

Superintending Engineer, Public Health, U. T. Chandigarh and Others

Vs

Kuldeep Singh and Others

SLP (C) No. 492 of 1997

(S. Saghir Ahmed, K. Ramaswamy JJ)

21.01.1997

ORDER

1. This special leave petition arises from the order of the Central Administrative Tribunal, Chandigarh Bench, made on 6-9-1996 in OA No. 330/CH of 1989. Admittedly, the respondent belongs to Scheduled Castes and was eligible for promotion as Head-Draftsman. For the promotion to the said post, the petitioners appointed Mr. Ravinder Kumar Sood on 30-3-1988 and Mr. Dharam Nand on 14-3-1989. The respondent had challenged their promotion and non-consideration of his case claiming that he was eligible to be considered in the post as a reserved candidate though the post was meant for Scheduled Tribes. By order of the Government of India, the posts are interchangeable between the Scheduled Castes and the Scheduled Tribes and if the candidate belonging to Scheduled Tribes is not available, the eligible candidate belonging to Scheduled Castes is entitled to be considered for promotion to the post reserved for Scheduled Tribe candidates. Since he was not considered, the legitimate right to promotion given according to the roster was denied to him. The Tribunal accepted the contention and allowed the petition. In the meanwhile, pending his application he came to be promoted on 26-6-1993. However, direction was given to consider him from the date he was actually due for promotion with consequential benefits in the place to which R. K. Sood was promoted

2. Mr. K. B. Rohtagi, learned counsel for the petitioners, contends that in respect of the Union Territory of Chandigarh, no Scheduled Tribes' list is available and, therefore, the vacancy reserved for Scheduled Tribes cannot be treated to be one available to the Scheduled Tribes. We find no force in the contention. The Government of India, Ministry of Home Affairs, admittedly, by letter dated 12-6-1986 had given direction that since in the Union Territory of Chandigarh, the population of Scheduled Tribes is not available, the principle of alternative exchange to the Scheduled Castes should be adopted. Consequently, when vacancy No. 1 in the roster is available to the Scheduled Tribes, it requires to be filled by considering, for promotion, the candidates belonging to Scheduled Castes. It is, therefore, clear that though Scheduled Tribe candidate was not available to fill up the vacancy at No. 1 in the roster, the candidate belonging to the Scheduled Castes was required to be considered according to the Rules and given promotion on seniority-cum-fitness basis which is the rule under which the candidates are required to be considered. Admittedly, as on the time Mr. R. K. Sood was promoted, i.e., 30-3-1988 the respondent was admittedly eligible to be considered but he was not considered on the specious ground that as per the carry-forward rule the period of three years had expired. Therefore, he was not eligible at that time. That contention is also not acceptable for the reason that in the Brochure for Scheduled Castes and Scheduled Tribes, the word "subsequent recruitment year" has been interpreted in Chapter II thereof as under :

"Recruitment year shall mean a calendar year and for purposes of three years' limit

for carry forward of reserved vacancies shall mean the year in which recruitment is actually made."

3. Thus, it is clear that in a calendar year, i.e., from 1st January to 31st December of the calendar year, if the recruitment has been made and if the candidates belonging to the Scheduled Castes and Scheduled Tribes are not available, the reserved vacancies are required to be carried forward for three recruitment years. Take for instance, the recruitment took place in the year 1986 and the candidates belonging to Scheduled Castes and Scheduled Tribes are not available, the vacancies are required to be carried forward for three recruitment years thereafter. Suppose the second recruitment takes place in 1989, the second recruitment year is 1989 but not the year 1987, as sought to be interpreted by the respondent. It is seen and admitted that in the year 1987, the respondent was not eligible. Therefore, the post was carried forward to the year 1987 (sic 1988) and in 1988 the post was filled up without considering the case of the respondent and the petitioners construed it to be three recruitment years and thereby it is said that the period of three years for the purpose has elapsed. The construction is fallacious and deliberate to deny the benefit of reservation in the light of the unequivocal instructions as extracted hereinbefore. Moreover, no proceedings for reservation and prior approval of the Government of India, Ministry of Home Affairs were obtained. We are surprised to note, as rightly pointed out by the Tribunal, that the petitioner, Union Territory Office, despite given repeated opportunities to produce the roster, has suppressed production of the roster which they are enjoined to maintain. In the petition, no explanation has been offered. The duty to implement the rule of reservation is a constitutional duty to be performed honestly, sincerely and in its true content and spirit which the petitioner appears to have derelicted.

