

PRADIP MOHANTY, J & B.K.NAYAK, J.

W.P.(C) NO.66 OF 2010 (Decided on 25.01.2011)

STATE OF ORISSA & ORS.

..... Petitioners.

. Vrs

SUBRAT KUMAR TRIPATHY

..... Opp.Party.

CONSTITUTION OF INDIA, 1950 – ART.16 (1) & (4).

For the Petitioners - Addl. Standing Counsel.
For Opp.Party - M/s. Kali Prasanna Mishra,
T.P.Tripathy, L.P.Dwivedy

B.K.NAYAK, J. The State of Orissa and the Staff Selection Commission as petitioners have filed this writ application challenging the order dated 05.08.2009 passed by the Orissa Administrative Tribunal in O.A.No.269 of 2008 vide Annexure-5.

2. The facts of the case are that pursuant to the advertisement dated 27.08.2002 issued by the Orissa Staff Selection Commission, the opposite party applied for appointment to the post of Sub-Inspector of Police. The opposite party, who is a general candidate claimed appointment as a sports person against the sports quota. He came out successful in the written examination and was called to appear in the psychological test, physical test and viva voce test. He came out successful in psychological test, but fell short of the physical requirement as applicable to unreserved/general candidates. The physical requirement for unreserved candidate was that the candidate must be 168 cm in height and 55kg in weight. The requirement of minimum height for SC/ST candidate was however 163 cm. The opposite party is 165 cm in height and 50 kg in weight and therefore in the physical test he fell short of 3 cm in height and 5 kg. in weight. The opposite party initially filed O.A.No.1515(C) of 2004 before the Orissa Administrative Tribunal, Cuttack Bench, Cuttack for a direction to the petitioners to allow him to face the viva voce test and to give him appointment against the sports quota. The Tribunal disposed of the original application on 16.08.2004 directing petitioner No.3, the Secretary of the Staff Selection Commission to examine the averments made in the original application and to pass appropriate orders regarding the prayer of the opposite party within two months from the date of receipt of the copy of the order. The further direction was to communicate the decision of petitioner No.3 to the opposite party. In pursuance of such order, the Staff Selection Commission rejected the prayer of the opposite party for relaxation of requirement of minimum physical standard and the physical test and the said decision was communicated to the opposite party vide Commission letter No.1271 dated 07.04.2004 (Annexure-2). Thereafter the opposite party filed the present O.A.No.2208(C) of 2004 before the Administrative Tribunal, Cuttack Bench, Cuttack, which was transferred to the Principal Bench at Bhubaneswar and renumbered as O.A.No.269 of 2008 with a prayer to direct the present petitioners to allow the opposite party to face the viva voce test and to appoint him as S.I. of Police

against the post reserved for sports persons in view of the Government of Orissa in G.A. Department Resolution No.24808-Gen dated 18.11.1985.

3. In the O.A., the present petitioners, who were respondents therein, filed a Counter Affidavit stating that there was no scope for relaxation of any of the conditions specified in the advertisement in respect of Sports persons. In other words, the candidates claiming appointment against sports quota have to be governed by the criteria laid down in respect of the relevant caste category to which they belong. The further stand of the petitioners in the counter affidavit was that the present opposite party had filed a representation seeking relaxation and the said representation was not considered as it was not possible to bring any relaxation in individual cases unsupported by any guidelines which will be applicable to all candidates.

4. The learned Tribunal disposed of the original application by order dated 05.08.2009 (Annexure-5) and directed that the opposite party be put through the remaining tests i.e., the Physical Test and Viva Vove Test and be considered for appointment against a vacant post if found suitable and that age would be no bar for such appointment. It was further directed that the entire exercise be completed within a period of three months from the date of receipt of the copy of the order of the Tribunal. For giving such direction the Tribunal compared the opposite party with reserved candidates of S.C./S.T. category for whom the requirement of minimum height is 163 cm and reasoned that in case for S.C./S.T. candidates the minimum height required for the post of S.I. of Police is 163 cm, the opposite party being a sports person, who is more efficient physically, cannot be discriminated merely because he belongs to the general caste, i.e., unreserved category. The Tribunal also relied upon the Government Resolution No.24808-Gen dated 18.11.1985 and held that since the Resolution provides only for requirement of minimum educational qualification as the qualifying standard, the opposite party, who is a sports person, is required to qualify such minimum standard set for selection in all respect. In relation to the deficiency of the opposite party to conform to the minimum weight of 55 kg, the Tribunal has not made any consideration.

This order of the Tribunal is under challenge.

5. Mr.Rath, the learned Additional Standing Counsel contends that without there being any specific guideline or Rules to that effect, the Administrative Tribunal has no jurisdiction to relax the height and weight of the opposite party. It is also his submission that observation of the Tribunal that minimum height requirement for the post is 163 cm which is fixed for the S.C./S.T. category candidates is wholly misconceived as because the reserved category of S.C./S.T. candidates were only given a relaxation with regard to height which is less than the minimum required standard. In other words, the relaxation or concession given to a particular type of candidate cannot be equated with reservation and cannot be treated to be the minimum requirement for the post concerned. He also submits that the reservation for sports person, like that of women and physically handicapped being horizontal reservation, the candidates claiming such reservation must conform to the minimum eligibility criteria fixed for the category to which they belong. The learned counsel for the opposite party strongly relies on the Government Resolution dated 18.11.1985 and vehemently urges that the only requirement is the minimum educational qualification and even if the opposite party fell short of the height and weight required for general/unreserved candidates, he cannot be denied appointment in the post reserved for sports persons.

