

\$~13

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5454/2016 and CM Appl. 22764/2016**

VANESH MEENA

..... Petitioner

Through: Mr. A.K. Bhardwaj and Ms. Jagriti
Singh, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Manish Mohan, CGSC with Ms.
Manisha Saroha, Advocate for R-1.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

%

15.01.2020

1. The Petitioner has prayed for an issuance of writ of certiorari, quashing and setting aside the order dated 17th February, 2015 in review application (RA) No.141/2014 and order dated 24th February, 2014 in Original Application (OA) no.4127/2012 passed by the Central Administrative Tribunal (CAT).

2. In brief, the case of the Petitioner is that he is qualified graduate (Eng Metallurgy) and in response to an advertisement dated 20th July, 2012 issued by respondent No.2 organisation, i.e., Steel Authority of India Ltd. (SAIL) he applied for the post of Management Trainee (Tech.) under Metallurgy Branch. The applicant belongs to SC category and he was entitled to reservation as per policy of the Government enumerated in DOPT OM dated 2nd July, 1987 and further as per the ratio laid down by Hon'ble Supreme Court in the matter of *R.K. Sabharwal vs. State of Punjab* 7.5% of the vacancies are to be reserved for ST category candidates in all

government appointments.

3. The Petitioner cleared the written test and received an email from respondent dated 2nd February, 2012 for appearing in the interview. The final result was declared in April, 2012 but name of the Petitioner was not there in the list of selected candidates. Petitioner made inquiries and he came to know that the Respondents had not followed the reservation policy of Union of India and they had allotted less number of vacancies to ST candidates and hence he filed OA No.4127/2012 before CAT.

4. The main grievance of the Petitioner was that ST candidates were entitled to 22 posts whereas only 20 posts were given to them. As per the Petitioner, serious manipulation had been done in allotment of posts by the Respondents. He submits that the said OA was dismissed by the CAT without appreciating as to whether 22 posts reserved for ST candidates have been actually fulfilled or not by ST candidates. Review Application No.141/2015 filed by the Petitioner was also dismissed by the CAT by the second impugned order.

5. Feeling aggrieved, the Petitioner has filed the present writ petition on the grounds that Respondents cannot violate the guidelines of reservation for ST candidates in selection process; it is duty of the Respondent organisation to conduct fair and just selection; the allotment of posts to different categories of candidates should be strictly in accordance with the roster system as per OM dated 2nd July, 1987; CAT ought to have verified as to whether 22 ST candidates were appointed or not; there was serious manipulations in the final merit list and gross injustice has been done to the Petitioner. The

Petitioner has prayed as under:

“(a) To quash and set aside the order of 17.02.2015 passed in RA No.141/2014 and order dated 24.02.2014 passed in OA No.4127/2014,

(b) To direct the respondents to give on post of MT (Tech) under ST quota in terms of the advertisement dated 20.07.2012.

(c) To call the original records pertaining to selection process,

(d) Issue a writ of Mandamus or any other writ/directions/orders as may be deemed fit and proper in the facts and circumstances of the case.

(e) Award Cost in favour of petitioner;”

6. The record of the CAT was filed. It appears that at no stage any notice was issued to the Respondents. However, vide order dated 13th November, 2017, it was directed to list the present matter in the category of ‘after notice miscellaneous matters.’

7. We have heard the counsel for the parties. The only point to be decided in the present case is as to whether OM dated 2nd July, 1987 regarding Post Based Roster has been rightly applied or not. It is pertinent to mention here that Post Based Roster was implemented in compliance to the judgments of the Hon’ble Supreme Court in the matter of ***R. K. Sabharwal Vs State of Punjab*** 1995 AIR 1371 as well as ***J. C. Malik vs. Ministry of Railways***.

8. The introductory part of the OM introducing the said roster is reproduced hereunder;

“The undersigned is directed to say that under the existing

instructions vacancy-based rosters have been prescribed in order to implement the Government's policy relating to reservation of jobs for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes. The application of reservation on the basis of these rosters was called into question before Courts. The Constitution Bench of the Supreme Court, in the case of R.K. Sabharwal v. State of Punjab as well as J.C. Mallick v. Ministry of Railways has held that the reservation of jobs for the backward classes SC/ST/OBC should apply to posts and not to vacancies. The Court further held that the vacancy-based rosters can operate only till such time as the representation of persons belonging to the reserved categories, in a cadre, reaches the prescribed percentages of reservation. Thereafter, the rosters cannot operate and vacancies released by retirement, resignation, promotion, etc. of the persons belonging to the general and the reserved categories are to be filled by appointment of persons from the respective category so that the prescribed percentage of reservation is maintained.

2. The Court also held that persons belonging to the reserved categories, who are appointed on the basis of merit-and not on account of reservation-are not to be counted towards the quota meant for reservation.

3. With a view to bringing the policy of reservation in line with the law laid down by the Supreme Court, it has been decided that the existing 200-point, 40-point and 120-point vacancy-based rosters shall be replaced by post-based rosters. All Ministries/Departments and concerned authorities are requested to prepare the respective rosters based on the principles elaborated in the Explanatory Notes given in Annexure – I to this OM and illustrated in the Model Rosters annexed to the OM as Annexure – II, II and IV. Similarly, the concerned authorities may prepare rosters to replace the existing 100-point rosters in respect of local recruitment to Groups 'C' and 'D' posts on the basis of the same principles.”

