
(2022) 05 MAN CK 0004
In the Manipur High Court
Case No : Writ Petition (C) No. 159 Of 2021

Naorem Nepolian Meitei & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 04-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2022) 05 MAN CK 0004

Hon'ble Judges : Ahanthem Bimol Singh, J

Bench : Single Bench

Advocate : Ng. Jotindra Luwang, Boboy Potsangbam, S. Samarjeet

Final Decision : Allowed

Judgement

Ahanthem Bimol Singh, J

[1] Heard Mr. Ng. Jotindra Luwang, learned Advocate appearing for the petitioners, Mr. Boboy Potsangbam, learned CGSC appearing for the respondent No. 1 and Mr. S. Samarjeet, learned senior panel counsel appearing for the respondent Nos. 2 to 6.

[2] The present writ petition had been filed questioning the legality and sustainability of the non-selection of the petitioners, who belongs to reserved category (ST/SC/OBC) and who have not availed any relaxation in the recruitment process for their appointments as Constable/ Rifleman, even though they got more marks than many of the selected candidates against the un-reserved posts.

[3] The fact of the present case, in a nutshell, is that the Staff Selection Commission issued a notice dated 21-07-2018 for conducting an open examination for recruitment to the post of Constable (General Duty) in Border Security Force (BSF), Central Industrial Security Force (CISF), Central Reserved Police Force (CRPF), Indo-Tibetan Border Police (ITBP), Sashastra Seema Bal (SSB), National Investigation Agency (NIA), Secretariat Security Force (SSF) and

Rifleman (General Duty) in Assam Rifles. Altogether 54953 vacancies (47307 Male / 7646 Female), including 490 vacancies for male candidates earmarked for the Manipur State were also notified in the said notice.

[4] The recruitment process consists of Computer Based Examination (CBE), Physical Efficiency Test (PET), Physical Standard Test (PST) and Medical Examination. In Para 11 (ix) of the said notice, it is provided that on the basis of the aggregate marks scored by the candidates in Computer Based Examination, the final selection of candidates, along with force allocation, in each category namely, Un-Reserved, SC, ST, OBC and Ex-Servicemen will be made separately for male and female candidates in respect of each State/ UT and further earmarked category of border guarding and militancy/ naxals affected Districts wherever applicable and that selection of candidates for NIA and SSF will be made on all India basis.

[5] In para 9-III of the aforesaid notice and under the heading "Scheme of Examination", the Physical Standard Test (PST) is provided as under:-

"9. Scheme of Examination:

III. Physical Standard Test (PST):

Physical standards laid down for the post of Constable/ Rifleman are –

a. Height

Height (in cms)

Male

Female

General, SC & OBC candidates (except those mentioned below)

170

157

Relaxation:

The minimum height for all candidates belonging to Scheduled Tribes

162.5

150

The minimum height for all Scheduled Tribe candidates hailing from the North-Eastern States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim & Tripura and Naxal/ Left Wing Extremism affected Districts.

160

147.5

The minimum height for the candidates falling in the categories of Garhwalis, Kumaonis, Dogras, Marathas and candidates belonging to the States of Assam, Himachal Pradesh and Jammu & Kashmir

165

155

The minimum height for the candidates hailing from North Eastern States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura

162.5

152.5

The minimum height for the candidates hailing from Gorkha Territorial Administration (GTA) comprising of the three sub-Division of Darjeeling District namely Darjeeling, Kalimpong and Kurseong and includes the following "Mouzas" Sub-Divisions of these Districts.

(1) Kigargarg Tea Garden (2) Lohagarh Forest (3) Rangmohan (4) Barachenga (5) Panighata (6) Chota Adalpur (7) Paharu (8) Sukna Forest (9) Sukna Part-I (10) Pantapati Forest-1 (11) Mahanadi Forest (12) Champasari Forest (13) Salbari Chhatpart-II (14) Sitong Forest (15) Sivoke Hill Forest (16) Sivoke Forest (17) Chhota Chenga (18) Nipania

157

152.5

b. Chest:

Chest (in cms: Unexpanded/ Minimum expansion)

Male

Female

General, SC & OBC male candidates (except those mentioned below)

80/5

N/A

Relaxations:

The minimum chest for all male candidates belonging to Scheduled Tribes

76/5

N/A

The minimum chest for male candidates falling in the categories of Garhwalis, Kumaonis, Dogras, Marathas and candidates belonging to the States of Assam, Himachal Pradesh and Jammu & Kashmir

78/5

N/A

The minimum chest for the candidates hailing from North Eastern States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura and candidates hailing from Gorkha Territorial Administration (GTA) comprising of the three Sub-Division of Darjeeling District namely Darjeeling, Kalimpong and Kurseong and includes the following "Mouzas" Sub-Divisions of these Districts.

