

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.22294 of 2017 (O&M)
Date of Decision: September 28, 2017

Comptroller & Auditor General of India, 10, Bahadur Shah Zagar Marg,
New Delhi & others

...Petitioners

Versus

Central Administrative Tribunal, Chandigarh Bench, Chandigarh & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL
HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr.Barjesh Mittal, Advocate,
for the petitioners.

AMIT RAWAL, J.

1. The Comptroller & Auditor General of India and others have challenged the order of the Central Administrative Tribunal, Chandigarh Bench (for short "CAT") dated 31.1.2017 (Annexure P-10) rendered in O.A.No.235/CH/2013 partly accepting the claim of the private respondents.

2. The applicant-private respondents had approached the CAT by filing the aforementioned Original Application claiming the following relief:-

i) *That respondents be directed to consider the case of the applicants for regularization as per GoI DOPT O.M. Dated 11.12.2006 and the judgment of Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Uma Devi, from due date they being working with the respondents continuously since long for nearly 8 to 17 years against the sanctioned posts. The action of the respondents in not considering the claim of the*

applicants as per law laid down in the case of Secretary, State of Karnataka Vs. Uma Devi, be declared as wholly illegal and arbitrary.

ii) Or in the alternative they be considered against the vacancies of MTS advertised vide advertisement dated 24.9.2011 in the order of their merit/marks in the selection process and the selection of equal number of private respondents having lower merit may be quashed and set aside being illegal and arbitrary. Clause 3(B)(vii) of the advertisement be also declared as illegal and arbitrary and also contrary to clause 3(C) of the advertisement.”

Out of the aforementioned two reliefs, relief No.(ii) has been granted by the CAT.

3. Mr.Barjesh Mittal, learned counsel for the petitioners submitted that on 24.9.2011, petitioners issued an advertisement inviting the applications for direct recruitment of 167 posts of Multi Tasking Staff (for short “MTS”) in pay band-I (5200-20200+GP 1800) in four offices located at Chandigarh. Out of the total 167 posts, six posts were reserved for scheduled caste category. The terms and conditions of the advertisement were sacrosanct as Clause 3(B)(vii) provided that no age relaxation is allowed to SC/ST/OBC candidates against unreserved posts, but as far as reserved post, there shall be age relaxation upto three years in the case of candidates belonging to OBC category. The minimum required educational qualification was provided as 10th class pass, however, for casual workers engaged in IA&AD, the required qualification was fixed as 8th class pass with the stipulation that if appointed, they will have to pass 10th class within a period of two years.

4. Respondent Nos.2 to 7-applicants, all belonging to scheduled caste category, submitted applications in pursuance to the aforementioned

advertisement. However, respondent No.7 was not possessing the qualification of 8th class pass and was only 7th class pass. Consequently, his application for the post of MTS was outrightly rejected. Respondent Nos.2 to 6 participated in the selection process and were called for interview. After conducting the interview, the final merit list of MTS was prepared. Top four candidates, under scheduled caste category (with cut of marks of 86), who had secured more marks than respondent Nos.2 to 6 after grant of vertical and horizontal reservation, were selected and appointed on the said posts. On account of their non-selection, respondent Nos.2 to 7 preferred the Original Application claiming the aforementioned relief.

5. Learned counsel further submitted that the CAT, vide order dated 28.3.2013 (Annexure P-4), had issued a direction to the Comptroller & Auditor General (for short "CAG") to formulate the regularization scheme within 45 days. The same was challenged by the applicants vide Review Application No.41 of 2013 and similarly, the petitioners also filed cross Review application No.43 of 2013. Vide orders dated 24.5.2013 (Annexures P-5 and P-6), both the review applications were dismissed. The same orders were challenged by affected parties, i.e., the applicants and the petitioners vide CWP Nos.17663 of 2013 and 24501 of 2013, respectively. This Court, vide order dated 23.5.2016 (Annexure P-7), remanded the matter to the CAT for fresh adjudication of the issue whether the reserved category candidates having scored more marks than general category candidates could be adjusted against open category seats having availed relaxation in age as laid down by the Apex court in **Jitendra Kumar Singh & Another Versus State of U.P. and others, 2010 (3) SCC 119.**

6. The CAT had partly allowed the Original Application by

granting the relief, as noticed above, which is not sustainable, inter-alia, on the following grounds:-

- a) Where the candidates have taken the benefit of age relaxation, they cannot be granted the benefit for being considered on the posts meant for general category;
- b) The Apex Court in **Jitendra Kumar Singh's case (supra)**, was not dealing with the Office Memorandum dated 1.7.1998 issued by the Government of India to consider the provisions of Sections 3 & 8 of 1994 Act, which provides for reservation against SC/ST & OBC categories;
- c) The ratio decidendi culled out in **Jitendra Kumar Singh's case (supra)**, dealt with a matter with regard to relaxation in fee or age. However, in the present case, the process of selection did not involve holding of any preliminary written test, physical efficiency test, final written test followed by interview. The candidates were shortlisted on the basis of Circular dated 27.8.2010 (Annexure R-4), which demonstrates that the candidates were to be awarded marks simply on the basis of their educational qualifications (40 marks), work experience (45 marks) and interview (15 marks which were further bifurcated to 5+10 marks), therefore, the candidates were to be selected on fixed parameters without any competition among them with respect to their competency and calibre. Thus, the reserved category candidates having availed the relaxation even for educational qualification and weightage for work experience cannot be equated and, therefore, could not

be ordered to be adjusted against the direct quota vacancies;

d) In support of his submission, learned counsel for the petitioner has relied upon the judgment rendered by the Apex court in **Deepa E.V. Versus Union of India & others, 2017(2) S.C.T. 33**, wherein in paragraph 10, it was held that once the candidate belonging to SC/ST/OBC has availed relaxation for being considered for general category candidates, he cannot claim a right to be appointed under the general category.

