

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

L.P.A. No.1576 of 2016(O&M) in
Civil Writ Petition No.24081 of 2015
Reserved on : August 21, 2019
Date of decision: October 04, 2019

Indian Bank and others

...Appellants

Versus

Ajay Deswal

...Respondent

AND

L.P.A. No.1577 of 2016 (O&M) in
Civil Writ Petition No.26653 of 2015

Indian Bank and others

...Appellants

Versus

Ajay Deswal

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Jagat Vir Dhindsa, Advocate for
Mr.Aalok Jagga, Advocate for the appellants.

None for the respondent.

HARINDER SINGH SIDHU, J.

1. This judgment shall dispose of the aforesaid two appeals.
2. These LPAs have been filed against the judgment and order dated 26.05.2016 passed by the learned Single Judge whereby CWP No.24081 of 2015 and CWP No.26653 of 2015 filed by the respondent have been allowed.

3. The respondent is an Ex-serviceman. He was appointed as an Airman in July 1988. He was discharged on fulfilling the terms and conditions of enrolment as per Air Force Regulations on 30.06.2014. At the time of his discharge he was serving as Sergeant.

4. The appellants vide advertisement dated 09.08.2014 (Annexure P-2) issued by the Institute of Banking Personnel Selection (appellant No.4) invited applications to fill up various posts of Clerks in various participating banks. Appellant No.4 is the Centralized Recruiting Agency for selecting eligible candidates for appointment to various banks as per the notified vacancies. There were eighteen banks (participating organisations) for which the recruitment was to be made.

5. Respondent submitted his application for the post of Clerk on 20.08.2014. In his application form against the column 'Category' he filled OBC. Against the Column 'Are you an ex-serviceman?' he answered: Yes.

6. As per the advertisement, the minimum age was 20 years and the maximum age was 28 years. Relaxation of upper age limit was provided to various categories as under:-

Sr. No.	Category	Age relaxation
1.	Scheduled Caste/Scheduled Tribe	5 years
2.	Other Backward Classes	3 years
3.	Persons with disability	10 years
4.	Ex-servicemen/Disabled Ex-Servicemen	Actual period of service rendered in the defence forces + 3 years (8 years for disabled Ex-servicemen belonging to SC/ST) subject to a maximum age limit of 50 years

5.	Widows, divorced women and women legally separated from their husbands who have not remarried	9 years
6.	Persons ordinarily domiciled in the Kashmir Division of the State of Jammu & Kashmir during the period 1.1.80 to 31.12.89	5 years
7.	Persons affected by 1984 riots	5 years
8.	Regular employees of the Union Carbide Factory, Bhopal retrenched from service (applicable to Madhya Pradesh State only)	5 years

7. The date of birth of the respondent was 30.10.1971. As on 01.08.2014 he had completed 42 years of age. Obviously his application was entertained as he got the benefit of age relaxation being an Ex-Serviceman.

8. The respondent was selected for the said post. He was issued appointment letter dated 09.10.2015. He was asked to go for training w.e.f. 02.11.2015. On 04.11.2015, he was verbally informed that he could not go for training as the Hon'ble Supreme Court in **Ram Singh and others vs. UOI 2015 (2) SCT, 424**, decided on 17.03.2015 had quashed the reservation for Jat community in the OBC Category. As the respondent belonged to the Jat Community the OBC Certificate issued to him was not valid. Respondent filed CWP No.24081 of 2015, seeking directions to the appellants to permit him to undergo and complete the training. In the petition an interim order was issued pursuant where to he successfully completed his training. During the pendency of that petition, the appellants cancelled his appointment vide letter dated 12.11.2015. The cancellation letter stated that the respondent had been provisionally allotted to Indian

Bank under OBC-Ex-servicemen category, as he belonged to the Jat Community which was categorised as 'OBC' in the State of Haryana. The Supreme Court had quashed the notification dated 04.03.2014, which included the Jat Community in the Central list of Other Backward Classes for various states including Haryana. Thus the candidature of the respondent could not be considered for appointment in the Bank under the aforesaid category.

