

Alok Kumar Pandit vs State Of Assam & Ors on 26 November, 2012

Bench: Gyan Sudha Misra, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8499 OF 2012
(Arising out of SLP(Civil) No.31979/2010)

ALOK KUMAR PANDIT

...Appellant

VERSUS

STATE OF ASSAM & ORS.

...Respondent(s)

O R D E R

1. Leave granted.

2. The questions which arise for consideration in this appeal filed against the order of the Division Bench of the Guwahati High Court dismissing the writ petition filed by the appellant for quashing the selection made by the Assam Public Service Commission (for short, 'the Commission') are whether a candidate of reserved category, who is adjudged more meritorious than open/general category candidates, is entitled to be appointed in the service/cadre/post of his choice/preference against the post earmarked for the reserved category to which he belongs and whether while computing the quota/percentage of reservation, such candidate should be treated to have been allotted a post in the open category.

3. On a requisition received from the State Government, the Commission issued advertisement No.6/2006 dated 10.8.2006 for 116 posts of Assam Civil Service Class-I (Junior Grade), Assam Police Service (Junior Grade), Labour Officer, Assistant Registrar of Cooperative Societies, Inspector of Labour, Inspector of Taxes and Inspector of Excise. These included 11 backlog posts of reserved categories of Scheduled Castes, Scheduled Tribes (P) and Scheduled Tribes (H). The appellant, who belongs to OBC applied for recruitment against the advertised posts. After clearing the preliminary and final examination, the appellant was called for interview. The list of selected candidates was published by the Commission on 15.6.2009.

4. As the appellant's name did not figure in the merit list, he submitted an application under the Right to Information Act, 2005 for supply of the details of marks awarded to him in various papers and interview. Vide reply dated 16.7.2009, the Commission informed the appellant that he had secured 840 marks (669 in the main examination and 141 in the interview). The appellant then filed

Writ Petition No.3590/2009 for quashing the entire selection and for issue of a mandamus to the Commission to prepare fresh select list in accordance with the recruitment rules and the reservation policy framed by the State Government. Some other unsuccessful candidates also filed writ petitions questioning the selection made by the Commission. The Division Bench of the High Court disposed of all the petitions by common order dated 1.9.2009 and directed the Commission to prepare fresh select list.

5. In compliance of the direction given by the High Court, the Commission prepared fresh select list which was notified on 18.2.2010. The appellant's name did not find place even in the fresh list. He, therefore, filed Writ Petition No.1040/2010 and prayed for issue of a mandamus to the Commission to again revise the select list by contending that more meritorious candidates of the reserved category of OBC who should have been adjusted against the open category posts were illegally appointed against the posts earmarked for the OBC. He pleaded that the Commission committed serious error by allotting the posts in Assam Civil Service to OBC candidates who, keeping in view their overall merit, should have been appointed against the open category posts and, in any case, for the purpose of computing quota of reservation for OBC, such appointments should be treated as having been made against open category posts.

6. The Division Bench of the High Court considered the case of one Manjit Barkakoti, who had secured 952 marks and was placed at Sl.No.25 in the overall merit, but could not be appointed to the Assam Civil Service against the open category post because his marks were less than other open category candidates and held that no illegality was committed by appointing him to that service against the post earmarked for the reserved category. The Division Bench further held that appointment of the candidates of the reserved category, who were adjudged more meritorious than some of the open category candidates against the posts earmarked for the particular reserved category did not result in usurpation of the quota earmarked for that category. All this is evinced from the following portions of the impugned order:

“5. The contention advanced by the petitioner that Manjit Barkakoti being at Sl. No.25 of the over all merit list should be treated was a general category candidate has dangerous portents with the law cannot countenance. If Manjit Barkakoti is to be treated as a general category candidate, he will not make it to the Assam Civil Service even with lesser marks will qualify as an OBC candidate for the Assam Civil Service to the exclusion of a more meritorious OBC candidates. Such a situation cannot be allowed to prevail.

