

**K.N. Sreenivasan Vs. Flag Officer Commanding-in-chief, Headquarters, Kochi and ors.**

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**Court :** Supreme Court of India

**Decided On :** Sep-08-1994

**Reported in :** (1996)7SCC73; 1996(32)ATC782; 1995(8)SLR548; 1996SCC(L&S)460

**Judge :** P.B. Sawant and; S.C. Agrawal, JJ.

**Appellant :** K.N. Sreenivasan

**Respondent :** Flag Officer Commanding-in-chief, Headquarters, Kochi and ors.

**Judgement :**

P.B. Sawant and; S.C. Agrawal, JJ.

1. We have heard learned counsel and have gone through the record
2. It appears from the letter dated 16-3-1991 addressed by the Commanding Manager (Administration) to the appellant as well as from the counter filed by one Commander Khanna. Chief Staff Officer in July 1993 in reply to this appeal, that there was a roster maintained for promotion to the post of the Senior Foreman, Grade I. When the incumbent of the said post, viz., Shri Pillai retired on 31-1-1991, the post fell vacant. At this stage, according to the roster, it was the turn of a Scheduled Caste candidate to fill in the post by promotion. However, no Scheduled Caste candidate was available. There is nothing on record to show that

if a Schedule Caste candidate is not available, the rule requires that the post should be offered to either a Schedule Tribe or an OBC candidate. Nor is there any material to show that even if such a rule existed, candidates from the said two categories were available to be appointed. On the other hand, both the said letter as well as the counter show that the stand taken by the respondents was that the said post would remain vacant and in fact it has remained vacant because no Scheduled Caste candidate was available. We are unable to understand the reasoning of the respondents. If no individual from the reserved category is available, then the procedure to be followed is to convert the post into a non-reserved post and offer the same to the candidate from the non-reserved category and carry forward the post for the reserved category for which it was meant if the carry forward rule existed and so permits

3. In the present case, this is the second time when the reserved post was carried forward for the Scheduled Castes. Hence the post has to be converted into a non-reserved post and offered to the appellant who even as per the counter filed on behalf of the respondent is qualified to be appointed to the same. Since it is only the second time when the post was carried forward for the Scheduled Castes, the same can be carried forward for the said category for the third time if the carry forward rule permits<sup>4</sup>. We, therefore, direct the respondent to consider the appellant for appointment to the said post of Senior Foreman, Grade I and if he is qualified, appoint him within four weeks from today. The appeals are allowed accordingly, with no order as to costs.

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