

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

**T.A. No.50/2012
(Writ Petition Civil No.6909/2012)
M.A. No. 3138/2015
M.A. No. 3571/2017**

Reserved On:12.09.2018

Pronounced on:15.10.2018

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Om Prakash
Son of Shri Ashok,
R/o 29/122,
Trilokpuri,
Delhi-110091. Applicant

(By Advocate: Shri A.K. Behera with Shri Parveen Chandra)

Versus

1. Kendirya Vidyalaya Sangathan
Through:
Chairman/Commissioner,
18, Institutional Area,
Saheed Jeet Singh Marg,
New Delhi-110016.
2. The Joint Commissioner (Admn)
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Saheed Jeet Singh Marg,
New Delhi-110016.
3. National Commission for Scheduled
Castes, Through its
Research Officer,
5th Floor,
Lok Nayak Bhawan,
Khan Market,
New Delhi-110 003.
4. Shahid Ali C/o Dr. Ambika Kalra

K.V. No.2 NH-4, NIT,
Faridabad-212001.

5. Ritu C/o Kendriya Vidyalaya
Sikar, Sabalpura, NH-11,
Sikar-332001.
6. Mrs. Deepika Trivedi
C/o Kendriya Viyalaya No.2,
Air Force Station,
Jodhpur, Rajasthan.
7. Ram Raj Nagar
C/o Kendriya Vidyalaya No.2,
Railway Colony Kota Jn.
Distt. Kota Pin-324002.
8. Mrs. Nandani Singh
C/o Kenridya Viyalaya No.2,
Mathura Refinery,
Township Mathura,
UP-281006. ... Respondents

(By Advocate: Shri S. Rajappa for Respondent No.1
Dr. Ch. Shamsuddin Khan for Respondent No.3
Shri Kripa Shankar Prasad for Respondent No.5)

ORDER

By Mr. V. Ajay Kumar, Member (J)

Whether the horizontal reservations are to be implemented in the same manner like in case of vertical reservations, is the question fell for our consideration in this OA.

2. The brief facts of the TA are that the respondent-Kendriya Vidyalaya Sangathan (in short KVS), vide the Annexure P-1 Notification called for the applications for selection to 367 Drawing Teacher posts, besides other category of posts. The said 367 posts are distributed among various categories as under:-

S.No.		Post name		Short name			
2.		Drawing Teacher		DT			
GEN	SC	ST	OBC	OH	HH	Total	
165	65	28	99	07	07	367	

3. The applicant, who belongs to SC community and also an Orthopedically Handicapped person having qualified for the said post of Drawing Teacher, applied in response to the said advertisement and also accordingly participated in the written examination. Having succeeded in the said written examination, he was called for the interview and accordingly participated in the interview also. The respondent-KVS published the selected list of candidates in December, 2010, but the name of the applicant has not figured in the said list either under SC category or under the Orthopedically Handicapped (in short OH) category. As per the information obtained under the provisions of the RTI Act, 2005, the applicant secured more marks than some of the selected candidates, but as he was not selected, he challenged the said action and as the recommendation of the SC/ST Commission to consider his case also went in vain, he filed the instant OA.

2. Heard Shri A.K. Behera with Shri Parveen Chandra, learned counsel for the applicant and Shri S. Rajappa, learned counsel for Respondent No.1 and Dr. Ch. Shamsuddin Khan, learned counsel

for Respondent No.3 and Shri Kripa Shankar Prasad, learned counsel for Respondent No.5 and perused the pleadings on record.

3. The respondents have explained the process of selection in their additional affidavit filed on 24.08.2018, in detail, which will suffice for the purpose of the disposal of the present OA and the same reads as under:-

“4. It is submitted that KVS published the advertisement for various posts including the Drawing Teacher in Employment News dated 29th August, 2009 to 4th September, 2009 for the year 2009-2010. In the advertisement, category wise vacancies were advertised. Details of category wise vacancies of Drawing Teachers were as under:-

General 185, OBC-99, SC-55, ST-28

Total-367, OH-07, HH-07

5. The written test was conducted on 30.01.2010. On the basis of the marks obtained by the candidates in the written test and cut-off marks fixed by KVS, candidates were shortlisted for interview. The cut-off marks fixed by KVS for shorting the candidates for interview were as under:-

General-37, OBC-32, SC-30, ST-14, OH-15 and HH-24.

6. The petitioner obtained 33 marks in the written test and shortlisted for interview under SC and OH category. In SC category who obtained 30 marks in the written test was called for interview. The interview for drawing teacher was conducted in the month of August, 2010. The applicant appeared in the interview and obtained 24 marks in the interview. His total weightage was 34.00.

