

RADHEY SHYAM SINGH AND ORS.

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v.

UNION OF INDIA AND ORS.

DECEMBER 9, 1996

[S.C. AGRAWAL AND FAIZAN UDDIN, JJ.]

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Service Law :

Government of India (Department of Personnel and Administrative Reforms Resolution dated 4.11.1975 :

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Recruitment process—Merit list—Zone-wise preparation of—By Subordinate Services Commission—On basis of examination held at various zones—Held : violative of Arts. 14 and 16—However, decision made effective only prospectively—Constitution of India 1950, Arts. 14 and 16,

D

Recruitment process—Merit list—Zonewise merit list in vogue for a long time—Held : violated Arts. 14 and 16—Such a selection process could not be upheld merely because it was in vogue for a long time.

The respondent passed a resolution whereby a "Subordinate Services Commission" was constituted for the purposes of recruitment to Non-technical Class III posts in the departments of the Government of India and in the subordinate offices. The said resolution ensured holding of examination but as far as possible actual recruitment was to be made on zonal basis so as to be absorbed in the vacancies arising within the respective regions. According to the advertisement published by the Commission a separate list was to be drawn up in respect of each zone in the order of merit after the examination.

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The appellants filed an application before the Central Administrative Tribunal challenging the the zone-wise selection on the basis of separate merit list drawn from each zone instead of drawing an All India Merit List on the ground that such a selection violated Articles 14 and 16 of the constitution of India. The Tribunal dismissed the application. Hence this appeal.

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Allowing the appeal, this Court

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- A** HELD : 1.1. There exists no nexus between the zone-wise selection and the object to be achieved, that is, the selection of the best candidate. Therefore, the process of selection as envisaged in the advertisement in question would lead to discriminatory results because adopting the said process of zone-wise selection would result in the devaluation of merit at the selection examination by selecting a candidate who has secured more marks and consequently the rule of equal chance for equal marks would be violated.
- B** Such a process would not only be against the principles enunciated in Articles 14 and 16 of the Constitution but it would also result in heart burning and frustration amongst the young men of the country. The rule of equality of opportunity for every individual in the country is an inalienable part of our Constitutional guarantee and that being so a candidate who secures more marks than another is definitely entitled to get preference for the job as the merit must be the test when selecting a candidate for recruitment for the posts which are advertised. [675-G-H; 676-A-C]

- D** *Rajendran v. State of Madras & Ors.*, [1968] 2 SCR 786; *Periakaruppan v. State of Tamil Nadu & Ors.*, [1971] 2 SCR 430 and *Nidamarti Maheshkumar v. State of Maharashtra & Ors.*, [1986] 2 SCC 534, relied on.

Om Prakash v. Akhilesh Kumar, [1986] 1 SCR 855, referred to.

- E** 1.2. However, this judgment will have prospective application and whatever selections and appointments have so far been made in accordance with the impugned process of selection shall not be disturbed on the basis of this judgment. But in future no such selection shall be made on the zonal basis. The process of zone-wise selection cannot be upheld merely because it had been in vogue for a long time for the simple reason that it was never challenged by anybody and was not subjected to judicial scrutiny at all. [676-H; 677-A-B]

CIVIL APPELLATE/ORIGINAL JURISDICTION : Civil Appeal No. 4190 of 1995 Etc.

- G** From the Judgment and Order dated 15.2.95 of the Central Administrative Tribunal in New Delhi in O.A. No. No. 322 of 1995.

