

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No.2563/2015

Reserved on: 01.06.2016
Pronounced on:22.09.2016

**Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri Raj Vir Sharma, Member (J)**

Sh. Pawan Singh, Roll No.805606
S/o Shri Rajender Singh
VPO Issapur, Barvan Pana,
New Delhi-73.

...Applicant.

(By Advocate: Shri Yashpal Rangi)

Versus

Govt. of NCT of Delhi

1. The Chief Secretary,
Govt. of NCT of Delhi,
New Secretariat, I.P.Estate,
New Delhi.
 2. The Director General (Prisons),
Prisons Headquarters,
Near Lajwanti Garden Chowk,
Janakpuri, New Delhi-64.
 3. The Chairman,
Delhi Subordinate Services Selection
Board, FC-18, Institutional Area,
Karkardooma, Delhi-92.
- ...Respondents.

(By Advocate:Ms.Harvinder Oberoi)

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ORDER**Shri Sudhir Kumar, Member (A):**

The applicant, who is an Ex-Serviceman, and also belongs to an OBC category caste, has approached this Tribunal because he is aggrieved with the action of the respondents whereby they have denied him a reservation within the reservation by denying to provide him reservation for his OBC category, within the reservation provided for Ex-Servicemen, for appointments to the posts of Assistant Superintendent, Delhi (Prisons), and he has claimed that the action of the respondents is arbitrary, illegal and violative of Articles 14 & 16 of the Constitution.

2. The Respondent No.3 – Delhi Subordinate Services Selection Board (DSSSB, in short), had advertised 35 posts of Assistant Superintendents to be vacant under the Respondent No.2, under Post Code No.38/13, in June 2013, and the applicant applied for and claimed that his candidature should be considered against such posts in the OBC category, and also that he was seeking reservation under the Ex-Servicemen quota also. He has submitted that he had specifically mentioned both his category and sub category in his Application Form, which form was apparently found to be correct, and he was issued a Roll Number and Admit Card as at Annexure A-2.

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3. The applicant has submitted that as per the Advertisement, the mode of selection for appointments as Assistant Superintendents was Written Examination, followed by Physical Endurance Test (PET, in short), which was qualifying in nature. The Written Test was held on 09.03.2014, and the applicant got 93.5 marks out of total 200 marks. Based on the performance of the candidates in the Written Examination, the Respondent No.3 - DSSSB had through Result Notice No.280 declared 74 candidates as provisionally qualified for appearing in the PET. The applicant was surprised to see in that result that no one from the Ex-Servicemen category had been declared to be qualified. It was further mentioned in that result that there were no reserved posts in respect of the Ex-Servicemen category.

4. The applicant has assailed the action of the respondents by stating that non-grant of reservation to the Ex-Servicemen category is contrary to the instructions as issued by the Government of NCT of Delhi's letter dated 18.12.1998, as produced at Annexure A-4, regarding problems of Ex-Servicemen. He has pointed out that it had been specifically mentioned in the Advertisement that the reservation for the Ex-Servicemen will be provided as per the DoP&T guidelines, and that Advertisement was further based upon the above-mentioned letter dated

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18.12.1998 (Annexure A-4), through which the Ex-Servicemen (Re-employment in Central Civil Services & Posts) Rules, 1979 (Annexure A-3) provides for 10% reservation to the Ex-Servicemen quota, which had been adopted by the Govt. of NCT of Delhi.

5. The applicant has further submitted that the respondents themselves realised the mistake committed by them in the Result Notice, and through a modified Result Notice dated 26.02.2015 (Annexure A-5), they had declared 8 candidates in the Ex-Servicemen category eligible for the PET. The detailed schedule for conduct of PET was then advertised through Annexure A-6 dated 04.03.2015, along with the list of candidates to appear at the PET.

6. The applicant has submitted that on perusal of the Result Notice dated 04.03.2015 and its enclosure, he learnt that all the Ex-Servicemen candidates, who were called for the PET belonged to the General category. He has submitted that per the Advertisement, 9 posts out of 35 posts of Assistant Superintendents (Prisons) had been reserved for the OBC category quota. He has, therefore, claimed that one post from among those 9 posts should have been declared to be reserved for the Ex-Servicemen quota, but no candidate from the OBC

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category within the Ex-Servicemen quota had been declared by the respondents to be eligible for the PET.

