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

+ **W.P.(C) 10005/2018 & C.M. No. 38956/2018 (stay)**

**UMA SHANKAR GURJAR** ..... Petitioner

Through: Mr Mayilsamy K., Advocate.

versus

**UNION OF INDIA AND ORS.** ..... Respondents

Through: Dr. Ashwani Bhardwaj, Advocate for  
R-1 & 3.

Mr Naresh Kaushik and Ms Vibhuti  
Tyagi, Advocates for UPSC/R-2.

Mr Anshuman Mehrotra, Mr Bhanu  
Gupta and Mr Ankur Chhibber,  
Advocates for R-5.

**CORAM:**

**JUSTICE S. MURALIDHAR**

**JUSTICE TALWANT SINGH**

**ORDER**

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**27.08.2019**

**Dr. S. Muralidhar, J.:**

1. The challenge in this petition is to Notification No. 45013/9/2009-Pers.I, dated 6<sup>th</sup> December, 2017 published by the Ministry of Home Affairs ('MHA'), Government of India, setting out the rules for the Limited Departmental Competitive Examination ('LDCE') to be held by the Union Public Service Commission ('UPSC') (Respondent No.2) for the purposes of filling up vacancies to the post of Assistant Commandants (Executive) ['AC (E)'] in the Central Industrial Security Force ('CISF') for the year

2018.

2. The Petitioner also challenges the final list dated 25<sup>th</sup> July, 2018 of recommended candidates and seeks a consequential direction to the Respondents to place the Petitioner in the rank below the General Category ('GC').

3. At the first hearing on 24<sup>th</sup> September 2018, while directing notice to be issued in the petition, the Court directed impleadment of the candidate at serial number 29 of the final list of qualified candidates for the post of AC (E) as a co-Respondent.

4. The brief facts are that the Petitioner was appointed in the CISF as Sub-Inspector on 8<sup>th</sup> December, 2010. He undertook mandatory basic training at NISA, Hyderabad. The Petitioner was then posted at VSSC, Thumba on 19<sup>th</sup> January, 2012. At the time of filing the present petition, he was on deputation with NDRF and posted at 4<sup>th</sup> Battalion, NDRF, Arakkonam, while being attached at NDRF HQ, Delhi.

5. The Petitioner sat for the LDCE for the post of AC (E) in the GC and cleared the written examination in the year 2018. The Department of Personnel & Training ('DoPT') issued an Office Memorandum ('OM') dated 4<sup>th</sup> April, 2018 stating, *inter alia*, that the reserved category candidates who were selected on the same standard as applied to the GC candidates will not be adjusted against the reserved vacancies.

6. Soon after the written examination, the successful candidates were called for a physical test. The Petitioner was one such candidate. Thereafter, the personality test (interview) was notified on 27<sup>th</sup> June, 2018. When the final results were announced on 25<sup>th</sup> July, 2018, the Petitioner did not qualify.

7. The Petitioner protested against the selection of Respondent Nos. 4 and 5, who belonged to the Scheduled Tribe ('ST') category, but were appointed against the GC vacancy. His objection was that the minimum height for a GC and SC candidate was 165 cm, whereas for an ST candidate, it was 162.5 cm. It was contended by the Petitioner that if an individual claimed any relaxation under any reserved category, he could not be considered in the GC. In effect, the attempt of the Petitioner was to show that selection of Respondent Nos. 4 and 5 in the GC was invalid and the Petitioner being next in the line of consideration must then get the post.

8. It must be noticed here that while issuing notice in the present petition on 24<sup>th</sup> September, 2018, the Court directed that the appointment of Respondent Nos. 4 and 5 would be subject to the outcome of the present petition.

9. A counter affidavit has been filed on behalf of Respondent Nos. 1 and 2. It is pointed out that as per the recruitment rules notified on 17<sup>th</sup> February 2009, the method of recruitment for the post of AC ( E) in the CISF were as under:

- “a) 33% by promotion.
- b) 17% by Limited Departmental Competitive Examination for Central Industrial Security Force conducted by Union

Public Service Commission, failing which by promotion.

