

**Central Administrative Tribunal  
Madras Bench**

**OA/310/01230/2012**

**Dated the 4<sup>th</sup> day of October Two Thousand Nineteen**

**P R E S E N T**

**Hon'ble Mr. P.Madhavan, Member(J)**  
**&**  
**Hon'ble Mr.T.Jacob, Member(A)**

P.Prema  
D/o M.Palanivel,  
No.15, Sathani Street,  
Kossapalayam,  
Purucherry 605 013. .. Applicant  
By Advocate **M/s.C.K.Chandrasekar**

**Vs.**

1. Union of India, owing  
JIPMER rep. by its Director,  
Dhanvantri Nagar,  
Gorimedu,  
Puducherry 605 006.
2. The Deputy Director (Admn.),  
JIPMER, Puducherry 605 006.
3. G.Gunasillen
4. A.Albert
5. S.Annamale
6. K.R.Sivasubramanian
7. A.Subramanian
8. Kanaga Thirumeny
9. K.Sivakumar
- 10.N.A.Kumar .. Respondents

By Adovacte **Mr.M.T.Arunan, Mr.R.Arumugam**

**ORDER**

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

“to set aside the Order No.Estt.3(4)/2009 dated 14.8.2012 issued by the 2<sup>nd</sup> respondent (A-5) read with the Selection List bearing Ref.No.Nil dated 06.9.2012 issued by the 2<sup>nd</sup> respondent (A-7) as being illegal, arbitrary and unconstitutional and consequently direct the respondents to reinstate the applicant as Storekeeper in the first respondent-JIPMER with all attendant benefits, and other service benefits including seniority and monetary benefits and

pass such other orders or directions as this Tribunal may deem fit and proper in the circumstances of the case, award costs and thus render justice.”

2. According to the applicant, she had applied for the post of Storekeeper which was notified by the respondents as Annexure A1. The respondents had notified 23 posts of Storekeeper and the reservation was UR-13, OBC-6, SC-3 and ST-1. The age limit fixed was 30 years and the qualification was 10+2 or equivalent and 2 years experience in store keeping and knowledge in computer. A Degree was made desirable. The applicant belongs to OBC category and she was eligible to apply for the post of Storekeeper. The scheme of examination was written examination with interview. As per the notification, there will be a horizontal reservation for sports persons, Ex-servicemen and Physically Handicapped persons which is shown in the notification. As per the notification, 1 UR quota is allotted to Meritorious Sports Person (MSP) and 3 UR for Ex-servicemen. The relaxation of age is also allowed for

the reserved categories. The respondents conducted a written examination on 26.9.10 and the applicant secured 38.25% marks in the written examination. She was ranked as 41 in the overall list and ranked as 22 in the OBC list. She was called for interview on 06.10.2010 and she secured 30 marks in the interview and her total marks was 68.25%. On 02.6.11 the respondents offered appointment as Storekeeper as per Annexure A2. Since she was working as Data Entry Operator (DEO) on contract basis in the respondents department, she resigned the same and the respondents had issued a service certificate as Annexure A3. She was relieved from the post of DEO and she joined as Storekeeper on 03.6.11. Whiles, suddenly on 14.8.2012 she was served with a termination order as Annexure A5 stating that the selection was cancelled as per order of the Tribunal in OA 1564/2010 filed by one Zaguir Quassane wherein the Tribunal had set aside the selection list holding that the percentage of marks given for interview was highly excessive and it is not sustainable as per annexure A6 order. According to her, she was not a party to the said OA. Accordingly, the respondents conducted a fresh interview taking the maximum for written examination as 85% marks and 15% marks for interview. She went through the interview and there was not much change in her marks after the interview. But she was not given any employment by the respondents. When she enquired with the respondents, she came to understand that the respondents had given horizontal as well as vertical reservation for the Ex-servicemen stating that Ex-servicemen has come up high on merit. Instead of providing 3 Ex-servicemen on the horizontal reservation basis, the respondents had provided 8 posts for Ex-servicemen. According to her, it is

highly illegal and against the principles of reservation. She being an OBC candidate, she should not be denied employment due to the excessive reservation granted to the respondents 3 to 10 in this OA. So, she prays to set aside the termination order as well as the selection list dated 06.9.2012 and to direct the respondents to reinstate her as Storekeeper.

