
(2013) 10 AP CK 0105

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 5408 and 6356 of 2001

V. Dasharatham and Others

APPELLANT

Vs

The Registrar, Central Administrative Tribunal, The Director,
National Institute of Nutrition and Jalalappa
 The
Director, National Institute of Nutrition Vs Shri S. Jalalappa
and Others

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2014) 1 ALD 227

Hon'ble Judges : L. Narasimha Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : S. Jagadish in Writ Petition No. 5408 of 2001 and Sri B. Narasimha Sarma in Writ Petition No. 5408 of 2001, for the Appellant; Ponnamm Ashok Goud, Assistant Solicitor General for Respondent No. 1 in Writ Petition Nos. 5408 and 6356 of 2001 and for Respondent No. 2 in Writ Petition No. 6356 of 2001, Sri B. Narasimha Sarma for Respondent Nos. 2 and 3 in Writ Petition Nos. 5408 and 6356 of 2001, Sri T.P. Acharya for Respondent No. 1 in Writ Petition No. 6356 of 2001, Sri. S. Jagadish for Respondent Nos. 3 to 7 and Sri. C.M.R. Velu, for the Respondent

Final Decision : Disposed Off

Judgement

L. Narasimha Reddy, J.—These writ petitions are filed against the order dated 27.02.2001 passed by the Central Administrative Tribunal, Hyderabad Bench, in O.A. No. 293 of 2000. For the sake of convenience, the parties are referred to as arrayed in W.P. No. 6356 of 2001.

2. The 1st respondent was working as an animal Attendant in the National Institute of Nutrition, the petitioner herein, since 18.10.1996. The promotion from that post is, to the post of Senior Animal Attendant (in short "SAA"). The Recruitment Rules framed by the Indian Council of Medical Research in 1973 (in short "Rules") provided that the post of SAA shall be filled up through promotion. However, if suitable eligible candidates for promotion are not available, the

appointment can be made through direct recruitment.

3. The petitioner issued a Notification through Employment News, dated 27th February to 5th March, 1999, inviting applications for six posts of SAA and all the vacancies were reserved for Scheduled Tribe Category. The respondents 3 to 8 have been selected and they were also issued orders of appointment on 16.02.2000. Challenging the said appointment of respondents 3 to 8, the 1st respondent filed O.A. No. 293 of 2000. According to him, once the appointment to the post of SAA is required to be made through promotion, there was absolutely no basis for the petitioner in resorting to direct recruitment. Another contention of the 1st respondent was that the reservation of all the six vacancies in favour of S.T. category-is untenable.

4. The petitioner filed a counter in the O.A., stating that though the appointment to the post of SAA is only through promotion, it is contingent upon availability of suitable candidates and it is always permissible for them to take recourse through direct recruitment, if the situation warrants. It was stated that the six vacancies notified for direct recruitment were reserved on account of the fact that they were carried forward, over the period on account of non-availability of the ST candidates in the Feeder category for SAA, for a long time.

5. The respondents 3 to 8 have also contested the O.A. almost on the same lines.

6. Through its Order dated 27.02.2001, the Tribunal allowed the O.A., and has set aside the selection and appointment of respondents 3 to 8. A direction was issued to the petitioner to dereserve the post and to fill them up by General Category candidates, within a period of three months from the date of receipt of copy of the order.

7. Heard the learned Standing Counsel for the Central Government, Sri T.P. Acharya, learned counsel for the 1st respondent, Sri Ponnamm Ashok Goud, learned counsel for the 2nd respondent, Sri S. Jagadish, learned counsel for the respondents 3 to 7 and Sri C.M.R. Velu, learned counsel for the 8th respondent.

8. It is not in dispute that the relevant Rule provides for appointment to the post of SAA is exclusively by promotion. This, however, is not absolute. The rule making authority has proceeded to add that in case the suitable candidates for promotion are not available, the appointment can be made through direct recruitment.

9. As many as six vacancies of SAA reserved for STs over the period were not filled through promotion on account of non-availability of STs candidates. The record is not clear as to since how long the posts were carried forward. On finding that the vacancies are accumulating, the petitioners have taken recourse to the method of direct recruitment and accordingly invited the applications. Ultimately the respondents 3 to 8 were selected and appointed.

10. It is true that whenever the suitable candidates are not available either in the direct recruitment or against the vacancies earmarked for any particular

category, particularly the SCs and STs, they have to be carried forward, for twice or thrice, depending on the purport of the Rule, and if still the vacancy could not be filled, they have to be de-reserved. Even in such cases, the Central Government has issued instructions to the effect that whenever an occasion arises for de-reservation of vacancy, the post shall be filled through the process of direct recruitment by advertising it and at a later point of time a balancing act must be performed. A clause was also added to the effect that the said procedure does not apply to the cases where the appointment to a particular category is, exclusively through promotion.

11. The 1st respondent insisted that the observations made by the Central Government, in relation to the cases where appointment to a particular post is exclusively through promotion, must be followed. It is difficult to accept that contention. The reason is that, in the instant case, the post of SAA is though expected to be filled through promotion alone, provision is made for appointment through direct recruitment, if candidates from the feeder category are not available. Once it becomes permissible for the petitioner to take recourse to the method of direct recruitment, it is axiomatic that point in the roster does not change, simply because the method of appointment is changed. In other words, if the vacancy that could not be filled for want of the qualified candidates in the feeder category, was earmarked in the roster for S.C., S.T., or B.C., the appointment through direct recruitment must be with the same candidates and the pattern of reservation cannot be changed.

12. The Tribunal, however, did not take this aspect into account, and directed de-reservation of the post. This is not permissible in law. We, therefore, allow the writ petitions and set aside the impugned order.

13. Accordingly, both the writ petitions are allowed, setting aside the order dated 27.02.2001, in O.A. No. 293 of 2000, passed by the Central Administrative Tribunal, Hyderabad bench. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these writ petitions, shall stand disposed of.