



2024:DHC:9661-DB



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

+ **W.P.(C) 9683/2023 & CM APPL. 37115/2023**

DELHI POLICE AND ANRPetitioners

Through: **Mr. K. D. Sharma, Adv.**

versus

MAHESH SINGHRespondent

Through: **Mr. Anil Singhal, Adv.**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (ORAL)

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12.12.2024

1. In pursuance of a special recruitment drive for natives of Tripura, for appointment to the post of temporary Constable (Exe), an advertisement was released by the Delhi Police in 2018¹, inviting applications.

2. Note-3 towards the conclusion of the advertisement reads thus:

“Note 3: The recruitment shall be conducted as per the provisions of Rule – 9 & 14 of Delhi Police (Appointment & Recruitment) Rules-1980, Standing Order No 212/2016 issued vide No 3095-3245 HAR/PHQ dated 28.06.2016 broadly and reservation policy as per Tripura Recruitment Rules.”

3. Thus, the advertisement provided for reservation as per Tripura Recruitment Rules. The provision for reservation, contained in the

¹ “the 2018 Examination” hereinafter



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Tripura Recruitment Rules, as notified on 2 April 2007, read thus:

“RESERVATION OF 2% VACANCIES FOR EX-SERVICEMEN IN CLASS II AND CLASS IV POST UNDER GOVERNMENT OF TRIPURA, AND CARRYING FORWARD OF UNFILLED VACANCIES.

23. 2% vacancies in class III and class IV posts under Govt. of Tripura have been reserved for ex-servicemen. In case of direct recruitment regarding the unfilled reserved vacancies:

“In case appropriate category of Ex-servicemen are not available in a recruitment year to fill up the posts reserved for them, the vacancies would be carried forward to the next recruitment year. If no suitable candidate is available in the second recruitment year, the vacancies will be again carried forward to the third recruitment year. Even, if no candidate is available in the third year, the post will be filled up by a person of appropriate category.”²

4. The respondent also placed reliance, before the Tribunal, from whose order the present writ petition emanates, on Rule 5(c) and Rule 9(f) of the Delhi Police (Appointment and Recruitment) Rules 1980³ and an undated notification of 2018 issued by the Hon’ble Lieutenant Governor, Delhi, as well as the Ex-Serviceman (Rules) 1979, to contend that 10% of the vacancies advertised had mandatorily to be reserved for ex-Servicemen.

5. We, however, are not in agreement with the said contention. Rules 5(c) and 9(f) of the DPARR, the notification of 2018 and the Ex-Servicemen (Rules) 1979 generally deal with reservation in Group C posts. In the present case, however, Note 3 in the advertisement for

² Authority: Tripura Gazette, Extraordinary Issue, April 2, 2007 A. D. Para 11, sub para 6 (Notification No. F. 2.-193/SCWIGU98/ 01 dt. 02 April, 2007).

³ “DPARR”



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the 2018 Examination clearly stipulated that the reservation policy which would apply with respect to the said recruitment would be the reservation policy as stipulated in the Tripura Recruitment Rules.

6. The respondent, who is an ex-Serviceman, and had joined the Indian Army on 2 February 2000, and was a native of Tripura, applied, in response to the aforesaid recruitment advertisement dated 2018 for appointment as Constable (Exe.) in the Delhi Police. Undisputedly, the respondent was the only ex-Serviceman who appeared in the said examination, which took place on 23 February 2019.

7. The result of the examination was declared on 24 February 2019. The respondent was not selected, despite his being the only ex-Serviceman who appeared for the selection.

8. The respondent, accordingly, represented to the Delhi Police on 26 February 2019, submitting that he was entitled for being appointed as Constable (Exe.) against the reservation available for ex-Servicemen. In pressing the claim, the respondent relied on the general policy of 10% reservation for ex-Servicemen available in all Group-C posts.

9. By order dated 29 April 2019, the petitioner rejected the respondent's representation. It is worthwhile to reproduce the said communication dated 29 April 2019, thus:



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“To

Shri Mahesh Singh (Roll No. 700223)
S/o Shri Munshi Singh
R/o Ward No. 36, S.D. Mission Colony,
Sub-Divn, Sadar, P.S. A.D. Nagar
West Tripura - 799003

Subject: Special Recruitment Drive to the post of Constable (Exe.)
Male in Delhi Police, 2018 in the State of Tripura – Representation
regarding benefit of Ex-servicemen.