3. The respondents entered appearance and filed a detailed reply statement. They admitted the first selection wherein more marks were given for interview and the cancellation of the said selection by this Tribunal in OA 1564/2010. Thereupon, they had conducted a selection giving maximum 15% marks for the interview and 85% marks for the written examination. A second interview was conducted and list was published. The Ex-servicemen respondents 3,4,5,6&7 who came up meritorious were given selection under UR category. Thereafter, 3 Ex-servicemen respondents 8,9&10 were selected in the Ex-servicemen quota which was provided for Ex-servicemen. According to the respondents, as per Central Civil Services Group 'C' and Group 'D' Rules, “Ex-servicemen who had put in not less than 6 months continuous service in the Armed Forces of the Union shall be allowed to deduct the period of such service from his actual age and if the resultant age does not exceed the maximum age-limit prescribed for the post or service for which he seeks appointment by more than three years, he shall be deemed to satisfy the condition regarding age-limit.” So, according to the respondents, the Ex-servicemen are entitled to compete in the UR category as well as in the reservation category and accordingly, they have given appointment to Ex-servicemen who came up in merit under UR category and 3 posts

were given for Ex-servicemen in horizontal reservation category. So, according to them, there is no arbitrariness or violation of principles of reservation as referred in this case. They mainly rely upon the decision of the Hon'ble Supreme Court in ***Jitendra Kumar Singh and Anr. v. State of UP and Ors. (AIR 2010 SC 1851) and Ravinder Kumar v. State of Haryana & Others (2010 (5) SCC 136)***. The respondents 3-6,8-10 have also filed reply. It is submitted that the selection and appointment of these respondents are in terms the provision enumerated under Rule 5 of Ex-Servicemen (Re-employment in Central Civil Services & Posts) Rules 1979 which reads as follows:-

“...5. Special Provision regarding age-limit: For appointment to any vacancy in Central Civil Services, Group 'C' and Group 'D', whether reserved or not under these rules, every Ex-servicemen who has put in not less than six months' continuous service in the Armed Forces of the Union shall be allowed to deduct the period of service from his actual age and if the resultant age does not exceed the maximum age-limit prescribed for the post or service for which he seeks appointment by more than three years, he shall deemed to satisfy the condition regarding age limit.”

So, according to them, those who have come up in high rank were given appointment under UR category and only 3 persons were accommodated in horizontal reservation category for Ex-servicemen. So, there is no violation of any principles of reservation. The respondents had correctly selected 14 persons under UR and there is no violation of any principles of reservation in the selection. The respondents were not given any special concession or treatment in the selection process and they competed with other persons and participated in the selection process at par with other candidates except

the age relaxation that was granted to the Ex-servicemen. The applicant in this case had appeared for interview conducted by the 1<sup>st</sup> respondent in compliance to the order passed by this Tribunal in OA 1564/2010 without any objection and she has become unsuccessful and she cannot challenge the selection at this stage and the OA is liable to be dismissed. It is also contended that the experience certificate produced by the applicant is a fake one and it has to be verified. Though they had filed representation before the competent authority for verification of the experience certificate, nothing has happened. So, the applicant is not eligible for the post as claimed by her.

4. Heard both sides and perused the pleadings and materials produced by the rival parties.

5. When the matter is taken up for hearing, learned counsel for the respondents submits that a similar issue has been dealt with in OA 1163/12 by this Tribunal and the same order is applicable in this case also. Therefore, this OA may be disposed off in similar lines.