- c) 02% by absorption from Public Sector Undertakings where Central Industrial Security Force is inducted, failing which by direct recruitment.
- d) 48% by direct recruitment through Central Police Forces (Assistant Commandants) Examination conducted by Union Public Service Commission (including 10% for Ex-Servicemen or Short Service Commissioned Officers).”

10. By a notification dated 6<sup>th</sup> December, 2017, the MHA issued the impugned instructions regarding the filling up of 29 vacancies of AC (E) in the CISF under the LDCE quota. 23 vacancies were in the GC, 4 in the SC and 2 in the ST. The candidate should have completed four years of regular service as on 1<sup>st</sup> January, 2018 in the rank of SI (GD)/Inspector (GD), including the period of basic training and should have a clean record of service till issue of offer of appointment. Specific to the issue of height, a minimum requirement of 165 cm and 157 cm respectively for men and women in both the GC and SC category was stipulated. For the ST category, a minimum height of 162.5 cm and 154 cm for men and women respectively was stipulated.

11. It is stated by the Respondents 1 and 2 that 99 candidates qualified in the written examination and appeared in the physical standard test/physical efficiency test (PST/PET) from 7<sup>th</sup> to 10<sup>th</sup> May, 2018. This was followed by a medical examination. In the PST/PET and the Medical Examination, 77 candidates were found fit and 14 medically unfit. Further, a review medical examination was undertaken where all the 14 candidates earlier found

medically unfit were declared medically fit.

12. A total of 91 candidates were found fit for personality test/interview. Both the Petitioner as well as the Respondent No. 4 were declared fit and underwent the PST/PET, personality test and interview. Against the reserved vacancies of two ST candidates, UPSC selected one more ST candidate i.e. Respondent No.5, who qualified against the GC vacancy.

13. The Respondents 1 and 2 acknowledge receipt of the Petitioner's representation but state that it was not decided since the matter was *sub judice*. No reply was therefore given awaiting the outcome of the present writ petition.

14. A separate counter affidavit has been filed by the UPSC. The stand taken therein is that the CISF Examination Rules "do not have any provision regarding relaxation of physical standards or medical standards notified therein" and that "no authority has been empowered to relax these standards". It is contended that both Respondent Nos. 4 and 5 have qualified on their own merit in terms of age and cut-off marks fixed for the CISF Exam. It is pointed out that different parameters of physical standards relating to height, weight, chest for male/female and for different categories of candidates are prescribed keeping in view the gender/race of the candidates.

15. A separate counter affidavit has been filed by Respondent No. 5. Rejoinder has been filed by the Petitioner to the counter affidavit of Respondent No. 3, CISF.

16. Learned counsel for the Petitioner first referred to an OM dated 1<sup>st</sup> July, 1998 where it was indicated that in case of direct recruitments, SC/ST/OBC candidates selected on their own merit would not be adjusted against reserved vacancies. Reference is made to paragraph 3 of the said OM, which reads as under:

“3. In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates, for example, in the age limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies.”

17. Learned counsel for the Petitioner also referred to the decision in *Deepa E.V. v Union of India 2017 (12) SCC 680* and *Niravkumar Dilipbhai Makwana v Gujarat Public Service Commission 2019 SCC OnLine SC 827* to urge that Respondent Nos. 4 and 5 being ST candidates who qualified as a result of a lower height standard could not have been accommodated against the GC vacancies.

18. Learned counsel for the Respondents, on the other hand, referred to the decisions in *Jitendra Kumar Singh v State of U.P. (2010) 3 SCC 119* and *Vikas Sankhala v. Vikas Kumar Agarwal (2017) 1 SCC 350*.

19. The short question that arises for consideration is whether the lower standard of qualifying height prescribed for ST candidates would disentitle such candidates from being selected on their own merit under the GC quota?