Reference your representation dated 27.02.2019 regarding
your claim of benefit of Ex-servicemen category in the Special
Recruitment Drive for the post of Constable (Exe.) Male in Delhi
Police, 2018 in the State of Tripura.

In this regard, it is to inform that your representation was
examined at Police Hdqrs. The Special Recruitment Drive for the
post of Constable (Exe.) male and female in Delhi Police, 2018
was conducted in the State of Tripura to fill up the following
vacancies in Delhi Police:-

Constable (Exe.) Male : Total-44 (UR-23, SC-07, ST-14)
Constable (Exe.) Female : Total-21 (UR-10, SC-04, ST-07)

During the Special Recruitment Drive, the State reservation
policy was followed. There was no mention of any reservation for
Ex-Servicemen in the advertisements published in the local dailies
during above Special Recruitment Drive. As per the policy of
Rajaya Sainik Board/Tripura, 2% vacancies are reserved for Ex-
Servicemen. Since only 23 Un-Reserved vacancies were there for
this Drive, keeping 2% of 23 did not work out to be any whole
vacancy. Hence, no vacancy could be earmarked for Ex-
Servicemen category.

It was Special Recruitment Drive, wherein it was intended
to give representation to the natives of Tripura State in Delhi
Police. In view of above facts and circumstances, your request is
regretted being devoid of merits.

(VIKRAM K. PORWAL)
DY. COMMISSIONER OF POLICE,
RECRUITMENT, DELHI.”

10. Thus, it is clear that the only basis for not appointing the
respondent as Constable (Exe) against the post reserved for ex-

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Servicemen was the application of the policy for reservation of ex-Servicemen as contained in the Tripura Recruitment Rules.

11. The letter of rejection acknowledges that (i) there were a total of 44 vacancies of Constable (Exe) Male, with 23 Unreserved, 7 Scheduled Castes, 14 Scheduled Tribes vacancies, against which the recruitment had been undertaken and that 2% of the vacancies were reserved for Ex-Servicemen.

12. Aggrieved by the petitioner's decision not to select him as Constable (Exe), and by the rejection of his representation on 29 April 2019, the respondent approached the Central Administrative Tribunal⁴ by way of OA 2072/2019⁵.

13. In his OA, the respondent prayed that the petitioner be directed to provide 10% reservation of posts for ex-Servicemen in the 2018 Examination and, consequently, to appoint him as Constable (Exe) against the available reserved vacancies for ex-Servicemen.

14. Alternatively, it was contended by the respondent before the Tribunal that, even if the 2% reservation available for ex-Servicemen under the Tripura Recruitment Rules was to be applied, the said percentage would have to be worked out on the total number of vacancies, and not on the number of unreserved vacancies. In other words, 2% would have to be worked out on 44 vacancies. 2% of 44 worked out to 0.88, which was required to be rounded off to 1. The

⁴ "the Tribunal" hereinafter

⁵ **Mahesh Singh v Delhi Police**



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respondent being the sole ex-Serviceman who had applied for the 2018 Examination, his contention was that he had necessarily to be appointed against that vacancy.

15. In its counter affidavit, filed by way of response to the OA, the petitioner contended that it had applied the 2% quota for Ex-Servicemen, as per Tripura Recruitment Rules to the number of unreserved vacancies, which was 23. As 2% of 23 worked out to 0.46, which was less than 0.5, it was submitted that no vacancy could be reserved for ex-Servicemen. It was further contended that, as per the applicable roster for vacancies against the 2018 Examination, no roster point was available in which an ex-Serviceman could be accommodated.

16. The OA of the respondent stands allowed by the Tribunal by judgment dated 7 March 2023, against which the petitioner Delhi Police has approached this Court by means of the present writ petition.

17. While proceeding to analyze the case on merits, the Tribunal initially delineated the core issue arising before it for consideration, thus, in para 12.1 of its judgment:

“12.1 In the present matter, the core issue involved is –

Question No.1 — Whether reservation for special category, i.e., “Ex-Servicemen” has to be on the basis of 10% reservation as contemplated in the Central Rules or 2% as advertised or contemplated under Tripura Recruitment Rules for special recruitment drive?

