

PETITIONER:
BABURAM

Vs.

RESPONDENT:
C C JACOB & ORS. (WITH C.A NO.10909/96)

DATE OF JUDGMENT: 18/03/1999

BENCH:
N.Santosh Hegde, S. Saghir Ahmed

JUDGMENT:

SANTOSH HEGDE, J.

C.A. Nos.10658-59/96 :

These appeals arise out of the order dated 22.9.1995 made by the Central Administrative Tribunal, Ernakulam Bench, (for short 'the tribunal') in O.A. Nos.186/94, 961/95 and 1192/94. The applicants therein questioned the selection made by the Departmental Promotion Committee and consequential promotion of the appellant to the post of Superintendent of Customs in a vacancy reserved for Scheduled Castes. The contention before the tribunal was that the percentage of reservation has always to be worked out in relation to the number of posts which formed the cadre strength and the said reservation is not to be made with reference to a vacancy.

Since the law in regard to the above stated position was nebulous, a Constitution Bench of this Court in the case of R K Sabharwal & Ors. v. State of Punjab & Ors. (1995 2 SCC 745) settled the said issue holding that such reservation is in relation to the number of posts comprising in the cadre and not in relation to vacancies. The judgment of the Constitution Bench was delivered on 10.2.1995.

This Court in the said judgment after taking into consideration the fact that the law was not clear till that date, observed thus : "We, however, direct that the interpretation given by us to the working of the roster and our findings on this point shall be operative prospectively." The question that arises for our consideration in this case is: was it open to the tribunal to apply the law laid down in R K Sabharwal's case (supra) to the facts of the case in hand. The brief facts necessary for the purpose of deciding this question are that in June, 1993, the Departmental Promotion Committee (for short 'the DPC') considered the suitability of candidates eligible for promotion to four vacancies which arose during 1993-94 in the cadre of Superintendent of Customs (Preventive) from the post of Preventive Officers in which proceedings of the DPC the appellant was chosen to be promoted against a reserved vacancy earmarked for the Scheduled Castes. The said decision of the DPC was challenged before the tribunal on 27.1.1994 wherein the applicants contended that they are entitled to be considered

for promotion to the category of Superintendent of Customs in the concerned vacancy, treating these vacancies as unreserved. Consequently, they prayed that their case be considered for promotion on merits. During the pendency of the applications before the tribunal, the appellants herein came to be promoted on 26.6.1994 as against a reserved vacancy which arose on 1.6.1994. The tribunal on 22.9.95 following the judgment of this Court in the Sabharwal's case (supra), allowed the applications and held that there had been an erroneous application of the principle of reservation resulting in appointment of Scheduled Caste candidates in excess of the quota earmarked for them. It directed the concerned respondents to recalculate the entitlements of different categories and take further action applying the quota rule to the cadre and not to the vacancies as they arose. It further directed that till the quota is correctly maintained, no appointment will be made from the groups which have exceeded the quota reserved for them. As noted above, the finding of the tribunal is based on the ratio of the judgment laid down by this Court in Sabharwal's case (supra). The contention of the appellant in these appeals is that the judgment in Sabharwal's case was made effective prospectively, hence, the same could not have been applied to the promotion of the appellant. This contention was negatived by the tribunal on the ground that the decision of the DPC in selecting the appellant does not amount to an appointment and in view of the fact that the appellant's promotion was made subsequent to filing of the petition, the appellant cannot claim the benefit of the prospectivity given to the Sabharwal's judgment by this Court. We are unable to agree with this view of the tribunal. It is to be noted that the prospectivity given to Sabharwal's case was obviously on the ground that there was a doubt in regard to the position of law until the same was clarified by this Court in Sabharwal's case. The decision of the DPC was taken in June, 1993; much prior to the judgment in Sabharwal's case. It is only pursuant to the decision of the DPC, the appellant came to be promoted on 27.6.1994 which is also a date prior to the delivery of the judgment in Sabharwal's case. In our opinion, the prospectivity was given to Sabharwal's case only to see that status prevailing prior to the judgment in Sabharwal's case should not be disturbed. The prospective declaration of law is a device innovated by the apex court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty-bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law. In the instant case, both decisions of the DPC as well as the appointing authority being prior to the judgment in Sabharwal's case, we are of the opinion that the tribunal was in error in applying this decision. For this reason, these appeals succeed and are hereby allowed; setting aside the orders and directions made by the tribunal in OA Nos.186/94, and 961/95.

C.A. No.10909/1996 :

In view of our judgment in CA Nos.10658-59/96, this appeal also succeeds and is hereby allowed.

JUDIS