aspect. What is material to note is that both in 1981 and in 1983 the vacancy for a Scheduled Tribe candidate remained unfilled and the reservation was carried forward while other candidates were recruited. In 1985, therefore, the reservation which was for a Scheduled Tribe candidate was being advertised for the third time.

8. Chapter 11 of the Brochure deals with carrying forward of reservations and exchange of reservation between Scheduled Castes and Scheduled Tribes. Paragraph 11.1 states as follows :

"11.1 Carry forward of reservations. - If sufficient number of Scheduled Castes and Scheduled Tribes candidates fit for appointment against reserved vacancies are not available, such vacancies can be dereserved after following the prescribed procedure for dereservation as in Chapter 10 and such reserved vacancies can be filled by candidates of other communities. After such dereservation, reservations are carried forward to subsequent three recruitment years

NOTE (1) : Recruitment year shall mean a 'calendar year' and for purposes of the three years' limit for carry forward of reserved vacancies shall mean the year in which recruitment is actually made.

#NOTE (2) : * * *##

Para 11.2 is as follows :

"11.2 Exchange of reservation between Scheduled Castes and Scheduled Tribes. - While vacancies reserved for Scheduled Castes and Scheduled Tribes may continue to be treated as reserved for the respective community only, Scheduled Tribes candidates may also be considered for appointment against a vacancy reserved for Scheduled Castes candidates and vice versa where such a vacancy could not be filled by a Scheduled Caste or Scheduled Tribe candidate even in the third year to which the reservation is carried forward. The normal provision is that the exchange is permissible only for the reservations which have been carried forward to third and subsequent year of recruitment"

9. There is considerable merit in the contention of the petitioner that 1985 was the third recruitment

year for the reservation meant for a Scheduled Tribe candidate and in that year the reservation could have been exchanged for a Scheduled Caste candidate, especially in view of the definition of "recruitment year" in Note (1) to para 11.1. The benefit of such exchange was not given to the petitioner because of the erroneous view taken by the High Court that the post was not exchangeable in 1985. We need not, however, examine this matter any further because the petitioner has by now attained the age of fifty years and he has very fairly accepted that it would not now be appropriate to appoint him as an Additional District Judge, and he will be content if his stand is vindicated.

10. In these circumstances, we pass no order on the special leave petition which is disposed of.