Question No.2 — Whether the reservation for Ex-Servicemen has



to be applied on the unreserved vacancies only or has to be applied to “overall vacancies notified in the advertisement irrespective of being unreserved/SC/ST quota” ?

18. While applying the 2% reservation quota for ex-Servicemen available under the Tripura Recruitment Rules, the Tribunal has, in para 12.6 to 12.9 and para 13 of the impugned judgment, reasoned thus:

“12.6 It is not disputed that as per the advertisement it was highlighted in Note-3 that reservation policy as per Tripura Recruitment Rules shall be made applicable. Factually, it is not disputed that even if 2% reservation for Ex-Serviceman is taken to be correct, 2% of 44 means 0.88 and rounding off of the same will be 1 vacancy. Therefore, at least one vacancy out of 44 was required to be reserved for Ex- Serviceman. In this case also the applicant stands selected and deserves to be appointed as Constable (Ex.) in Delhi Police. For the purpose of reservation for Ex-serviceman category it is the orders issued by Govt. of India that will apply to appointment in Delhi Police as Per Rule 5 (c) & 9 (f) of Delhi Police (Appointment & Recruitment) Rules, 1980. The Govt. of India issued Serviceman Rules, 1979 and the same were consolidated vide OM dt. 25.2.2014. Therefore, 10% of posts of Constable (Ex.) out of 44 are required to be reserved and filled up from Ex-Serviceman.

12.7 In the aforesaid context, it is to be seen whether overall method of reservation has to be applied for special category, i.e. Ex Servicemen in the factual scenario of the present case. In the event, the said overall method of reservation has to be applied necessary corollary would mean that there is substance in the submissions made by the counsel for the applicant inasmuch as total number of vacancies advertised was 44 and 2% reservation for Ex-Serviceman work out to 0.88 rounding off of the same will be 1 vacancy. Therefore, at least one vacancy out of 44 is required to be reserved for Ex-Serviceman.

12.8 The aforesaid issue is no longer *res integra*, which has been clearly laid down in the decision rendered by Hon'ble Supreme Court in the case of *Indra Sawhney etc. etc. v Union of India and ors.*⁶, the relevant part of the judgment is reproduced below:

⁶ 1992 Supp (3) SCC 217



812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture : all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as ‘vertical reservations’ and ‘horizontal reservations’. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations — what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this 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 (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains — and should remain — the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.

12.9 Relying on the aforesaid para, the Hon’ble Supreme Court in the case of ***Rakesh Kumar Daria v Rajasthan Public Service Commission and others***⁷, the three judges Bench considered the difference between vertical and horizontal reservation and held as under:

“7. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are ‘vertical reservations’. Special reservations in favour of physically handicapped, women etc., under Articles 16(1) or 15(3) are ‘horizontal reservations’. Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-

⁷ (2007) 8 SCC 785



reserved posts on their own merit, their numbers will not be counted against the reserved for the quota respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category.

[*Vide Indira Sawhney (Supra)*, *R. K. Sabharwal v State of Punjab*⁸, *Union of India v Virpal Singh Chauhan*⁹ and *Ritesh R. Sah v Dr. Y. L. Yamul*¹⁰]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

8. If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of

⁸ (1995) 2 SCC 745

⁹ (1995) 6 SCC 684

¹⁰ (1996) 3 SCC 253



candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates [But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidate on the ground that 'SC- women' have been selected in excess of the prescribed internal quota of four.]

9. In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 women candidates, which was equal to the quota for 'General Category - Women'. There was thus no need for any further selection of woman candidates under the special reservation for women, But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven women candidates selected on their own merit (candidates at S1.Nos.2, 3, 4, 5, 9, 19, 21, 25, 31, 35 & 41 of the Selection List) and another eleven (candidates at S1.Nos.54, 61, 62, 63, 66, 74, 75, 77, 78, 79 & 80 of the Selection List) included under reservation quota for 'General Category-Women'. This is clearly impermissible. *The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation.*

10. Similarly, we find that in regard to 24 posts for OBC, 19 candidates were selected by RPSC in accordance with merit from among OBC candidates which included three woman candidates. Thereafter, another five women were selected under the category of 'OBC - Women', instead of adding only two which was the shortfall. Thus there were in all 8 women candidates, among the 24 OBC candidates found in the Selection List. The proper course was to list 24 OBC candidates as per the merit and then find out number of woman candidates among them, and only fill the shortfall to make up the quota of five for woman.