6. The perception of the petitioner is capable of being analysed from another standpoint. According to the petitioner, by treating such meritorious candidates as reserved category candidates, the actions of the Public Service Commission have reduced the posts available for reserved category candidates.

The aforesaid perception of the petitioner is not correct on facts. Along with a general merit list, the Public Service Commission has prepared separate select list for each of the service for which advertisement was issued. The number of posts available in each service and the distribution thereof

amongst the general candidates and each of the reserved category candidate is mentioned in the select list published. 29 posts in all for all the different services in question were available. A reading of the select list for each service as prepared by the Commission clearly indicates that 29 OBC candidates have been appointed. If that be so, the concept of usurping the quota for OBC candidates, as sought to be so, the concept of usurping the quota for OBC candidates, as sought to be urged, will have no basis. Above all, it is not the case of the petitioner that any OBC candidate securing less than 840 marks (secured by the petitioner) has been appointed in any service.”

7. Learned counsel for the appellant referred to the provisions of the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978, Assam Public Service Combined Competitive Examination Rules, 1989 and office memo No.ARP-338/83/14 dated Dispur, the 4th January, 1984 issued by the State Government and argued that the reserved category candidates, who were more meritorious than open category candidates, but were appointed against the reserved category posts should be deemed to have been appointed against the posts earmarked for the open category and they cannot be treated as appointed against the posts earmarked for the reserved category, which is constitutionally and legally impermissible. He submitted that if migration is allowed to more meritorious candidates of the reserved category, who, as per their overall merit should be appointed against the general category posts then the quota earmarked for reserved category will be reduced and that would be clearly contrary to the provisions of the rules framed under proviso to Article 309 of the Constitution, the reservation policy framed by the State Government and Articles 14 and 16 of the Constitution.

8. Learned counsel for the State of Assam supported the impugned order and argued that the view taken by the High Court on the entitlement of more meritorious candidates of reserved category to opt for the reserved category posts is in consonance with the law laid down by this Court and the appellant who is less meritorious reserved category candidate cannot claim appointment to the State services because that would amount to violation of the rights of more meritorious candidates of his own category.

9. We have considered the argument/submission of the learned counsel for the parties. In our view, the questions framed in the opening paragraph of this order are no longer res integra and must be answered in affirmative in view of the judgments of this Court in *State of Bihar v. M. Neethi Chandra* (1996) 6 SCC 36, *Anurag Patel v. U.P. Public Service Commission* (2005) 9 SCC 742 and *Union of India v. Ramesh Ram* (2010) 7 SCC 234.

10. However, before advertng to aforesaid judgments we consider it proper to notice two other judgments in *Indra Sawhney v. Union of India* 1992 Supp. (3) SCC 217 and *R.K.Sabharwal v. State of Punjab* (1995) 2 SCC 745. In the first of these cases, the nine Judges Bench considered the constitutional validity of O.M.s dated 13.8.1990 and 25.9.1991 issued by the Government of India on the issue of reservation of socially and educationally backward classes. B.P.Jeevan Reddy, J., wrote the majority opinion on his own behalf and on behalf of Chief Justice M.H. Kania and M.N. Venkatachaliah and A.M. Ahmadi, JJ. S. Ratnavel Pandian, T.K.Thommen, Kuldip Singh, P.B.Sawant and R.M.Sahai, JJ., wrote separate opinions. In his detailed judgment B.P. Jeevan Reddy, J. answered several questions. In paragraph 811 of the judgment he made the following

observations:

“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.”

11. In the second case, the Constitution Bench held that the State cannot count a reserved candidate selected in the open category against the vacancies in the reserved category.