9. The respondent filed CWP No.26653 of 2015 assailing the cancellation of his appointment. His plea before the Ld. Single Judge was that his candidature had in fact been considered only under the 'Ex-servicemen category'. For this he relied on the fact that his name figured at Sr.No.121 in the selection list of Ex-servicemen. There was a separate list for 'OBC Category' which did not contain his name. Therefore, cancellation of his appointment on the ground that he had been appointed under the 'OBC Ex-Servicemen Category', was not justified.

10. The appellants on the other hand by relying on the interview call letter Annexure P-3 for 11.02.2015 and the appointment letter dated 09.10.2015, wherein, it is stated that *“we are pleased to offer you provisional appointment in our bank as Clerk under OBC-EXS Category subject to your accepting terms and conditions set out hereunder.....”* asserted that the selection of the respondent was under the 'OBC- Ex-Servicemen' category. It was asserted that because of the decision of the Supreme Court in **Ram Singh's case** the petitioner could not be considered as an OBC. Hence his appointment was rightly cancelled.

11. The Ld. Single Judge relying on the fact that the respondent's name had been incorporated at Sr. No.121 in the Selection list of Ex-Servicemen, held that his selection was under that category. It was directed that in the appointment letter the "OBC" be deleted and his category be read as "Ex-servicemen". The order dated 12.11.2015 cancelling his appointment set aside. He was held entitled to consequential service benefits from the date of appointment.

12. Learned counsel for the appellant-Bank has contended that the Ld. Single Judge had erred in holding that the appointment of the respondent should be considered under the Ex-servicemen category. He argued that the vacancies of Clerks were to be filled State-wise. In the State of Haryana there were 20 vacancies, out of which, 05 were for OBC and amongst those 05 vacancies, 03 were reserved for OBC/Ex-servicemen. There was no independent vacancy for Ex-servicemen.

13. Taking note of the fact that the advertisement did not disclose any categorization of the posts and the divergent stands of the Indian Bank (Appellant No. 1) and Institute of Banking Personnel Selection (Appellant No. 4) the following order was passed on 30.08.2017:

"The advertisement does not disclose any categorization of posts dedicated to General, SC, OBC or Ex-serviceman. However, the form to be filled up by a candidate does indicate these categories. In the absence of any clear provision in the advertisement issued by the Institute of Banking and Personnel Selection, it is not understandable as to how allocation of successful candidates was to be made to various banks. The respondent while applying for the post of clerk had indicated

his category as ex-servicemen and had also mentioned that he belongs to the OBC Category as per prevailing notification issued by the Government of Haryana. The age limit prescribed for the post was minimum 20 years and maximum 28 years but relaxation was given as per the following schedule:-

<i>Sr. No.</i>	<i>Category</i>	<i>Age relaxation</i>
<i>1.</i>	<i>Scheduled Caste/Scheduled Tribe</i>	<i>5 years</i>
<i>2.</i>	<i>Other Backward Classes</i>	<i>3 years</i>
<i>3.</i>	<i>Persons with disability</i>	<i>10 years</i>
<i>4.</i>	<i>Ex-servicemen/Disabled Ex-Servicemen</i>	<i>Actual period of service rendered in the defence forces + 3 years (8 years for disabled Ex-servicemen belonging to SC/ST) subject to a maximum age limit of 50 years</i>
<i>5.</i>	<i>Widows, divorced women and women legally separated from their husbands who have not remarried</i>	<i>9 years</i>
<i>6.</i>	<i>Persons ordinarily domiciled in the Kashmir Division of the State of Jammu & Kashmir during the period 1.1.80 to 31.12.89</i>	<i>5 years</i>
<i>7.</i>	<i>Persons affected by 1984 riots</i>	<i>5 years</i>
<i>8.</i>	<i>Regular employees of the Union Carbide Factory, Bhopal retrenched from service (applicable to Madhya Pradesh State only)</i>	<i>5 years</i>

The respondent was clearly beyond the prescribed age but was considered in the category of ex-serviceman by giving him relaxation. It is to be noticed that if this relaxation had not been given, the appellant was not eligible, being over age, in any of the categories. The respondent was selected and allocated to the appellant-Bank but faced termination of his services when the notification regarding grant of OBC status to the caste of the respondent was struck down.