11. The appellants' grievance that the selection adopted process by RPSC was contrary to the reservations policy contained in Rule 9(3) is justified. But the question is whether the entire selection should be set aside and whether all appellants should be granted relief. On completion of the selection process, 97 candidates were appointed in the year 2002 and have been serving as Judicial Officers for more than five years. There has also been a subsequent selection and appointments in the year 2005. Further all the selected candidates are not impleaded as parties. Even from among the original ten writ petitioners, only seven are before us. On the facts and circumstances, we do not propose to disturb the selection list dated 30.12.2001 or interfere with the appointments already made in pursuance of it. We will only consider whether the appellants before us are entitled to relief. We find that even if the selection list had been prepared by applying horizontal reservation properly, only the appellant (Rajesh Kumar Daria) in this appeal, and appellant Nos.3 and 6 in the connected appeal (Mohan Lal Soni and Sunil Kumar Gupta) will get selected. The other appellants were not eligible to be selected."

13. On careful consideration of the ratio laid down by the Hon'ble Supreme Court in **Rakesh Kumar Daira** (supra), it is indisputable that the Impugned Order has ignored the basic concept of reservation in so far as special category, i.e. Ex- Servicemen is concerned. The Impugned Order, Annexure A-1, is liable to be set aside for the reasons that it is contrary to ratio laid down by the Hon'ble Apex Court, wherein it has been noted as under:

- (i) There was no mention of any reservation for Ex-Servicemen in the advertisements published in the local dailies during above Special Recruitment Drive.
- (ii) As per the policy of Rajaya Sainik Board /Tripura, 2% vacancies are reserved for Ex-Servicemen.
- (iii) Since only 23 Un-Reserved vacancies were there for this Drive, keeping 2% of 23 did not work out to be any whole vacancy. Hence, no vacancy could be earmarked for Ex-Servicemen category."

19. Following the aforesaid reasoning, the Tribunal has set aside the order dated 29 April 2019, rejecting the respondent's representation



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and has directed the petitioner to prepare the final list of selected candidates applying the reservation rules applicable to the Delhi Police and, in the event of the respondent being found to be meritorious and entitled for appointment, to issue an order of appointment to him.

20. Aggrieved by the aforesaid decision, the Delhi Police has approached this Court by means of the present writ petition.

21. We have heard Mr. K.D. Sharma, learned Counsel for the petitioners and Mr. Anil Singhal, learned Counsel for the respondent, at length.

22. Mr. Sharma submits that there was no roster point against which the Ex-Servicemen could be accommodated. He further faults the Tribunal for having applied the 2% reservation quota under the Tripura Recruitment Rules to the total number of vacancies. Mr. Sharma's contention is that the 2% reservation could be applied only to the number of unreserved vacancies. He submits that if the 2% reservation for ex-Servicemen was also to cover the vacancies already reserved for SCs/STs and OBCs, it would result in reservation within reservation, which is not permissible in law.

Analysis

23. We are unable to countenance either of the said submissions.



24. At the outset, we reiterate that, as Note 3 in the advertisement covering the 2018 Examination specifically stipulated that the reservation policy applicable would be as per Tripura Recruitment Rules, the only benefit of reservation with candidates undertaking the Examination could seek was as available under the Tripura Recruitment Rules.

25. The provisions of Rule 5(c) and Rule 9(f) of the DPARR and of Standing Order dated 28 June 2016, would not, therefore, apply, as they were not incorporated, either expressly or by reference, into the Notification governing the 2018 Examination.

26. That leaves us with the more disputed issue of whether the 2% reservation for ex-Servicemen, provided in the Tripura Recruitment Rules, was to be computed with respect to the number of unreserved vacancies or to the total number of vacancies, i.e., with respect to 23 or 44.

27. There is also no substance in Mr. Sharma's contention that working out of 2% available reservation for Ex-Servicemen on the basis of figure of 44 vacancies would amount to grant of reservation within reservation.

