

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 955/2003**

Ex SGT Kaushal Sharan Samaiyar Petitioner
Through: Dr. N.K. Khetrapal, Adv.

VERSUS

The Chairman, Indian Oil Corporation
& Ors Respondents
Through: Mr. V.N. Kaura, Sr. Adv. with
Ms. Paramjeet Benipal, Adv.

RESERVED ON:
30.07.2008

% **DATE OF DECISION:**
06.08.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. Shri Kaushal Sharan Samaiyar, the petitioner, seeks directions to be issued to the Indian Oil Corporation to grant him benefit of reservation as an Ex-Serviceman.

2. The petitioner points out that in Group C and D posts, for Ex-Servicemen in Public Sector Undertakings, as stipulated in the Government order issued by the Department of Public Enterprises 14.5% and 24.5% posts have to be reserved for ex-servicemen.

3. The Office Memorandum No. 36012/58/92-Estt (SCT) dated 01.12.1994 issued by the Department of Personnel and Training, Ministry of Personnel, P.G. & Pensions, Government of India stipulates the revised procedure for filling the reserved vacancies for Ex-Servicemen as under:

OFFICE MEMORANDUM

Reservation available for ex-servicemen in Group D C and specified categories of Group B posts/services under the central Government
Revised procedure for filling the vacancies.

1. The government had been considering the method of effecting the available reservation for ex-servicemen in the light of the judgement 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. Horizontal reservations cut across vertical reservation (in what is called inter-locking reservation) and the person selected against these reservations has to be placed in the appropriate category, that is to 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 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 observations 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-servicemen selected under the reservation provided for them should be placed in the appropriate category viz. SC/ST/OBC/General category depending upon the

category which he belongs. For example, an ex-servicemen who is a SC will be counted against the SC reservation point, an ex-servicemen who is ST of 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 Department 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 are being issued separately.

Sd/-
BHAVANI THAYAGARAJAN
Director(JCA)

4. The petitioner points out that the Indian Oil Corporation, being a Public Sector Undertaking, is obliged to give effect to the above office memorandum and that it has failed to fulfill its obligation to grant reservation to the Ex-servicemen; petitioner being an Ex-serviceman himself.

5. Petitioner appeared for the written test conducted by the Indian Oil Corporation for the post of operator "D" trainee at Indian Oil Corporation, Barauni in the year 2002 but was denied appointment to the said post.

6. The respondent corporation admits that the petitioner was the lone ex-serviceman who was to be considered for recruitment against the notified vacancies; and that as per the policy of the Indian Oil Corporation was also granted relaxation in the age limit to take the test.

7. The respondent counters the allegation of non-compliance of 14.5% reservation earmarked for Ex-servicemen in para (c) and (d) of its counter affidavit as under:

“(c) The reservations under Article 16(4) of the Constitution applied by the IOC in Bihar for backward classes are:

Scheduled Caste	15%
Scheduled Tribes	9%
OBCs	26%
Total:	50

(d) After application of the said reservations under Article 16(4) of the Constitution of India, there remains no room for any residuary reservation for ex-servicemen with reference to the recruitment in question even assuming (though without admitting) that reservation in favour of ex-servicemen is permissible under Article 16(1) of the Constitution of India.”

8. It appears that the respondent has misconstrued the two kinds of reservations i.e. the vertical reservations and the horizontal reservations; both of which have been recognized and distinguished by the Hon'ble Supreme Court in its judgments.

9. In the decision reported as Indra Sawhney v. Union of India AIR 1993 SC 477, the Hon'ble Supreme Court noted in para 95 the distinction between the vertical and horizontal reservation as under:

“We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: 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 casts, 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 inter-locking 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 (O.C.) 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.

It is, however, made clear that the rule of 50% shall be applicable only to reservations proper; they shall not be – indeed cannot be – applicable to exemptions, concessions or relaxations, if any, provided to 'Backward Class of Citizens under Article 16 (4)."