20. At the outset, it requires to be noticed that there are physical standards, like height, weight etc. which are also known as 'Enlistment Standards' and there are other markers of eligibility, which would include age and educational qualifications. This is also apparent from the OM dated 1<sup>st</sup> July 1998, cited by learned counsel for the Petitioner, which, in the context of 'relaxed standards' illustratively cites "age limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for General Category candidates, etc.". The word 'etc.' has to be read *ejusdem generis*. It takes colour from the preceding words which refer to age limit, experience, and qualifications. It does not contemplate physical standards which would vary depending on gender, geographical location, and so on.

21.1 In ***Jitendra Kumar Singh v. State of U.P.*** (*supra*), a competitive examination was held for filling up the post of Sub-Inspectors of Civil Police and Platoon Commanders in PAC by direct recruitment. For SC, ST and OBC candidates, there was a waiver of the examination fee and relaxation in the upper age limit in terms of Section 8 (1) of the UP Public Services (Reservation for Scheduled Caste, Scheduled Tribes and other Backward Classes) Act, 1994.

21.2 Section 3(6) of the above Act provided that if a reserved candidate got

selected on the basis of merit in an open competition with general candidates he would not be adjusted against vacancies reserved for the reserved category.

21.3 Government instructions dated 25th March, 1994 provided that if a reserved category candidate were selected on the basis of merit in the open competition along with general category candidates he would not be adjusted towards reserved category i.e. he would be deemed to have been adjusted against the unreserved vacancies. This was irrespective of whether he had availed of any facility or relaxation (like relaxation in age limit).

21.4 The Appellants, who were general candidates, contended that reserved category candidates should not be adjusted against the unreserved vacancies but only against the reserved vacancies. This was not accepted by the High Court. The decision of the High Court was affirmed by the Supreme Court. It was clarified as under:

“71. We are of the considered opinion that the concessions falling within Section 8 of the Act of 1994 cannot be said to be relaxations in the standard prescribed for qualifying in the written examination. Section 8 clearly provides that the State Government may provide for concessions in respect of fees in the competitive examination or interview and relaxation in upper age limit.

72. Soon after the enforcement of the 1994 Act the Government issued Instructions dated 25-3-1994 on the subject of reservation for Scheduled Castes, Scheduled Tribes and other backward groups in the Uttar Pradesh Public Services. These instructions, inter alia, provide as under:

"4. If any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age-limit) available to reserved category."

From the above, it becomes quite apparent that the relaxation in age-limit is merely to enable the reserved category candidate to compete with the general category candidate, all other things being equal. The State has not treated the relaxation in age and fee as relaxation in the standard for selection, based on the merit of the candidate in the selection test i.e. main written test followed by interview. Therefore, such relaxations cannot deprive a reserved category candidate of the right to be considered as a general category candidate on the basis of merit in the competitive examination. Sub-section (2) of Section 8 further provides that government orders in force on the commencement of the Act in respect of the concession and relaxations including relaxation in upper age-limit which are not inconsistent with the Act continue to be applicable till they are modified or revoked."

21.5 It was further held:

"75. In our opinion, the relaxation in age does not in any manner upset the "level playing field". It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfil the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are

merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category the candidate belongs. All the candidates to be declared eligible had participated in the Preliminary Test as also in the Physical Test. It is only thereafter that successful candidates have been permitted to participate in the open competition.”

22.1 Again, in *Vikas Sankhala v. Vikas Kumar Agarwal* (*supra*) the issue arose in the context of appointment of teaching staff through the Teachers Eligibility Test (TET) conducted by the State of Rajasthan. There was a relaxation of 10% in the minimum pass marks in the TET for persons belonging to SC, ST and OBC.

22.2 One of the issues considered by the Supreme Court was:

“38.3 (iii) Whether reserved category candidates, who secured better than general category candidates in recruitment examination, can be denied migration to general seats on the basis that they had availed relaxation in TET?”

22.3 In answering the said question in negative, the Supreme Court referred to the circulars issued by the State Government from time to time and the decision in *Jitendra Kumar Singh v. State of U.P* (*supra*). It was noted that the mere fact that some relaxation was given in the pass marks in the TET did not give any advantage to the reserved category candidate, as it only enabled them to compete with others by allowing them to participate in the selection process.