12. If the proposition laid down in *Indra Sawhney v. Union of India* (supra) and *R.K.Sabharwal v. State of Punjab* (supra) are considered in abstract, it may be possible to say that once a reserved category candidate secures higher merit than open category candidates, he can be considered for appointment only against open category post and the quota of the particular reserved category cannot be reduced by treating his appointment as one made against the post earmarked for the reserved category to which he belongs. However, literal application of this proposition can lead to serious anomaly and discrimination inasmuch as more meritorious candidate of the particular reserved category could be deprived of the service/cadre/post of his choice/preference and less meritorious candidate of the reserved category could get appointment on the post which would otherwise be available to more meritorious candidate. This can be illustrated by the following example: -

‘X’ and ‘Y’ are members of reserved category. They compete for selection for recruitment to All-India Services, which includes, IAS, IPS, IRS, etc. In the merit list prepared by the Commission ‘X’ is placed higher than some of the open category candidates but on the basis of his overall inter se merit with the open category candidates he could get appointment only to IRS. ‘X’ can get the post of his choice/preference i.e. IAS provided his case is considered for appointment against the posts earmarked for the particular reserved category to which he belongs. If he is not allowed to do so, then why who is less meritorious than ‘X’ within the reserved category will get appointment to IAS against the reserved post. In this manner ‘X’ will, despite his better merit within the reserved category, stand discriminated in the matter of appointment against the post for which he had given his preference.

13. The anomaly of the type mentioned above was not countenanced in *Indra Sawhney v. Union of India* (supra) and *R.K.Sabharwal v. State of Punjab* (supra) and, therefore, the Court did not have the occasion to deal with the same. However, we are convinced that appointment of less meritorious candidate of the reserved category against the service/cadre/post of his choice and denial of such appointment to more meritorious candidate of that category would result in blatant violation of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.

14. In *State of Bihar v. M. Neethi Chandra* (supra), this Court considered the question whether the candidates of the reserved categories who had secured more marks than open category candidates

could be placed in a disadvantageous position because they were allotted branches which were not of their choice. If they were allotted branches as per their merit among the reserved category candidates then they would have got the branches of their choice. The writ petitions filed by more meritorious candidates of the reserved categories were disposed of by the High Court by directing that the seats should be first offered to the candidates of reserved category on merit and once all the reserved seats are filled, the remaining seats should be offered to the general category. The High Court made a further arrangement for the reserved category of girls, who could get seats on merit on their own reservation as girls as well as on reserved seats as scheduled casts/scheduled tribes etc. The girls were to be considered first for admission against the seats reserved for them. If any girl belonged to scheduled casts/scheduled tribe, etc., she was to be given a choice of one of the two reservations and the girls in excess of the reserved vacancies could then seek admission on general merit. While partly reversing the order of the High Court, this Court observed:

“Let us take a situation in which in a particular reserved category there are \times number of seats but the candidates qualifying according to criteria fixed for that category are $\times+5$ with the best among them also qualifying on merit as general candidates. According to the arrangement made by Circular No. 20, the first candidate gets a choice along with the general category candidate but being not high enough in the list, gets a choice lesser than what he could secure in the reserved category to which he was entitled. The \times number of seats could then be filled up with the four qualifying candidates being denied admission for want of seats. This would have been harsh for the best candidate as well as violative of Articles 14 and 16 of the Constitution. On the other hand, if the direction of the High Court is followed, the first \times number of candidates get seats according to merit against the reserved seats but the remaining 5 will also have to be ‘adjusted’ against the open seats for regular candidates. These 5 will be those who are not qualified according to the general merit criteria and so will necessarily displace 5 general candidates who would be entitled to seats on merit.

At the same time, as pointed out above, all is not well with the Government Circular No. 20 as it operates against the very candidates for whom the protective discrimination is devised. The intention of Circular No. 20 is to give full benefit of reservation to the candidates of the reserved categories. However, to the extent the meritorious among them are denied the choice of college and subject which they could secure under the rule of reservation, the circular cannot be sustained. The circular, therefore, can be given effect only if the reserved category candidate qualifying on merit with general candidates consents to being considered as a general candidate on merit-cum- choice basis for allotment of college/institution and subject.” (emphasis supplied)