7. Since the applicant fell aggrieved, he gave a representation in this regard to the Respondent No.3, through Annexure A-7 dated 26.03.2015. Taking this contention of his further, in Para 4.9 of the OA the applicant has submitted that out of 35 posts of Assistant Superintendents, 19 posts were for Unreserved category, 9 posts were reserved for OBC category, 5 posts were for SC category, and 2 for ST category. He has claimed that out of the 19 Unreserved category posts, 10% of those posts, or two posts ought to have been reserved for Unreserved Ex-Servicemen category, and out of 9 posts reserved for OBC category, 10% of those posts, or one post needed to be reserved for OBC Ex-Servicemen category, and he had laid a claim that his case had therefore to be considered against all the three Ex-Servicemen category vacancies so calculated by him.

8. Against the same Advertisement, the applicant had also applied for the posts of Warders (Male) under Post Code No. 37/13, and he has claimed that in that Post Code, a separate reservation has been granted by the respondents to the OBC Ex-Servicemen category, though out of 41 Ex-Servicemen applicants, only one candidate could qualify at the PET under Post

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Code No.37/13, i.e. the applicant himself. He has, therefore, submitted that if he had been called for the PET under the OBC Ex-Servicemen category under Post Code No.38/13 also, he had a bright chance of being appointed as an Assistant Superintendent.

9. The applicant has further submitted that he had learnt from reliable sources that the respondents are planning to call more candidates from the Ex-Servicemen category for the PET, as there are more qualified candidates in their respective categories.

10. In filing this OA, the applicant had taken the ground that once the Govt. of NCT of Delhi had adopted the Ex-Servicemen Rules 1979 (supra) for appointments to any posts, then there seems to be no reason why reservation should not be granted to the OBC Ex-Servicemen category candidates for appointments to the posts of Assistant Superintendents (Prisons). He reiterated his contention that if out of 9 posts reserved for the OBC category, 10% reservation had been provided to the Ex-Servicemen quota, and one post had been earmarked for the OBC Ex-Servicemen category candidates, then he would have certainly qualified. He has taken the further ground that since the respondents have not declared any candidates under the OBC Ex-Servicemen category qualified for the PET, in spite of the fact that many of them have got the marks above minimum qualifying

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marks in the OBC category, such action on the part of the respondents is arbitrary, illegal and violative of Articles 14 & 16 of the Constitution. He has taken the further ground that once the respondents have granted reservation to the OBC Ex-Servicemen category candidates in respect of Post Code No.37/13 of the same Advertisement, they cannot deny him the claimed reservation within the reservation under Post Code No.38/13. He had, therefore, assailed the action of the respondents that they have declared all the Ex-Servicemen category candidates to have qualified for the PET only from the General category, but not from the OBC category. In the result, he had prayed for the following reliefs:-

- “(i) direct the respondents to reserve 1 post for Ex-Servicemen from 9 posts reserved for OBC category for appointment to the post of Assistant Superintendent (Post Code 38/13).
- (ii) direct the respondents to declare the OBC Ex-Servicemen category candidates qualified for PET for appointment 1 post of Assistant Superintendent (Post Code 38/13).
- (iii) to pass any other orders as the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case. ”

11. He had also prayed for interim relief, which was never considered and granted before the case came to be heard and reserved for orders.

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12. The respondents filed their counter reply on 05.01.2016 and submitted that they are mandated to process the selection for various Group "B" & "C" posts, as per the requisitions of the user Departments, and they had conducted the selection process strictly in accordance with the Advertisement notified consequent to such requisitions. They had pointed out that the applicant had secured 93.5 marks out of 200 marks in Part-I Written Examination for the post of Assistant Superintendent (Prisons), which was much less than the cut off marks obtained by the last short-listed candidate in the Ex-Servicemen category, which were 123 marks out of total 200 marks. They had, therefore, submitted that the applicant could not have been short-listed for appearing at the Part-II PET Examination, since he had secured much less marks than the cut off marks obtained by the last short-listed candidate in the Ex-Servicemen category, and, therefore, his candidature could not be considered. They had denied that the reservation, as applicable to the Ex-Servicemen category, has not been applied by the respondents, and had pointed out that as per the merit list and marks list, 8 Ex-Servicemen candidates had been selected, and the last selected Ex-Servicemen candidate had obtained 123 marks out of total of 200, and all eight belong to the Unreserved Ex-Servicemen

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category. The grounds taken by the applicant for filing the OA were denied, and it was prayed that the OA be dismissed.