28. This contention, as the Tribunal has correctly noted, ignores the different nature of reservation available for SCs/STs and OBCs, as compared to reservation available for Ex-Servicemen and other such categories. The reservation available for Ex-Servicemen constitutes



horizontal reservation, as compared to reservation available for SCs/STs and OBCs. Horizontal reservation intercuts vertical reservation available for SCs/STs and OBCs and, therefore, would also cover the vacancies available to be filled by vertical reservation. The reliance on the passage from *Indira Sawhney*, by the Tribunal, we must note in this context, is apt. We may, for the sake of clarify and at the cost of repetition, reproduce the passage, in part, once again:

“Horizontal reservations cut across the vertical reservations — what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this 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 (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains — and should remain — the same.”

29. Clearly, therefore, the percentage of horizontal reservations available is to be computed on the total number of vacancies and, thereafter, the candidate adjusted within the appropriate vertical reserved – or unreserved – quota, to which she, or he, belongs.

30. This position in law is, as the Tribunal has correctly noted, clearly underscored in paras 7 to 11 of the judgment of the Supreme Court in *Rakesh Kumar Daria*, reproduced in the impugned judgment of the Tribunal and once again reproduced as under:

“7. The second relates to the difference between the



nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are 'vertical reservations'. Special reservations in favour of physically handicapped, women etc., under Articles 16(1) or 15(3) are 'horizontal reservations'. Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the reserved for the quota respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category.

[Vide Indira Sawhney (Supra), R. K. Sabharwal v State of Punjab, Union of India v Virpal Singh Chauhan and Ritesh R. Sah v Dr. Y. L. Yamul]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

8. If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb



the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates [But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidate on the ground that 'SC- women' have been selected in excess of the prescribed internal quota of four.]

9. In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 women candidates, which was equal to the quota for 'General Category - Women'. There was thus no need for any further selection of woman candidates under the special reservation for women, But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven women candidates selected on their own merit (candidates at S1.Nos.2, 3, 4, 5, 9, 19, 21, 25, 31, 35 & 41 of the Selection List) and another eleven (candidates at S1.Nos.54, 61, 62, 63, 66, 74, 75, 77, 78, 79 & 80 of the Selection List) included under reservation quota for 'General Category-Women'. This is clearly impermissible. *The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation.*

10. Similarly, we find that in regard to 24 posts for OBC, 19 candidates were selected by RPSC in accordance with merit from among OBC candidates which included three woman candidates. *Thereafter, another five women were selected under the category of 'OBC - Women', instead of adding only two which was the shortfall.* Thus there were in all 8 women candidates, among the 24 OBC



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candidates found in the Selection List. The proper course was to list 24 OBC candidates as per the merit and then find out number of woman candidates among them, and only fill the shortfall to make up the quota of five for woman.”

(Emphasis supplied)

31. The application of the formula is therefore simple. The number of reserved category posts is computed on the basis of the total number of vacancies. For example, take a case in which there are 50 vacancies in total, of which 20 are unreserved, 10 are reserved for SC, 10 for ST and 10 for OBC candidates, and 10% vacancies are available for ex-servicemen (which is admittedly a horizontal reservation). 10% would be worked out, not on 20 (as the petitioners has done in the present case), but on 50. 5 vacancies, thus, have to be filled by ex-Servicemen. The Department would first have to prepare lists of candidates who, on merit, make it to the unreserved, SC, ST and OBC categories. Thus, the most meritorious 20 unreserved, 10 SC, 10 ST and 10 OBC candidates would figure in these lists.

32. Now assume a situation in which, of the 5 ex servicemen who competed, 3 were unreserved, 1 was SC, 1 was ST and there was no OBC ex-serviceman. The 3 unreserved category ex-servicemen would be entitled to be appointed under the vertical unreserved quota. Again, assume that, in the list of 20 meritorious candidates in the final select panel, 2 were ex-servicemen. In that event, applying paras 9 and 10 (particularly para 10) of *Rakesh Kumar Daria*, there would remain a shortfall of 1 “ex-serviceman-unreserved”. The third unreserved ex-serviceman would have to be accommodated, and the last unreserved “non-ex-serviceman” moved out. Similarly, if the SC



ex-serviceman figured in the list of 10 most meritorious SC candidates, no further adjustment would have to be made in that list. However, if he did not figure, he would have to be included in the list and the last non-ex-serviceman SC candidate in the list removed. Similarly, in the list of meritorious ST candidates, if the ST ex-serviceman found place, no further adjustment would have to be made. If he did not, however, he would have to be included in the list, and the last non-ex-serviceman ST candidate moved out.