15. In *Anurag Patel v. U.P. Public Service Commission* (supra) this Court was called upon to consider whether more meritorious candidates of reserved category who were adjusted against the posts earmarked for general category were not entitled to make a choice of the post earmarked for reserved category. The facts as noticed by this Court were that the 3rd respondent, i.e., Rajesh Kumar Chaurasia in CA No. 4794 of 1998, who secured 76th place in the select list, filed Civil Miscellaneous Writ Petition No. 46029 of 1993 before the High Court of Allahabad contending that he was appointed as a Sales Tax Officer, although the appellant in CA No. 4794 of 1998, i.e., Nanku

Ram (Anurag Patel) who was also a Backward Class candidate, was appointed as a Deputy Collector, who according to the 3rd respondent, had secured 97th rank in the select list, a rank lower than him. Similarly, 8 persons, all belonging to Backward Classes, who find their names in the select list filed Writ Petition No. 22753 of 1993 alleging that they were entitled to get postings in higher cadre of service as the persons who secured lower rank in the select list were given appointment to higher posts. The first petitioner in the writ petition i.e. Shri Rama Sanker Maurya and the 2nd petitioner i.e. Shri Abdul Samad were at Serial Nos. 13 and 14 in the select list. According to these petitioners, persons lower in rank who got appointment in the reserved category were given postings on the ground that those posts were earmarked for being appointed in Class II services. After noticing the judgments in *Ritesh R. Sah v. Dr. Y. L. Yamul* (1996) 3 SCC 253 and *State of Bihar v. M. Neethi Chandra* (supra), the Court observed:

“In the instant case, as noticed earlier, out of 8 petitioners in Writ Petition No. 22753 of 1993, two of them who had secured Ranks 13 and 14 in the merit list, were appointed as Sales Tax Officer II, whereas the persons who secured Ranks 38, 72 and 97, ranks lower to them, got appointment as Deputy Collectors and the Division Bench of the High Court held that it is a clear injustice to the persons who are more meritorious and directed that a list of all selected Backward Class candidates shall be prepared separately including those candidates selected in the general category and their appointments to the posts shall be made strictly in accordance with merit as per the select list and preference of a person higher in the select list will be seen first and appointment given accordingly, while preference of a person lower in the list will be seen only later.”

16. A somewhat similar question came up before the three Judge Bench in *Union of India v. Ramesh Ram* (2009) 6 SCC 619. Some candidates belonging to OBC had filed an application before Madras Bench of the Central Administrative Tribunal challenging Rule 16(2) of the Civil Services Examination Rules, 2005. They pleaded that adjustment of more meritorious OBC candidates against the OBC quota was illegal. According to them, such candidate should be adjusted against the unreserved/general category posts and allow more OBC candidates, who were lower in rank, to be recommended for the posts earmarked for that category. The Tribunal held that the OBC candidates who were selected on merit must be adjusted against the general category posts. It further held that in terms of the judgment of this Court in *Anuraj Patel vs. U.P. Public Service Commission* (supra), the allocation of service should be in accordance with rank-cum-preference with priority given to meritorious candidates. The three Judge Bench noticed the judgments in *Ritesh R. Sah v. Dr. Y.L. Yamul* (supra), *Anurag Patel v. U.P. Public Service Commission* (supra) and *R. K. Sabharwal v. State of Punjab* (supra) and referred the matter to the Constitution Bench.

17. When the matter was placed before the Constitution Bench (the judgment of the Constitution Bench is reported as *Union of India v. Ramesh Ram* (2010) 7 SCC 234), the following question was framed:

“Whether candidates belonging to reserved category, who get recommended against general/unreserved vacancies on account of their merit (without the benefit of any

relaxation/concession), can opt for a higher choice of service earmarked for reserved category and thereby migrate to reserved category.”

18. The Constitution Bench referred to the rules, the judgments of this Court in *Union of India v. Satya Prakash* (2006) 4 SCC 550, *Ritesh R. Sah v. Dr. Y.L. Yamul* (supra), *State of Bihar v. M. Neethi Chandra* (supra), *Indra Sawhney v. Union of India* (supra), *M. Nagaraj v. Union of India* (2006) 8 SCC 212, *Anurag Patel v. U.P. Public Service Commission* (supra) and observed:

“The decision in *Anurag Patel* rectified the anomaly which had occurred since *U.P. PSC* had allotted services of lower preference to the candidates of Backward Classes who were meritorious enough to qualify as per the criteria laid down for general category candidates. Such meritorious candidates were disadvantaged on account of qualifying on merit which was patently offensive to the principles outlined in Articles 14 and 16 of the Constitution. This Court had reached such conclusion to ensure that allocation of service is in accordance with the rank-cum-preference basis with priority given to meritorious candidates for service allocation.