13. The applicant filed his rejoinder on 15.02.2016, more or less reiterating his contentions as taken by him in the OA. He submitted that as per the DoP&T guidelines, 10% posts have to be reserved for the Ex-Servicemen in Group "C" posts, which is horizontal reservation. He had further submitted that since Ex-Servicemen reservation is a horizontal reservation, therefore, out of the 9 posts meant for OBC category also, one post ought to have been reserved for the Ex-Servicemen OBC category, but no candidate from the Ex-Servicemen OBC category had been declared as qualified. He had, therefore, alleged that although the respondents had applied the DoP&T guidelines, they have only followed it in pieces, and not fully, which is not permissible in law.

14. Heard. The case was partly argued on 31.05.2016 and thereafter arguments were concluded on 01.06.2016. The learned counsel for the respondents, at the outset, put forth her submission that the legal question involved in the case was as to whether providing reservation within reservations in respect of Ex. Serviceman category and also in respect of OBC category, would lead to a different cut-off marks different from both the categories of Ex-Servicemen and the OBC category separately.

15. In this context, learned counsel for the applicant relied upon the Government of India's DoP&T OM No.36012/58/92-Estt.(SCT), dated 01.12.1994, issued after the Hon'ble Supreme Court's judgment in respect of OBC reservation through Nine-Judges' Bench in **Indra Sawhney vs. Union of India, 1992 Supp (3) SCC 210 (217) : 1992 AIR SCW 3682**. It was submitted that the Hon'ble Apex Court has held that the reservations for the SCs/STs/OBCs may be called "vertical reservations" under Article 16 (4) of the Constitution, and the reservations made under Article 16(1) of the Constitution like the reservations for physically handicapped persons and Ex-Servicemen may be called as horizontal reservations. It was further submitted that since the horizontal reservations cut across all the vertical reservations, that is called interlocking of reservations, and the persons selected against these reservations have to be placed in the appropriate category, that is so say that if a candidate belongs to S.C. category, he will have to be placed in that quota, by making necessary adjustments, and similarly if he belongs to Open Competition (OC) category, he will have to be placed in that category by making necessary adjustments. It was further submitted that it has been provided for in the OM that even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens

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should remain the same. It was submitted that the OM thereafter clarified, as above, that an Ex-Serviceman selected under the reservations provided for them should be placed in the appropriate category, viz., SC/ST/OBC/General category depending upon the category to which he belongs. For example, an Ex-Serviceman, who is an SC, will have to be counted against the SC reservation point, an Ex-Serviceman, who is ST or OBC, will have to be counted against ST/OBC reservation point, and an Ex-Serviceman who belongs to the General category, will have to be slotted in the General category vacancy point in the respective reservation roster. The OM has actually stated this position as follows:

"No. 36012/58/92-Estt.(SCT)
Dated 01-12-1994

Subject: Reservation available for Ex-servicemen in Groups 'D', 'C' and specified categories of Group 'B' posts/services under the Central Government-Revised procedure for filling the vacancies.

The Government had been considering the method of effecting the available reservation for Ex-servicemen in the light of the judgment of the Supreme Court in Indira Sawhney case.

2. The Court has held that reservation for SC/ST/OBCs made under Article 16(4) of the Constitution may be called vertical reservation and the reservation made under Article 16(1) of the Constitution like the reservation for physically handicapped persons as horizontal reservation.

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Horizontal reservations cut across vertical reservation (in what is called interlocking reservation) and the persons selected against these reservations has to be placed in the appropriate category, that is so say, if he belongs to Sc category, he will be placed in that quota by making necessary adjustment and similarly if he belongs to Open Competition (OC) category, he will be placed in that category by making necessary adjustment. Even after providing for these horizontal reservations, the percentage of reservation in favour of backward class of citizens should remain the same.

