
(2009) 06 GAU CK 0075
In the Gauhati High Court
Case No : Writ Petition (C) No. 1286 of 2006

Pradeep Brahma	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 02-06-2009

Acts Referred:

Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978 — Section 5
Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1983 — Rule 5

Citation : (2009) 122 FLR 927 : (2009) 2 GLD 480 : (2010) 6 GLR 104 : (2009) 5 GLT 384

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : S. Bhattacharyya, M. Bhattacharjee, for the Appellant; D.P. Chaliha J. Rajkumari, B.K. Sarma and P.K. Bora, R. Chakraborty, Addl. Sr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—By means of this writ petition, the petitioner, a reserved category candidate working in the post of Senior District Information and Public Relations Officer, has prayed for a direction to the respondents to appropriately implement the provisions of the Assam SC & ST (Reservation of Vacancies in Services and Posts) Act, 1978 and the Rules of 1983 framed thereunder. The petitioner has also questioned the legality and validity of the minutes of the Selection Committee held on 20.8.2005 (Annexure-3 to the writ petition) so far as the same relates to the observation regarding filling up of the promotional posts by the reserved category candidate is concerned. The petitioner has also challenged the order of promotion dated 14.2.2006 (Annexure-4 to the writ petition), which was issued pursuant to the said minutes of selection.

2. The issue involved is in a very narrow campus. The petitioner belonging to the ST(P) category candidate, asserts that he is entitled to get the promotion to the

next higher rank of Deputy Director against the carried forward roster point/vacancy.

3. Mr. S. Bhattacharyya, learned Counsel for the petitioner, referring to the provisions of Rule 5 of the aforesaid Rules of 1983 submits that since the particular point reserved for ST(P) candidate was earlier de-reserved, the vacancy meant for ST(P) candidate ought to have been carried forward against which the case of the petitioner ought to have been considered so as to fulfill the requirement of the reservation roster.

4. On the other hand, Ms. R. Chakraborty, learned Additional Senior Government advocate, referring to the stand of the State Government in its counter-affidavit, submits that no illegality has been committed in operating the roster and that on the basis of the percentage of reservation, the petitioner is not entitled to get the promotion to the post of Deputy Director.

5. Mr. D.P. Chaliha, learned senior counsel appearing for the private respondents also submits in tune with the submissions made by Ms. R. Chakraborty, learned State counsel.

6. There is no dispute that the total cadre strength in the category of Deputy Director is 10 (ten). Section 5 of the Act of 1978 provides for the reservations for SC and ST in vacancies to be filled up by promotion. It provides that there shall be reservation at 7% for the members of the SC and 10% for the members of ST(P) and 5% for the members of the ST(H). In the present case, we are concerned with the percentage of reservation and the operation of roster thereof in respect of the ST(P) candidates.

7. If we go by the percentage of reservation as mentioned above, in the total cadre strength of 10, operation the percentage of reservation, which is 10% for ST(P), only one post will go to the ST(P) officers. In the impugned minutes of the Selection Committee meeting held on 20.8.2005, this aspect of the matter has been mentioned. The Selection Committee after selecting the 18 officers for promotion to the post of Deputy Director, dealt with the percentage of reservation and operation of roster thereof. The name of the petitioner appears at sl. No. 16 of the list of suitable candidates. Above him, there is one Sri Prasanta Kumar Saikia at Sl. No. 7 also belonging to ST(P). The Selection Committee took note of the fact that there was a backlog of ST(P) against the roster point No. 1. It also took note of the fact that subsequently, an ST(P) candidate was promoted against roster point No. 11, which was also reserved for ST(P) candidate. The Selection Committee in its minutes noted that by operation of roster, the percentage of reservation for ST(P) candidate was achieved. However, it noted the confusion that the backlog against point No. 21 for ST(P) candidate was still outstanding as the backlog without lapse. It was in such circumstances, the Committee felt that the matter should go to the WPT and BC Department for necessary clarification. After the aforesaid minutes of the Selection Committee, the authority issued Annexure-4 notification dated

14.2.2006 (Annexure-4 to the writ petition) promoting the selected candidates in order of merit and also providing reservation. In the process, the selectee a Sl. No. 7 Sri Prasanta Kumar Saikia, an ST(P) candidate also earned promotion.

8. The question which arises for consideration is as to whether in the cadre strength of 10, an ST(P) candidate having been promoted, the percentage of reservation, which is 10% has been achieved or not and if achieved, whether even thereafter the roster can be operated so as to grant promotion to the petitioner, who is the next ST(P) category candidate and thereby to clear the outstanding backlog.

9. In *R.K. Sabharwal and others Vs. State of Punjab and others*, , it was held that the percentage of reservation has to be worked out in relation to the number of posts, which form the cadre-strength. The concept of "vacancy" has no relevance in operating the percentage of reservation. The Government has to apply the cadre strength as a unit in the operation of roster in order to ascertain as to whether a given class/group is adequately represented in service. The cadre strength as a unit also ensures that the reservation remains within the 50% limit, is not violated. Further, the roster is to be on the basis of the post-specific and not vacancy-based.

10. In paragraph 6 of the judgment, it was observed that the cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence, the percentage of reservation has to be worked out in relation to the number of posts, which form the cadre- strength. The concept of "vacancy" has no relevance in operating the percentage of reservation.

11. In *R.S. Garg Vs. State of U.P. and Others*, the Apex Court dealing with a case in which there were 6 posts and the reservation was to be confined to 21%, held that if the roster was to be followed, 2 posts would be reserved for the Scheduled Caste candidates, which is impracticable. In paragraph 40 of the judgment, it was observed:

40. We are not concerned with the reasonableness or otherwise of the, percentage of reservation. 21% of the posts have been reserved for the Scheduled Caste candidates by the State itself. It, thus, cannot exceed the quota. It is not disputed that in the event of any conflict between the percentage of reservation and the roster, the former shall prevail. Thus, in the peculiar facts and circumstances of this case, the roster to fill up the posts by reserved category candidates, after every 4 posts, in our considered opinion, does not meet the constitutional requirements.

12. In *M. Nagaraj and Others Vs. Union of India (UOI) and Others*, the Apex Court referring to its earlier decision in *R.K. Sabharwal* (supra) observed that the entire cadre strength should be taken into account to determine as to whether the reservation up to the quota limit has been reached. It was clarified that the judgment in *Indra Sawhney* reported in 1992 Supp. (3) SCC 217, on which Mr.

Bhattacharyya, learned Counsel for the petitioner has emphasized, was confined to initial appointment and not to promotion, with which we are concerned, in the present case. As in R.K. Sabharwal case, it was observed that the appropriate Government has to apply the cadre strength as a unit in the operation of roster in order to ascertain as to whether a given class/group is adequately represented in the service and that the roster has to be post-specific and not vacancy-based.

13. If the argument advanced by Mr. Bhattacharyya, learned Counsel for the petitioner is to be accepted, it will amount to reservation on vacancy-based and not taking into account the total cadre strength consisting of 10 posts. Pursuant to the impugned minutes of selection, said Sri Prasanta Kumar Saikia having been promoted as an ST(P) category candidate, the percentage of reservation, which is 10%, has already been achieved in the total cadre strength of 10 and thereafter, by way of operating the roster in the manner in which the petitioner wants to be operated, the percentage of reservation cannot be increased.

14. For the aforesaid reasons, I am not inclined to accept the case of the petitioner and accordingly, the writ petition is dismissed, without, however, any order as to costs.