
(2001) 02 AP CK 0074

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3226 of 2001

R. Nageswara Rao

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Citation : (2001) 2 ALD 618 : (2001) 2 ALT 486

Hon'ble Judges : Satya Brata Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. Somka Rama Krishna Rao, for the Appellant; Mr. R.S. Murthy, SC for Railways, for the Respondent

Judgement

Satya Brata Sinha, CJ

1. This writ petition arises out of an order dated 11-2-2000 passed by the Central Administrative Tribunal in OA No.1457 of 1998 whereby and whereunder the Original Application filed by the petitioner herein was dismissed.

2. The writ petitioner in the said Original Application questioned the proceedings dated 18-9-1998 in terms whereof the petitioner's request to convert a post reserved for scheduled tribe candidate in his favour as he belongs to OC category candidate was rejected. Having regard to the decisions of the Apex Court in Post-Graduate Institute of Medical Education and Research v. ILL. Narasimhan, 1997 (4) SLR 701 and S.S. Sharma and Others Vs. Union of India (UOI) and Others, , the Tribunal held.:

"The Apex Court in the reported case referred to above had stated that the de-reservation is a policy decision and the Court or a Tribunal cannot interfere with that decision and no one can claim for de-reservation as a matter of right. That observation of the Apex Court squarely holds good in this OA."

3. It appears that a similar matter came up for consideration before the Central Administrative Tribunal in S.K. Bikshapathi v. Union of India and others (OA

No.978 of 1998) and by reason of an order dated 22-10-1998 the Tribunal disposed of the said OA directing:

"(i) The letters dated 19/22-6-1998 and dated 2-7-1988 are set-aside;

(ii) The Railway Board should adhere to their initial decision of de-reservation of the post of Assistant Electrical Engineer earmarked for the ST candidate, which was to be filled as per the notification dated 23-11-1993.

(iii) If the applicant is next in turn for promotion to the de-reserved post of Assistant Electrical Engineer and he is otherwise eligible, he should be promoted against the de-reserved post;

(iv) The pay of the applicant should be fixed in accordance with law on his promotion as Assistant Electrical Engineer."

4. Union of India filed a writ petition before this Court against the said order of the Tribunal. A Division Bench of this Court, upon consideration of the matter and the decisions of the Apex Court in Post-Graduate Institute of Medical Education's case (supra) and Sharma's case (supra), has evolved the following principles therefrom :

"1. Whether a reserved post can be de-reserved or not is left to the discretion of the concerned department or authority, and no one has any vested right to claim that an unfilled vacancy in a reserved post should be filled up by a general category candidates after de-reservation of the post.

2. No Court or Tribunal can issue mandamus or direction to a public recruiting agency to fill up vacancies in the reserved for SCs/STs/BCs., by the candidates belonging to other categories by reservation of the posts.

3. No de-reservation of a post earmarked for SC/ST/OCs., can be done without the prior concurrence or approval of the National Commission for SCs/STs."

5. Having regard to catena of judgments of the Supreme Court and other High Courts, the direction of the Tribunal was set aside holding that the decisions of the Apex Court, including that of Post-Graduate Institution of Medical Education (supra) are directly applicable to the facts of that case. The instant case is, therefore, covered by the aforementioned division Bench judgment. Respectfully following the said decision, we are of the opinion that no case has been made out for interference with the said order.

6. For the reasons aforementioned, the writ petition is dismissed. No order as to costs.