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

+ W.P.(C) 4982/2021 & C.M.No.15269/2021

HEMANT POKHRIYAL

..... Petitioner

Through **Mr.Amit Kaushik, Advocate.**

versus

STAFF SELECTION COMMISSION & ORS.

..... Respondents

Through **Mr.Nirvikar Verma, Advocate.**

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Date of Decision: 01st October, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. Present writ petition has been filed challenging the selection procedure of the respondents for the post of Constable (GD) in the Central Armed Police Forces (CAPFs), NIA, SSF and Rifleman (GD) in Assam Rifles insofar as it debars a candidate from the reserved category from being adjusted against the General vacancy if the candidate has availed any relaxation irrespective of the fact that such relaxation is also available to the General category candidates.

ARGUMENTS ON BEHALF OF THE PETITIONER

2. Learned Counsel for the petitioner states that the petitioner belongs to Other Backward Class (OBC) from the border guarding district of Uttarkashi, under the Garhwal division of Uttarakhand. He further states that the

Petitioner applied for the post of Constable (GD) in the Central Armed Police Forces (CAPFs), NIA, SSF and Rifleman (GD) in Assam Rifles (AR) Examination, 2018 held by the Respondent No.1, Staff Selection Commission (SSC), pursuant to the Notification dated 21st July, 2018.

3. He further states that the Petitioner qualified in the computer based examination and was shortlisted for the Physical Efficiency Test (PET) and Physical Standard Test (PST) in which he availed the relaxations in the standards of height and chest as available to all the male candidates falling in the categories of Garhwalis, Kumaonis, Dogras, Marathas and candidates belonging to the States of Assam, Himachal Pradesh and Jammu and Kashmir. These relaxations as provided vis-a-vis general candidates by Clause 9(III) of the Examination Notification are reproduced below:-

III. Physical Standard Test (PST):-

Physical standard laid down for the post of Constable/Rifleman are:

<i>a. Height</i>	<i>Height (in cms)</i>	
	<i>Male</i>	<i>Female</i>
<i>General, SC & OBC candidates (except those mentioned below)</i>	<i>170</i>	<i>157</i>
<i>Relaxations:-</i>		
<i>The minimum height for the candidates falling in the categories of Garhwalis, Kumaonis, Dogras, Marathas and candidates belonging to</i>	<i>165</i>	<i>155</i>

<i>the States of Assam, Himchal Pradesh and Jammu and Kashmir</i>		
<i>b. Chest:</i>	<i>Chest (in cms: unexpanded/minimum expansion)</i>	
<i>General, SC & OBC male candidates (except those mentioned below)</i>	80/5	N/A
<u>Relaxations:-</u>		
<i>The minimum chest for male candidates falling in the categories of Garhwalis, Kumaonis, Dogras, Marathas and candidates belonging to the State of Assam, Himachal Pradesh and Jammu & Kashmir.</i>	78/5	N/A

(emphasis supplied)

4. Learned counsel for the Petitioner states that in the final result that was declared by the respondents on 21st January, 2021, the Petitioner had scored 73.1913 which, though more than the score secured by the last candidate selected in the unreserved category from his state (72.45198), was less than the score secured by the last candidate selected in the OBC (Border) category from his state (74.88390). He states that the Petitioner was not selected in either of the categories.

5. He states that subsequently it was revealed that the Petitioner was not accommodated in the un-reserved category because he had availed relaxation in the measurement of height and chest during the Physical Standard Test (PST). He submits that the relaxation that the Petitioner had availed was available not only for the OBC candidates but for all the candidates from the Garhwal area irrespective of their category. He states that since the relaxation availed by the Petitioner was also available to the candidates from the unreserved category, the petitioner should have been included in the final selection list of the unreserved category, having scored more than the cut-off. He contends that the Petitioner should have been considered in pursuance to Clause 11 (xiii) of the notification which reads as under:

“(xiii) SC, ST, OBC and ExS candidates, who are selected on their own merit without relaxed standards, along with candidates belonging to other communities, will not be adjusted against the reserved share of vacancies. Such candidates will be accommodated against the unreserved vacancies as per their position in the overall Merit List. The reserved vacancies will be filled up separately from amongst the eligible SC, ST, OBC and ExS candidates.”