The respondent contends that he had in fact applied against the ex-serviceman that is the reason he was considered by grant of relaxation.

The appellant in turn contends that as per the allocation made, they do not have any post meant for ex-serviceman to the credit of the bank.

If this argument is to be accepted then there has to be a clear cut allocation of posts intended for every category of posts which ought to have been reflected in the advertisement itself. The appellant washes his hands of the situation while stating that the Institute is responsible for taking the examination while the Institute puts the responsibility on the bank's shoulders. This is highly unsatisfactory state of affairs but before we proceed further, we direct the Institute of Banking Personnel Selection to explain the position as noticed above.

Adjourned to 25.02.2018.

A photocopy of this order be placed on the connected case file.”

14. On 24.09.2018, the following order was passed:-

“With a view to resolve this controversy, the Institute of Banking and Personnel Selection is directed to reconsider its letter dated 30.11.2015 and verify whether the respondent was entitled to figure amongst the selected candidates in ex-servicemen category on the basis of overall merit. If his name figures in the ex-servicemen category (not in OBC category), a communication to this effect may be sent to the appellant and/or other banks.

Adjourned to 27.11.2018.

A photocopy of this order be placed on the file of connected case.”

15. Pursuant thereto, an affidavit was filed on behalf of the appellant No.4-Institute of Banking Personnel Selection. Para 2 and 4 thereof read as under:-

“2. That in this regard it is submitted that common merit list of all Ex-serviceman candidates was prepared in the order of merit without considering the parent category i.e. SC, ST, OBC and General and accordingly they were noted/allotted against the reported vacancy of Ex-serviceman. There is no separate cut-off for OBC Ex-serviceman and Un-Reserved Ex-serviceman. Therefore the cut-off applicable to respondent No.1 was that of Ex-serviceman category and he had cleared the required cut-off and was accordingly allotted to Indian Bank. Therefore after the provisional allotment been done, the matter is between Indian Bank and respondent No.1 and the respondent No.4 has nothing to do after the provisional allotment.

4. That further it is submitted that the candidature of the respondent No.1 was cancelled by Indian Bank and not by respondent no.4 as the work of respondent No.4 is over after the provisional allotment and thereafter it is between the allotted bank and the candidate.”

16. From this affidavit it is clear a common merit list of all Ex-serviceman candidates was prepared in the order of merit without considering the parent category i.e. SC, ST, OBC and General. They were then allotted to the different Banks against the vacancy of Ex-serviceman. There was a single cut-off for the Ex-serviceman category. There was no separate cut-off for OBC Ex-serviceman and un-reserved Ex-serviceman.

The Respondent had cleared the required cut-off and was allotted to Indian Bank.

17. In view of this affidavit also it appears that the respondent has been appointed under the Ex-Serviceman category and not under the OBC-Ex-Serviceman category. A total of 177 candidates figure in the selection list of the Ex-Servicemen category allotted to different banks. The respondent is at Sr. No.121 in this list. He has scored 45.80 marks. The candidate at Sr. No.177 has 38.80 marks. He thus figures fairly high amongst the candidates allotted to the banks in this category. Even in the State of Haryana the last candidate provisionally allotted to the bank in the Ex-Serviceman category had a score of 38.80.

18. Thus there is no merit in the appeals and the same are dismissed.

(RAJIV SHARMA)
ACTING CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

October 04, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No