

**(2011) 03 P&H CK 0016**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 16691 of 2009**

Dayal Chand

APPELLANT

Vs

The Oriental Bank of Commerce and Another

RESPONDENT

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**Date of Decision :** 03-03-2011

**Acts Referred:**

**Citation :** (2011) 163 PLR 438

**Hon'ble Judges :** Ranjit Singh, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Ranjit Singh, J.—The petitioner, who is an ex-servicemen, has applied for appointment on the post of Clerk with the respondent Bank, for

which an advertisement was issued on 22/28.11.2008. The petitioner had applied for the post in the reserved category of ex-servicemen. 9001

posts of Clerks were advertised by the respondent-Bank and the vacancies were distributed amongst 16 States. The reservation for ex-

servicemen was to operate horizontally but number of posts reserved for in the category were not disclosed.

2. The petitioner was called for interview and he accordingly appeared before the Section Committee on 22.4.2009. The result was declared and

published on the website. To his surprise, the petitioner did not find his name in the list of selected candidates, though he had performed reasonably

well in the written test as well as in the interview. The grievance of the petitioner is that the selection was done by ignoring the reservation made for

ex-servicemen category as not even a single candidate from this category from the State of Haryana was selected. The petitioner would

accordingly plead that selection was in gross violation of fundamental rules regulating the appointments, especially of ex-servicemen. 10% quota is

reserved for ex-servicemen as per the Ex-servicemen (Reemployment in Central Civil Services Posts) Rules, 1979. The petitioner would submit

that the respondents deliberately did not disclose the number of vacancies reserved for ex-servicemen and accordingly pleads that selection was

made in violation of the provisions contained in the Constitution of India.

3. The petitioner had earlier filed a writ petition, which he withdrew on 15.7.2009 with liberty to file a fresh petition after obtaining some more

information. The petitioner thereafter filed an application under the R.T.I Act, in response to which he could learn that 10% posts were reserved

for ex-servicemen against 900 posts in clerical cadre. As per this, 11 posts were reserved for ex-servicemen for the State of Haryana. Not even a

single candidate was selected from Haryana against these 11 reserved posts. The ground to deny the selection is that none of the candidates from

Haryana could score 150 marks, which was the cut off marks for selection and that the petitioner had scored only 115 marks. The petitioner has,

thus, filed the present petition to challenge the action of the respondents in not selecting him against the reserved post of ex-servicemen and for

quashing the selection.

4. The Bank has filed reply. It is stated in the reply that 898 candidates have joined and are performing their duties. Two posts of S.Cs candidates

have been carried forward as backlog. The respondents would plead that the petition is bad for non-joinder as the selected candidates have not

been made party. It is then stated that dispute in regard to advertisement would be subject to jurisdiction of the Court situated in N.C.T., Delhi and

hence, this Court would not have jurisdiction to entertain the present petition. It is stated that the Government guidelines for reservation of ex-

servicemen have been duly implemented and the selection to the posts being based on merit-cum-suitability, would have to be buttressed from the

guidelines regulating the method of selection.

5. As per the reply, the petitioner could not be selected as the candidates having higher rank in general category could not be sacrificed for a

candidate who is falling in horizontal zone of reservation, as it affects the level of performance by such candidate. It is pointed out that the last

candidate selected in the general category, secured 150 marks and the petitioner, being an ex servicemen and belonging to general category,

scored only 115 marks. He was accordingly not found suitable. It is also pointed out that the last candidate selected in O.B.C. category had

secured 130 marks and in S.C. category 123 marks. The non-selection of the petitioner is, thus, justified on these grounds. As per the

respondents, the petitioner do not have any vested right for selection.

6. On one of the dates, during the course of arguments, the counsel for the respondents had relied upon compendium of instructions issued by the

Government of India, which were statelty followed while granting reservation to ex-servicemen. In this regard, counsel for the respondents has

referred to Chapter IV relating to recruitment of Subordinate Staff (Reserved). Reference is made to Para 4.8(vii) under the heading "lower

standard of selection". It is stated mat in the case of direct recruitment, if sufficient number of candidates belonging to ex-servicemen are not

available on the basis of general standard to fill all the vacancies reserved for them, candidates belonging to category of ex-servicemen may be

selected under a relaxed standard of selection to make up the deficiency in the reserved quota subject to the condition that such relaxation will not

affect the level of performance of such candidates. This clause rather is apparently making a provision for selecting ex-servicemen under relaxed

standard to make up deficiency. This clause can not be read to nullify the appointment of reserved category of ex-servicemen. Out of 11 posts

reserved for ex-servicemen, no candidate was selected. If reserved category candidates are to be appointed on the same standard as mat of

general category, then reservation would become redundant. It is noticed mat scheduled caste and backward class candidates with lesser marks

have been appointed. That being so, how could appointment for reserved category of ex-serviceman be treated differently to insist on same

standard as of general category for appointment. The petitioner was not considered because he had not come up to the general standard. The

respondents could very well relax the standard of selection to make up the deficiency in the reserved quota of ex-servicemen. It is also not the case

pleaded by the respondents that such relaxation would have effected the level of performance of such candidate. Para 4.3 of this compendium

clearly provides that vacancies in clerical cadre will be filled up by the respective Banks in terms of the guidelines issued by the Government of

India from time to time. The selection is to be based on written test. Accordingly, the justification given by the respondents in not selecting the

petitioner may not legally tenable.

7. The last selected candidate in the scheduled caste category has secured 123 marks. There would hardly be any difference between the standard

of a person who has scored 115 or 123 marks so far as level of efficiency is concerned. To say that the petitioner had not come up to cut off

marks as compared to the general category candidate, would amount to undoing the reservation for ex-servicemen. The petitioner was to compete

in his reserved category of ex-servicemen and for the purpose of performance could not be compared with the candidates belonging to other

categories.

8. The submission that the petitioner could not obtain the cut off marks is again apparently misconceived. It is not stated anywhere that there was

any minimum cut off marks fixed for selection, which the petitioner could not attain. Once the reservation is made for a particular category, the

person competing in that category will have to be assessed on the basis of his merit and selection accordingly made depending upon the number of

vacancies available in that reserved category. Concededly, 11 posts of Clerks were reserved for ex-servicemen category and none was selected.

This approach is not legally appropriate and as such, a case is made out for issuing direction to the respondents to make selection in accordance

with law. The action of the respondents in denying selection to the petitioner, therefore, can not be sustained.

9. Direction according is issued to the respondents to consider the petitioner for appointment on the basis of his selection, if he comes into the merit

amongst the reserved category of ex-servicemen on the basis of marks obtained by him.

The writ petition is allowed in the above terms.