33. As a result, the number of unreserved, SC, ST and OBC candidates would continue to remain 20, 10, 10 and 10 and the 5 ex-servicemen would also find place, thereby maintaining the sanctity of both vertical and horizontal reservation quotas without either one eating into the other. It is for this reason that the Supreme Court has held that horizontal reservations do not eat into vertical reservations, but “intercut” them.

34. In its recent decision in ***Rekha Sharma v Rajasthan High Court¹¹***, the Supreme Court held:

“9. It is quite well settled that the Horizontal Reservation is of two types : - (i) Compartmentalised Horizontal Reservation, and (ii) Overall Horizontal Reservation. The Compartmentalised Horizontal Reservation is such wherein the proportionate vacancies are reserved in each vertical reserved category. However, *in case of Overall Horizontal Reservation, the Reservation is provided on the total post advertised i.e. such reservation is not specific to each vertical category. As per the advertisement dated 22.07.2021, the vacancies in case of women candidates were classified/identified for each category i.e. General, OBC, SC, ST, MBC whereas for the Persons with*

¹¹ 2024 SCC OnLine SC 2109



benchmark disabilities, no such vacancies were mentioned in the said categories. Further, in the three-tier process of the Examination Scheme, the number of candidates to be admitted to the Main Examination were fifteen times the total number of vacancies (category wise) and the candidates had to qualify themselves by securing the minimum percentage of marks fixed for each of the categories in the Preliminary Examination. Therefore, the Persons with benchmark disabilities falling under the Overall Horizontal Reservation had to qualify for the Mains Examination by securing minimum cut off marks fixed for the concerned category in which he/she had applied.”

(Emphasis supplied)

In the present case, the Tripura Recruitment Rules provide for 2% vacancies “*in Class III and Class IV posts*”. Thus it would have to be computed, applying ***Rekha Sharma***, on the total number of vacancies.

35. Applying the principle contained in the said judgment, as the respondent is an unreserved category candidate, if he is found suitable for appointment as per merit, keeping in mind the one vacancy available for Ex-Servicemen, he would have to be accommodated in the vacancies which are filled in by unreserved category candidates.

36. The Allahabad High Court, speaking through Vikram Nath J, as he then was, dealt with a controversy identical to that which engages us, in ***Dr Rajesh Kumar Tewari v State of UP***¹². The contention of the State is thus noted, in para 2 of the report:

“2. Upon a request being sent by the Director, Higher Education, U.P., the Uttar Pradesh Higher Education Service Commission issued Advertisement Nos. 30, 31 and 32 jointly inviting applications for the post of Lecturer in different degree colleges and post graduate colleges for appointment of Lecturers in

¹² (2007) 112 FLR 17 (All): 2006 SCC OnLine All 1393



different institutions all over the State. A copy of the advertisement has been filed as Annexure 1. *According to the advertisement, total of 82 vacancies for the post of Lecturer in Hindi were advertised and the break up given was 41 posts for General category, 22 posts reserved for Other Backward Caste category, 17 posts reserved for the Scheduled Caste category and 2 posts reserved for the Scheduled Tribes category. The advertisement further mentioned that the reservation applicable for physically handicapped, dependents of freedom fighters and ex-service men was also applicable in the selection. According to both the petitioners, they had applied under the category of dependents of freedom fighters, but the respondents had illegally not applied the reservation in accordance with law for the dependents of freedom fighters and therefore, they were being illegally deprived from being considered under the said category. Counter affidavit has been filed by the respondents in which the fact that the petitioners have applied and are eligible for consideration under the dependents of freedom fighters category, is not disputed. The controversy which has arisen upon the filing of the counter affidavit is that the respondents have not correctly applied the provisions of U.P. Act No. 4 of 1993. What has been stated in the counter affidavit filed by Shri Nakachhed Ram posted as Assistant Director in the Directorate of Higher Education, is that although 2% reservation quota is admissible for the dependents of freedom fighters, but out of 41 vacancies for General Category, one post was reserved for the dependents of freedom fighters. It has further been stated in the counter affidavit that horizontal reservation for physically handicapped, dependents of freedom fighter and Ex-service men quota are allowed within the prescribed quota of General, OBC, SC and ST category. Paragraph 5 of the counter affidavit containing these averments is quoted hereunder:*

