

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

W.P.C.T 59 of 2022

**Union of India & Ors.
Vs.
Joy Halder**

Appearance:

For the Petitioners (UOI) : **Mr. Bhudeb Chatterjee, Adv.**

For the Respondent : **Mr. Debabrata Roy, Adv.
Mr. Arun Kumar Halder, Adv.**

Judgment On : **01.02.2023**

PRASENJIT BISWAS, J.

The instant writ petition is filed challenging the impugned order dated 05.10.2021 in O.A. No. 350/1294/ 2019 passed by the Central Administrative Tribunal, Kolkata Branch whereby and whereunder the appellant authorities are directed to consider the grievance of the respondent to adjust him suitably against the Fitter Auto post against an UR vacancy on the basis of his rank.

The background facts are that the Ordnance Factory, Medak, Yeddumailaram, Telangana, a Defence Production Unit under the Department of Defence production, Ministry of Defence, Government of India floated an advertisement being no. 10201/11/0209/1718 in the month of January 2017 for filling up vacancies/posts of Semi-Skilled Grade Industrial Employees (IES), Group C in various ordnance factories located all over India.

Note 2 of the said notification says as follows:

‘Ex-servicemen and physically handicapped candidates may apply against posts even if the posts are not reserved/earmarked for them. However, only age relaxation and fee exemption will be granted and they will be considered without horizontal reservations subject to the post being identified for PH’.

Two unreserved vacancies were advertised for the post of Fitter Auto and both the said vacancies were filled up by the Ex-Servicemen for whom 13 vacancies were already kept aside. Those two vacancies were filled up with ex-servicemen candidates only by applying horizontal reservation method and hence the respondent who secured more marks than the selected candidates have been left out. Being aggrieved by and dissatisfied with this selection process adopted by the appellant authority respondent knocked the door of the Tribunal and the Tribunal passed the impugned order.

Learned counsel appearing for the petitioners assailed before us that the Tribunal failed to appreciate the contentions put forth by the petitioners in its proper perspective. So, the Tribunal wrongly passed the

order dated 05.10.2021 by directing authorities to consider the grievance of the respondent and to adjust him suitably against the Fitter Auto Post against unreserved vacancy on the basis of his rank and in terms of his own merit.

Learned Counsel further submitted that the Tribunal has erroneously come to conclusion that 13 vacancies have already been kept aside for ex-servicemen in the notification because the vacancies notified for Ordnance Factory, Medak includes 04 posts reserved for PH and 13 posts reserved for ex-servicemen against overall vacancies. The percentage of reservation for ex-servicemen quota had to be worked out on the total number of posts advertised and the horizontal reservation applied in overall and not category wise reservation.

It is further submitted on behalf of the petitioners that the ex-servicemen were selected under the reservation provided for them and accordingly as per final select list for the post of Fitter Auto trade of Ordnance Factory Medak, 2 ex-servicemen were selected against the 2 unreserved vacancies of this trade. The principle of horizontal reservation and age relaxation criteria as per extent rules and the *ibid* advertisement were justifiably applied to select these two ex-servicemen.

Learned counsel further submitted that the principle of horizontal reservation was applied while filling the vacancies for all the trades for which combined vacancies for PH and ex-servicemen were advertised and total 13 vacancies of ex-servicemen and 04 PH category were filled up against different trades.

Per contra learned Counsel for the respondent submitted before us *inter alia* that the respondent scored 89 and his rank was one and on the

other hand the selected ex-servicemen scored 56 and 50 points respectively. This respondent who scored highest has been wrongly left out to accommodate the one less meritorious non-PH ex-servicemen.

It is further submitted by the learned counsel that although respondent did well in the examination and secured 89 out of 100 in the written examination but when final select panel was uploaded and from the said panel it appears that all the unreserved posts of Fitter Auto in Ordnance Factory, Medak were filled up by physically handicapped/ex-servicemen although there was no reservation for physically handicapped/ex-servicemen in the category of Fitter Auto of Ordnance Factory. According to Note 2 of the advertisement they are not entitled to any horizontal reservations.

