

SUPREME COURT OF INDIA

Union of India

Vs.

Ramesh Ram

S.L.P.(Civil) Nos. 13571-13572 of 2008

(K.G. Balakrishnan CJI., P. Sathasivam and J.M. Panchal JJ.)

14.05.2009

JUDGEMENT

K.G. Balakrishnan, CJI.

1. S.L.P.(C) Nos. 13571-13572 of 2008 are filed by the Union of India against the order dated 20.03.2008 passed by the High Court of Judicature at Madras in W.P. (C) Nos. 1814 & 1815 of 2008. Other aggrieved persons filed S.L.P. (C) Nos. 13297-13298, 13581 and 14834-14838 of 2008. Being aggrieved by the action of the Union Public Service Commission and the Government of India through which candidates in reserved category selected in unreserved category were given choice to opt for service of higher preference in terms of Rule 16(2) of the Civil Services Examination Rules, (hereinafter referred to as "CSE"), successful candidates filed Writ Petition (c) Nos. 297, 312, 336 & 416 of 2008 under Art. 32 of the Constitution of India to declare Rule 16(2),(3),(4) and (5) of the Civil Services Examination Rules, 2002 as ultra vires being inconsistent with Rule 16(1) of the said Rules as violative of Arts. 14, 16(4) and 335 of Constitution of India, consequently, quash the second provisional list released by Press Note dated 26.6.2008.

2. In Civil Services Examination 2005, in the first phase, UPSC recommended 425 candidates keeping the consolidated reserved list of 64 candidates as per Rule 16(4) and 16(5). As per Rule 16(2), out of 425 candidates, 31 OBC candidates and 1 SC candidate were selected on merit without availing any relaxation/concession. Out of above 31 OBC and 1 SC candidates, 26 OBC and 1 SC candidates were allocated service against the reserved vacancies as by this process they got a service of higher choice in the order of preference. If these 27 candidates were considered for service allocation against the general category and in competition with general candidates, they would have got the service of lower preference. Rule 16(2) enables candidate of any of the reserved categories to get a service of higher preference so that he is not placed at disadvantageous position vis-à-vis other candidates of his category.

3. Certain OBC candidates filed Original Application before the Central Administrative Tribunal, Madras Bench (CAT) challenging Rule 16(2). It was contended that adjustment of

OBC merit candidates against OBC category was illegal. According to them, such candidates should be adjusted against the unreserved or general category. This would allow more OBC candidates to be recommended for posts and it would also allow the lower ranked OBC candidates a better choice of service.

4. The Tribunal, after interpreting amended Rule 16(2) and various judgments of this Court, concluded that OBC candidates who were selected on merit must be adjusted against the 'general category'. However, it ordered that Rule 16(2) may be applied in terms of decision of this Court in *Anurag Patel vs. U.P. Public Service Commission & Ors.*¹ to ensure that allocation of service is in accordance with rank-cum- preference with priority given to meritorious candidates for service allocation.

5. Challenging the order of the Central Administrative Tribunal, the Union of India and other aggrieved persons preferred Writ Petitions before the High Court of Judicature at Madras. Some got themselves impleaded in the said proceedings. By the impugned order dated 20.03.2008, the High Court held Rule 16(2) as unconstitutional. After holding so, the High Court set aside the select lists and directed the Government of India and UPSC to rework service allocation de hors Rule 16(2).

6. As per the final result of CSE-2005, out of 457 vacancies, 425 candidates were recommended for appointment which included 210 General, 117 OBC, 66 SC and 32 ST category. UPSC was maintaining a consolidated reserve list of 64 candidates which included 32 General, 31 OBC and 1 SC candidates ranking in order of merit below the last recommended candidate under respective category as per Rule 16(4) and (5) of the CSE Rules, 2005. Admittedly, 31 OBC category candidates selected in the General Merit List were not included in the general category and instead they were part of 117 OBC category candidates selected with relaxed standard and an equal number of OBC category candidates in the lower order of merit were denied job. These 31 OBC category candidates selected in general merit list were included in the reserve list of OBC category candidate and thereby making the total of 117 in view of Rule 16(2) of the amended CSE Rules. The purpose of including those OBC category candidates selected in merit list was to give them a higher preferred service from the OBC category and this was the reason for which the Rules were amended.

