
(2011) 11 AHC CK 0051
In the Allahabad High Court
Case No : Writ C No. 45023 of 2011

Abhinav Agnihotri

APPELLANT

Vs

The Mahamaya Technical University and Others

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Constitution of India, 1950 — Article 15(3), 15(5), 16, 16(1), 16(4)

Citation : (2011) 10 ADJ 656

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—The Petitioner has rushed to this Court with request to quash the order dated 02.08.2011 communicated to him informing and intimating that seat details have been again looked into and have been found to be in order, and further to accord admission in B. Tech Course-2011 at HBTI, Kanpur.

2. Factual matrix of the case is that Mahamaya Technical University, NOIDA, Gautam Budh Nagar conducted U.P. State Entrance Examination-2011 (UPEE-2011) for the purposes of providing admission in B. Tech courses and other similar courses in the State of U.P. Advertisement was issued in this direction and the last date for receipt of application form was 04.03.2011; the date of examination scheduled to be held was 16-17.04.2011. The Information Brochure so published contained details of the procedure for selection and reservation provided to the different categories, horizontal and vertical in nature as well as intake of different colleges for which entrance examination was to be conducted.

3. Pursuant to the aforesaid advertisement the Petitioner applied for consideration of his candidature in the category of Freedom Fighter. Paragraph 9 of the Brochure provides for reservation. Paragraph 9.1 deals with vertical reservation regarding S.C., S.T. and OBC and Paragraph 9.2 deals with horizontal

reservation of different categories, such as (a) dependents of Freedom Fighter, (b) sons/daughters of defence personnel of U.P. either retired or killed/disabled in action or defence personnel posted in U.P., (c) Handicapped/Disabled of U.P. and (d) Girls of U.P. In paragraph 9.3. it was mentioned that except for the girl students, male candidates have to opt for only one category of horizontal reservation and the same has to be properly mentioned in the OMR and also at the time of admission on proforma certificate. Paragraph 9 of the information Brochure is quoted below:

9. Reservations

9.1 Vertical Reservation (Category)

Category Percentage of Reservation

- (a) Scheduled Caste of U.P. 21%
- (b) Scheduled Tribe of U.P. 02%
- (c) Other Backward Classes of U.P. 27%

9.2 Horizontal Reservation (sub-category available in each category):

Sub-category Code Maximum percentage of total seats

- (a) dependents of Freedom Fighter from U.P. UPFF 02%
- (b) sons/daughters of defence personnel of U.P. either retired (superannuated) or killed/disabled in action or defence personnel posted in U.P. UPAF 05%
- (c) Handicapped/Disabled of U.P. UPHC 03%
- (d) Girls of U.P. UPGL 20%

4. Petitioner submits that he qualified the written examination and his rank was 3675, and has further proceeded to mention that in U.P. dependents of Fighter Freedom category, he obtained 9th place. Petitioner submits that in the counseling, he locked as his first choice the HBTI Kanpur in Computer Science and Engineering and as second choice in the same institution in Electronics and Engineering, and third choice at the same institution was in Mechanical Engineering. Petitioner has stated that he has not been able to get any seat in HBTI Kanpur, rather he has been allocated Institute of engineering and Technology at Sitapur Road, Lucknow. On verification, Petitioner found that in HBTI Kanpur out of 478 seats, admission has given to only 443 students, and the dependents of Freedom Fighter were only four from the general category, and thereafter one seat has been allotted in favour of OBC Freedom Fighter. The Petitioner has also obtained reservation chart from the Website of the College. A perusal of the aforesaid chart makes it clear that in HBTI Kanpur reservation to the general category in freedom fighter out of 9 seats, 4 were reserved for general, 2 for OBC and 2 for SC category. The chart further goes to show that 4 seats of general category have been filled up and only one seat of OBC has been

filled up and no one turned up from SC category. The Petitioner has further proceeded to mention that the Petitioner having secured 9th place in Freedom Fighter category, he was entitled to be accommodated in HBTI Kanpur, as on account of reservation quota accorded on horizontal basis to the dependents of Freedom Fighter remains unfilled, and in this background requisite relief be accorded to the Petitioner by giving direction to grant admission to the Petitioner in B. Tech course 2011 in HBTI, Kanpur in computer Science and Engineering or Electronics Engineering or Mechanical Engineering under Freedom Fighter category. At this juncture, present writ petition has been filed.

