
(2016) 01 TP CK 0017
In the Tripura High Court
Case No : WP(C) No. 176 of 2012

Sudip Kumar Ahir

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Citation : (2016) 01 TP CK 0017

Hon'ble Judges : S. Talapatra, J.

Bench : Single Bench

Advocate : A. Bhowmik, Advocate, for the Appellant; A. Roy Barman, CGC, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Talapatra, J.—1. Heard Mr. A. Bhowmik, learned counsel appearing for the petitioner as well as Mr. A. Ray Barman, learned CGC appearing for the respondents.

2. The grievance as agitated by the petitioner falls within a short compass. The petitioner in response to the press release, Annexure P-1 appeared in the open rally for recruitment as the Rifleman (General Duty). It is not in dispute that the rally was organised on 09 to 14 Feb 2009. The respondents have submitted the merit list dated 02.04.2009, Annexure-R/2 to their said counter-affidavit of the selected candidates who appeared along with the petitioner in the said rally. From the said merit list, it appears that the petitioner's name did not figure there. In response to the representation filed by the father of the petitioner who was the Ex-Habilder of Assam Rifles, for the Director General of Assam Rifles the following was communicated:

"1. Refer to your application dated 09 May 2009.

2. It is to inform you that your son Mr. Sudip Kumar Ahir, who attended recruitment rally held at Agartala (Tripura) from 09 to 14 Feb 2009 was rejected for want of vac against OBC cat in the said recruitment rally. However, you are

advised to direct your son to attend our future recruitment rally as and when conducted in your own State for which wide publicity will be given in National/local newspapers well in advance."

3. The petitioner has asserted in the writ petition, in para-5 in particular, that he secured 80 marks in the selection test out of total 100 marks and he was also declared physically fit. Despite that his name was not included or incorporated in the select panel. Mr. A. Bhowmik, learned counsel appearing for the petitioner having referred to the merit list dated 02.04.2009, Annexure R-2 to the counter-affidavit filed by the respondents has submitted that the persons in serial No. 44, 45, 46, 47, 48, 49 and 51 who secured less than 80 were selected and appointed in the post of Rifleman (General Duty).

4. Mr. A. Bhowmik, learned counsel appearing for the petitioner has further submitted that no vacancy has been earmarked for the OBC category candidates most illegally and in breach of the reservation policy. The respondents while traversing such allegations have admitted in para-5 of their affidavit-in-opposition that the petitioner could not be selected due to non-release of OBC category vacancy. Moreover, they have stated in para-10 as under:

"That, in reply to the statement made in paragraph 11 & 12 of the writ petition, I say that the vacancy for Tripura State was correctly distributed as per Ministry of Home Affairs Memorandum and there is no vacancy of OBC cat out of 80 vacancies. Out of 100 Tripura State get 2% share of OBC category and therefore out of 80 vacancies advertised vide advertisement dated 9th to 14th February, 2009 and there is no share vacancy of OBC category, so the petitioner could not be appointed. And in view of the above facts and circumstances the writ petition is liable to be dismissed being devoid of merit."

5. However, by filing additional affidavit on 16.11.2015 the respondents have responded to the allegation that the petitioner was arbitrarily denied appointment against the general category. The respondents have submitted that the candidates should have been within upper limit of 23, 26 and 28 years as applicable for general/OBC/SC/ST candidates respectively as on 01.08.2009. It has been further contended that in the guidelines issued by the Ministry of Home Affairs from time to time it has been emphasized that the candidates who are selected on their own merit without relaxed standard along with the candidates belonging to general category will not be adjusted against the vacancies earmarked for reservation. Such SC/ST/OBC candidates would only be accommodated against the general/unreserved vacancies as per their position in the inter se merit list. The candidates who qualify on the basis of the relaxed standards viz. age limit, qualification and extended zone of consideration etc. will be counted against the reserved vacancies and not against unreserved vacancies subject to fitness of candidates for selection.