7. The case of the contesting respondents is that the newly introduced system which is different from the single list system before the amendment undermines the rights of the reserved category candidates to get higher preferred services like IAS, IPS or IRS and also reduces the number of reserved candidates selected while simultaneously increasing the number of general candidates. It also puts candidates who come through second list at a disadvantage in terms of seniority and promotions for rest of their career in their respective services. By the impugned order, the Central Administrative Tribunal as well as the High Court vindicated the grievance of all, particularly, OBC candidates.

8. By virtue of notification by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), New Delhi dated 04.12.2004, CSE Rules were

amended and we are concerned with Rule 16 (1) (2) (3) (4) and (5) which are reproduced hereunder:-

"16.(1) After interview, the candidates will be arranged by the commission in the order of merit as disclosed by the aggregate marks finally awarded to each candidate in the main examination. Thereafter, the Commission shall for the purpose of recommending candidates against unreserved vacancies, fix a qualifying mark (hereinafter referred to as general qualifying standard) with reference to the number of unreserved vacancies to be filled up on the basis of the main examination. For the purpose of recommending reserved category candidates belonging to SC, ST and OBC classes against reserved vacancies to be filled up in each of these categories on the basis of the main examination:

Provided that the candidates belonging to the SC, ST & OBC classes who have not availed themselves of any of the concessions or relaxations in the eligibility or the selection criteria, at any stage of the examination and who after taking into account the general qualifying standards are found fit for recommendation by the commission shall not be recommended against the vacancies reserved for SC, ST & OBC.

16 (2) While making service allocation, the candidates belonging to the SC, ST or OBC recommended against unreserved vacancies may be adjusted against reserved vacancies by the Govt. if by this process they get a service of higher choice in the order of their preference.

16(3) The Commission may further lower the qualifying standards to take care of any shortfall of candidates for appointment against unreserved vacancies and any surplus of candidates against reserved vacancies arising out of the provisions of this rule, the commission may make the recommendations in the manner prescribed in sub-rule (4) and (5).

16 (4) While recommending the candidates, the commission shall, in the first instance, take into account the total number of vacancies in all categories.

This total number of recommended candidates shall be reduced by the number of candidates belonging to the SC, ST & OBCs who acquire the merit at or above the fixed general qualifying standard without availing themselves of any concession or relaxation in the legibility or reallocation in the eligibility or selection criteria in terms of the provision to sub rule (1). Along with this of recommended candidates, the commission shall also declare a consolidated reserve list of candidates which will include candidates from general and reserved categories ranking in order of merit below the last recommended candidate under each category.

The number of candidates in each of these categories will be equal to the number of reserved category candidates who were included in the first list without availing of

any relaxation or concession eligibility or selection criteria as per proviso to sub rule (1), among the OBC categories in the reserve list will be in each category.

16(5) The candidates recommended in terms of the provisions of sub rule (4), shall be allocated by the Govt. to the services and where certain vacancies still remain to be filled up, the Govt. may forward a requisition to the commission requiring it to recommend, in order of merit, from the reserve list, the same number of candidates as requisitioned for the purpose of filling up the unfilled vacancies in each category."

9. Before the Central Administrative Tribunal as well as the High Court, the main challenge centers around Rule 16(2) of the Rules. The unamended as well as amended Rule 16(2), are as follows:- Rule 16(2) unamended Rule 16(2) amended The candidates belonging to any of While making service allocation, the Scheduled Castes or Scheduled the candidates belonging to the Tribes or the Other Backward Scheduled Castes, the Scheduled Classes may, to the extent of the Tribes or Other Backward Classes number of vacancies reserved for recommended against unreserved the Scheduled Castes and the vacancies may be adjusted against Scheduled Tribes and the Other reserved vacancies by the Backward Classes be recommended Government, if by this process, by the Commission by a relaxed they get a service of higher choice standard, subject to the fitness of in the order of their preference. these candidates for selection to the services.