5. Counter affidavit and supplementary counter affidavit have been filed and therein stand has been taken that the seat allotment has been properly done as per reservation policy, and the Petitioner has failed to make place for himself, and it has also been reiterated that total 9 seats were allotted to the dependents of Freedom Fighter of U.P. and out of the same 4 seats have been allotted to general category candidates, 2 for OBC, 1 for SC and for ST category candidates. In this background, it has been stated that all the 4 seats from the category from which Petitioner hails have been filled up, as such no benefit or advantage can be availed by the Petitioner. Counter affidavit has also been filed by the University and the same set of facts have been reiterated. However, it has been further stated that the vacant reserved seat gets de-reserved only after the second round of counseling is undertaken as per declared schedule. It has been stated that the date for admission to the allotted candidates was 19.08.2011 and as the last date was over and due to non-reporting of some candidate in college, the seat could not be filled after the counseling was over. Further reiteration has been made that the seats have been distributed in different disciplines and allotted purely on merit through the Statewide online counseling process.

6. Rejoinder affidavit has been filed and therein the list of total students admitted as obtained by the Petitioner from the Website of the College has been appended, and it has been emphasized that the vacancy in question which was lying vacant should be de-reserved. It has been stated that as per record nobody has been given admission in Computer Science or Mechanical Engineering under Freedom Fighter quota and the Petitioner having secured 9th place, is entitled to be given admission in accordance with the same.

7. After pleadings mentioned above have been exchanged, present writ petition has been taken up for final hearing and disposal with the consent of the parties.

8. Sri R.K. Ojha, learned Counsel for the Petitioner, contended that in the present case once horizontal reservation has been provided for to the extent of 2% of the total seats for subcategory i.e. dependents of Freedom Fighter category, then out of total number of seats which were liable to be settled, total 9 seats were liable to be filled up from amongst the dependents of Freedom Fighters of U.P., and here the factual circumstance as is reflected from the chart so brought on record is that only 7 candidates from the dependents of Freedom Fighter from U.P. have been accorded admission based on horizontal reservation, as such in the facts of

the case as requisite number of dependents of Freedom Fighter from U.P. remains unrepresented and seats are lying vacant, as such requisite relief be accorded to the Petitioner.

9. Countering the said submission, Sri Neeraj Tiwari, Advocate, representing the Respondent University as well as Sri S.M. Dayal, Advocate, representing the HBTI Kanpur, on the other hand, has contended that 9 seats available for the category in question had been compartmentalized category-wise, and accordingly 4 seats for general category, 2 for OBC, one of SC and one for ST category candidates had been earmarked and compartmentalized, then the same were not at all interchangeable, and accordingly, the Petitioner is not entitled for admission, especially when the admissions are over and the last date has also come to an end.

10. After respective arguments have been advanced, before proceeding to consider the matter on merits, what is true purport and meaning of horizontal reservation and in what way and manner it is different from vertical reservation has to be understood keeping in view the consideration made by Apex Court. Apex court in the case of Indra Sawhney v. Union of India 1992 Supp (3) SCC 217 has proceeded to explain the principles of horizontal reservation as follows:

all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as "vertical reservations" and "horizontal reservations." The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes (under Article 16(4)) may be called vertical reservations whereas reservations in favour of physically handicapped (under Clause (1) of Article 16) can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against the quota will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same.

11. In the State of U.P. various special provisions of reservation as contrasted from social reservation under Article 16(4) of the Constitution of India have been made. The method of implementing the special reservation which is horizontal in nature, cutting across vertical reservation has been subject matter of consideration before Apex Court in the case of Anil Kumar Gupta and Others Vs. State of U.P. and Others, of the said judgment being relevant are quoted below:

14. The question is which of the above interpretations is the correct one having regard to the language employed in the concerned notifications?