7. As the vacancies were advertised category wise i.e. General, OBC, SC and ST as such the result were prepared by the recruiting agency as per category wise. The last candidates who were empanelled in the only select panel of Drawing Teachers for the year 2009-2010 has obtained following weightage in the written test and interview.

General-44.50, OBC-41.67, SC-41.67 and ST-30.00

8. The vacancies of Drawing Teachers were advertised category wise as such the only select panel of Drawing

Teacher was prepared in their respective category to which they actually belonged (i.e. General, OBC, SC and ST). However, in respect of filling of vacancies it is submitted that in the advertisement, 07 vacancies of Drawing Teachers were reserved for OH category candidates. Out of 07 vacancies, 02 candidates of OH category was selected at their own merit and 02 candidates selected at relaxed standards in general category. In OBC category 03 OH candidates were empanelled in the select panel. Out of 03 candidates 02 candidates were selected as per their own merit and 01 candidate selected as per relaxed standard. As the applicant had obtained less than 41.67 weightage in the written test and interview, his name could not be empanelled in the select panel under SC category also. However, his name has been empanelled in the reserve panel of Drawing Teacher under SC category. In addition to the above information, it is also submitted that the reserve panel has been prepared 50% of the main panel in the respective category”.

4. In the backdrop of the above referred facts, Shri A.K. Behera, learned counsel appearing for the applicant would submit that, two OH candidates of General category and two OH candidates of OBC category were selected on their own merit. As per settled principles of law, if any reserved category candidate, including OH category candidate, selected on their own merit, they should be treated as the candidates pertaining to their respective category such as General or OBC, but cannot be considered as selected under OH category. If the said 4 OH candidates selected on their own merit are adjusted against their respective categories, such as General or OBC, the applicant would be entitled for selection under OH category reservation.

5. The learned counsel further submits that the Government of India, noticing the above referred settled principles of law, issued

DOP&T OM dated 29.12.2005 and paragraph 19 of the same clearly supports his submission.

6. On the other hand, Shri S. Rajappa, the learned counsel appearing for the respondent-KVS submits that in case of horizontal reservations, such as Persons With Disabilities, as in the instant case, if out of the total number of persons selected, 7 OH candidates are there, it can be said that the reservation for OH is fulfilled.

7. The learned counsel further submits that the OM dated 29.12.2005, on which the learned counsel for the applicant placed reliance, has already been set aside by the Hon'ble Apex Court in **Rajeev Kumar Gupta & Others Vs. Union of India and Others** in W.P. (C) No.521/2008 dated 30.06.2016.

8. The Hon'ble Apex Court has categorically explained about the vertical and horizontal reservations in **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others, 2007 (8) SCC 785** and the relevant paragraphs read as under:-

"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 vs. 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 vs. 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 O.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 compartmentalized 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 vs. State of Punjab [(1995 (2) SCC 745)], Union of India vs. Virpal Singh Chauhan [(1995 (6) SCC 684] and Ritesh R. Sah vs. 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.”.

9. In a recent decision, the Hon'ble Apex Court in **Union of India and Others Vs. M. Selvakumar and Another** Civil Appeal No.858/2017 dated 24.01.2017, observed as under:-

“23. Article 16 of the Constitution provides for equality of opportunity in matters of public employment. The State in terms of Article 16 of the Constitution provides two types of reservations i.e. a vertical or social reservation as provided for in Article 16 sub clause (4) and horizontal reservation which is referable to Article 16 sub clause (1). Special reservation in favour of physically handicapped, women etc.

under Article 16(1) or 15(3) of the Constitution are the instances of horizontal reservation.

24. A 9-Judges Bench in *Indra Sawhney and Others versus Union of India and Others* 1992 Suppl. (3) SCC 217 had elaborately considered both the concepts of reservation. In Para 812 of the said judgment, Justice B. P. Jeevan Reddy, has referred to both the types of reservations. It was held that horizontal reservations cut across the vertical reservation. Following was stated:

“812. 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 SC category he 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. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”

10. In view of the above referred decisions of the Hon’ble Apex Court, we agree with the submission of the learned counsel for the respondents. Once, against the 7 vacancies for OH category, which is an horizontal reservation, 7 persons belonging to OH category are selected, either on their own merit or under OH category, the requirement would be treated to have been satisfied.

11. Further, once the Hon’ble Apex Court in *Rajeev Kumar Gupta* (supra) declared DOP&T OM dated 29.12.2005, as illegal and

inconsistent with the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the submission of the applicant's counsel that the Hon'ble Apex Court while declaring the said OM as illegal, has not examined para 19 of the same, cannot be accepted.

12. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed. All the pending MAs also stand disposed of. No costs.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

RKS