4. Article 14 prohibits discrimination and Article 16(1) accords equality of opportunities in the matter of appointment to an office or post under the State. Article 38 read with the Preamble enjoins the State to accord socio-economic justice, the basic feature in all institutions of national life. Article 335 of the Constitution enjoins that the claims of the members of the Scheduled Castes and Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. It is settled law that it should be read consistent with Article 46 of the Constitution to take special care of the educational and economic interests of the Scheduled Castes and the Scheduled Tribes and to protect them from injustice and all forms of exploitation. Appointment to an office or post under the State is one of the policies of the State to accord economic justice as part of social justice for integration of Scheduled Castes and Scheduled Tribes in the social mainstream, as also dignity of person and equality of status. It would be an opportunity to improve excellence which is a fundamental duty. In the light of Article 16(4-A) introduced by the Constitution (77th Amendment) Act, 1995 the claims of the Scheduled Castes and the Scheduled Tribes for promotion shall be taken into consideration in making appointment or giving promotion. It is the constitutional duty coupled with the power of the authorities implementing the rules of recruitment including promotion. In that behalf, in *Comptroller and Auditor General of India, Gian Prakash v. K. S. Jagannathan* ((1986) 2 SCC 679 : 1986 SCC (L&S) 345 : (1986) 1 ATC 1) (SCC 679 at p. 693), a three-Judge Bench of this Court was to consider whether the appellant-Comptroller and Auditor General of India was under the constitutional obligation to fix the lesser standard of examination in the light of the Brochure, to inform the Scheduled Caste and Scheduled Tribe employees of the same and to conduct refresher courses before conducting examination and whether the failure to discharge the duty was unconstitutional. This Court considered the constitutional obligation on the part of the authorities in implementing the rule of reservation and pointed out in paras 21, 22 and 23 as under : (SCC pp. 693-95)

"21. It is now necessary to examine the nature of the discretion conferred by the said Office Memorandum dated 21-1-1977 - 'Whether it is a discretionary power simpliciter or a discretionary power coupled with a duty ?' From the provisions of the Constitution referred to above, it is transparently clear that it is a discretion to be exercised in the discharge of the constitutional duty imposed by Article 335 to take into consideration the claims of the members of the Scheduled Castes and the Scheduled Tribes, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. This duty is to be exercised in keeping with the Directive Principle laid down in Article 46 to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Article 37 of the Constitution provides that the Directive Principles of State Policy contained in Part IV of the Constitution, in which Article 46 occurs, are fundamental to the governance of the country and that it is the duty of the State to apply these principles in making laws. As said by Murtaga Fazal Ali, J., in *State of Kerala v. N. M. Thomas* ((1976) 2 SCC 310 : 1976 SCC (L&S) 227) (at p. 996 of the Reports : SCC p. 379, para 164) the directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles'.

22. The object of the said Office Memorandum dated 21-1-1977, is to provide an adequate opportunity of promotion to the members of the Scheduled Castes and the Scheduled Tribes. By reason of the provisions of Article 16(4) of the Constitution a treatment to the members of the Scheduled Castes and the Scheduled Tribes different from that given to others in matters relating to employment or appointment to any office under the State does not violate the Fundamental Right to equality of opportunity for all citizens in such matters guaranteed by Article 16(1) of the Constitution. It is now well settled by decisions of this Court that the reservation in favour of backward classes of citizens, including the members of the Scheduled Castes and the Scheduled Tribes, as contemplated by Article 16(4) can be made not merely in respect of initial recruitment but also in respect of posts to which promotions are to be made : (see, for instance *State of Punjab v. Hira Lal* ((1970) 3 SCC 567 : (1971) 3 SCR 267) and *Akhil Bharatiya Soshit Karamchari Sangh (Rly.) v. Union of India* ((1981) 1 SCC 246 : 1981 SCC (L&S) 50).