P.P. Rao and Jitendra Mohan Sharma for the Appellants/Petitioners,

- H** Respondents.
K.N. Shukla, Shashi Kiran, Anil Katiyar, Anubha Jain for the

The Judgment of the Court was delivered by

FAIZAN UDDIN, J. 1. This Civil Appeal has been directed against the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the Tribunal) in O.A. No. 322/1995 dismissing the appellants application at the admission stage challenging the selection process of various posts in pursuance of an advertisement by the Staff Selection Commission published in Employment News of 10-16th July, 1993 and the select list prepared and published in pursuance thereto, while Civil Appeal No. 5112/1995 has been preferred by the appellants of the said appeal against the order dated 7th March, 1995 passed by the aforesaid Tribunal in O.A. NO. 438/1995 dismissing the application at the admission stage challenging the said selection process and the select list as aforesaid. In the writ petitions also referred to above filed under Article 32 of the Constitution, the same selection process and select list has been challenged by the petitioners of the said writ petitions.

2. On the recommendations of the Administrative Reforms Commission the Government of India (Department of Personnel and Administration Reforms) passed a resolution on November 4, 1975 whereby a "Subordinate Services Commission" was constituted for the purposes or recruitment to Non-Technical Class III posts in the departments of the Government of India and in the subordinate offices. In the aforesaid government resolution, the functions of the Subordinate Services Commission constituted by the Government are stated in para 3 thereof, the relevant part of which reads as under:

"The Subordinate Services Commission will make recruitment to non-technical Class III posts in the departments of the Govt. of India and in the subordinate offices except those posts for which recruitment is made by the Railway Service Commission Staff in the offices of the Comptroller and Auditor General and the Accountants General and industrial establishments. The Commission will among other things conduct terminations whenever required for recruitment to the posts within their purview *and for ensuring that as far as possible the actual recruitment is made on a zonal basis so as to enable candidates from different regions to be absorbed in the vacancies arising within the respective regions*, the examinations would be held as far as possible on different centres and

A successful candidates posted, to the extent possible to their home states/regions."

(emphasis supplied)

B The said subordinate Service Commission (hereinafter referred to as Commission) published an advertisement on 10-16th July, 1993 in the Employment News inviting applications for the selection of candidates to the posts of (I) Preventive Officers, (II) Examiner, (III) Inspector of Central Excise, (iv) Inspector of Income-tax, (V) Assistant Enforcement Officers in the Directorate of Enforcement and (VI) Gr. II of Delhi Administration Subordinate Services. The number of vacancies was, however, not stated as the firm number of vacancies had not been determined and the reservation of SC/ST, Ex/servicemen and the physically handicapped persons was to be taken into account as per position reported in each department for each category of posts.

D 3. According to the said advertisement the recruitment was to be made zonewise on the basis of separate merit list drawn for each zone in respect of candidates who appeared at the centres within the same zone. The relevant portion of the said advertisement which relates to the zone-wise process of selection of candidates for the said posts as stated in paragraph No. 16 of the advertisement for ready reference is reproduced hereunder :

F "16. Selection of candidates (a) After the examination, the Commission will draw up a separate list in different categories of posts in respect of each of the zones mentioned in column 2 of the Table in para 13 above, in the order of merit as disclosed by the aggregate marks (written test and personality test) finally awarded to each candidate at the examination, and in that order so many candidates as are found by the Commission to be qualified in the examination shall be recommended for appointment upto the number of unreserved vacancies in each of the zones separately. However, in case no vacancy is available in a particular zone that zone would be clubbed with one of the contiguous zones at the discretion of the Commission and a common order of merit list for both the zones may be prepared. Similarly, where a particular office caters to the requirements of more than one zone, candidates competing at centres located in all such zones will be eligible to be considered

for appointment in that office and for this purpose, a common order of merit list for all such zones would be prepared.

(b) The candidates for Delhi Administration Grade II Subordinate service will be selected from Delhi Zone in the manner mentioned in sub-para (a) above.