15. On a careful consideration of the revised notification of December 17, 1994 and the aforementioned corrigendum issued by the Lucknow University, we are of the opinion that in view of the ambiguous language employed therein, it is not possible to give a definite answer to the question whether the horizontal reservations are overall reservations or compartmentalized reservations. We may explain these two expressions. Where the seats reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not inter-transferable, it would be a case of compartmentalised reservations. We may illustrate what we say: Take this very case; out of the total 746 seats, 112 seats (representing fifteen percent) should be filled by special reservation candidates; at the same time, the social reservation in favour of Other Backward Classes is 27% which means 201 seats for O.B.Cs.; if the 112 special reservation seats are also divided proportionately as between O.C., O.B.C., S.C. and S.T., 30 seats would be allocated to the O.B.C. category; in other words, thirty special category students can be accommodated in the O.B.C. category; but say only ten special reservation candidates belonging to O.B.C. are available, then these ten candidates will, of course, be allocated among O.B.C. Quota but the remaining twenty seats cannot be transferred to O.C. category (they will be available for O.B.C. candidates only) or for that matter, to any other category; this would be so whether requisite number of special reservation candidates (56 out of 373) are available in O.C. category or not; the special reservation would be a water tight compartment in each of the vertical reservation classes (O.C., O.B.C., S.C. and S.T.). As against this, what happens in the over-all reservation is that while allocating the special reservation students to their respective social reservation category, the over-all reservation in favour of special reservation categories has yet to be honoured. This means that in the above illustration, the twenty remaining seats would be transferred to O.C. category which means that the number of special reservation candidates in O.C. category would be $56+20=76$. Further, if no special reservation candidate belonging to S.C. and S.T. is available then the proportionate number of seats meant for special reservation candidates in S.C. and S.T. also get transferred to O.C. category. The result would be that 102 special reservation candidates have to be accommodated in the O.C. category to complete their quota of 112. The converse may also happen, which will prejudice the candidates in the reserved categories. It is, of course, obvious that the inter se quota between O.C., O.B.C., S.C. and S.T. will not be altered.

16. Now coming to the revised notification of December 17, 1994, it says that "horizontal reservation be granted in all medical colleges on total seats of all the courses...." These words are being interpreted in two different ways by the parties; one says it is over-all reservation while other says it is compartmentalized. Paragraph 2 says that the candidates selected under the aforesaid special categories "would be kept under the categories of Scheduled Castes/Scheduled Tribes/Other Backward Classes/General to which they belong. For example, if a candidate dependent on a freedom fighter selected on the basis

of reservation belongs to Scheduled Castes, he will be adjusted against the seat reserved for Scheduled Castes". This is sought to be read by the Petitioners as affirming that it is a case of compartmentalized reservation. May be or may not be. It appears that while issuing the said notification, the Government was not conscious of the distinction between overall horizontal reservation and compartmentalized horizontal reservation. At any rate, it may not have had in its contemplation the situation like the one which has arisen now. This is probably the reason that this aspect has not been stated in clear terms.

17. It would have been better - and the Respondents may note this for their future guidance - that while providing horizontal reservations, they should specify whether the horizontal reservation is a compartmental one or an overall one. As a matter of fact, it may not be totally correct to presume that the Uttar Pradesh Government was not aware of this distinction between "overall horizontal reservation", since it appears from the judgment in Swati Gupta that in the first notification issued by the Government of Uttar Pradesh on May 17, 1994, the thirty percent reservation for ladies was split up into each of the other reservations. For example, it was stated against backward classes that the percentage of reservation in their favour was twenty seven percent but at the same time it was stated that thirty percent of those seats were reserved for ladies. Against every vertical reservation, a similar provision was made, which meant that the said horizontal reservation in favour of ladies was to be a "compartmentalized horizontal reservation". We are of the opinion that in the interest of avoiding any complications and intractable problems, it would be better that in future the horizontal reservations are compartmentalized in the sense explained above. In other words, the notification inviting applications should itself state not only the percentage of horizontal reservation(s) but should also specify the number of seats reserved for them in each of the social reservation categories, viz., S.T., S.C., O.B.C. and O.C. If this is not done there is always a possibility of one or the other vertical reservation category suffering prejudice as has happened in this case. As pointed out herein above, 110 seats out of 112 seats meant for special reservations have been taken away from the O.C. Category alone - and none from the O.B.C. or for that matter, from S.C. Or S.T. It can well happen the other way also in a given year.

18. Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen percent special reservation seats to be filled up first and then take up the O.C. (merit) quota (followed by filling of O.B.C., S.C. and S.T. quotas). The proper and correct course is to first fill up the O.C. quota (50%) on the basis of merit: then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C. the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an over-all horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated

against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the O.C. Quota.

12. In the said judgment quoted above concept of horizontal reservation and compartmentalized reservation has been noticed in detail and it has been clearly ruled that in future horizontal reservation should be compartmentalized to avoid complication in future and if it is not done there is always possibility of one or other vertical reservation category suffering, as has happened in the case on hand.

13. Both these judgements have been dealt with Apex Court in the case of Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others, and view taken has been that horizontal reservation is special reservation in consonance with the mandate of Article 15(3) of the Constitution of India whereas women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Relevant extract of the said judgment is being looked into.

4. Rule 9(3) of the Rajasthan Judicial Service Rules, 1955 ("Rules" for short) which is relevant, reads as follows:

Reservation for women candidates shall be 20% category-wise in the direct recruitment. In the event of non-availability of the eligible and suitable women candidates in a particular year, the vacancies so reserved for them shall be filled in accordance with the normal procedure and such vacancies shall not be carried forward to the subsequent year and the reservation treated as horizontal reservation, i.e. the reservation of women candidates shall be adjusted proportionately in the respective category to which the women candidate belongs.

5. Before examining whether the reservation provision relating to women, had been correctly applied, it will be advantageous to refer to the nature of horizontal reservation and the manner of its application. In *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217, the principle of horizontal reservation was explained thus (para 812) : AIR 1992 SCW 3682

...all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as "vertical reservations" and "horizontal reservations." The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes (under Article 16(4)) may be called vertical reservations whereas reservations in favour of

physically handicapped (under Clause (1) of Article 16) can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations - what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against the quota will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same.

A special provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in *Anil Kumar Gupta and Others Vs. State of U.P. and Others*, thus:

...The proper and correct course is to first fill up the Open Competition quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e. S.C., S.T. and B.C.; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an overall horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.)

(Emphasis supplied)

6. We may also refer to two related aspects before considering the facts of this case. The first is about the description of horizontal reservation. For example, if there are 200 vacancies and 15% is the vertical reservation for SC and 30% is the horizontal reservation for women, the proper description of the number of posts reserved for SC, should be : "For SC : 30 posts, of which 9 posts are for women." We find that many a time this is wrongly described thus : "For SC : 21 posts for men and 9 posts for women, in all 30 posts." Obviously, there is, and there can be, no reservation category of "male" or "men."

7-8 The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations." Special reservations in

favour of physically handicapped, women etc., under Article 16(1) or 15(3) are "horizontal reservations." Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. Vide *Indira Sawhney (supra)*; *R.K. Sabharwal and others Vs. State of Punjab and others, Union of India and others etc. Vs. Virpal Singh Chauhan etc.*, and *Ritesh R. Sah Vs. Dr. Y.L. Yamul and others*, But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Castes-Women." If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two women candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates. (But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidate on the ground that "SC women" have been selected in excess of the prescribed internal quota of four.)

9. In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 women candidates, which was equal to the quota for

"General Category - Women." There was thus no need for any further selection of woman candidates under the special reservation for women. But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven women candidates selected on their own merit (candidates at Sl. Nos. 2, 3, 4, 5, 9, 19, 21, 25, 31, 35 and 41 of the Selection List) and another eleven (candidates at Sl. No. 54, 61, 62, 63, 66, 74, 75, 77, 78, 79 and 80 of the Selection List) included under reservation quota for "General Category Women." This is clearly impermissible. The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation.

10. Similarly, we find that in regard to 24 posts for OBC, 19 candidates were selected by RPSC in accordance with merit from among OBC candidates which included three women candidates. Thereafter, another five women were selected under the category of "OBC - Women," instead of adding only two which was the shortfall. Thus there were in all 8 women candidates, among the 24 OBC candidates found in the Selection List. The proper course was to list 24 OBC candidates as per the merit and then find out number of woman candidates among them and only fill the shortfall to make up the quota for five for woman.