Provided that the candidates belonging to the Scheduled Castes and the Scheduled Tribes and the other backward Classes who have been recommended by the Commission without resorting to the relaxed standard referred to in this sub-rule shall not be adjusted against the vacancies reserved for the Scheduled Castes and the Scheduled Tribes and the Other Backward Classes.

10. The questions that have to be answered are as follows:

“(i) Whether reserved category candidates i.e., OBC/SC/ST who were selected on merit and placed in the list of general/unreserved category candidates could be considered as reserved category candidates at the time of "service allocation"

(ii) Whether Rule 16(2) (3) (4) and (5) of the CSE Rules are inconsistent with 16(1) and violative of Arts. 14, 16(4) and 335 of the Constitution of India.

(iii) Whether the decision of the Central Administrative Tribunal in this case can be valid as it relied upon following Rule 16(2) of the Civil Service Examination Rules as far as it is conformed with the ratio of *Anurag Patel vs. U.P. Public Service Commission and Others*² which had taken reference from the judgment of *Ritesh R. Shah vs. Dr. Y.L. Yamul and Others*³ which is actually dealing with reservation in the admission for the seats in the post graduation medical courses and whether the reservation for admission in the educational institutions can be applied in a different scenario of considering the Constitutionality of a Government policy with regard to reservation in service under Union or State and if yes how far.

(iv) The five judges' Bench of this Court has decided in the case of *R.K. Sabharwal and Others vs. State of 10 Punjab and Others*⁴ as follows in paragraph 4:

".....he reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition." (emphasis supplied)

Now to follow this ratio, a number of questions arise in this case. Firstly, this judgment is strictly confined to the enabling provision of Article 16(4) of the Constitution under which the State Government has the sole power to decide whether there is requirement for reservation for the backward class of people in the service under the State. But the present case deals with the posts under Government of India being selected through Union Public Service Commission. Whether the above mentioned ratio can be strictly applicable here. Secondly, under the proviso of Rule 16(1) of the notification which is in question it has been provided that any candidate belonging to the SC, ST and OBC classes who have not availed themselves of any of the concessions or relaxations in the eligibility or the selection criteria, at any stage of the examination and who after taking into account the general qualifying standards are found fit for recommendation by the commission shall not be recommended against the vacancies reserved for SC, ST and OBC which is very much in accordance of the above judgment.

But through the disputed Rule 16(2) the candidates belonging to the SC, ST or OBC so recommended under Rule 16(1) against unreserved vacancies may be adjusted against reserved vacancies by the Government and by this process they get a higher choice in the order of their preference. Now it is to be resolved whether the candidates who have availed themselves of the better preferences available only for the reserved category candidates can be placed under the merit/general category as they are availing the relaxation/concessions available only for the reserved category people or they can be adjusted in the reserved category list as provided under the disputed Rule. Thirdly, if they are put in the general category along with the other general category candidates who are not eligible for any relaxations and are appointed to the services totally on the basis of their merit whether it will not violate the mandate of Articles 14 and 16(1) & (2) of the Constitution as it is providing with different scope of opportunity for the candidates placed under the general/merit category on the basis of caste.

11. It is also to be maintained that Government can make relaxation to a limit of prescribed percentage of a particular reserved category in accordance with the judgment rendered in *Indra Sawhney vs. Union of India*⁵.

The relevant paras are as follows:

".....the reservations contemplated in clause (4) of Article 16 should not exceed 50%.

810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in farflung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.