23. The question which now falls to be considered is the manner in which the Comptroller and Auditor General of India is required to exercise the discretion conferred by the said Office Memorandum dated 21-1-1977, and the manner in which he has, in fact, exercised it. The said Office Memorandum dated 21-1-1977, refers to two other office memoranda, namely, the Office Memorandum dated 23-12-1970, and the Office Memorandum dated 27-11-1972. Under the Office Memorandum dated 23-12-1970, where a sufficient number of Scheduled Caste and Scheduled Tribe candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, they may also be considered for promotion provided they are not found unfit for such promotion, and to achieve this, the said office memorandum directs that the qualifying standard in such examinations can be relaxed in their favour in keeping with the above criterion. The Office Memorandum dated 27-11-1972, fixes the reservation quota for the members of the Scheduled

Castes at 15% and the Scheduled Tribes at 7 1/20/0 in appointments filled by promotion on the basis of seniority subject to fitness. Under the said Office Memorandum dated 21-1-1977, if a sufficient number of Scheduled Caste and Scheduled Tribe candidates are not available in the qualifying examinations on the basis of the general standard to fill all the vacancies reserved for them in the promotional posts, suitable relaxation in the qualifying standard for such examinations should be made in the case of the Scheduled Caste and the Scheduled Tribe candidates bearing in mind all relevant factors including, namely, (1) the number of vacancies reserved, (2) the performance of the Scheduled Caste and the Scheduled Tribe candidates as well as the general candidates in that examination, (3) the minimum standard of fitness for appointment to the post, and also (4) the overall strength of the cadre and that of the Scheduled Castes and the Scheduled Tribes in that cadre. The said Office Memorandum dated 21-1-1977, thus postulates two qualifying standards - one, a general qualifying standard and the other, a relaxed or lower qualifying standard for candidates belonging to the Scheduled Castes and the Scheduled Tribes. Paragraph 4 of the said Office Memorandum dated 8-2-1968, reproduced earlier, shows that in the case of direct recruitment through a qualifying examination a minimum standard is generally to be fixed and that in such cases, a lower minimum qualifying standard should be fixed for the candidates belonging to the Scheduled Castes and the Scheduled Tribes, taking into account the minimum standard necessary for the maintenance of efficiency of administration, and that if the minimum qualifying standard for general candidates is reviewed at a later date, the lower minimum qualifying standard applicable to the Scheduled Caste and Scheduled Tribe candidates should also be reviewed. The Office Memorandum No. 111/70-Estt. (SCT) dated 25-7-1970 which deals with examination for direct recruitment also speaks of a general standard and of a lower standard for candidates belonging to the Scheduled Castes and the Scheduled Tribes, the standard being required to be relaxed in their case to make up the deficiency in the reservation quota provided they are not found unfit for such post or posts. As seen above, a similar provision exists in the said Office Memorandum dated 23-12-1970, with respect to departmental competitive examinations for promotion and in departmental confirmation examinations."

5. This principle of power coupled with duty was succinctly stated by Earl Cairns, L.C. in the House of Lords in *Julius v. Lord Bishop of Oxford* ((1880) 5 AC 214 : (1874-80) All ER Rep 43, HL) (AC at pp. 222-23) quoted with approval therewith by this Court in *Commr. of Police v. Gordhandas Bhanji* (1952 SCR 135 : AIR 1952 SC 16) (SCR at p. 147) thus :

"There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."

6. It would thus be clear that the petitioner was under a constitutional duty coupled with power. Every public servant is a trustee of the society and in all facets of public administration, every public servant has to exhibit honesty, integrity, sincerity and faithfulness in implementation of the political, social, economic and constitutional policies to integrate the nation, to achieve excellence

and efficiency in the public administration. A public servant entrusted with duty and power to implement constitutional policy under Articles 16(4), 16(4-A), 15(4) and 335 and all interrelated directive principles, should exhibit transparency in implementation and should be accountable for due effectuation of constitutional goals. Maintenance of the roster and strict adherence to it in accordance with the Brochure issued by the Government of India in that behalf to implement the rule of reservation in promotion is the charge and trust put on public servants. The Constitution has trusted the public servant as honest administrator to effectuate public policy and constitutional goals. The petitioner herein, has betrayed that trust and tended to frustrate the public policy. It is deducible from the facts that the petitioner failed to perform that constitutional duty. The Administrator of the Union Territory of Chandigarh should look into and take appropriate action against the erring officers concerned and report compliance to the Registry of this Court within two months.

7. The Tribunal, therefore, had rightly held that in the year 1988, the vacancy ought to have been filled up by promoting the respondent when R. K. Sood was considered and vacancy reserved for Scheduled Tribes was filled up without considering the case of the respondent. Omission thereof amounted to violation of constitutional duty and avoidance of implementation of the rule of reservation and the roster provided by the Government. The view of the Tribunal, therefore, is correct in law warranting no interference.

8. The special leave petition is accordingly dismissed.