10. The reservations referred to in its counter affidavit by the respondent are vertical reservations. The upper limit of 50% which the respondent pleads being exhausted after granting reservations to the Scheduled Castes, Scheduled Tribes and Other Backward Classes is applicable to these vertical reservations.

11. The law is settled that special reservations are

made for the ex-servicemen and these reservations are referred to as “horizontal reservations” . These reservations have to be accommodated and adjusted within the reserved and unreserved categories and the percentage of seats reserved under the horizontal reservation have to be provided for.

12. The horizontal reservations refer to the reservations made for Physically Handicapped, the Ex- servicemen, Women and other groups. These special groups are granted reservations within the categories of SC, ST, OBC and General and room is created for them to be protected within these categories.

13. In the decision reported as Anil Kumar Gupta v. State of U.P. & Ors. JT 1995 (5) SC 505, the Hon'ble Supreme Court noted the two procedures of providing the horizontal reservations. One, overall horizontal reservations and other, compartmentalized horizontal reservations. In para 17 the Hon'ble Court observed as under:

“....We may explain these two expressions. Where the seats reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not inter-transferable, it would be a case of compartmentalized reservations. We may illustrate what we say: Take this very case; out of the total 746 seats, 112 seats (representing fifteen percent) should be filled by special reservation candidates; at the same time, the social reservation in favour of Other Backward Classes is 27% which means 201 seats for O.B.C ; if the 112 special reservation seats are also divided proportionately as between O.C., O.B.C., S.C. And

S.T, 30 seats would be allocated to the O.B.C. Category; in other words, thirty special category students can be accommodated in the O.B.C category; but say only ten special reservation candidates belonging to O.B.C. are available, then these ten candidates will, of course, be allocated among O.B.C. Quota but the remaining twenty seats cannot be transferred to O.C. Category (they will be available for O.B.C. Candidates only) or for that matter, to any other category; this would be so whether requisite number of special reservation candidates (56 out of 373) are available in O.C. Category or not; the special reservation would be a water tight compartment in each of the vertical reservation (O.C., O.B.C., S.C. and S.T.). As against this, what happens in the overall reservations is that while allocating the special reservation students to the respective social reservation category, the overall reservation in favour of special reservation categories has yet to be honoured. This means that in the above illustration, the twenty remaining seats would be transferred to O.C. category which means that the number of special reservation candidates in O.C. category would be $56+20=76$. Further, if no special reservation candidate belonging to S.C. and S.T. is available then the proportionate number of seats meant for special reservation candidates in S.C. and S.T. also get transferred to O.C. category. The result would be that 102 special reservation candidates have to be accommodated in the O.C. category to complete their quota of 112. The converse may also happen, which will prejudice the candidates in the reserved categories. It is, of course, obvious that the *inter se* quota between O.C, O.B.C, S.C, and S.T. will not be altered.”

14. In Anil Kumar Gupta's case (supra) the Hon'ble

Supreme Court also observed in para 19 as under:

“.... We are of the opinion that in the interest of avoiding any complications and intractable problems, it would be better that in future the horizontal reservations are compartmentalized in the sense explained above. In other words, the notifications inviting applications should itself state not only the percentage of horizontal reservation(s) but should also specify the number of seats reserved for them in each of the social reservation categories,

viz. S.T., S.C., O.B.C, and O.C. If this is not done there is always a possibility of one or the other vertical reservation category suffering prejudice as has happened in this case.....”

15. The writ petition is accordingly disposed of directing respondent to reconsider the case of the petitioner and while so doing take note of the concept of vertical and horizontal reservation as explained by the Hon'ble Supreme Court in the decisions in Indra Sawhney's case, and Anil Kumar Gupta's case. The decision taken would be informed to the petitioner within 6 months from today.

16. No costs.

August 6, 2008
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(PRADEEP NANDRAJOG)
JUDGE