The decision in *Anurag Patel* in turn referred to the earlier decision in *Ritesh R. Sah v. Dr. Y.L. Yamul*. However, we have already distinguished the judgment in *Ritesh R. Sah*. That decision was given in relation to reservation for admission to postgraduate medical courses and the same cannot be readily applied in the present circumstances where we are dealing with the examinations conducted by UPSC. The ultimate aim of civil services aspirants is to qualify for the most coveted services and each of the services have quotas for reserved classes, the benefits of which are availed by MRC candidates for preferred service. As highlighted earlier, the benefit accrued by different candidates who secure admission in a particular educational institution is of a homogeneous nature. However, the benefits accruing from successfully qualifying in UPSC examination are of a varying nature since some services are coveted more than others.” (emphasis supplied)

19. The Constitution Bench noticed the judgment in *R.K. Sabharwal v. State of Punjab* (supra) and distinguished the same by making the following observation:

“Reference was also made to *R.K. Sabharwal v. State of Punjab*, this Court had declared that the State shall not count a reserved category candidate selected in the open category against the vacancies in the reserved category. However, by this it could not be inferred that if the candidate himself wishes to avail a vacancy in the reserved category, he shall be prohibited from doing so. After considering the counsel's submissions and deliberations among ourselves, we are of the view that the ratio in that case is not applicable for the purpose of the present case. That case was primarily concerned with the Punjab Service of Engineers in the Irrigation Department of the State of Punjab. The decision was rendered in the context of the posts earmarked for the Scheduled Castes/Scheduled Tribes and Backward Classes on the roster. It was noted that once such posts are filled the reservation is complete. Roster cannot operate any further and it should be stopped. Any post falling vacant in a cadre thereafter, is to be filled from the category reserved or general due to

retirement or removal of a person belonging to the respective category. Unlike the examinations conducted by UPSC which includes 21 different services this case pertains to a single service and therefore the same cannot be compared with the examination conducted by UPSC. The examination conducted by UPSC is very prestigious and the topmost services of this nation are included in this examination. In this respect, it is obvious that there is fierce competition amongst the successful candidates as well to secure appointments in the most preferred services. 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 a requirement for reservations in favour of the backward class in the services under the State Government. However, the present case deals with positions in the various civil services under the Union Government that are filled through the examination process conducted by UPSC. Therefore, the fact-situation in R.K. Sabharwal case is clearly distinguishable.

20. In view of the above discussion and the law laid down in *State of Bihar v. M. Neethi Chandra* (supra), *Anurag Patel v. U.P. Public Service Commission* (supra), which has been approved by the Constitution Bench in *Union of India v. Ramesh Ram*, we hold that the official respondents did not commit any illegality by appointing more meritorious candidates of OBC to Assam Civil Service for which they had given preference and the High Court did not commit any error by dismissing the writ petition.

21. As a sequel to the above, the questions framed in this appeal are answered in the following terms:

“ 1) A reserved category candidate who is adjudged more meritorious than open category candidates is entitled to choose the particular service/cadre/post as per his choice/preference and he cannot be compelled to accept appointment to an inferior post leaving the more important service/cadre/post in the reserved category for less meritorious candidate of that category.

2) On his appointment to the service/cadre/post of his choice/preference, the reserved category candidate cannot be treated as appointed against the open category post.”

22. In the result the appeal is dismissed. The parties are left to bear their own costs.

.....J.
[G.S. SINGHVI]

NEW DELHI;
NOVEMBER 26, 2012

.....J.
[GYAN SUDHA MISRA]