6. Before going to consider the legality and propriety of the Tribunal's order and the contentions raised by the learned counsel for both the parties, it is necessary to see the Government in the G.A. Department Resolution No.24808-Gen dated 18.11.1985 which is reproduced below :

“ In their Resolution No.1099 S.C., dated the 16th February, 1985, the Tourism, Sports & Culture (Sports & Culture) Department have decided to adopt a Sports Policy, broadly in keeping with the National Policy guidelines for ensuring systematic and concerted efforts for development of sports and games in the State. Besides certain other facilities provided for the sportsmen under the Sports Policy, a decision has also been taken that one percent of the jobs in the Government and public Sector Organizations will be kept reserved for deserving sportsmen representing the State subject to their meeting the minimum educational requirement.

2. In order to implement this decision in a systematic manner, it has now been decided by Government that one percent of vacancies arising in a year in each of the categories of Class II and Class III services/posts and in Class-IV posts filled by direct recruitment should be reserved for the sportsmen. Further, it has been decided that the 8th vacancy in cycle of 100 vacancies should be reserved for sportsmen.

3. A cell shall be constituted in the Directorate of Sports to register the names of the sportsmen and one of the Assistant Directors will remain in charge of this cell. The Assistant Director in charge shall receive applications from the sportsmen for registration. Applications for registration shall be accompanied with certificates relating to educational qualification and training, etc. and also with a certificate to the effect that the candidate is a sportsman and participates and represents the State in regular open national Events and Championships.

4. Recognized Associations/ Federations/ Organizing bodies may issue the sports certificates to the candidates who participated or represented in the Open National Events and Championships.

The Director, Sports shall issue identity cards to the deserving sportsmen on the basis of the above certificates.

5. The sportsmen shall produce the identity card issued in their favour by the Director, Sports at the time of their appointment against the posts reserved for them.

6. The above instructions may be followed by different Departments and Heads of Departments and the relevant recruitment rules framed by the Departments of Government may be amended accordingly.”

7. On the direction of the Court, the learned Additional Standing Counsel produced the copy of the advertisement dated 27.08.2002 which reveals that a total of 254 number of posts of S.I. of Police was advertised with the following break up for different categories.

S.C.	– 41	(13 reserved for women candidates)
S.T.	– 57	(19 reserved for women candidates)
SEBC	- 71	(23 reserved for women candidates)
Unreserved	- 85	(28 reserved for women candidates)

Just below the above break up a Note has been appended and Sl. No.(2) of the Note states that the above category wise vacancy position is inclusive of reservation for Ex-servicemen and Sportsmen as per Rules in force.

8. It is quite clear from the Government Resolution dated 18.11.1985 and the Note given in the advertisement as seen above, that the reservation for a sportsman in the service is a horizontal reservation and not vertical one which is available to be made in public services by the State in exercise of its enabling power under Clause(4) of Article-16 of the Constitution of India. There is no dispute that the opposite party is a general caste candidate and therefore, he will be entitled to claim reservation as a sportsman to a post from amongst those meant only for the general caste/unreserved candidates. The Tribunal has fallen to error by making a comparison of the opposite party with candidates of S.C./S.T. category for whom a relaxation of height by 5 cm has been granted. Such relaxation or concession given to the reserved category of S.C./S.T. candidate cannot be said to be the minimum standard of height required for appointment to the post of S.I. of police. In fact the requirement of a minimum standard of height is 168 cm.

9. Explaining the nature of reservation for sports person, physically disabled and women etc. in public services, the Apex Court in the case of ***Jitendra Ku.Singh and another-v.State of Uttar Pradesh and others : (2010) 3, SCC 119***, took note of the observations made in the case of ***Indra Sawhney v.Union of India : 1992 Supp (3) SCC 217*** and held as follows :

“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.”

10. In the case of ***Shiv Prasad –v.-Government of India and others (2008) 10 Supreme Court Cases 382*** the aforesaid observation made in the case of Indra Sawhney (supra) was also followed in the matter of horizontal reservation for women by the Apex Court which upheld the appointment of a woman candidate in the unreserved category as Assistant professor to the exclusion of a more meritorious male candidate of such unreserved category.

11. We are therefore of the view that the Tribunal was not justified in saying that since a S.C./S.T. candidate of 163 cm height was eligible to be considered for appointment, the opposite party should have also been considered in the sports quota though he belonged to general/unreserved category.

12. The reasons given by the Tribunal that under the Government resolution dated 11.08.1985 the only requirement for sports person is to attain the minimum educational qualification and nothing else is required is wholly fallacious. There being no specific rule for reservation of posts and services for sports persons, it is not disputed that the Government Resolution is governing the field which provides for reservation of 1% of jobs for sports persons as per the Government policy. However, the physical requirement and other eligibility criteria for recruitment to the post of S.I. of Police has not been given a go bye in the Government Resolution. The resolution does not mean that having the minimum requisite educational qualification, a sports person should be appointed without passing the required tests those are necessary to be passed by candidates of all categories in order to qualify for the service. The reservation for a sports person being horizontal in nature, it means that fulfilling the minimum eligibility criteria and obtaining the minimum qualifying marks in all the tests a sports person may be preferred to other more meritorious and qualified candidates of his category. Since the required physical standard for sports person has not been dispensed with by the State Government, rightly the State has not granted relaxation in respect of requirement of physical standard in favour of the opposite party.

13. In the light of the aforesaid discussions, we are of the view that the Tribunal's order under Annexure-5 is illegal and unsustainable. We, therefore, set aside the said order of the Tribunal.

The writ application is accordingly allowed. No costs.

Writ petition allowed.