



**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

2020:JKLHC-JMU:10070

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SWP No. 1746/2018
CM No. 278/2019[02/2019]
IA No. 01/2018
CM No. 2213/2019[01/2019]

Reserved on: 05.03.2020
Pronounced on: 19.03.2020

Anil Sharma and others

..... Petitioner(s)

Through: Mr. Ajay K.Gandotra, Advocate.

Versus

**Chief General Manager, Human Resources
Management and another**

.....Respondent(s)

Through: Mrs. Aruna Thakur, Advocate.

CORAM: HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE

JUDGEMENT

1. Vide Advertisement Notification dated 17.11.2017 issued by the Reserve Bank of India (hereinafter referred to as 'the RBI'), the applications from the eligible candidates for 526 posts of Office Attendants in various offices of the Bank were invited. The selection for the posts was to be made through country-wide competitive Test (Online Test) followed by Language Proficiency Test (LPT) in regional language. The breakup of the posts for the Jammu office of the RBI as indicated in the Advertisement Notification was as under:-

General	: 10
OBC	: 09
Total	: 19



2. Out of the notified posts, one post was earmarked for providing horizontal reservation in favour of the Disabled Ex-servicemen/Dependents of Ex-servicemen killed in action (EX-1) and four posts for Ex-servicemen (normal) EX-2. The scheme of selection as laid down in the advertisement notification was in the following manner:-

(c) Scheme of Selection:

Selection would be done on the basis of Online Test (as given below) and Language Proficiency Test (LPT).

Online Test:

<u>Sr. No.</u>	<u>Name of Tests (Objective)</u>	<u>No. of Questions</u>	<u>Maximum Marks</u>	<u>Composite Time</u>
1	Reasoning	30	30	90 minutes
2	General English	30	30	
3	General Awareness	30	30	
4	Numerical ability	30	30	
	Total	120	120	

- i. Online test except the test of General English will be in bilingual, i.e. English and Hindi.
- ii. There will be negative marking for wrong answer in the Online Test. 1/4th mark will be deducted for each wrong answer.
- iii. Candidates will have to pass with minimum prescribed mark in each subject of Online Test.
- iv. LPT will be of Qualifying Type. The candidates provisionally selected from the On-line Test will have to undergo a language proficiency test (LPT). LPT will be conducted in the Official / Local Language of the State concerned ([Annex-I](#)). Candidate not proficient in the Official/Local Language would be disqualified.
- v. Other detailed information regarding the test will be given in an Information Handout, which can be downloaded by the candidates from RBI's website along with call letter.
- vi. Roll No. of those candidates who have qualified for LPT on the basis of Online test will be displayed on RBI's website in the month of January/February 2018. Date for LPT will also be displayed on the website along with a brief notice thereof.
- vii. LPT is mandatory. No exemption of any sort will be given to any candidate from appearing in LPT, which will be conducted at respective offices. Final Selection will depend, on the performance in online test, qualifying in LPT, Medical fitness, verification of certificates and Biometric Data, etc. to the Bank's satisfaction. Decision of the Bank in this regard, will be final.



3. The petitioner No.1 applied in the category EX-1 ,i.e., Disabled Ex-servicemen. The petitioners Nos.2 and 3, however, submitted their application forms and sought consideration under the category of EX-2, i.e., Ex-servicemen (normal) for which four posts were reserved. All the petitioners appeared for online test on 05.01.2018. On the basis of online test, provisional list of shortlisted candidates for Jammu Region was uploaded on the website of RBI on 08.02.2018 in which 50 candidates including the petitioners were enlisted. It is contended that out of four posts reserved for EX-2 category only three candidates, i.e., petitioners No.2 and 3 along one Raman Sharma figured in the provisional shortlist. The petitioner No.1, however, qualified online test and was the only candidate shortlisted against the sole post reserved for category EX-1. The shortlisted candidates were thereafter called for Language Proficiency Test on 19.03.2018 and as asserted by the petitioners, they cleared the Language Proficiency Test as well. They were, thereafter called for viva-voce, which was conducted on 04.04.2018 and were also declared to have qualified Biometric Test also. The documents of the petitioners were verified and found to be genuine and correct. On the conclusion of the selection process, the respondent No.2 uploaded final select list on its website on 24.08.2018 and the candidates figuring in the final select list were called for Medical Test, which was to be followed by offer of letter of appointment. The petitioners were not lucky enough to be in the select list and, therefore, feeling aggrieved filed the instant petition *inter alia* claiming the benefits of horizontal reservation provided for