14. Said judgments have again been followed by Apex Court in the case of Public Service Commission, Uttaranchal Vs. Mamta Bisht and Others, . Relevant paragraphs 13 and 14 are being extracted below:

The view taken by the High Court on application of horizontal reservation is contrary to the law laid down by this Court in Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others, wherein dealing with a similar issue this Court held as under:

9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are "horizontal reservations". Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class may compete for nonreserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. Vide Indra Sawhney, R.K. Sabharwal v. State of Punjab, Union of India v. Virpal Singh Chauhan and Ritesh R. Sah v. Dr.Y.L.

Yamul. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.

(Emphasis added)

14. In view of the above, it is evident that the judgment and order of the High Court is not in consonance with law laid down by this Court in *Rajesh Kumar Daria* (supra). The judgment and order impugned herein is liable to be set aside and all consequential orders become unenforceable and inconsequential.

15. On the parameters of the aforesaid judicial pronouncements of Hon'ble Apex Court, it has to be seen as to whether in the present case, there has been compartmentalization or not of the seats available qua horizontal reservation.

16. A perusal of the chart given in paragraph 9 of the Information Brochure, as already quoted above would go to show that in paragraph 9.1 vertical reservation has been provided for and against the said respective category of vertical reservation percentage has also been provided for as 21%, 2% and 27 % respectively. Paragraph 9.2 deals with horizontal reservation and further proceeds to give details of the sub-category, which is available in each category percentage-wise as follows:

(a) dependents of Freedom Fighter (Code UPFF) and the maximum percentage of total seat has been prescribed as 2%, (b) sons/daughters of defence personnel of U.P. either retired or killed/disabled in action or defence personnel posted in U.P., (Code UPAF) and the maximum percentage of total seat has been prescribed as 5% (c) Handicapped/Disabled of U.P. (Code UPHC) and the maximum percentage of total seat has been prescribed as 3% and (d) Girls of U.P. (Code UPGL) and the maximum percentage of total seat has been prescribed as 20%.

17. It has been clearly specified in paragraph 9.3 that each candidate can be given only one type of horizontal reservation except for girl students, who can opt for any one of the said category codes (a), (b) or (c). Categories have been specified comprising of Scheduled Caste, Scheduled Tribes and OBC, with respective percentage of reservation, described as vertical reservation category,

which is relatable to Article 16(4) of the Constitution and thereafter special reservation described as horizontal reservation relatable to Article 16(4) and 15(5) of the Constitution has been provided for with a clear cut stipulation of the percentage of seats available in the sub-category available in each category. Scheme of things provided for clearly reflects that present case is a case of compartmentalized reservation qua horizontal reservation.

18. Once clear cut scheme has been provided for wherein horizontal reservation has been compartmentalized deliberately providing for horizontal reservation, sub-category available in each category, so that vertical reservation does not suffer prejudice on account of horizontal reservation, and accordingly distribution of seats has been done in the institution concerned based on the same, providing for four seats to the dependents of Freedom Fighters of general category, two for OBC, one for SC and one for ST, and once candidates from the said sub-category are available in the respective category from horizontal reservation, then no further exercise is required, however, in cases where from the respective sub-category available in each category, if the candidate is not available, then next candidate in merit from the vertical reservation has to be accorded admission. Once seats in question have been vertically divided and applying the principle of special reservation dealing with horizontal reservation, seats in question have been compartmentalized and divided, then in such a situation the seats are not interchangeable, as such the Petitioner who is from general category cannot complain as a matter of right that admission be given to him on the ground that 9 incumbents from Freedom Fighter category have not been accorded admission. Fact of the matter is that seats in question have been earmarked by compartmentalization and once candidates from the said category are not available, then the seat in question has to be given to the candidates from vertical reservation in such a situation and in this background, applying the principle of compartmentalized horizontal reservation seats in question are not interchangeable, as such request made by the Petitioner cannot be accepted. Further the Petitioner has not suffered any prejudice as accepted position is that out of nine seats so reserved for horizontal category in compartmentalized manner from the respective category from which the Petitioner hails, he has failed to make place for himself. In such a situation and in this background no relief can be accorded to the Petitioner.

19. Consequently, writ petition fails and the same is dismissed.