

Suresh Chandra

Vs

J. B. Agarwal and Others

Civil Appeal No. 3081 of 1997

(K. Ramaswamy, G. B. Pattanaik JJ)

04.04.1997

ORDER

1. Leave granted. We have heard learned counsel on both sides.
2. This appeal by special leave arises from the judgment of the Division Bench of the Delhi High Court, made on 18-4-1995 in CWP No. 4254 of 1994.
3. The admitted position is that to the post of the Assistant Manager (Electrical) carrying the pay scale of Rs. 1000-1600, the next channel of promotion is Senior Manager (Electrical) carrying the pay scale of Rs. 3000-4500. When the case of the appellant was sought to be considered for the said post by applying rule of roster, the respondent filed a writ petition. The High Court following the judgment of this Court in Chakradhar Paswan (Dr.) v. State of Bihar [(1988) 2 SCC 214 : 1988 SCC (L&S) 516 : (1988) 7 ATC 104] had held that rule of reservation could not be applied to the single post cadre as it would amount to 100% reservation violating Article 16 (1) read with Article 14 of the Constitution. In Arati Ray Choudhury v. Union of India [(1974) 1 SCC 87 : 1974 SCC (L&S) 73 : (1974) 2 SCR 1] a Constitution Bench of this Court had held that the reservation in single post applying the rule of the roster is constitutionally valid. This Court has considered the entire case-law in Union of India v. Madhav [(1997) 2 SCC 332 : 1997 SCC (L&S) 503 : JT (1996) 9 SC 320]. The Bench of three Judges, to which both of us were members, held that in case of solitary isolated post on the basis of the rule of rotation, the benefits and facilities should be extended to the reserved candidates, namely, Scheduled Castes and Scheduled Tribes for appointment by promotion to the single post and, therefore, application of the rule of reservation is not unconstitutional. Accordingly, it was held thus : (SCC p. 338, para 10).

"... even though there is a single post, if the Government have applied the rule of rotation and the 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 are eligible to be considered, such a rule is not violative of Article 16 (1) of the Constitution."

4. This principle was reiterated in State of U.P. v. Dr. Dina Nath Shukla [(1997) 9 SCC 662 : JT (1997) 2 SC 467]. Shri Goburdhun, learned counsel appearing for the respondents, has contended that this Court has considered the judgment in Chetana Dilip Motghare v. Bhide Girls' Education Society [1995 Supp (1) SCC 157 : 1995 SCC (L&S) 312 : (1995) 29 ATC 107]. The said judgment was considered in Madhav case [(1997) 2 SCC 332 : 1997 SCC (L&S) 503 : JT (1996) 9 SC 320]. and it was held therein, as a question of fact, that since the material was not placed before the Court, having noticed the Constituted Bench judgment in Arati Ray Choudhury case [(1974) 1 SCC 87 :

1974 SCC (L&S) 73 : (1974) 2 SCR 1], the Court limited the decision to the facts of that case and held that it is not possible to accede to the contentions raised by the review petitioner therein. Therefore, there is no question of reconsideration of the position once over. It is then contended that as held in *S. Vinod Kumar v. Union of India* [(1996) 6 SCC 580 : 1996 SCC (L&S) 1480 : JT (1996) 8 SC 643] the basic qualifications cannot be relaxed while applying the rule of reservation under Article 16(4) of the Constitution. He contends that the respondent is a degree-holder while the appellant is only a diploma-holder. Therefore, his case could not be considered. The question was considered by the Departmental Promotion Committee and it held that subject to the other eligibility criteria, educational qualification could be relaxed. If the appellant satisfied other qualifications then his case would be considered. He then contends that the said relaxation is bad in view of the orders that relaxation of the eligibility cannot be granted. He places reliance upon the rules of recruitment in that behalf. The rules of recruitment, as placed before us, do indicate the basic qualification for initial recruitment which cannot be relaxed. But in a case of promotion, the said rule does not apply. It is, therefore, not necessary for us to go into the question whether the appellant is eligible to be considered on other grounds. Whether or not he would be eligible, his case would be considered in accordance with law.

5. It is contended by Shri Goburdhun that the respondent has been working as a Manager for the past three years on the post of Senior Manager. He is likely to retire after three years and, therefore, he will be deprived of the chance to remain in the promotion post. We cannot accede to the contention. If the rule of roster is applied to a single post cadre and if the vacancy arises against a reserved post in accordance with the rule of roster, necessarily, so long as the reserved candidate is found fit for promotion, one is required to give place to fill up the post in accordance with the roster point. Otherwise, the roster point itself would be rendered illusory.

6. He contends that in *Paswan case* [(1988) 2 SCC 214 : 1988 SCC (L&S) 516 : (1988) 7 ATC 104] it was held that the reservation in promotion to the single post is contrary to the ratio in the *Devadasan case* [*T. Devadasan v. Union of India*, (1964) 4 SCR 680 : AIR 1964 SC 179 : (1965) 2 LLJ 560] and violative of Articles 16(1) and 16(2) of the Constitution. That principle is not the correct principle of law. It is contrary to the judgment of the nine-Judge Bench of this Court in *Ahmedabad St. Xavier's College Society v. State of Gujarat* [(1974) 1 SCC 717 : (1975) 1 SCR 173]; a judgment of Constitution Bench in *Arati Ray Choudhury case* [(1974) 1 SCC 87 : 1974 SCC (L&S) 73 : (1974) 2 SCR 1]; *Pradeep Jain (Dr.) v. Union of India* [(1984) 3 SCC 654] *Marri Chandra Shekhar Rao v. Dean, Seth G. S. Medical College* [(1990) 5 SCC 201 : (1997) 3 Scale 289] and *Ashok Kumar Gupta v. State of U.P.* [(1997) 5 SCC 201 : (1997) 3 Scale 289].

7. The appeal is, accordingly, allowed. The writ petition stands dismissed but, in the circumstances, without costs.