

Union of India and Others

Vs

Brij Lal Thakur

Civil Appeal No. 2236 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

17.03.1997

ORDER

1. Delay condoned. Leave granted.
2. We have heard learned counsel on both sides.
3. This appeal by special leave arises from the order passed on 31-3-1995 by CAT, New Delhi in OA No. 1801 of 1994.
4. The post of ECG Technician in the Grade of Rs. 1200-2040 became vacant on 30-11-1993 in the Central Hospital, Northern Railway due to retirement of Mrs. William Chand, a general candidate, holding that post. For promotion of Theatre Assistants to the said post, trade test was conducted in which Smt. Prakash Kaur belonging to a Scheduled Caste and two others were called. The vacancy to be filled up was reserved for Scheduled Castes in a carry forward post as per the rotation of the roster. In the trade test held on 8-12-1994, Smt. Prakash Kaur was found suitable and she was accordingly promoted as ECG Technician w.e.f. 9-12-1994. The respondent, as unsuccessful candidate, filed on OA in the Tribunal contending that since the post of ECG Technician is a solitary post, reservation as per roster is unconstitutional as it would lead to 100% reservation. The contention found favour with the Tribunal. Accordingly, it set aside the appointment by promotion of Smt. Prakash Kaur and gave direction to treat it as unreserved post and to consider the case of the respondent for appointment to the post according to Rules. The controversy is no longer res integra. This Court in *Union of India v. Madhav* [(1997) 2 SCC 332 : 1997 SCC (L&S) 503 : JT (1996) 9 SC 320] by a Bench of three Judges considered the entire case-law following the Constitution Bench judgments in *Arati Ray Choudhury v. Union of India* [(1974) 1 SCC 87 : 1974 SCC (L&S) 73], *Commr. of Commercial Taxes v. G. Sethumadhava Rao* [(1996) 7 SCC 512 : 1996 SCC (L&S) 630 : (1996) 33 ATC 320], *M. Venkateswarlu v. Govt. of A.P.* [(1996) 5 SCC 167 : 1996 SCC (L&S) 1153] and *State of Bihar v. Bageshwari Prasad* [1995 Supp (1) SCC 432 : 1995 SCC (L&S) 506 : (1995) 29 ATC 349]. It was held that : (SCC p. 338, para 10)

"... even though there is a single post, if the Government have applied the rule of rotation and roster point to the vacancies that had arisen in the single point post and were sought to be filled up by the candidates belonging to the reserved categories at the point on which they were eligible to be considered, such a rule is not violative of Article 16(1) of the Constitution."

In the case the post of Secretary in the National Savings Scheme Service was a single point post to which 40-point roster was maintained to the vacancy in the said post. When the Scheduled Tribe

candidate was selected for promotion on the basis of the rule of rotation, it was held by the Tribunal that the promotion was violative of Articles 14 and 16(1) of the Constitution. Reversing that order it was held that :

"Thus, the Government have adhered to the rule of rotation to a single post and the 40-point roster to the single post was applied and the vacancy reserved for the Scheduled Castes and Scheduled Tribes as and when had arisen, was sought to be filled up, when the candidates were available. Thus, we hold that the roster point No. 4 in the vacancy of the Secretary reserved for the Scheduled Tribes was valid and constitutional. When the officer available was eligible to be considered, he was entitled to be considered in accordance with the rules and be promoted as Secretary. The Tribunal, therefore, was not right in directing that the rule of rotation could not be applied to the single post. It is brought to our notice that the original promotee died pending the proceedings and, therefore as and when vacancy arises as per the rule of rotation as per the roster the same would be filled up in accordance with law."

5. Accordingly, we hold that appointment by promotion to the single post of ECG Technician applying 40-point post and rule of rotation, consideration of Smt. Prakash Kaur to the said vacancy is not violative of Articles 14 and 16(1) of the Constitution. The promotion is legal and valid. The Tribunal, therefore, was incorrect in setting aside the promotion is legal and valid. The Tribunal, therefore, was incorrect in setting aside the promotion of Mrs. Prakash Kaur.

6. The appeal is accordingly allowed. The order of the Administrative Tribunal stand set aside. The petition stands dismissed. No costs.