the category of EX-1 and EX-II. It is contended that despite the petitioners, eligible candidates, available and having qualified Online Test as well as LPT, the posts meant for providing horizontal reservation to the category of ex-servicemen, i.e., EX-I and Ex-2 were not filled up. The matter came up for consideration before this Court on 31.08.2008 when this Court while issuing notice to the respondents in the writ petition also provided that the selection of last three candidates appearing in the select list impugned will remain subject to the outcome of the writ petition. The respondents were also directed to produce the record of selection on the next date of hearing.

4. In response to the notice issued by this Court, the respondents have caused their appearance through their counsel Ms. Aruna Thakur and have filed their reply affidavit. The factual assertions made by the petitioners have not been denied by the respondents. It is submitted by the respondents that out of the 19 finally selected candidates, 10 candidates belong to open merit (combined category) and 09 candidates belong to OBC category. It is further stated that out of 10 finally selected candidates in the combined category, one candidate belongs to a person with disability (PWD/OH) category and one candidate belongs to ex-servicemen (open merit category). It is urged that since the reservation for ex-servicemen is horizontal reservation and therefore, included in the vacancies of various category, i.e. General, SC, ST and OBC. It is submitted that the petitioners and others claiming the benefit of horizontal reservation were granted 8 grace marks as per the Govt. of India instructions, but, none of them



could make it to the select list/reserve list of the open merit candidates. It is submitted that the candidate last selected in the open/combined category has obtained 91.50 marks whereas three petitioners herein have secured 61.5, 78.25 and 76.00 marks respectively even after providing grace marks. It is, thus, urged that since the petitioners have not been able to secure marks equal to or more than the cut-off in the open merit and, therefore, they were not placed in the final select list.

5. Having heard learned counsel for the parties and perused the record, I am of the considered view that the manner in which the respondents have given effect to horizontal reservation provided to the category of ex-servicemen is not in consonance with law and amounts to denial of benefit of reservation provided for such category.
6. Indisputably, for Jammu office of the RBI, 19 vacancies of Office Assistants, 10 in the General category and 09 in the OBC category were notified for selection. One post for Ortho-handicap, one post for EX-I and four posts for EX-2 were earmarked for providing horizontal reservation. The petitioner No.1 is a disabled ex-servicemen falling in the category of EX-I whereas the petitioners 2 and 3 are ex-servicemen (normal) falling in the category of EX-2 and they had accordingly, submitted their application forms. The petitioners were found eligible and their application forms in order by the respondents. They were allowed to participate in the online Psychometric Test followed by Language Proficiency Test (LPT), the latter test being of qualifying nature only. All the three petitioners qualified the Online



Test and were shortlisted for participating in the Language Proficiency Test (LPT). They successfully qualified the LPT test as well as and, were, thus legitimately expecting to be in the final select list after their successful Biometric Test and verification of documents. Their expectation was primarily driven by the fact that there was no competition amongst the candidates belonging to the categories of EX-I and EX-2. The respondents prepared the final select list on the basis of the merit. 10 candidates were selected in the General Category and the last candidate selected obtained 91.5 marks in the online examination. Out of the 10 candidates selected in the General Category, one Raman Kumar was an ex-serviceman falling in the category of EX-2 and had obtained 91.5 points. The respondents, as is apparent from the perusal of the record as also the stand taken by them in the reply affidavit, adopted a unique way of giving effect to horizontal reservation provided for the category of “person with disability (PWD) and ex-servicemen” (EX-I and EX-2). The respondents have followed the instructions of Mumbai Recruitment Office (MRO), conveyed to the Regional Director, Jammu through e-mail dated 24.04.2018 wherein it was provided that while preparing the final select list, 8 marks as grace marks be added to the total marks secured by category candidates in the Online Test. It is thus, evident that instead of reserving four posts for the category of ex-servicemen as indicated in the Advertisement Notice, the respondents pursuant to the aforesaid e-mail received from Mumbai Recruitment Office granted 8 grace marks to the petitioners and others claiming the



benefit of horizontal reservation in the category of PWD and Ex-servicemen. The respondents found that only one candidate, namely, Raman Kumar belonging to the category of EX-2 could obtain marks equal to the cut-off in the open merit and therefore, placed him in the final select list. The petitioners, who secured marks less than the cut-off in the open/combined merit, were, thus, not selected.