6. The main challenge put forward by the applicant in this case is that the reservation given for Ex-servicemen is excessive and it is against the principles of horizontal reservation. The counsel for the applicant mainly rely upon the Hon'ble Supreme Court decision in *Rajesh Kumar Daria v. Rajasthan Public Service Commission and Others reported in [(2007) 7 SCC 785]* and *Public Service Commission, Uttaranchal v. Mamta Bisht and Others reported in [(2010) 12 SCC 204]*. According to the applicant, the respondents 3 to 10 are Ex-servicemen who are appointed in the new select list and respondents 3,4,5,6&7 were Ex-servicemen

selected under UR category and the respondents had again given 3 vacancies for Ex-servicemen i.e. respondents 8,9&10 in this case. According to the applicant, since more than 3 Ex-servicemen had already entered service in the UR category, there is no further scope for granting separate quota for Ex-servicemen.

7. On the other hand, the counsel for the respondents would mainly contend that Ex-servicemen is given special concession regarding age as per Rule-5 of the Ex-servicemen (Re-employment in Central Civil Services & Posts) Rules 1979 wherein it is stated that “Special Provision regarding age-limit: For appointment to any vacancy in Central Civil Services, Group 'C' and Group 'D', whether reserved or not under these rules, every Ex-servicemen who has put in not less than six months' continuous service in the Armed Forces of the Union shall be allowed to deduct the period of service from his actual age and if the resultant age does not exceed the maximum age-limit prescribed for the post or service for which he seeks appointment by more than three years, he shall deemed to satisfy the condition regarding age limit.” According to the respondents, as per the said provision, Ex-servicemen can compete in the UR category and in the reserved category and there is nothing wrong in the selection of respondents 2 to 10 in this case. So, according to the respondents, there is no illegality even if the number of Ex-servicemen selected exceeds the 3 posts given under Horizontal reservation. Here the respondents 3,4,5,6&7 had come up in the merit in the top and they were given appointment in the UR category. Respondents 8,9&10 were appointed under Ex-servicemen quota which they are entitled to get.

8. Counsel for the applicant had invited attention to the decision of the Hon'ble Supreme Court in *Rajesh Kumar Daria* where it was held that -

“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 number 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 that the reservation quota for SCs stood filled. The entire reservation quota will be intact and available in addition to those selected under open competition category.

But the said 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 SCs, the proper procedure is first to fill up the quota for SCs in order of merit and then find out the number of candidates among them who belong to the special reservation group of “Scheduled Caste 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.

In the present case, when the first 59 from among the successful candidates were taken and listed as per merit, the list contained 11 woman candidates, which was equal to the quota for “general category women”. There was thus no need for any further selection of woman candidates under the special reservation for women. But RPSC took only the first 48 candidates in the order of merit (which contained 11



women) and thereafter, filled the next 11 posts under the general category with woman candidates. As a result, among 59 general category candidates in all 22 women were selected. That was clearly impermissible. The process of selections made by RPSC amounted to treating the 20% reservation for women as a vertical reservation, instead of a horizontal reservation within the vertical reservation.”

The Hon'ble Supreme Court has followed the same dictum in *Public Service Commission, Uttaranchal's* case also referred supra. So, according to him, there is nothing wrong in giving appointment to Ex-servicemen in the UR vacancies, but if the number of Ex-servicemen has already exceeded the quota, they cannot be again given reservation in the Horizontal reservation quota. This is not the case with respect to Vertical reservation. If the SC or BC candidates gets high mark, they can be accommodated in the UR category and it will not affect the quota reservation for those category. But in the case of Horizontal reservations i.e. special reservations within the UR category, the procedure is to first fill up the UR category on merit and then find out the number of candidates among them belongs to special category reservation. If the number of special reservation candidates in such list is equal to or more than the special reservation quota then there is no need for further selection towards special reservation quota. In this case, more than 3 persons had already come up in the merit list and there cannot be given reservation again to Ex-servicemen under the special reservation quota. So, the respondents had not properly implemented the Horizontal reservation quota in this case. The applicant belongs to OBC category and if we go through the category of respondents 8,9&10, it can be

seen that respondents No.8 secured only 40.99% and R9 had secured 40.14% and R10 only 38.61%. Here respondents 8&10 are OBC candidates. The applicant in this case has secured more than the above marks i.e. she had obtained 41.51 marks in the selection process and she has got higher marks than respondents 8 to 10 who are also OBC candidates. Clearly the respondents ought not to have given appointment to respondents 8,9&10 which is against the principles of Horizontal reservation. There is no explanation offered by the respondents in this respect. It is true that the Ex-servicemen can compete both in the UR category and special reservation quota. They cannot be granted both the reservations together. If there is proper representation for Ex-servicemen in the UR category, the Horizontal reservation quota cannot be again utilised for appointing more Ex-servicemen.

