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UNION OF INDIA AND ORS.

v.

BRIJ LAL THAKUR

MARCH 17, 1997

B

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Service Law.*

C

*Reservation—Railway Hospital—Post of E.C.G. Technician—To be filled by promotion of theatre Assistants—Vacancy reserved for Scheduled Castes in a carry forward post as per rotation of roster—In the trade test held Scheduled Caste candidate found suitable and promoted to the post—Unsuccessful candidate challenged the appointment contending that since the post was a solitary post, reservation as per roster was unconstitutional—Tribunal allowed the claim and set aside the appointment—Held, appointment by promotion to the single post of E.C.G. Technician applying 40 point post and rule of rotation, consideration of Scheduled Caste candidate to the said vacancy is not violative of Articles 14 and 16(1) of the Constitution—Promotion is legal and valid—Order of the Tribunal is set aside—Constitution of India—Articles 14 and 16(1).*

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*Union of India & Anr. v. Madhav s/o Gajanan Chaubal & Anr., JT (1996) 9 SC 320, relied on.*

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*A.R. Choudhury v. Union of India & Ors., [1974] 1 SCC 87; Commissioner of Commercial Taxes v. D. Sethu Madhva Rao, [1996] 7 SCC 512; Venkteswarlu v. Govt. of A.P., [1996] 5 SCC 167 and State of Bihar v. Bageshwardi Prasad, [1995] Supp. 1 SCC 432, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2236 of 1997.

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From the Judgment and Order dated 2.5.96 of the Patna High Court in L.P.A No. 815 of 1995.

B.B. Singh for the Appellants.

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S.B. Sanyal and Ranjan Mukherjee for Respondent.

The following Order of the Court was delivered.

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Delay condoned. Leave granted.

We have heard learned counsel on both sides.

This appeal by special leave arises from the order passed on March 31, 1995 by C.A.T., New Delhi in O.A. No. 1801/94.

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The post of E.C.G. Technician in the Grade of Rs. 1200-2040 became vacant on November 30, 1993 in the Central Hospital, Northern Railway due to retirement, Mrs. William Chand, a general candidate, holding that post. For promotion of Theater Assistants to the said post, trade test was conducted in which Smt. Prakash Kaur belonging to Scheduled Castes and two others were called. The vacancy to be filled up was reserved for Scheduled Castes in a carry forward post as per the rotation of the roster. In the trade test held on December 8, 1994, Smt. Prakash Kaur was found suitable and she was accordingly promoted as E.C.G. Technician w.e.f. December 9, 1994. The respondent an unsuccessful candidate filed O.A. in the Tribunal contending that since the post of E.C.G. Technician is the solitary post, reservation as per roster is unconstitutional as it would lead to 100% reservation. The contention found favour with the Tribunal. Accordingly, it set aside the appointment by promotion of Smt. Prakash Kaur and gave direction to treat it as unreserved post and to consider the case of the respondent for appointment to the post according to Rules. The controversy is no longer *res integra*. This Court in *Union of India & Anr. v. Madhav s/o Gajanan Chaubal & Anr.*, JT (1996) 9 SC 320 by a Bench of three Judges considered the entire case law following the Constitution Bench judgments in *A.R. Choudhury v. Union of India & Ors.*, [1974] 1 SCC 87, *Commissioner of Commercial Taxes v. D. Sethu Madhava Rao*, [1996] 7 SCC 512, *Venkteshwarlu v. Govt. of A.P.*, [1996] 5 SCC 167 and *State of Bihar v. Bageshwari Prasad*, [1995] Supp. 1 SCC 432. It was held that "even though there is a single post, if the Government have applied the rule of rotation and roster point to the vacancies that had arisen in the single point post and were sought to be filled up by the candidate belonging to the reserved categories at the point on which they were eligible to be considered, such a rule is not violative of Articles 14 and 16(1) of the Constitution", In that case the post of Secretary in the National Savings Scheme Service was a Single point post to which 40 point roster was maintained to the vacancy in the said post. When the Scheduled

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A Tribes candidate was selected for promotion on the basis the rule of rotation, it was held by the Tribunal that the promotion was violative of Articles 14 and 16(1) of the Constitution. Reversing that Order it was held that:

B "Thus, the Government have adhered to the rule of rotation to a single post and the 40 point roster to the single post was applied and the vacancy reserved for the Scheduled Castes and Scheduled Tribes as and when had arisen, was sought to be filled up, when the candidates were available. Thus, we hold that the roster point No. 4 in the vacancy of the Secretary reserved for the Scheduled Tribes was valid and constitutional. When the officer available and was eligible to be considered, he was entitled to be considered in accordance with the rules and be promoted as Secretary. The Tribunal, therefore, was not right in directing that the rule of rotation to the single post could not be applied. It is brought to our notice that the original promotee died pending the proceedings and, therefore as and when vacancy arises as per rule of rotation as per roster the same would be filled up in accordance with law."

D Accordingly, we hold that appointment by promotion to the single post of E.C.G. Technician applying 40 point post and rule of rotation, consideration of Smt. Prakash Kaur to the said vacancy is not violative of Articles 14 and 16(1) of the Constitution. The promotion is legal and valid. The Tribunal, therefore, was incorrect in setting aside the promotion of Mrs. Prakash Kaur.

E The appeal is accordingly allowed. The order of the Administrative Tribunal stand set aside. The petition stands dismissed. No costs.

R.P.

Appeal allowed.

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