7. I have carefully gone through the selection record produced before me and could not find any statutory provision or even the executive order issued by the competent authority providing for addition of 08 grace marks to the merit of the candidates belonging to the categories of PWD and ex-servicemen and then comparing their merit with the merit of the candidate last selected in the open merit. It is different matter that one candidate under the EX-2 has made it to the select list as he has succeeded in obtaining marks equal to the cut-off in the open category. 03 vacancies in the EX-2 and 01 in EX-I remained unfilled. The respondents by devising this novel way of operating horizontal reservation defeated the concept of horizontal reservation provided for certain categories like 'person with disability' and 'ex-servicemen'. I repeatedly asked the learned counsel for the respondents to point out if any minimum qualifying marks in the online test for selection have been provided by the respondents, he could not point any such stipulation contained anywhere in the advertisement notification. I could not find such stipulation in the contemporaneous record including the selection record placed before me. Adding of grace marks could be a measure to provide lower



standard for selection, this is so indicated in Rule 6A of the Ex-servicemen (Re-Employment in Central Civil Services and Posts) Rules, 1979 which are applicable to Reserve Bank of India as well. Rule 6A would operate only where for a particular selection, a minimum standards are laid for direct recruitment and if sufficient number of candidates belonging to ex-servicemen are not available on the basis of general standard to fill up all the vacancies reserved for them, the candidates belonging to the category of ex-servicemen may be selected under a relaxed standard of selection to make up the deficiency in the reserved quota. This however, is subject to the condition that the relaxation will not affect the level of performance by such candidate.

8. In view of the admitted factual position that in the instant case there were no minimum standards prescribed for qualifying online test for selection. As a matter of fact, all the three petitioners qualified online test and were shortlisted for Language Proficiency test (LPT) and other follow up selection processes like Biometric Test and verification of documents etc. It goes without saying that in the instant selection, there were no minimum standards fixed by the respondents to qualify for selection and therefore, addition of 08 grace marks to the merit of the petitioners was totally inconsequential. It was totally absurd and illogical to compare the merit of the candidates belonging to ex-servicemen category with the merit of last selected in open merit. The whole procedure adopted by the respondents is de-hors the rules and settled position of law as enumerated in the case of **Indira**



Sawhney and others Vs. Union of India, reported in **1992 Supp (3)**

SCC 210. The petitioners were entitled to the benefit of horizontal reservation and with a view to give effect to such reservation, it was incumbent upon the respondents to prepare a separate merit list of the candidates belong to the categories of EX-I and EX-2 and pick up one candidate with highest merit in the category of EX-I and four candidates in the order of merit from the category EX-2 and place them in the select list of their respective categories. Since all the petitioners in the instant case belong to General Category, therefore, they would have consumed three posts in General Category. Had the respondents followed the law as it is, all the three petitioners would have made it to the select list of General Category and would have displaced three candidates, i.e., the candidates figuring at S.No.07, 08, and 10.

9. In the light of the preceding analysis and the discussion made hereinabove, this petition is **allowed** and the respondents are directed to select and appoint the petitioners as Office Attendants in the Jammu Office of Reserve Bank of India by giving them the benefit of horizontal reservation meant for ex-servicemen, i.e., (EX-I and EX-2) against the available vacancies in the General Category, if any, out of the impugned select list. The appointment of the petitioners shall be retrospective from the date the candidates in the impugned select list have been appointed in Jammu Office of the RBI. The retrospective effect to appointment of the petitioners shall be notional only and would not qualify for any monetary benefits. This Court has not



quashed the selection of the candidates figuring at S.Nos.7,8, and 10 for the reasons that the petitioners have not arrayed them as party respondents, though this Court while issuing notice had kept their selection subject to the outcome of the writ petition. Throwing the candidates out of the job without even providing them an opportunity of being heard would not be fair.

10.Disposed of along with connected CM(s).

11.Record produced by learned counsel for the respondents be returned to her.

(Sanjeev Kumar)
Judge

Jammu
19.03.2020
Madan Verma, PS