9. Another contention put forward by the respondents in this case is that this is one of the batch of cases filed against the same selection and OA Nos.60/13, 1162/12 and 1163/12 were disposed off earlier and all the above OAs were dismissed. According to the respondents, the very same question came up in the other cases also. We have perused the judgments in the above cases and it seems that the question of how Horizontal reservation has to be dealt with in the light of *Rajesh Kumar Daria's* case was not at all considered in the above cases. The above cases were disposed of holding that the Ex-servicemen can compete both in the UR category as well as in the special reservation quota and there is nothing wrong in giving selection

to the Ex-servicemen in the UR category. The applicant in this case was not a party to the 3 cases mentioned above and the present OA was not disposed off along with OA Nos.60/13, 1162/12 and 1163/12. The question in issue in this case was different and the applicant has challenged the very reservation adopted by the respondents in this case. In para-6 & 7 of the OA, it is specifically contended that “the impugned select list is erroneous and had been prepared contrary to principles of reservation. The select list is irrational and unjust as the same was prepared without considering the candidates like the applicant who are more meritorious than some of the selected candidates. It was also pleaded that the respondents had erred in granting reservation to Ex-servicemen beyond the prescribed levels and also in granting Vertical and Horizontal reservation. When the applicant had secured more marks than the Ex-servicemen she should have been appointed as Storekeeper. So, the reservation given is illegal and arbitrary.” So, the contention raised in this case is slightly different and the only question raised in this OA is whether the Horizontal reservation given to the Ex-servicemen is correct or not. The principles laid down in *Rajesh Kumar Daria's* case was not considered in the earlier OAs disposed off by this Tribunal. This aspect was not considered on merit in the above cases. Further the applicant was not a party to any of those cases. On going through the pleadings and the judgments in OA 60/13, OA 1162/12, OA 1163/12 and OA 285/15, it can be seen that, the issue mainly considered is whether the Ex-servicemen can compete in the

UR vacancies on merit and the said question was answered in favour of the respondents and OAs were dismissed. The principle of law regarding horizontal reservations as laid down by the Hon'ble Supreme Court in *Rajesh Kumar Daria's* case was not considered. So, those judgments have no relevance in this case. Further, the applicants in those cases had not impleaded this applicant.

10. In view of the decision in *Rajesh Kumar Daria's* case, we find that the respondents had failed to properly consider how the special reservation provided for Ex-servicemen to be given under UR category. They had given reservation in excess of the special reservation provided for Ex-servicemen. So, we find that the selection of R8, R9 and R10 under Horizontal reservation was illegal.

11. In this case, we find that there is no allegation of any fraud against the selection. R8,9&10 had no role in the selection and they were selected by respondents and they were appointed as Storekeepers and they are working in such posts even now.

12. **In this circumstances, we hereby direct the respondents to redo the select list in the light of what is discussed above and allot persons who come within the cut off marks on the basis of vertical and horizontal reservations provided for in the notification within a period of three months from the date of receipt of a copy of this order. If the applicant or any other persons comes up in the list, such persons will be appointed above R8,9&10 notionally in the vacancies without any financial benefits from the date on which R8,9,&10 were appointed.**

**They will earn seniority from that date onwards. R8,9&10 will not be ousted from service, but shall figure in the bottom of list of selected candidates.**

13. With the above direction, the OA is disposed off. No costs.

(T.Jacob)  
Member(A)

04.10.2019

(P.Madhavan)  
Member(J)

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