
(2016) 04 OHC CK 0043
In the Orissa High Court
Case No : W.P.(C) No. 15104 of 2015

Bishnu Prasada Dash

APPELLANT

Vs

Governor, Reserve Bank of India

RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

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

Citation : (2016) 2 ILRCuttack 123

Hon'ble Judges : Dr. A.K. Rath, J.

Bench : Single Bench

Advocate : In person, for the Petitioner; Mr. D.N. Mishra, Advocate, for the Opposite Parties

Final Decision : Allowed

Judgement

Dr. A.K. Rath, J.—In this writ petition, the petitioner has prayed, inter alia, for a direction to the opposite parties to re-draw the select list of

general candidates by including his name in reserve category ex-serviceman and to appoint him in the post of Assistant in the Reserve Bank of

India, Bhubaneswar.

2. Shorn of unnecessary details, the short facts of the case of the petitioner are that the Reserve Bank of India issued an advertisement, vide

Annexure-1, in the employment news to fill up the posts of Assistant. Twenty five posts of Assistant were earmarked for Bhubaneswar region out

of which, one was reserved for disabled ex-servicemen and three posts for ex-servicemen (normal). The educational qualification for the posts of

Assistant was Bachelor's Degree in any discipline with a minimum of 50% marks (pass class for SC/ST/PWD candidates). For ex-servicemen, a

candidate should be a graduate from a recognised University or should have

passed the matriculation or its equivalent examination of the Armed Forces and rendered at least 15 years of defence service. The selection was to be made on the basis of candidate's performance in the written examination as well as interview. The petitioner being eligible applied for the same. He was the only ex-serviceman candidate and called for the interview. But then, he was not selected. He applied for the information under the RTI Act. The same was provided to him on 17.4.2015, vide Annexure-4, wherein it was indicated that the reservation for ex-servicemen was horizontal and included in the vacancies for various categories.

The recruitment of ex-servicemen in each recruitment drive was made taking into consideration the general policy of reservation, wherein the upper ceiling is 50%. The select list of the Assistants of the year 2014 annexed thereto indicates that the general candidates who had secured 189 marks had been selected. Pursuant to his complaint dated 12.1.2015, he got an e-mail message, vide Annexure-5, wherein it is stated that the reservation for ex-servicemen was horizontal and included in the vacancies of various categories. Since ex-servicemen were getting extended relaxation in age, qualification etc., they had to be included in the "select list" of categories (UR/SC/ST/OBC) to which they belonged to, provided, they could be included in such list in the normal course. He made an appeal to the opposite party no.1. While the matter stood thus, he received the letter dated 9.6.2015, vide Annexure-7, which indicates that the marks secured by him were less than the marks scored by last candidate selected in the general category. Therefore, as per the extant policy followed by the bank, he was not selected in the final list. The Bank was guided by the OM 36012/58/92 Estt(SCT) dated 01.12.1994 issued by Government of India. It provides that horizontal reservations cut across vertical reservation (in what was called interlocking reservation) and the persons selected against these reservations had to be placed in the appropriate category. Even after providing for these horizontal reservations, the percentage of reservation in favour of backward class of citizens should remain the same. Thus only those ex-servicemen who qualify in the respective categories were selected. With this factual scenario, this writ petition has been filed.

3. Pursuant to issuance of notice, a counter affidavit has been filed by the opposite parties 1 and 2. It is stated that in order to carry out its

functions effectively, the Bank recruits different classes of employees such as Class I (Officers), Class II (Personal Assistants which is now abolished), Class III (Assistants/Word Processor Assistants) and Class IV (Subordinate Staff) from time to time. The recruitment in Class I and Class III is centralised, while recruitment of Class IV staff is done at Regional Office level. The Bank follows the constitutional principles and guidelines on reservation issued by Department of Personnel and Training (DoPT), Government of India in all recruitments at central and regional office level. The Bank maintains rosters for reservation of Scheduled Castes, Scheduled Tribes and Other Backward Classes (Vertical Reservation) as well as for Physically Handicapped candidates (Horizontal reservation).