9. Annexure 1 to OM dated 2nd July, 1987 contains the explanatory notes.

The explanatory note No. 6 reads as under:

“6. As indicated in the model roster, the method for making a roster is to multiply each post by the prescribed percentages of reservation for the different reserved categories. The point at which the multiple for a community obtains a complete number or oversteps the number is to be reserved for that community - while taking care to evenly space out the different reserved categories. Thus, at point No.15, in the roster at Annexure-II, both OBC and Supreme Court get entitled. However, since earlier reserved point has gone to OBC, point No.15 has been reserved for Supreme Court and point No.16 for OBC.”

10. It is not in dispute that the Petitioner had applied for the post of Management Trainee in Metallurgy. There were 62 posts which were earmarked for Metallurgy department as per the reply affidavit filed by SAIL. The relevant sub para of para 8 in this regard is reproduced hereunder:

“That SAIL follows the model roster as given at Annexure-II of the OM no.36012/2/96-Estt.(Res) issued by Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, dated 2nd July, 1997, which has been attached by the applicant himself as (**Annexure A-7** to the original application). That a total of 62 posts were filled in metallurgy discipline and as per above roster filed by Applicant himself, only 4 posts could have been reserved for ST candidates and that is what the Respondent SAIL has done in the present matter. The fifth Post from ST candidates could have been filled if and only if there were 69 posts in the metallurgy discipline, otherwise not. It is submitted here that a post is reserved for the respective category when the percentage requirement reached to a whole number. This can be illustrated with following example:

Posts	Share of entitlement	Category for
-------	----------------------	--------------

				which the post reserved
	SC	ST	OBC	
1	.15	.075	.27	UR
2	.30	.150	.54	UR
3	.45	.225	.81	UR
4	.60	.300	1.08	OBC-1
5	.75	.375	1.35	UR
6	.90	.450	1.62	UR
7	1.05	.525	1.89	SC-1
14	2.10	1.050	3.78	ST-1

That therefore 5 posts cannot be reserved with reservation requirement of 4.65, as made out in the application on wrong presumption. Thus, the SAIL has made compliance of ratio laid down by Hon'ble Supreme Court in R.K. Sabharwal Vs. State of Punjab. It is categorical denied that SAIL changed the reservation criteria during the selection process referred to above.”

11. The contention of the Petitioner is twofold. His first contention is that 7.5% of vacancies should be taken as of the total number of posts of management trainees and not that of Metallurgy department only. The stand of the Respondent is that the Roaster is maintained department wise. In view of the Court, it is for the Respondents to decide as to how they wish to implement the roster. In the present case they are implemented the roster on the basis of different branches and the Metallurgy branch has 62 posts of management trainees and hence four vacancies came in the share of the scheduled tribe (ST) candidates and all the four vacancies were filled by ST candidates who had scored more marks than the present petitioner.

12. The second limb of argument of the Petitioner is that rounding off of the

percentage is to be done and the 200 Point Based Roster shows that for 62 posts, the vacancies in the share of ST @ 7.5 % comes to 4.65 which should have been rounding off to 5 vacancies. This submission of the counsel for the Petitioner is directly in contradiction with Explanatory Note 6 quoted above which makes it clear that each post was to be multiplied by the prescribed percentage of reservation for different categories of reservation and where the said multiple completes the number or over-steps the number (whole number) only then the said post is reserved for that community. For 62 posts, ST reservation comes to 4.65, hence the whole number is only four so only four vacancies are to be reserved for ST candidates.

13. However, had there been 69 vacancies then the ST candidates would have got 5 vacancies although they had crossed the whole number 5 at 67th vacancy itself but the above-mentioned Explanatory Note 6 also makes it clear that the different reserved categories have to be evenly spaced out and where more than one category qualifies for that particular point, then it is to be seen that which category had got the earlier reserved point and accordingly this dispute is to be resolved. So, the 67th vacancy as per the chart goes to the OBC, 68th vacancy to SC category and 69th vacancy to ST candidate. This distribution of vacancies at point no. 67 onwards does not affect the merits of this case because there were only 62 vacancies for Metallurgy department which were to be filled as per Roster and as discussed earlier, there were only 4 vacancies for ST candidates which were duly filled.

14. Counsel for the Petitioner has relied upon judgment titled as *State of UP*

v. Pawan Kumar Tiwari 2005 SCC (L&S) 193. The said judgment deals with UP Public Services (Reservation for Physically Handicapped, Dependants for Freedom Fighters and Ex-Servicemen) Act, 1993 and UP Public Services (Reservation for SC and ST and Other Backward Classes) Act, 1994. These two Acts have got no application as far as appointments in the Respondent SAIL are concerned, hence these judgments or the principle of rounding off propounded in the said judgments has no application because Explanatory Note No.6 quoted hereinabove clearly rules out rounding off of posts.

15. The other judgment relied upon by learned counsel for Petitioner is *Savita v. Central Board of Secondary Education 2013 Law Suit (Delhi) 1719*. However, the said judgment is in relation to rounding off of the marks obtained in qualifying examination and not in respect of rounding off of the posts and for allocation of posts to the reserved category.

16. In view of the above, this Court does not find any illegality in the orders of the CAT dated 24th February, 2014 dismissing OA no.4127/2014 and dated 17th February, 2015 in RA no. 141/2014.

17. The writ petition has no merit and same is dismissed. The pending application is also dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 15, 2020

nk