

# Chander Kirti Negi vs High Court Of Delhi on 10 December, 2020

**Author: Vipin Sanghi**

**Bench: Vipin Sanghi, Rajnish Bhatnagar**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 9653/2019 and CM APPL. 39877/2019

CHANDER KIRTI NEGI

Through:

Mr. Preet Pal Si

versus

HIGH COURT OF DELHI

Through:

Mr. Viraj R. Dat

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

% 10.12.2020

1. The petitioner has preferred the present writ petition to seek the following substantive relief:-

"i. issue a Writ, Order or Direction in the Nature of Mandamus thereby directing the respondents to consider the candidature of the petitioner and include the name of the petitioner in the list of candidates called for viva Voce for the Delhi Higher Judicial Services 2017 in the ST category against the 04 vacant post; and"

2. The present petition had been preferred by the petitioner in the following background:

3. The petitioner is a person belonging to a schedule tribe, namely, Kinnaura Tribe. The said tribe is recognized as a Scheduled Tribe under the Schedule Tribe Order 1950, as amended. He is, therefore, entitled to avail of the reservation granted to the Scheduled Tribe candidates in the matter of public employment. The respondent - which is High Court of Delhi, issued a Notification on 23.12.2017 to invite applications for filling up of 11 vacancies, by direct recruitment, in the Delhi High Judicial Services. Of the said vacancies, 4 were reserved for Scheduled Tribe candidates.

4. Mr. Singh, learned counsel for the petitioner has pointed out that the said vacancies have accumulated over the years, since the last appointment of a Scheduled Tribe candidate to the Delhi High Judicial Service by direct recruitment was in the year 2010.

5. Admittedly, the recruitment to the Delhi Higher Judicial Service in question was governed by Delhi Higher Judicial Services Rules, 1970. Rule 7(C) is relevant, and the same reads as follows:-

"7C. Selection for appointment by direct recruitment- The High Court shall before making recommendations to the Administrator invite applications by advertisement and may require the applicants to give such particulars as it may prescribe and may further hold written examination and viva voce test in the following manner:-

(i) Written Test-750 marks.

(ii) Viva voce - 250 marks.

Provided that a candidate shall be eligible to appear in viva- voce only in case he secures 50% marks in the Written Examination in the case of candidate of general category and 45% in the case of candidates of reserved categories;

Provided further that a candidate of general category must secure a minimum of 50% marks and a candidate of reserved categories must secure a minimum of 45% marks in viva-voce to be eligible for being recommended for appointment to the service."

(emphasis supplied)

6. The petitioner appeared in the written examination conducted by the respondent, in pursuance of the said notification. The result of the written examination - [Preliminary Examination (Objective Type) and Main Examination (Descriptive Type)] dated 10.7.2019, has been placed on record. As per the said result, the petitioner - who is at serial no. 22, is shown to have secured 336.25 marks in aggregate out of maximum marks of 750 i.e. 44.83%. Since the petitioner fell short of the minimum requirement of 45% in terms of Rule 7(C) by 0.17%, he was not called for interview. Consequently, he preferred the present writ petition.

7. By our interim order dated 5.9.2019, we permitted the petitioner to participate in the viva-voce examination and directed the respondent to produce the final result before this court in a sealed cover.

8. Accordingly, the petitioner appeared in viva-voce examination. His result was produced before us.

9. On perusal of the result, it transpired that, in the aggregate i.e. upon consideration of his written examination marks, as aforesaid, and his viva- voce marks, he did meet the cut off in terms of Rule 7 (C) i.e. he secured more than 45% marks in the aggregate. The stumbling block for the petitioner, however, continues to be that he did not secure 45% marks in the written test.

10. The submission of Mr. Singh, learned counsel for the petitioner is that the petitioner is the only candidate belonging to the Scheduled Tribe category under consideration, and even if he were to be declared successful in the examination, he would not adversely affect the rights of any other

candidate belonging to the same category. He submits that no candidate belonging to the ST category has been appointed directly to the Delhi Higher Judicial Services for the last 10 years, and therefore, this Court should, in exercise of its extraordinary writ jurisdiction, direct the respondent to round off the marks/percentage awarded to the petitioner in the two-tier written examination to 45% from 44.83%.

11. The respondent has filed its counter-affidavit, and has placed reliance primarily on the decision of the Supreme Court in *Orissa Public Service Commission and Another Vs. Rupashree Chowdhary and Another*, Civil Appeal No. 6201/2011 decided on 2.8.2011 [(2011) 8 SCC 108]. This was a case where the High Court directed the appellant-Orissa Public Service Commission, to round off the aggregate marks of the respondent-candidate from 44.93% to 45%. Similar rounding off was directed in respect of two other candidates, who were not parties before it. Consequently, the respondent became eligible to appear in the interview as per Rule 24 of the Orissa Superior Judicial Service under the Orissa Judicial Service Rules, 2007. On appeal by the Orissa Public Service Commission, the Supreme Court disapproved of the directions issued by the Orissa High Court, primarily on the ground that no power is provided in the statute/rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. The Court observed that no such rounding off or relaxation was permissible. The Rules are statutory in nature, and no dilution or amendment of such Rules is permissible or possible by adding some words to said statutory rules for giving the benefit for rounding off, or relaxation. The Court went on to observe in para 13 as follows:

"13. When the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences, for the Act speaks for itself. There is no ambiguity in the language of Rule 24 leading to two conclusions and allowing an interpretation in favour of the respondent which would be different to what was intended by the Statute. Therefore, no rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of Rule 24 of the Rules under consideration."

12. The position is no different in the Rules before us. The said Rules are clear and categorical. It is very clearly provided in Rule C that a candidate shall be eligible to appear in viva-voce "only in case he secures 50% marks in the written examination in the case of candidate of general category and 45% in the case of candidates of reserved categories". There is no power of relaxation in the Rules in question. Therefore, the decision of the Supreme Court in *Orissa Public Service Commission (supra)* is squarely attracted in the facts of the present case. The said decision, as pointed out by Mr. Datar, has been consistently followed thereafter including in *The West Bengal Joint Entrance Examination Board and Others Vs. Sarit Chakraborty and Others* Civil Appeal No. 8498/2014 decided on 1.9.2014 (2015 Vol. 2 SCALE 162). Consequently, the plea of the petitioner that the petitioner's marks in respect of the two-tier written examination should be rounded off from 44.83% to 45% cannot be accepted. This Court cannot exercise its extraordinary jurisdiction to grant a relief which is in the teeth of the statutory rules.

13. We, therefore, find no merit in this petition, and accordingly dismiss the same, leaving the parties to bear their own costs.

VIPIN SANGHI, J RAJNISH BHATNAGAR, J DECEMBER 10, 2020 AK/ib