4. In all there were 15 zones and the candidates were eligible to appear at any zone out of those 15 zones. In case no vacancy was available in particular zone then that zone was to be clubbed with one of the contiguous zones at the discretion of the Commission and a common list for both the zones in the order of merit may be prepared. It is alleged that the appellants No. 1 and 2, namely, Radhey Shyam Singh and Dharmendra Kumar made representations to the Secretary of the Commission objecting to the process of zonewise selection on the basis of separate merit list drawn for each zone and requested to make an All India Merit List in place of zonewise merit list because the number of vacancies were not declared but the said representations were not decided and, therefore, the appellants appeared in the written selection test under protest. The appellants in these two appeals as well as the petitioners in the two writ petitions applied for various unreserved posts and appeared in the written examination. The appellants and the petitioners qualified in the written test, the result of which was declared on 24-30th September, 1994 as published in the Employment News and were called for the interview/personality test held in different zones in the month of October 1994 onwards. The results of the said examination after interview and personality test were declared on January 21, 1995 but none of the appellants were declared selected in U.P. zone examinations. So was the case with the petitioners.

5. The appellants as well as the petitioners approached the Tribunal as aforesaid challenging the zonewise selection on the basis of separate merit list drawn from each zone instead of drawing All India Merit List which according to the appellants and petitioners had resulted the selection of persons which relatively inferior merits in violation of principles embodied in Article 14 and 16 of the Constitution of India. The Tribunal relying on the decision of this Court in *Om Prakash v. Akhilesh Kumar*, [1986] 1 SCR 855 = AIR (1986) SC 1043 dismissed the applications at the admission stage itself by taking the view that they had already appeared in the examination as per advertisement issued by the Commission while it

A was open to them before taking that selection to seek judicial review and since the process of selection of 1993 was challenged after the merit list had been declared in January 21, 1995 they were estopped from challenging the selection in which they had participated and ultimately could not be empanelled in the merit list. Being aggrieved by the said order of the Tribunal the appellants and the petitioners have approached this Court for redress.

6. Shri P.P. Rao, learned senior counsel appearing for the appellants contended that the zone-wise process of selection adopted by the Commission did not provide equal opportunity to the candidates appearing in different zones though the competitive examination was same in all the zones. He submitted that since the vacancies available in each zone were not indicated, the appellants were denied the opportunity of appearing at the competitive examination from a centre of a zone where the number of the vacancies was large there being more and better chances of selection. The appellants were thus denied the opportunity of competing with the candidates of other centres. It was submitted that the candidates appearing in a zone having large number of vacancies were declared selected though they had secured marks less than the candidates in other zones where the vacancies were less by reason of which the candidates securing even more marks than the candidates in other zones could not be selected. He, therefore, urged that the process and method of zone-wise selection of candidates adopted by the Commission was violative of Article 14 and 16 of the Constitution of India as it had resulted in selection of candidates of inferior quality in one zone while the candidates of superior merit in the other zones could not be selected. These arrangements were also adopted by the learned counsel appearing in the other appeal and writ petitions. On the other hand Shri K.N. Shukla, learned senior counsel appearing for the respondents supported the process of selection and the impugned order of the Tribunal by contending that the zonewise selection was adopted in order to enable the candidates from a particular zone to be absorbed in the job in the same zone and the Commission has been recruiting the candidates to various posts on zonal basis right from 1975 and this process of selection has stood the test of time and, therefore, it could not be disturbed. He submitted that the composition of zone and scheme of holding the examination on zonal basis was given in the advertisement and the candidates were free to choose the zone from which they desired to appear in the recruitment examination and to choose the centre.

It was stated that since the appellants and the petitioners had appeared in the examination, but could not be selected and as such they cannot be permitted to challenge the process of selection now.

7. We have given serious considerations to the aforementioned rival contentions and have critically perused the Government resolution dated November 4, 1975 whereby the Commission was constituted and the functions assigned to it as well as the advertisement issued for the recruitment of the candidates for the aforementioned posts. A reading of the functions assigned to the Commission, the relevant part of which is reproduced in the earlier part of this judgment will go to show that it provided that the Commission will among other things conduct examinations wherever required for recruitment to the posts within their purview and for ensuring that as far as possible the actual recruitment is made on a zonal basis so as to enable candidates from different regions to be absorbed in the vacancies arising within the respective regions. It thus provides the holding of examination as far as possible and making of actual recruitment on zonal basis. The object sought to be achieved by this process or method of selection is to enable the candidates from different regions to be absorbed in the vacancies arising within the respective regions. The question therefore, that arises for consideration is whether such a selection based on zonal basis would be permissible or it would be violative of the Constitutional guaranteed enshrined in Article 14 and 16 of the Constitution of India.

