

S. Rajendran

Vs

Union of India and Others

Civil Appeals Nos. 5736-5737 of 1994

(Sujata V. Manohar, D. P. Wadhwa JJ)

11.02.1998

JUDGMENT

SMT. SUJATA V. MANOHAR, J. -

1. The appellant and Respondent 3 belong to the service of the Jail Department of the Government of Pondicherry. The appellant Rajendran was promoted as Assistant Superintendent of Jails on 8-2-1980. The 3rd respondent was directly recruited as a probationer to the post of Assistant Superintendent of Jails on 4-11-1988. The 3rd respondent belongs to a Scheduled Caste. At the material time, in the seniority list of Assistant Superintendents, the appellant was at Serial No. 1 and the 3rd respondent was at Serial No. 4. The next promotional post for Assistant Superintendent of Jails is the post of Deputy Superintendent which is a Grade C post with the pay scale of Rs. 1400-2300. Under the Government of Pondicherry, Jail Department, Group C and Group D Posts (Non-Ministerial) Recruitment Rules, 1981, the post of Deputy Superintendent of Jails is to be filled by promotion failing which, by direct recruitment. In the case of recruitment by promotion, the Rules as amended provide that it will be by promotion from regular Assistant Superintendents who have put in not less than three years' continuous service in that grade.

2. On 23-7-1990 a single vacancy arose in the post of Deputy Superintendent of Jails. This vacancy was a reserved vacancy for a Scheduled Caste candidate. Respondent 3 was the only available Scheduled Caste candidate. However, he was not eligible for promotion on that date since he had not completed his period of probation and had not qualified for promotion by passing the departmental tests being Jail Test and Executive Officers' Test. Since no suitable Scheduled Caste candidate was available for promotion, the department applied for deservation of the post so that a general category candidate could be appointed to that post. This request, however, was turned down and the department was advised by the Government to fill up the post on an ad hoc basis until a suitable Scheduled Caste candidate became available. Accordingly, the appellant was appointed Deputy Superintendent by promotion on an ad hoc basis. On 6-2-1993 Respondent 3 became eligible for promotion since he was declared to have satisfactorily completed his period of probation and since he had also qualified by passing the two departmental tests. By then he had also completed three years of regular service. The department accordingly moved the Government for appointing the 3rd respondent in the reserved post. Thereupon the appellant filed an application before the Central Administrative Tribunal at Pondicherry for regularisation of his appointment as a Deputy Superintendent. His application was allowed. However, subsequently, on a review of its earlier order on the ground of there being an error a parent on the face of the record, the Tribunal dismissed the application of the appellant. Hence, the appellant has come by way of present appeal against the order of the Tribunal in review.

3. The brochure on "Reservation For Scheduled Castes and Scheduled Tribes in Services" issued by the Government of India, in para 11.3 in Chapter 11 deals with reservations and carry-forward of a single vacancy arising in a year. It provides as follows :

"In cases where only one vacancy occurs in the initial recruitment year and the corresponding roster point happens to be for a Scheduled Caste or a Scheduled Tribe, it should be treated as unreserved and filled accordingly and the reservation carried forward to subsequent three recruitment years, but in the subsequent recruitment year (s), even if there is only one vacancy, it should be treated as "Reserved" against the 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(s)."

In this connection OM No. 1/9/74-Estt.(SCT) dated 29-4-1975 further provides that the matter has been considered in the light of the judgment of the Supreme 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) and it has now been decided that in partial modification of OM dated 4-12-1963 and 2-9-1964, while in cases where only one vacancy occurs in the initial recruitment year and the corresponding roster point happens to be for a Scheduled Caste or a 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 years, even if there is only one vacancy, it should be treated as "Reserved" against the 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. For instance, if a single vacancy arises in the initial recruitment year 1975, and it falls at a reserved point in the roster, it will be treated as "unreserved" and filled accordingly in that year but the reservation would be carried forward to subsequent recruitment years. In the first subsequent year i.e. 1976, if again, a single vacancy occurs, then it should be treated as "reserved" against the reservation carried forward from 1975 and a Scheduled Caste/Scheduled Tribe candidate, should be appointed against that vacancy. In the event of Scheduled Caste/Scheduled Tribe candidate not being available to fill the reserved vacancy in 1976, the reservation would be further carried forward to 1977 and 1978, when also a single vacancy, if any, arising in those years should be treated as "reserved" against the carried forward reservation, whereafter, the reservation will lapse.

4. In the present case, a single vacancy for the post of Deputy Superintendent against a roster point which was reserved for a Scheduled Caste candidate arose in the year 1978. This was the initial recruitment year. In that year since no Scheduled Caste candidate was available it was treated as "unreserved" and the reservation was carried forward to the next recruitment year which was 1983 when a single vacancy arose. This vacancy was treated as a "reserved" vacancy. However, since a Scheduled Caste candidate was not available for this vacancy an application was made for deserving this vacancy which was granted. It was thereupon filled by a general category candidate and the reservation was carried forward or transferred to the next recruitment year which would now be the initial recruitment year for the reserved vacancy since the earlier point was deserved. The next recruitment year was 1990 when the next vacancy arose. This is how the vacancy which arose on 23-7-1990 was reserved for a Scheduled Caste candidate. Since no Scheduled Caste candidate was available in 1990 and since the application of the department for deservation was rejected, this vacancy as per the rules set out above, was required to be carried forward for three recruitment years. The vacancy was accordingly carried forward for the next three recruitment years being the years 1991, 1992 and 1993. In 1994 the reservation would have lapsed if no suitable

Scheduled Caste candidate was available. However, in 1993 the 3rd respondent was available for filling up the reserved vacancy in the Scheduled Caste category. That is why, to prevent the appointment of Respondent 3, the appellant filed the application before the Central Administrative Tribunal in July 1993.

5. In the background of this factual position, the action of Respondents 1 and 2 in giving only an ad hoc promotion to the appellant appears to be justified. Because they were required to carry forward the reserved vacancy for three subsequent years, the reservation would lapse only in the year 1994. The occasion, however, for making an appointment from the general category in 1994 did not arise.

6. In the case of *Jogendra Sethi v. Rabindranath Behura* (1995 Supp (3) SCC 693 : 1996 SCC (L&S) 112 : (1995) 31 ATC 772) this Court considered the provisions with regard to reservation of posts for Scheduled Castes and Scheduled Tribes in Orissa made in the Orissa Reservation of Vacancies in Posts and Services (For Scheduled Castes and Scheduled Tribes) Act, 1971. It considered the provision for carry-forward of vacancy for three years of recruitment and held that the first recruitment year would be the year in which the vacancy arose and it was required to be carried forward for three subsequent calendar years looking to the definition of "recruitment year" in the said Act. Under the brochure on "Reservation for Scheduled Castes and Scheduled Tribes in Services" also, in Chapter 11, para 11.1, Note (1) defines "recruitment year" to mean "a calendar year and for purposes of the three years' limit for carry-forward of reserved vacancies it shall mean the year in which recruitment is actually made". The vacancy, therefore, was required to be carried forward for three calendar years starting with 1991. (See also in this connection *Malkhan Singh v. Union of India* ((1997) 2 SCC 33 : 1997 SCC (L&S) 315).)

7. In the premises the Tribunal had correctly reviewed its earlier order and dismissed the application of the appellant. The present appeals are, therefore, dismissed. There will, however, be no order as to costs.