

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No. 575 of 2022

Sri Charanjit Debnath

.....Petitioner

Vs.

The Union of India and 4 Ors

.....Respondents

For the Petitioner(s)	:	Ms. R. Purkayastha, Advocate
For the Respondent(s)	:	Mr. B. Majumder, Dy. S.G.

HON'BLE MR. JUSTICE ARINDAM LODH
Order

31/10/2022

By way of filing the present writ petition, the petitioner has challenged the select list prepared by the respondents for appointment to the post of Constables (GD) in Central Armed Police Forces (for short, CAPFs), NIA & SSF and Rifleman (GD) in Assam Rifles (AR) in so far 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.

2. Heard Ms. R. Purkayastha, learned counsel appearing for the petitioner. Also heard Mr. B. Majumder, learned Dy. S.G. appearing for the respondents-Union of India.

3. Ms. R. Purkayastha, learned counsel for the petitioner has submitted that the subject in dispute is quite covered by a decision

of the Delhi High Court in ***Hemant Pokhriyal Vs. Staff Selection Commission and Ors.*** [WP(C) No. 4982/2021 and C.M. No. 15269/2021 decided on 1st October, 2021].

4. Ms. R. Purkayastha, learned counsel has also relied upon the decisions rendered by this Court in case No. **WP(C) 718/2020** titled as ***Sri Shambhu Debnath Vs. The Union of India and 5 Ors.***, **WP(C) 117/2021** titled as ***Sri Arpan Chowdhury Vs. The Union of India and 5 Ors.***, and **WP(C) 120/2021** titled as ***Smt. Sangita Tanti Vs. Union of India and 4 Ors.***, decided on 22.08.2022.

5. Briefly stated, vide notice dated 21.07.2018, an advertisement was issued by the Staff Selection Commission for recruitment to the post of Constables (GD) in Central Armed Police Forces (CAPFs), NIA & SSF and Rifleman (GD) in Assam Rifles (AR). It was stated therein that the recruitment process will consist of Computer Based Examination, Physical Efficiency Test, Physical Standard Test and Medical Examination. The petitioner has been declared qualified in Computer Based Examination, Physical Efficiency Test, Physical Standard Test as well as DME. After completion of the entire selection process, a notification vide No. 07/01/2018-C-1/2(Vol-II) had been issued by the Staff Selection Commission declaring the State-wise, post-wise and category-wise last cut off marks of the qualified candidates. On 21.01.2021, the declaration of the final merit list along with force allocation has been made by the SSC, wherein, most illegally, the name of the petitioner has not found place. The final merit list was a shock for the petitioner as the petitioner had obtained higher marks than the cut off marks in the UR category in case of Code A,

Code D and Code E. The petitioner submitted that after seeing the final mark-sheet of the petitioner, issued by the respondents, the petitioner was surprised to note that in the mark-sheet it has been mentioned that the petitioner has availed height relaxation, which is not at all true. Being aggrieved, by representation dated 02.02.2021, the petitioner had ventilated his grievance to the respondent No.4 for redress, but till date, his prayer has been kept unattended and unanswered though on enquiry about his representation, the respondent No.4 had repeatedly assured him to redress his grievance.

Being aggrieved and finding no other alternative, the petitioner filed the instant writ petition before this Court.

6. Ms. R. Purkayastha, learned counsel appearing for the petitioner has submitted that as an O.B.C candidate the petitioner has not availed any relaxation applicable to reserved category candidates. Learned counsel for the petitioner has further submitted that from the PET/PST qualifying mark-sheet, it is clearly evident that the height of the petitioner is 166.5cm and the minimum height required for a candidate of Tripura is 162.5cm, the minimum chest for the candidates of the State of Tripura is 77-82cm and the petitioner's chest is 78-83cm and in the said result-sheet it has been clearly mentioned that the petitioner has not availed any height relaxation or chest relaxation and therefore the petitioner is eligible to get selection under the UR category as per the selection procedure mentioned as advertised.

7. It is found that many similarly situated reserved category candidates were appointed in the post of Constable in CAPFs being treated as UR candidate and found place in the merit list published

by the respondents. Similar matter came up before a Division Bench of the Delhi High Court in the case of **Hemant Pokhriyal**(*supra*). The Division Bench of Delhi High Court held that the procedure adopted by the respondents was not in consonance with the terms and conditions mentioned in the advertisement and directed the respondents to prepare a revised select list incorporating the name of the petitioner i.e. Hemant Pokhriyal. The Division Bench of the Delhi High Court observed as under:

"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."

Thereafter, while allowing the writ petition in the case of **Hemant Pokhriyal**(*supra*), ultimately, it was had held that:

*"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 devise 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 overruling, 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."

8. On a query, Ms. Purkayastha appearing for the petitioner has informed this Court that selection process was completed in the month of January, 2021. The petitioner has approached this Court challenging the said select list prepared by the respondents in the month of May, 2022 i.e. after lapse of more than one and half years.

9. I have also noticed the decision rendered by this Court in the case of **Arpan Chowdhury** (*Supra*) and **Sri Shambhu Debnath** (*supra*) as well as the case of **Smt. Sangita Tanti** (*supra*). While allowing those writ petitions *supra* this Court had followed the directions and observations made by the Division Bench of Delhi High Court in **Hemant Pokhriyal** (*supra*) and directed the respondents to appoint them even by way of creating supernumerary vacancies.

10. Keeping in mind the decisions and directions passed in **Hemant Pokhriyal** (*supra*) as well as the directions passed by this Court in the above mentioned writ petitions, I direct the respondents to prepare a revised select list incorporating/including the name of the petitioner in accordance with his merit position on being treated him as UR candidate and appoint him in the advertised post without disturbing the candidates already selected and appointed.

11. The entire process of appointment of the petitioner shall be completed within a period of 6(six) weeks from today.

With the aforesaid directions, the instant writ petition stands allowed and disposed.

सत्यमेव जयते

JUDGE