“That the contents of paragraph No. 6 of the writ petition are not admitted for the reason already given in para 1(d) of this counter affidavit. However, it is pertinent to submit that vertical reservation cannot exceed 50% of total vacancies. Hence, horizontal reservations for Physically Handicapped, Dependent of the Freedom Fighter and Ex-Serviceman quota are allowed within the prescribed quota of General, OBC, SC and ST category. It is further submitted that only 2% reservation quota is admissible for the dependents of freedom fighter (Annexure 1 to this counter affidavit). In the present case, out of 41 vacancies for General category one post was reserved for the dependent of Freedom Fighters. Hence, the averments to the contrary made in para under reply are incorrect and therefore denied.”

(Emphasis supplied)



37. The High Court went on to resolve the issue thus:

“12. In the present case, it is admitted fact that 82 vacancies were advertised and the quota fixed for the dependents of freedom fighters is 2%. Thus, 2% of 82 being more than 1.5 would result into 2 posts in that quota. The law with regard to rounding off is very clear and well settled. Where the value is one-half or more, it has to be rounded off to the next whole number and where it is less than one-half, it has to be ignored. In the present case, 2% of 81 comes to 1.62. It being more than one-half, the value to be taken is 2. This view is supported by the decision of the Hon'ble Apex Court in the case of *State of U.P. v Pawan Kumar Tiwari*¹³.

13. The respondents have, therefore, to prepare a separate panel of the selected candidates in the dependents of freedom fighters quota for 2 posts and thereafter place them in the respective caste category. In the present case, as is clear from the averments contained in paragraph 6 of the counter affidavit, the quota for the dependents of freedom fighters has been calculated in the different caste categories. The respondents have calculated only one seat in the general category and no quota in the other 3 caste categories because 2% of 41 comes to 0.82, which amounts to 1 post and in all the other 3 caste categories, the vacancies being less than 25, 2% of each of the vacancies being less than 0.5, no vacancy of dependents of freedom fighters quota has been carved out in the other 3 caste categories.

14. Such application of the quota for dependents of freedom fighters is contrary to the provisions of the U.P. Act No. 4 of 1993 and also the Government Order dated 22.10.2001 and therefore, cannot be sustained.

15. *It is, thus, held that vacancies for applying reservation pursuant to the UP Act No. 4 of 1993 have to be calculated from the total number of posts advertised and not from the number of posts reserved for OBC, SC/ST and the unreserved posts for open competition. The correct*

¹³ (2005) 2 SCC 10; 2005 (104) FLR 582 (SC) : 2005 (28) AIC 774 (SC)



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number of vacancies would come to 2 and not 1 as alleged in the counter affidavit.”

(Emphasis supplied)

38. Though the Allahabad High Court also relied, in arriving at its findings, on the applicable local statute, its findings are in tandem with the law now laid down in ***Rekha Sharma***.

39. Applying the above legal position to the facts before us, the number of ex-Servicemen category vacancies which are available, however, the percentage would have to be worked out on the total number of vacancies, and not on the vacancies of unreserved category candidates.

40. Thus worked out, 2% of 44 works out to 0.88.

41. As noted by the Allahabad High Court in ***Dr Rajesh Kumar Tewari***, the Supreme Court has, in ***Pawan Kumar Tiwari***, clarified that, where, applying the reservation policy, if the number of vacancies applying the reservation quota in any particular category is found to be a fraction, that fraction, if greater than 0.5 would have to be rounded off to the next whole number. Applying the said principle, as 2% of 44 works out to 0.88, one vacancy would be available to be filled by ex-Servicemen.

42. The respondent being the only ex-Serviceman, who had applied pursuant to the 2018 advertisement, he would be entitled to be considered against the said vacancy.



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Conclusion

43. We, therefore, find no infirmity with the impugned judgment of the Tribunal, which is upheld in its entirety.

44. The writ petition is, accordingly, dismissed, with no order as to costs.

C. HARI SHANKAR, J.

MANOJ JAIN, J.

DECEMBER 12, 2024

ar/dsn

Click here to check corrigendum, if any