811. In this connection 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."

(emphasis supplied) In the light of the above-mentioned decision whether it is reasonable not to give better preference of posts in service for the persons of reserved category who have been selected in the open competition field on the basis of their own merit and even if they are given such better preference whether that should not come under this specific percentage as it will only be a certain relaxation or concession and not a proper form of reservation as observed in the same judgment in paragraph 813 is as follows:

"813. It is, however, made clear that the rule of 50% shall be applicable only to reservations proper; they shall not be -- indeed cannot be -- applicable to exemptions, concessions or relaxations, if any, provided to 'Backward Class of Citizens' under Article 16(4)."

12. In the case of *Union of India and Another vs. Satya Prakash and Others*⁶ this Court dealt with the unamended Civil Service Examination Rules prior to 2002 wherein the more meritorious candidates could not opt for a better service.

It was held in Para 19 as under:

".....While a reserved category candidate recommended by the Commission without resorting to the relaxed standard will have the option of preference from the reserved category recommended by the Commission by resorting to relaxed standard, but while computing the quota/percentage of reservation he/she will be deemed to have been allotted seat as an open category candidate (i.e. on merit) and not as a reserved category candidate recommended by the Commission by resorting to the relaxed standard."

It was thus directed in para 20 as under:-

"20. If a candidate of the Scheduled Caste, the Scheduled Tribe and Other Backward Class, who has been recommended by the Commission without resorting to the relaxed standard could not get his/her own preference in the merit list, he/she can opt a preference from the reserved category and in such process the choice of preference of the reserved category recommended by resorting to the relaxed standard will be pushed further down but shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preference."

The said judgment was rendered with a view to correct the injustice meted out to the meritorious reserved category candidates who were recommended against posts in services which were lower in preference than the posts in services to which the reserved category candidates were recommended in spite of obtaining better marks and merit. As the judgment dealt with the unamended Rule 16 whether it is applicable to the amended Rule 16.

13. As far as the amended Rule 16 is concerned the very basis of the change is given in Rule 16(3) so as to "take care of any shortfall of candidates for appointment against unreserved vacancies" whereby it is the intention of the legislature to take reasonable restriction over reservation so that the candidates of the unreserved category also get equal opportunity to represent themselves. It is also to be noted that the reserved category candidates selected in the merit/unreserved category upon the basis of their merit have not availed of any relaxations which are only available for the reserved category candidates. Whether whenever

they are opting for the better preference that is available in the reserved category they are to be considered among the reserved category and should not be placed in the same category where the candidates, be it of reserved or unreserved category, who have not taken any kind of relaxation available only for the reserved category candidates have been placed and also whether the policy of the Government can be interfered with by when it has reasoned objective for the inclusion of the amended Rule 16 which is under dispute.

14. Before dealing with the main questions that are to be answered by the larger Bench, it is to be kept in mind that, though, in *Indra Sawhney's* case (supra), more than 50% relaxation/concession has been provided with de hors proper reservation it was also mentioned in the said judgment that the State Government is in the best position to make policies for reservation when they are actually required under the specific situations and circumstances of a state (in case of India as a whole the Central Government). In the present case, the UPSC has provided the amendment of Rule 16 which has been made to fulfill certain objective already specified in the Rules. It is also to be cleared out whether the persons from reserved category who are already selected in the merit category without taking any relaxation/concession available for the reserved category candidates can actually avail the better preference of service from the services under reserved category list as that will be solely based upon the caste of the candidates i.e. whether he is SC, ST or OBC as he has already been selected in the general category on the basis of his merit only.

15. In view of the fact that the issues raised and discussed relating to amended Rule 16 of CSE applicable to all Central Civil Services, we are of the view that an authoritative pronouncement is needed, particularly, in the light of the various decisions referred above hence all these SLPs and Writ Petitions are referred to a Constitution Bench.

¹(2005) 9 SCC 742

²(2005) 9 SCC 742

³(1996) 3 SCC 253

⁴(1995) 2 SCC 745

⁵1992 Supp.3 SCC 217

⁶(2006) 4 SCC 550