
(2009) 10 DEL CK 0359

In the Delhi High Court

Case No : Writ Petition (C.) No's. 628-630 of 2006

Union of India (UOI) and Others

APPELLANT

Vs

Ramesh Chander

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Citation : (2009) 10 DEL CK 0359

Hon'ble Judges : Vipin Sanghi, J;Anil Kumar, J

Bench : Division Bench

Advocate : Kumar Rajesh Singh, for the Appellant; V.K. Ojha and A.K. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has challenged the order dated 2nd August, 2005 passed by the Central Administrative Tribunal in OA No. 2509 of 2004 titled Ramesh Chander v. Union of India and Ors. directing the petitioner to declare the result of selection for the year 2000 for one post of SWMI Grade 6500-10500/- and consider the respondent as applicant in the Scheduled Castes category for the promotion though the promotion post was reserved for ST category.

2. Brief facts to comprehend the controversies are that for filling up one post of SWMI Grade 6500-10500 which was reserved for the ST category selection was done in the year 2000. The written test was held on 28th July, 2000, however, no ST candidate was available in the feeder cadre, i.e., SWMI Grade 5000-9000/-.

3. The respondent was a candidate under the category of Scheduled Caste in the feeder cadre. The petitioner was called to appear in the written test and he qualified the written test and subsequently the viva voce was held on 25th August, 2000.

4. According to the petitioner, a proposal for obtaining de-reservation of post was sent to Railway Board, however, the de-reservation of the post in the category of Schedule Tribe was declined. The respondent also made representations that he

is entitled for consideration as schedule caste candidate for the post which is reserved for Schedule Tribe which were, however, not considered and replied.

5. That aggrieved by the action of the petitioner not to consider the respondent, a candidate from the Scheduled Caste category, for the post of the Scheduled Tribe as no candidate belonging to Scheduled Tribe was available, the respondent filed the petition before the Central Administrative Tribunal contending inter alia that as per departmental instructions on reservation and concession in promotions, the respondent, belonging to the category of Schedule Caste, should have been considered for appointment against the vacancy in the category of Scheduled Tribe as no other candidate was available in the Schedule Tribe Category and that for appointment of a candidate belonging to Scheduled Caste category for a post in the category of Scheduled Tribes, de-reservation was not necessary.

6. The Tribunal after considering the contentions of the parties and relying on relevant instructions contemplating that the reserved vacancies continued to be reserved for the respective categories, however, an employee belonging to Scheduled Caste category may be considered for appointment against a vacancy reserved for Schedule Tribe in the same year in which the reservation is made, allowed the petitioner.

7. The instructions in this regard also contemplated that if owing to non-availability of suitable candidates belonging to Schedule Castes or Scheduled Tribes, as the case may be, and if it may become necessary to de-reserve a reserved vacancy, a reference should be made to the Department of Personnel and Training for de-reservation. These instructions however, did not contemplate the same for consideration of candidates for reserved category.

8. The petitioner has impugned the order of the Tribunal relying on a notification of Ministry of Railways dated 11th May, 1999 contending inter alia that a post reserved for one category could be de-reserved only by the Railway Board and that too only when it was absolutely necessary and justified on the ground of safety of train operations, achievement of production target etc. According to the petitioners, the request for de-reservation to the Railway Board was declined and consequently the respondent who was an applicant under the Schedule Caste category could not be considered for promotion to a post which was reserved for Scheduled Tribe category.

9. After hearing the learned Counsel for the parties and perusing the petition, counter affidavit and the documents, it is apparent that the Ministry of Railways' order dated 11th May, 1999 does not contemplate that a candidate in the category of Scheduled Castes cannot be considered for promotion/appointment to a post reserved for Schedule Tribe category without de-reservation of the Schedule Tribe post by the Railway Board, if no scheduled Tribe candidate is available. The said order dated 11th May, 1999 rather deals with the eventuality of non-availability of Scheduled Caste and Scheduled Tribe candidates and in that

case for de-reservation of the post considered absolutely necessary and justified on the ground of safety of train operations, achievement of production target etc. The said order also contemplated that where the work of such important/urgent nature then that reserved post could not be kept vacant, then ad hoc promotions for specific periods should be considered by the appropriate authority.

10. The order/instructions dated 11th May, 1999 do not lay down in any manner that a candidate in the category of Schedule Cates cannot be considered for promotion to the post reserved for Schedule Tribe candidate, on no Scheduled Tribe candidate being available without de-reservation of such a post in the category of Schedule Tribe. Rather the appropriate instructions pertaining to reservations and concessions in promotions categorically lays down that a Schedule Caste officer may be considered for promotion against a vacancy for Schedule Tribe on the reserved vacancy being not filled in the same year. The relevant instructions 5 and 6 are as under:

(5) While reserved vacancies will continue to be reserved for the respective community only, an SC officer may also be considered for appointment against a vacancy reserved for ST or vice versa in the same year itself in which the reservation is made when the appropriate reserve vacancy could not be filled by an SC or an ST candidate, as the case may be.

(6) If owing to non-availability of suitable candidates belonging to SCs or STs, as the case may be, it becomes necessary to de-reserve a reserved vacancy, a reference should be made to the Department of Personnel and Training indicating that claims of SC/ST candidates eligible for promotion in reserved vacancies have been duly considered as laid down above. On dereservation being agreed to the reserved vacancies can be filled by other candidates, subject to carry forward of reservation for three recruitment years.

11. In the circumstances, the decision of the Central Administrative Tribunal directing the petitioners to declare the result of selection for the year 2000 for one post of SWMI Grade 6500-10500 and to consider the respondent as a Schedule Caste candidate for the post reserved for Schedule Tribe candidate on no Scheduled Tribe candidate being available and to promote him to that post cannot be faulted in the facts and circumstances. Therefore, for the foregoing reasons, the decision of the Central Administrative Tribunal in OA No. 2059 of 2004 dated 2nd August, 2005 in the matter Ramesh Chander v. Union of India and Ors. cannot be faulted and is not liable to be set aside.

12. The writ petition is, therefore, without any merit and it is dismissed. Considering the facts and circumstances, the parties are left to bear their own costs. Learned Counsel for the petitioners have stated on instructions that the decision of the Tribunal directing the petitioner to declare the result of selection for the year 2000 for the one post of SWMI Grade 6500-10500 for promotion to the post of Scheduled Tribe has already been implemented.