(emphasis supplied)

6. Learned Counsel for the Petitioner states that if a candidate of the reserved category performs better than a candidate of the general category without the ‘aid of any crutches’ then his selection is on the basis of merit and not on the basis of reservation and he shall have to be treated as a general category candidate because he makes it on his own merit and not by reason of the category to whom he/she belongs.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

7. Per contra, learned counsel for the respondents contends that since the petitioner had availed the relaxed standards in height and chest measurement, he had to be considered in the category as per the provisions contained in Clause 11(xiv) and not under Clause 11(xiii) of the Examination Notification which reads as under:

“(xiv) SC, ST, OBC and ExS candidate who qualifies on the basis of relaxed standards viz. age limit, height and chest measurement, experience or qualifications, permitted number of chances, extended zone of consideration larger than what is provided for general category candidate etc., irrespective of his/ her merit position, such SC, ST, OBC and ExS candidates is to be counted against reserved vacancies. In so far as cases of ex-serviceman are concerned, deduction of the military service rendered from the age of ex-servicemen is permissible against the reserved or unreserved posts and such exemption cannot be termed as relaxed standards in regard to age.”

(emphasis supplied)

8. He states that the height & chest of the petitioner is less than the physical standards fixed for common recruitment test of CT(GD) in CAPFs & Assam Rifles, NIA and SSF and he has been declared qualified in the physical standard on relaxed standards as per the provisions contained in Clause 9(III) of the Notification on anthropological or geographical grounds. He further states that as per DOP&T OM No.36011/1/98-Estt.(Res) dated 01/07/1998, only the SC/ST/OBC candidates who are selected on their own merits without relaxed standards, along with candidates of other communities will not be adjusted in the reserved vacancies.

WHEN A CANDIDATE GETS SELECTED FOR APPOINTMENT TO A POST ON THE BASIS OF HIS OWN MERIT AND WITHOUT AVAILING THE RELAXATIONS THAT ARE AVAILABLE, THEN HIS SELECTION WOULD NOT BE COUNTED AGAINST THE RESERVED POST. PARA 11(XIII) OF THE EXAMINATION NOTICE ALSO STATES SO.

9. It is settled law that when a candidate gets selected for admission or for appointment to a post on the basis of his own merit and without availing the relaxations that are available to them, then his selection would not be counted against the reserved post.

10. In *Indra Sawhney & Ors. v. Union of India & Ors. (1992) Supp (3) SCC 217*, the Supreme Court has held as under:-

“[It] is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

11. A similar view has been reiterated by the Supreme Court in *R.K. Sabharwal and Others v. State of Punjab and Others, (1995) 2 SCC 745; Union of India and Others v. Virpal Singh Chauhan and Other, (1995) 6 SCC 684; Ritesh R. Sah v. Dr. Y.L. Yamul and Others, (1996) 3 SCC 253*.

12. This Court also finds that the examination notice in para 11(xiii) specifies that if a SC, ST, OBC and Ex-Serviceman are selected on their own merit and without any relaxed standards relatable to aforesaid categories or without consideration larger than what is provided for General category, then the candidate is not to be adjusted against the reserved vacancies.

RELAXATIONS IN MEASUREMENT OF HEIGHT AND CHEST ARE AVAILABLE TO ALL THE CANDIDATES FROM GARHWAL REGION WHETHER THE CANDIDATE BELONGS TO A RESERVED OR UNRESERVED CATEGORY. PARA 11(XIV) CLEARLY STATES THAT WHEN A RESERVED CATEGORY CANDIDATE IS SELECTED ON THE SAME STANDARD AS APPLICABLE TO A GENERAL CANDIDATE THEN HE SHALL NOT BE ADJUSTED AGAINST RESERVED VACANCIES.