Learned Counsel further assailed that from the final result it appears that against one of the two unreserved posts of Fitter Auto, one ex-serviceman was appointed whose date of birth is 01.07.1978 and as such on the last date of application i.e. 10.07.2017 the said ex-serviceman already attended the age of 39 years. Although according to the advertisement the ex-servicemen against UR vacancies were entitled to age relaxation of 3 years in addition to the period of service rendered in the defence service as on the closing date and the age limit was 18 to 32 years.

Learned Counsel lastly submitted that this respondent secured no.1 rank in the written examination and so this respondent ought to have been considered for appointment as Fitter Auto against unreserved vacancies of Ordnance Factory, Medak instead of filling up both unreserved post of Fitter Auto of the said factory by applying horizontal reservation which was totally contrary to the Note 2 of the advertisement.

As per submission of the learned counsel there is no illegality or infirmity in the impugned order by which this petitioner authority was directed to consider the grievance of this respondent and to adjust him suitably against the Fitter Auto post against an unreserved vacancy on the basis of his rank and in terms of his own merit.

We have bestowed our anxious consideration on the arguments advanced on behalf of the parties *in extenso*. In order to appreciate the facts and circumstances of the case in proper perspective, it is apt to delve into the concept of reservation.

The reservation policy in India mentions two types of reservations:

1. Horizontal Reservations
2. Vertical Reservations

Reservation for Scheduled Castes, Scheduled Tribes, and Other Backward Classes is referred to as vertical reservation. It applies separately for each of the groups specified under the law.

Horizontal reservation refers to the equal opportunity provided to other categories of beneficiaries such as women, veterans, the transgender community, and individuals with disabilities, cutting through the vertical categories.

In case of ***Saurav Yadav vs. State of Uttar Pradesh***, reported in **(2021) 4 SCC 542** the Apex Court explained the meaning of vertical and horizontal reservation and their relationship. Court held that Article 15(4) and 16 (4) of the Indian Constitution elucidate the provision of reservation for SC, ST, and OBC. They stated that the Horizontal reservation provides

benefit to the different class like; women, veterans, disabled person, “cut across” the vertical reservation.

In the above referred case Hon’ble Apex Court observed in paragraph 60 and 61 in *Alia* that-

“Horizontal reservations on the other hand, by their nature, are not inviolate pools or carved in stone. They are premised on their overlaps and are ‘interlocking’ reservations. As a sequel, they are to be calculated concurrently and along with the inviolate ‘vertical’ (or “social”) reservation quotas, by application of the various steps laid out with clarity in paragraph 11 of Justice Lalit’s judgement. They cannot be carried forward. The first rule that applies to filling horizontal reservation quotas is one of adjustment, i.e. examining whether on merit any of the horizontal categories are adjusted in the merit list in the open category, and then, in the quota for such horizontal category within the particular specified/ social reservation.

*The open category is not a ‘quota’, but rather available to all women and men alike. Similarly, as held in *Rajesh Kumar Daria*, there is no quota for men. If we are to accept the second view [as held by the Allahabad High Court in *Ajay Kumar v. State of UP* and the Madhya Pradesh High Court in *State of Madhya Pradesh & Anr. v. Uday Sisode & Ors.*, referred to in paragraph 20 of Justice Lalit’s judgement], the result would be confining the number of women candidates, irrespective of their performance, in their social reservation categories and therefore, destructive of logic and merit. The second view, therefore – perhaps unconsciously supports- but definitely*

results in confining the number of women in the select list to the overall numerical quota assured by the rule”.

In **Saurav Yadav (supra)** the court reiterates its previously held view that candidates belonging to reserved categories like SCs, STs and OBCs can be appointed under open for general category, if they qualified on their own merit, so that they are not counted under the reserved category. Where a vertical reservation is made in favour of backward class, make compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective backward class. The person selected against the horizontal 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 category, he will be placed in that category by making necessary adjustments.

Paragraph 68 of the above referred case entails that-

“I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid “slots”, where a candidate’s merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the state’s argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate

to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him”.