7. We have heard the learned counsel for the petitioners, appraised the paper book and are of the view that there is no force and merit in the aforementioned submissions of the learned counsel for the petitioners.

8. It would be apt to reproduce Conditions No. 3(A) and 3(B) (vii) & (viii) of the notice, which read thus:-

i) 3(A) AGE LIMIT

The candidate must have attained the age of 18 years and must not have attained the age of 27 years as on the closing date for receipt of applications.

3(B) The upper age limit as prescribed in Para 3A will be relaxable

i. xxx xxx xxx xxx

vii. *No age relaxation is allowed to SC/ST/OBC candidates against unreserved posts.*

viii. *As per orders of the Comptroller & Auditor General of India, casual workers, who have been earlier engaged at least for two years in the concerned offices of the Indian Audit & Accounts Department to which the vacancies relate, will also be eligible for age relaxation to the extent of period of their engagement as casual labourers. This relaxation would be over and above the relaxation admissible to the SC/ST/OBC/PH/ Ex-Servicemen categories.”*

9. Admittedly, the applicant-respondents were found to be more meritorious than the selected candidates in the general category. The factual matrix arisen in the present case is that applicants No.1 to 5, who belonged to the reserved category availed the relaxation in educational qualification and weightage in marks on account of continuous service in the same department at par with the candidates belonging to the general category. Thus, they were required to be considered on merits for the post of MTS in the general category as no extra special benefit was availed by the reserved category candidates. This is in consonance with the judgment rendered in

Jitendra Kumar Singh's case (supra), wherein it has been held as under:-

“39. In view of the aforesaid facts, we are of the considered opinion that the submissions of the appellants that relaxation in fee or age would deprive the candidates belonging to the reserved category of an opportunity to compete against the General Category Candidates is without any foundation. It is to be noticed that the reserved category candidates have not been given any advantage in the selection process. All the candidates had to appear in the same written test and face the same interview. It is therefore quite apparent that the concession in fee and age relaxation only enabled certain candidates belonging to the reserved category to fall within the zone of consideration. The concession in age did not in any manner tilt the balance in favour of the reserved category candidates, in the preparation of final merit/select list. It is permissible for the State in view of Articles 14, 15, 16 and 38 of the Constitution of India to make suitable provisions in law to eradicate the disadvantages of candidates belonging to socially and educationally backward classes. Reservations are a mode to achieve the equality of opportunity guaranteed under Article 16 (1) of the Constitution of India. Concessions and relaxations in fee or age provided to the reserved category candidates to enable them to compete and seek benefit of

reservation, is merely an aid to reservation. The concessions and relaxations place the candidates at par with General Category candidates. It is only thereafter the merit of the candidates is to be determined without any further concessions in favour of the reserved category candidates. It has been recognized by this Court in the case of Indra Sawhney (supra) that larger concept of reservation would include incidental and ancillary provisions with a view to make the main provision of reservation effective. In the case of Indra Sawhney (supra), it has been observed as under:-

"743. The question then arises whether clause (4) of Article 16 is exhaustive of the topic of reservations in favour of backward classes. Before we answer this question, it is well to examine the meaning and content of the expression "reservation". Its meaning has to be ascertained having regard to the context in which it occurs.

The relevant words are "any provision for the reservation of appointments or posts". The question is whether the said words contemplate only one form of provision namely reservation simplicitor, or do they take in other forms of special provisions like preferences, concessions and exemptions. In our opinion, reservation is the highest form of special provision, while preference, concession and exemption are lesser forms. The constitutional scheme and context of Article 16 (4) induces us to take the view that larger concept of reservations takes within its sweep all supplemental and ancillary provisions and relaxations, consistent no doubt with the requirement of maintenance of efficiency of administration--the admonition of Article 335. The several concessions, exemptions and other measures issued by the Railway Administration and noticed in

Karamchari Sangh are instances of supplementary, incidental and ancillary provisions made with a view to make the main provision of reservation effective i.e., to ensure that the members of the reserved class fully avail of the provision for reservation in their favour....."

40. In our opinion, these observations are a complete answer to the submissions made by Mr. L.N. Rao and Dr. Rajiv Dhawan on behalf of the petitioners."

10. Examining the factual matrix herein, only four persons in the reserved category were selected out of six advertised posts and two posts were filled up by way of compassionate appointment. The applicant-respondents were already continuously working for so many years and had become overage for further public employment. The factum of claiming relaxation in the age as well as educational qualification by the general category candidates and the reserved category candidates had not been controverted. Thus, the claim of the applicants having availed the benefit could not be considered for reserved category. However, the situation would have been different had the candidates belonging to the general category not availed the benefit of age relaxation and educational qualification, then it would have been a class apart and, thus, could not be equated with the reserved category. Similar view had been expressed in the judgment rendered in **Udayamperoor, Ernakulam Vs. UOI & Ors., 2015 (4) KLT 32**, which had been relied upon in O.A.No.060/00476/2015 decided on 9.12.2016 by the CAT (Annexure P-9).

11. Referring to the judgment relied upon by learned counsel for the petitioners in **Deepa E.V.'s case (supra)**, suffice it to notice that the

factual matrix, as noticed above, being totally different, no advantage can be derived therefrom by him.

12. For the reasons stated above, no ground for interference is made out. The conclusion of the CAT cannot be faulted. Resultantly, the writ petition is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**September 28, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No