13. This Court is of the view that the relaxations in measurement of height and chest are available to all the candidates from Garhwal Region or other specified regions whether the candidate belongs to a reserved or unreserved category. There is specific relaxation for Scheduled Tribes, but no relaxation with regard to height or chest is provided specifically to OBCs.

14. The respondent No.1's interpretation that since the petitioner is an OBC category candidate and has availed relaxation in measurement in the standards of height and chest which is available to a Garhwali candidate, he cannot be considered in unreserved category by virtue of para 11(xiv) is untenable in law as the instructions and the clarification clearly state that when a reserved category candidate is selected on the same standard as applicable to a General candidate then he shall not be adjusted against reserved vacancies. It is only when a candidate avails relaxations that are not otherwise available to the candidates of the unreserved category that he is to be considered in his category.

15. The Office Memorandum dated 1st July, 1998 issued by the Ministry of Personnel, PG & Pensions, Department of Personnel & Training clarifies the position. It states 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.”

(emphasis supplied)

16. In the present case the height and chest relaxations that have been availed by the Petitioner are available to all the candidates belonging to the Garhwal region. In fact, there are no height and chest relaxations provided for the candidates belonging to the OBC category in Clause 9(III) of the Notification and they are to be considered along with the General candidates.

17. Even the learned predecessor bench in the order dated 02nd August, 2021 had observed as under:-

“We are prima facie of the opinion that when Clause 11 (xiv) of the Examination Notice supra refers to Scheduled Castes (SC), Scheduled Tribes (ST), OBC and Ex-Servicemen candidates who have qualified on the basis of relaxed standards, the same refers to the relaxation by virtue of being SC, ST, OBC or Ex-Servicemen and not relaxation given to candidates from particular States/region inasmuch as the said relaxations are available to all candidates from that region/State, even those belonging to the Unreserved category.”

18. This Court respectfully agrees with the said interpretation.

IF THIS COURT WERE TO ACCEPT THE ARGUMENT OF THE RESPONDENTS IN THE PRESENT CASE, THE FACT THAT THE PETITIONER BELONGS TO A RESERVED CATEGORY INSTEAD OF WORKING TO HIS BENEFIT WOULD RATHER WORK TO HIS DISADVANTAGE.

19. Moreover, if this Court were to accept the arguments of the respondents in the present case, the fact that the petitioner belongs to a reserved category

instead of working to his benefit would rather work to his disadvantage as he would have been better off (selected for the post) if he had registered for the exam as a General category candidate from the Garhwal region. This would however, be completely contrary to the intention of the legislators/administrator while making provisions for relaxations for certain categories.

RELIEF MOULDED; JUDGMENT WOULD HAVE PROSPECTIVE EFFECT

20. Consequently, the present petition is allowed. However, this Court is of the view that in the present case, as training of the selected candidates has already commenced, it would not be proper to direct the respondents to re-draw the result in its entirety. After all, it is settled law that the prospective declaration of law is a device innovated by the Apex Court to avoid re-opening of settled issues and to prevent multiplicity of proceedings. Even the High Courts in exercise of their equity jurisdiction without applying the doctrine of prospective over-ruling, indisputably can grant a limited relief. [See: *P.V.George and Others vs. State of Kerala and Others*, (2007) 3 SCC 557; *Somaiya Organics (India) Ltd. and Another vs. State of U.P. and Another*, (2001) 5 SCC 519; *Gaurav Tripathi vs. State of U.P. and Others*, 2009 SCC OnLine All 1608 and *Baburam vs. C.C. Jacob and Others*, (1999) 3 SCC 362.]

21. Accordingly, this Court directs that the present judgment would have prospective effect i.e. it would not disturb the list of selected candidates till date. However, the vacancies that remain to be filled, shall be filled in accordance with the revised list, that should be prepared in accordance with

the law declared by this Court in the present judgment. With the aforesaid directions, the writ petition along with pending application stands disposed of.

MANMOHAN, J

NAVIN CHAWLA, J

**OCTOBER 01, 2021
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