22.4 Therefore, in terms of the circular dated 11<sup>th</sup> May, 2011 issued by the

Government in that case, “the reserved category candidates, who secured more marks than the marks obtained by the last candidate selected in general category would be entitled to be considered against unreserved category vacancies.” This was subject to the condition that “these candidates have not availed any other concession in terms of number of attendance etc. except fee and age”.

23.1 On the other hand, in *Deepa E.V. v. Union of India* (*supra*) the Appellant applied for the post of Laboratory Assistant, Grade-II in the Export Inspection Council of India functioning in the Ministry of Commerce and Industry, Government of India. The Appellant was in the OBC category and was among the 11 candidates from that category called for the interview. She secured 82 marks. One other OBC candidate who had secured 93 marks was selected. In the general category none of the candidates secured the minimum cut-off of 70 marks.

23.2 The Appellant accordingly contended that she should be accommodated in the general category. Her writ petition was dismissed by the Single Judge and her appeal against that judgment was also dismissed by the Division Bench.

23.3 The Supreme Court referred to condition 3 in the proceedings dated 1<sup>st</sup> July, 1998 issued by the Department of Personnel and Training, Government of India on the subject “Reserved vacancies to be filled up by candidates lower in merit or even by released standards-candidates selected on their own merits not to be adjusted against reserved quota.” Condition 3 read as

under:

“3. In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standards as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting *an SC/ST/OBC candidates, for example in the age-limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates, etc. the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies.*” (emphasis in original)

23.4 On account of the fact that a bar as specific as the above had not been challenged by the Appellant in that case, the Supreme Court was unable to grant her the relief prayed for.

24.1 Turning to the decision in ***Niravkumar Dilipbhai Makwana v. Gujarat Public Service Commission*** (*supra*), it is seen that the said decision is in fact not inconsistent with the above legal position. There, the question that arose was whether a candidate who has availed of an age relaxation in a selection process, as a result of belonging to the reserved category, could thereafter seek to be accommodated in or migrated to the general category seat.

24.2 In that case, the State Government had framed a policy for the grant of reservation in favour of SC/ST and OBC by the Circulars dated 21<sup>st</sup> January, 2000 and 23<sup>rd</sup> July, 2004. The State Government had clarified that when a relaxed standard is applied in selecting a candidate for SC/ST/SEBC

category in the age limit, experience, qualification, permitted number of chances in the written examination etc., then a candidate of such category selected in the said manner, shall have to be considered only against his/her reserved post. Such a candidate would be deemed as unavailable for consideration against an unreserved post.

24.3 After referring to the decisions in *Jitendra Kumar Singh v. State of U.P.* (*supra*) and *Gaurav Pradhan v. State of Rajasthan* (2018) 11 SCC 352, the Supreme Court held that the age relaxation granted to the candidates belonging to the SC/ST and SEBC category was “an incident of reservation under Article 16(4) of the Constitution of India” and, that, therefore, a person “who avails of an age relaxation at the initial stage will necessarily avail of the same relaxation even at the final stage”. In other words, the question framed by it was answered in the negative.

25. In the present case, the relaxation is not as regards age or educational qualification or number of chances, but in the matter of height. There is no bar in the present case to a ST candidate availing of height relaxation from competing with GC candidates in their quota on merit. To borrow the language of the decision in *Jitendra Kumar Singh v. State of U.P.* (*supra*) Respondents 4 and 5 were, after applying the relaxed height standard, “merely brought within the zone of consideration, so that they can participate in the open competition on merit.” Once they participated in the written examination it was “immaterial as to which category the candidate belongs.” Further they successfully completed the PST/PET. Therefore, the height relaxation did not preclude Respondent Nos. 4 and 5 from being

appointed under the GC.

26. For all of the aforementioned reasons, there is no merit in the present petition. It is accordingly dismissed. The interim order is vacated and the pending application is disposed of. No costs.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**AUGUST 27, 2019**  
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