3. In the light of the above-said observation of the Supreme Court, it has been decided that the percentage of reservation for Ex-servicemen should remain the same as at present. An Ex-serviceman selected under the reservation provided for them should be placed in the appropriate category, viz., SC/ST/OBC/General category depending upon the category to which he belongs. For example, an Ex-Serviceman who is a SC will be counted against the SC reservation point, an Ex-Serviceman who is ST or OBC will be counted against ST/OBC reservation point and the Ex-Servicemen who belongs to General category will be slotted in the General category vacancy point in the respective reservation roster.

4. All the Ministries/Departments are requested to bring the above instructions to the notice of all the Heads of the Departments and Appointing Authorities under their control for necessary compliance. Necessary amendment to the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979, is being issued separately."

16. Learned counsel for the applicant further pointed out the contents of Annexure A-6, a list of shortlisted candidates belonging to the OBC category, in which the present applicant's

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name appeared at Sl.No.44, and though his category had been mentioned as OBC/Ex-Serviceman, yet his candidature had been shortlisted and his name had been mentioned only to be as an Ex-Serviceman, without giving him the benefit of the OBC category.

17. On the other hand, learned counsel for the respondents had submitted her written arguments on 01.06.2016 to the effect that once the applicant's case had been considered under the Ex-Servicemen category, his candidature could not be considered in the OBC category on the basis of marks obtained in Part-I Examination, as, in any case, he had scored only 93.50 marks out of total 200 marks which were much less than the cut off marks obtained by the last shortlisted candidate in the OBC category, which were 149.25 marks out of total 200 marks. It was denied that double reservation or reservation within reservation had been provided for any candidates for any posts, and in respect of Shri Harish, whose case had been cited by the learned counsel for the applicant, it was submitted that though he had been nominated in the OBC Ex-Servicemen category, but the Respondents had considered his candidature only in the OBC category.

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18. We have given our anxious consideration to the facts and the law concerning the case. The applicant is basically claiming a reservation within another reservation, and seeks to derive the benefit of reservation both under the category of Ex-Servicemen, as well as under the category of OBC.

19. However, it may be pointed out that there is much difference in the reservation for SC & ST categories, and the OBC category, since, while in respect of SCs & STs, the reservation is **"quantitative"** in nature, and is available to all the SCs & STs, irrespective of any income and any other criteria, the reservation in respect of OBCs is **"qualitative"** in nature, and is only available to those who are not floating in the creamy layer of the OBC backward classes, which have been classified under the OBC category castes. The very fact that the applicant is an Ex-Serviceman, and he would be a recipient of his pension in respect of his military service, that would automatically take him above the creamy layer of the OBC category, and, therefore, though the applicant may have been born in a caste which has been classified among the backward class category castes as OBC, but he certainly cannot be allowed to claim to be eligible for reservation under OBC category, which reservation would be available only to those who are not floating in or belonging to

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creamy layer of the OBC category castes, and possess a valid Non-Creamy Layer OBC category certificate.

20. Therefore, it is clear that neither can there be an automatic reservation within a reservation for OBCs, as has been clarified in the DoP&T O.M. itself, and even in the OBC category, when the applicant himself is above the Creamy Layer category, he cannot lay a claim to a double reservation under the OBC category candidate also, because his military pension itself would take him above the monetary limit fixed for providing reservation to those below the Creamy Layer of the OBCs.

21. In such circumstances, the applicant was only entitled to the reservation in the Ex-Servicemen category, irrespective of the fact of his birth in a caste which is classified under the OBC category. He also could not have obtained a valid Non-Creamy Layer OBC Caste Certificate because of his Military Pension.

22. Since the applicant could not get shortlisted under the Ex-Servicemen category for the purpose of PET, as he had obtained much less marks, which were much lower than the last selected 8 candidates shortlisted for the purpose of Ex-Servicemen category reservation, it is obvious that the applicant cannot lay a claim to the reservation under the Ex-Servicemen category also.

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Therefore, the OA is rejected, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

/kdr/