4. Heard the petitioner in person and Mr. D.N. Mishra, learned counsel for the opposite party.

5. The petitioner contended that pursuant to the advertisement issued by the Reserve Bank of India to fill up the posts of Assistant in Bhubaneswar

region, he being an ex-serviceman and otherwise eligible applied for the same. He came out with flying colours in the written as well as viva-voce

test. He was the only candidate in ex-servicemen category. But then, the opposite parties committed a manifest illegality and impropriety in not

appointing him to the post. He further submitted that in the merit list prepared for the general category, opposite party no.4 has secured 189 marks

and he has secured 180 marks. He being the reserve category candidate ought to have been selected in place of opposite party no.4. He further

submitted that special reservations are made for ex-servicemen. The reservations have to be adjusted within the reserved and unreserved

categories and the percentage of posts reserved under the horizontal reservations have to be provided for.

6. Per contra, Mr. Mishra, learned counsel for the opposite parties 1 to 3, submitted that the Bank had issued a notification in July 16, 2014 for

recruitment of Assistant in various offices of the Bank. For selection to the posts, a competitive Online Examination was conducted in September,

2014. The result of the said Examination was declared on 31 December 2014 and different cut off marks (on merit and meeting the benchmarks

set by RBI) were declared for General, Scheduled Caste (SC), Scheduled Tribe (ST), Other Backward Classes (OBC) and Persons with

Disability (Orthopedically Handicapped) categories for being called for interview at various offices of the Reserve Bank. The cut-off mark for

general category candidates at Bhubaneswar was fixed at 159. After interview, the final selection was made as per the merit lists prepared on the

basis of total scores obtained by the candidates in the Online Examination and the Interview. The petitioner belongs to ex-serviceman (normal

category). He secured 180 marks in the examination. Being the only ex-serviceman candidate he was called for the interview. The general category

candidates were selected upto 180 marks. The reservation for ex-servicemen was horizontal reservation and included in the vacancies for various

categories. The last candidate belonging to General Category secured 189 marks in total and was selected.

7. The principle of horizontal reservation has been succinctly stated in *Indra Sawhney v. Union of India*, 1992 Supp. (3) SCC 217. In

paragraph 95, the apex Court held thus:

95. "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 this quota will be placed in the appropriate category; if he belongs to

S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) 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.

8. On a survey of earlier decisions, the Supreme Court in the case of *Rajesh Kumar Daria v. Rajasthan Public Service*, AIR 2007 SC 3127

enumerated the principle of horizontal reservation and the manner of filling up the vacancies. The same is quoted hereunder:

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 (Pr.812) :

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 v. State of U.P* 1995 (5) SCC 173 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

compartmentalised 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.).

[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. 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 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 v. State of Punjab (1995 (2) SCC 745), Union of India v. Virpal Singh Chauhan (1995 (6) SCC 684 and Ritesh R. Sah v. Dr. Y.L. Yamul (1996 (3) SCC 253)]. 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 woman 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. On the anvil of the decisions cited supra, the case of the petitioner may be examined. The petitioner is the only ex-serviceman candidate. He

was selected in the written as well as viva-voce test. He secured 180 marks. His case was denuded on the ground that opposite party no.4

secured 189 marks.

10. The principle enumerated in *Rajesh Kumar Daria* applies to the reserved category candidates belonging to ex-servicemen. Since the petitioner

was the only ex-serviceman candidate and selected, he ought to have been selected by deleting the corresponding number of candidates from the

bottom of such list relating to other ex-serviceman so as to ensure that the final ex-serviceman candidate contains one ex-serviceman candidate.

11. In the wake of the aforesaid, the writ petition is allowed. Opposite parties are directed to re-draw the select list of Assistant by including the

name of the petitioner and appoint him in the said post. No costs.