(1) Kigargarg Tea Garden (2) Lohagarh Forest (3) Rangmohan (4) Barachenga (5) Panighata (6) Chota Adalpur (7) Paharu (8) Sukna Forest (9) Sukna Part-I (10) Pantapati Forest-1 (11) Mahanadi Forest (12) Champasari Forest (13) Salbari Chhatpart-II (14) Sitong Forest (15) Sivoke Hill Forest (16) Sivoke Forest (17) Chhota Chenga (18) Nipania

77/5

N/A

c. Weight: For male and female candidates: Proportionate to height and age as per medical standards.

[5.1] In Note.-II of para 2 and para 11 (xiii) and (xiv) of the aforesaid notice, it is provided as under:-

"2.....

"Note. II: 10% vacancies are earmarked for Ex-Servicemen (ExS). If suitable Ex-servicemen candidates are not available, vacancies reserved for Ex-servicemen will be filled by non-Ex-servicemen candidates of respective categories."

"11. Mode of Selection:-

"(xiii) SC, ST, OBC and ExS candidates, who are selected on their own merit without relaxed standards, along with candidates belonging to other communities, will not be adjusted against the reserved share of vacancies. Such candidates will be accommodated against the unreserved vacancies as per their position in the overall Merit List. The reserved candidates will be filled up separately from amongst the eligible SC, ST, OBC and ExS candidates."

"(xiv) SC, ST, OBC and ExS candidate who qualifies on the basis of relaxed standards viz. age limit, height and chest measurement, experience or qualifications, permitted number of chances, extended zone of consideration larger than what is provided for general category candidate etc., irrespective of his /her merit position, such SC, ST, OBC and ExS candidates is to be counted against reserved vacancies. In so far as cases of ex-servicemen is permissible against the reserved or unreserved posts and such exemption cannot be termed as relaxed standards in regard to age."

[6] Pursuant to the aforesaid notice, the petitioner Nos. 1 and 2 belonging to SC category, petitioner Nos. 3 to 11 belonging to OBC and petitioner Nos. 12 to 17 belonging to ST category duly applied for the said recruitment examination in their respective category through online and the Staff Selection Commission conducted the examination from 11-02-2019 to 11-03-2019 for the Computer Based Mode. All the petitioners appeared in the said Computer Based Mode Examination and they qualified in the said examination and their names were shortlisted for appearing in the Physical Efficiency Test (PET)/ Physical Standard Test (PST). All the petitioners were found qualified in the said two test without availing any relaxation as provided under para 9.III of the aforesaid notice. Thereafter, the petitioners joined in the Detailed Medical Examination (DME) and Review Medical Examination (RME) and they were declared fit in respect of medical status. In short, all the petitioners were found qualified in the Computer Based Examination, Physical Efficiency Test, Physical Standard Test and Medical Examination.

[7] The Staff Selection Commission issued a notification on 21-01-2021 declaring the final result of the said examination and in the said notification, the category-wise detail of vacancies, number of candidates selected and cut-off details of the last selected candidates in respect of female candidates and male candidates were notified. Subsequently, the petitioners also obtained their mark details from the official website of the Staff Selection Commission and the petitioners scored 53.9461, 45.49993, 51.04809, 50.677713, 48.51754, 47.79407, 47.51706, 45.00909, 44.45672, 42.84539, 45.10208, 48.44847, 48.35075, 45.15239, 43.94409, 39.45163 and 38.08839 respectively in respect of Computer Based Examination.

The cut-off marks of the last selected candidates belonging to Un-reserved category for the State of Manipur for male candidates in respect of the posts of BSF, CISF, SSB, ITBP and ARs are 43.44560, 43.47469, 43.58351, 44.18004, 43.44560 and 36.46043 respectively.

[8] On examination and comparison of the marks obtained by the petitioners and the last selected candidates of the un-reserved category, it is found that the petitioners scored more marks than the last selected candidates of un-reserved category, however, the petitioners were not recommended/ selected against the vacant posts available under the un-reserved category only on the ground that the petitioners, who belongs to reserved category, cannot be recommended/ selected against the un-reserved posts as they have availed certain relaxation in the Physical Standard Test.

The stand taken by the respondents in their counter affidavit is that the petitioners, who belongs to reserved category of ST/SC/OBC availed certain relaxation in the Physical Standard Test as provided under para 9-III of the aforesaid notice issued by the Staff Selection Commission and as per provision contained in para No. 11 (xiv) of the said notice of the Staff Selection Commission, they can be counted against reserved vacancies only and not

against un-reserved vacancies. It is also the case of the respondents that as the petitioners scored less marks than the marks of the last candidates selected against their respective reserved category, they could not find place in the final list of selected candidates.