In the case of **Anil Kumar Gupta (supra), reported in (1995) 2 SCC 173** a distinction between horizontal and vertical reservation has been discussed. Compartmentalised reservation is one where the seat reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not inter-transferable. In compartmentalised reservation, social reservation is watertight compartment in each of the vertical reservation class (OC, OBC, SC and ST).

In the above case it has been clearly held that the Government should specifically provide if the horizontal reservation is overall horizontal reservation or compartmentalised reservation. While concluding as under it has been observed by the Hon’ble Apex Court that

"17. It would have been better - and the respondents may note this for their future guidance - that while providing horizontal reservations, they should specify whether the horizontal reservation is a compartmental one or an overall one. As a matter of fact, it may not be totally correct to presume that the Uttar Pradesh Government was not aware of this distinction between "overall horizontal reservation", since it appears from the judgment in Swati Gupta that in the first notification issued by the Government of Uttar Pradesh on 17-5- 1994, the thirty percent reservation for ladies was split up into each of the other reservations. For example, it was stated against backward classes that the percentage of reservation in their favour was twenty seven percent but at the same time it was stated that thirty percent of those seats were reserved for ladies. Against every vertical reservation, a

similar provision was made, which meant that the said horizontal reservation in favour of ladies was to be a "compartmentalised horizontal reservation". 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 compartmentalised in the sense explained above. In other words, the notification 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. As pointed out hereinabove, 110 seats out of 112 seats meant for special reservations have been taken away from the O.C. category alone - and none from the O.B.C. or for that matter, from S.C. or S.T. It can well happen the other way also in a given year."

It is evident from the Note 2 of the notification that only age relaxation and fee exemption was granted to the ex-servicemen and they will be considered without horizontal reservation subject to the post being identified for PH. It further appears from the said notification that 4 vacancies were earmarked for PH candidates and 13 vacancies were earmarked for ex-servicemen. Nothing appears from the said notification that two unreserved vacancies specified in the notification were earmarked for ex-servicemen actually to be included in 13 combined vacancies. The notification inviting applications did not state the percentage of horizontal

reservation(s) and also not specified 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.

The unreserved post of Fitter Auto in Ordnance Factory, Medak were filled up by physically handicapped/ ex-servicemen although there was no reservation for physically handicapped/ ex-servicemen in the category of post of Fitter Auto. According to Note 2 of the advertisement they were not entitled to any horizontal reservations.

We find nothing in the record to show that two unreserved vacancies for the post of Fitter Auto were earmarked for Ex-servicemen and were actually to be included in the 13 combined vacancies of the different posts.

Tribunal rightly held that ex-servicemen have to be placed in the appropriate category i.e. SC/ST/OBC in the roster meant for reservation of SC/ST/OBC and the application form for the post should require a candidate applying under the quota reserved for ex-servicemen to indicate whether they belong to SC/ST/OBC or General Category.

Learned Counsel for the appellant authority referred an unreported decision of Hon'ble Apex Court in case of ***Prem Lal Korde vs. Jakir Khan in Civil Appeal No.(s) 2353-2354 of 2021***(*Arising out of SLP © Nos.36396-36370 of 2017*).

In that case it is held by the Apex Court that the appellant belonged to the category of Other Backward Classes and was also an ex-serviceman. He was given employment relying on 10% horizontal reservation. It was not the case that the quota meant for ex-servicemen in the vertical column of other backward candidates was already filled or that the appellant was not and ex-serviceman. It was also not the case that any other more deserving

person who could answer the description as one belonging to OBC to category as well as ex-servicemen had not been selected.

The fact of that case is not similar with that of the present case. So, we find that there is no applicability of the decision of the Hon'ble Apex Court as referred by the Learned Counsel for the appellant in this case.

In this case the petitioners miserably failed to substantiate that two unreserved vacancies of fitter auto were included in 13 vacancies earmarked for ex-servicemen. Accordingly, we are unable to concur with the arguments advanced on behalf of the petitioners.

We, therefore, do not find any infirmity and/or illegality in the impugned order.

The writ petition is dismissed. Since the time fixed in the impugned order passed by the Tribunal has expired because of the pendency of the instant writ petition, such time is extended by eight weeks from date.

There shall, however, be no order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)