6. Admittedly, the age of the petitioner was above 23 years and if he was appearing as the general category candidate he was not eligible for appearing in

the selection test. But Mr. Bhowmik, learned counsel appearing for the petitioner has refuted such rationale contending that the upper age limit is prescribed for purpose of allowing the candidates to appear in the selection process not for purpose of assessing the comparative merits in the selection. As such the reasons so advanced by the respondents can not survive. By the order dated 03.12.2015, this court raised certain points to be dealt with by the respondents, which are as follows:

- i) What was the age of Sri Rupasen Chakma at Serial No. 5, Sri Mithu Das at Serial No. 7, Sri Prasenjit Das at Serial No. 8 and Sri Biswa Sadhan Jamatia at Serial No. 11 and Sri Sukro Mani Chakma at Serial No. 17 of the inter se merit list, who belong to ST and SC categories, at the time of making their application?
- ii) Whether the reservation was ever extended for the OBC out of the total cadre strength and, if yes, in what manner?
- iii) Whether are there men in position against those reserved vacancies?
- iv) Whether the petitioner's case was considered in the General Category at all or he was discarded without any consideration?

7. Mr. A. Roy Barman, learned CGC appearing for the respondents has produced a written instruction, which is made part of this record, to show that the reserved category candidates who were adjusted against the general category vacancies were all below 23 years of age. From the table as produced with the written instruction it has clearly appeared that all the candidates namely Rupasen Chakma, Mithu Das, Prasenjit Das, Biswa Sadhan Jamatia and Sukro Mani Chakma whose name was referred in point No. 1 of the order dated 03.12.2015 are below the age of 23 years. But the respondents did not make any endeavour to respond to the points No. 2, 3 and 4 in the said order dated 03.12.2015.

8. Having regard to the circumstances, this court is of the considered opinion that before making the appointments there had been no enumeration of the post to be allotted to the OBC candidates. That is perhaps the reason why the respondents could not make reply to the point No. 3 whereby they are asked to show the men in position against the reserved vacancies relating to the OBC in particular. However, Mr. A. Roy Barman, learned CGC on the basis of the oral instruction has submitted that the petitioner's case was not considered in the general category as he was above 23 years of age. The referred guidelines of the Ministry of Home Affairs have not been produced before this court and as such this court cannot extend any consideration to such averments made in the affidavit in opposition.

9. What Mr. A. Bhowmik, learned counsel appearing for the petitioner has submitted is that relaxation in the maximum age limit is provided with object to allow the socially disadvantaged participate in the selection process, not for any other purpose. If thereafter it is found that on assessment of the comparative merit any candidate has secured such position which allows him to be considered

within the general category candidate, he has to be considered as the general category candidate irrespective of his age. But in this case, the respondents even did not consider the case of the petitioner though the petitioner has secured 80 in the selection process and he was found physically fit. But the persons who secured marks below 80 in the general category have been selected and appointed as the Rifleman (GD), but the petitioner was denied.

10. In *Jitendra Kumar Singh and Anr. vs. State of Uttar Pradesh and Ors.*, reported in , (2010) 3 SCC 119, the apex court has observed as under:

"With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the Preliminary Test as also in the Physical Test. It is only thereafter that successful candidates have been permitted to participate in the open competition."

11. Having held so, the respondents are directed to consider the appointment of the petitioner in the post of the Rifleman (General Duty) from the vacancies as declared by the press release dated 01.02.2009 published in Daily Desher Katha within a period of three months from today. It is made clear that if there is shortage of vacancy, the respondents shall accommodate the petitioner in the vacancy that might have arisen even after the press release, the advertisement, was published. In the event of his appointment his seniority be counted from the date in accordance with the merit and from the same date when the other candidates were appointed in terms of the merit list dated 02.04.2009, Annexure R-2 to the counter-affidavit. However, there shall be no order for arrear wages/salaries in the circumstances of this case.

12. The writ petition therefore stands allowed to be extent as indicated above, leaving the parties to bear their own cost.