[9] The case of the petitioners is that the relaxation in the measurement of height and chest provided under para 9-III of the aforesaid notice are available to all the candidates hailing from the North Eastern States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura or other specific regions irrespective of whether the candidates belong to reserved or un-reserved category. In fact, no relaxation in the measurement of height and chest is provided to the candidates belonging to OBC and SC in para 9-III of the aforesaid notification and that the general candidates who availed the same relaxation in the measurement of height and chest provided under para 9-III of the aforesaid notice have been recommended/ selected against the un-reserved posts, accordingly, the petitioners are entitled to receive the same benefits as are given to the general candidates.

[10] Mr. Ng. Jotindra Luwang, learned counsel for the petitioners placed before this court, the judgment and order dated 01-10-2021 passed by a Division Bench of the High Court of Delhi in WP(C) No. 4982 of 2021 in the case of Hemant Pokhriyal Vs. Staff Selection Commission, judgment and order dated 07-12-2021 passed by the High Court of Tripura in WP(C) No. 117 of 2021 and batch of analogous cases and judgment and order dated 02-02-2022 passed by the High Court of Tripura in WP(C) No. 718 of 2020 and submitted that in the said judgments and orders, the Hon'ble High Court of Delhi and Tripura have already decided that the relaxation in the measurement of height and chest as provided under para 9-III of the Staff Selection Commission's recruitment notice are available to all the candidates of North Eastern States, including Manipur, irrespective of whether they belong to reserved or un-reserved category and that no specific relaxation had been given to the candidates belonging to OBC category and accordingly, non-selection of OBC candidates against un-reserved posts on the ground of availing relaxation has been held as illegal and unsustainable and violative of article 14 and 16 of the Constitution.

The learned counsel also submitted that the Hon'ble High Courts further directed the authorities to prepare a revised select list and to consider the cases of the petitioners in those writ petitions for their appointment against the unfilled un-reserved vacancies without disturbing those candidates who have already appointed earlier. The learned counsel strenuously submitted that the present writ petition is squarely covered by the aforesaid judgments and orders of the Hon'ble High Court of Delhi and Tripura and the present writ petition can be allowed by giving similar directions.

[11] Mr. Ng. Jotindra Luwang, learned counsel further submitted that as many as 113 un-reserved vacancies and 59 vacancies reserved for Ex-Servicemen and earmarked for the State of Manipur were left unfilled due to want of eligible and

qualified candidates and those vacancies remained unfilled till today on the direction given by this court in its orders dated 07-04-2021 and 13-12-2021 passed in the present writ petition. The learned counsel submitted that all the petitioners can be appointed against these vacancies in terms of "para 2 Note. II" and "para 11(xiii)" of the recruitment notice issued by the Staff Selection Commission.

[12] After hearing the submission of the learned counsel appearing for the parties and on careful examination of the record of the present case, this court is of the considered view that the relaxation in the measurement of height and chest as provided under para 9-III of the recruitment notification of the Staff Selection Commission is available to all the candidates hailing from the North Eastern States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, etc. irrespective of whether they belong to reserved or un-reserved category and that no specific relaxation have been provided to the candidates belonging to either OBC or SC candidates. In the present case, the respondents have not denied the fact that candidates belonging to general category have been selected and appointed against un-reserved posts even though they availed relaxation in the measurement of height and chest as provided under para 9-III of the said recruitment notice. The respondents have not also denied the fact that the petitioners scored more marks than many of the last selected candidates against the un-reserved quota.

[13] In view of the above, this court did not find any reason as to why the petitioners should not be treated equally with those general candidates in the matter of their appointment against un-reserved posts and why the petitioners should not get the benefit provided under para. 11(xiii) of recruitment notice issued by the SSC. This court is also of the considered view that the non-selection of the petitioners No. 1 to 11, who belongs to SC an OBC category, on the alleged ground of availing relaxation as provided under para 9-III of the said recruitment notification is unreasonable, arbitrary, discriminatory and violative of article 14 and 16 of the Constitution.

In the result, the respondents are directed to consider the cases of the petitioners No. 1 to 11 against the vacancies earmarked for un-reserved candidates as was available at the time of selection in pursuance to the employment notice dated 21-07-2018 and recast the selection panel and to appoint them against the available vacancies without disturbing the candidates appointed earlier against the un-reserved vacancies. It is also made clear that the appointment of the petitioners will be prospective, however their seniority shall be determined on the basis of the inter-se merit.

[14] In respect of the petitioners No. 12 to 17 as they are Scheduled Tribe candidates and as there is specific relaxation provided to them in para 9-III of the recruitment notice in the matter of measurement of height and chest, it is open to the respondents to re-examine the cases of the petitioners No. 12 to 17 as to whether they qualify in the Physical Standard Test without availing the

relaxed standard given to ST candidates. If in the event, the petitioners No. 12 to 17 are found to be qualified in the Physical Standard Test without availing any relaxation given to ST candidates, they shall be entitled to the same benefits as are given hereinabove to the petitioners No. 1 to 11.

In terms of the above, the writ petition is allowed. The parties are to bear their own costs