8. It is needless to emphasize that the purpose and object behind holding a recruitment examination is to select suitable and best candidates out of the lot and such an object can only be achieved by making a common select list of the successful candidates belonging to all the zones. On the other hand if zone-wise selection is made then various candidates who appeared in some of the zones and secured more marks than those who are selected from other zones would be deprived of their selection resulting into great injustice and consequent discrimination. Thus there can be said to exist no nexus between the aforesaid process of zone-wise selection and the object to be achieved, that is, the selection of the best candidates. That being so the process of selection as envisaged in paragraph 16 of the advertisement in question and reproduced in the earlier part of this judgment would lead to discriminatory results because by adopting the said process of zone-wise selection would result in the devaluation of merit at

A the selection examination by selecting a candidate having lesser marks over the meritorious candidate who has secured more marks and consequently the rule of equal chance for equal marks would be violated. Such a process would not only be against the principles enunciated in Article 14 and 16 of the Constitution but it would also result in heart burning and frustration amongst the young men of the country. The rule of equality of opportunity for every individual in the country is an inalienable part of our constitutional guarantee and that being so a candidate who secures more marks than another is definitely entitled to get preference for the job as the merit must be the test when selecting a candidate for recruitment for the posts which are advertised. In the present case admittedly the process of selection as envisaged in paragraph 16 of the advertisement in question is violative of Article 14 and 16 of the Constitution of India as it has been demonstrated from the marks list of the appellants placed before us at the Bar during the course of arguments that they had secured more marks than those secured by some of the selected candidate.

D 9. In the case of *Rajendran v. State of Madras & Ors.*, [1968] 2 SCR 786 this Court had struck down the districtwise distribution of seats for the medical admission as providing for unitwise allocation was held to be violative of Article 14 and 16 of the Constitution on the ground that it might result in candidates of inferior calibre being selected in one district and those of superior calibre not being selected in another district. Similarly in the case of *Peeriakaruppan v. State of Tamil Nadu & Ors.*, [1971] 2 SCR 430 unit wise allocation of seats was also held to be void and was struck down as discriminatory. Again in the case of *Nidamarti Maheshkumar v. State of Maharashtra & Ors.*, [1986] 2 SCC 534 region-wise scheme adopted by the State Government was held to be void and struck down by this Court by holding that it would result in denial of equal opportunity and was thus violative of Article 14 of the Constitution. The ratio of these decisions of this Court is fully attracted to the facts of the present case in which the process of selection on the zonal basis will also result in denial of equal opportunity and would be violative of Article 14 and we hold accordingly.

G 10. The argument advanced by the learned counsel for the respondents that this process of zone-wise selection is in vogue since 1975 and has stood the test of time can not be accepted for the simple reason that it was never challenged by anybody and was not subjected to judicial scrutiny at all. If on judicial scrutiny it cannot stand the test of reasonable-

ness and constitutionality it cannot be allowed to continue and has to be struck down. But we make it clear that this judgment will have prospective application and whatever selections and appointments have so far been made in accordance with the impugned process of selection shall not be disturbed on the basis of this judgment. But in future no such selection shall be made on the zonal basis. If the Government is keen to make zone-wise selection after allocating some posts for each zone, it may make such scheme or rules or adopt such process of selection which may not clash with the provisions contained in Article 14 and 16 of the Constitution of India having regard to the guidelines laid down by this Court from time to time in various pronouncements. In the facts and circumstances of the case we make no order as to costs. The appeals and writ petitions are allowed as indicated above.

V.S.S.

Appeals and Petitions allowed.