

IN THE HIGH COURT OF JUDICATURE AT PATNA  
C.W.J.C. No. 321 of 2006

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Chandrashekhar Azad Vrs. State of Bihar & Ors.

For the Petitioner : Mr. Dayanand Singh.  
For the B.P.S.C. : Mr. Ashok Kr. Choudhary.  
For the State : Mr. Nirmal Kumar Sinha.

10/ 01.03.2007

Heard both the parties.

The members of the present Commission conducted the 46th Combined Competitive Examination. They were not associated with the Commission when the 42nd to 45th Combined Competitive Examinations were conducted by the Commission. The writ petitioner is a candidate of the 45th Combined Competitive Examination. In the writ petition, the petitioner contended that in accordance with his position in the merit list, he ought to have had been recommended but instead of recommending the petitioner, B.P.S.C. recommended a person, who had not been selected or who was much below in the merit list for being appointed

From the stand taken by the parties in their pleadings, it is now clear that after the 42nd to 45th Combined Competitive Examinations were conducted and the merit list was prepared, the candidates belonging to reserve category if had achieved such

posts on the basis of such merit, which <sup>were</sup> ~~was~~ available for the open category, they would first be recommended to such posts and if a candidate, so recommended, was not happy with the said post, he could ask for a posting on the basis of his merit in the merit list comprising of his category of reserved classes. In the normal course, in such a situation the post available for open category would remain available for people belonging to open category and accordingly, a person in the open category, having merit to have a recommendation for that post, would be recommended and on the basis of such recommendation, ~~he would~~ get his appointment to such post. However, surprisingly this was not done. The post available for open category, to which a member of the reserved category had been recommended but the reserve category candidate refused to accept the post on the basis of such recommendation for the same was not a choice post and accordingly, obtained another recommendation to a choice post on the basis of his position in the merit list in comparison to his class of reserve candidates, got reserved for that class of reserve candidates. / As a result, it, prima facie, appears that the petitioner

despite being at a position in the merit list for being appointed to an open category post was not recommended for an appointment.

In the latest affidavit filed by the Commission, the Commission has indicated that its Chairman and majority of the members have decided to change the system, as was adopted by the Commission for the 22nd to 45th Combined Competitive Examination. The change that would be effected has been summarised in Annexure-B to the affidavit of Sri Sharad Chandra Jha affirmed on 7th February, 2007 and filed in the this Court on 13th February, 2007. Court feels that the decision, as has been taken in Annexure-B to the said affidavit, is a correct decision, which would ensure maintenance of the reservation policy of the State Government. / In that, it has been provided that a reserve category candidate if on the basis of his merit is recommended for an open category post, he shall be treated as an open category candidate for the purpose of making the recommendation and he would be appointed to the post available for that open category candidate. / He would not eat up the reserved post. It must be kept in mind that by reason of Article 14 of

appearing in such Competitive Examination is entitled to the benefits of his merit. The reservation policy comes later. Therefore, question of adjusting a meritorious reserved candidate for reserved category post would not arise. By reason of Article 14 of the Constitution of India, he is entitled to be acknowledged on the basis of his merit.

However, it appears to be the contention of the erstwhile members of the Commission and even the minority view of the present Commission, that the policy, as has been adopted now and as discussed above, was in vogue even for the 42th to 45th Combined Competitive Examination. It has been stated that when a candidate, having merit to occupy an open category post has been recommended for such post, but having regard to the fact that the post was not a choice post, reverted back to have a recommendation on the basis of his merit amongst his category, for all practical purposes, it must be deemed that he has eaten up that open category post and accordingly, the reserved post has not been filled up by him. This argument is not acceptable to Court. A person cannot have the cake and eat too. No doubt, he is entitled to exercise his right

India and accordingly, can say that I have merit and accordingly, I should be appointed to the post which is available for open category, but neither Article 14, nor the laws made for reservation authorises him to say that if the post as is available in the open category is not suitable, I should be permitted to exercise yet another option by being treated in my class.

In those circumstances, this writ petition is disposed off by directing the Commission to ascertain whether on the basis of the merit of the petitioner, and by not adjusting the open category posts in the manner it had been adjusted upon conclusion of 45th combined Competitive Examination, the petitioner was entitled to be recommended in a post in the open category for he belongs to open category/and if so to make a suitable recommendation in favour of the petitioner.

The Commission is requested to expedite the matter and complete the exercise preferably within three months from today.

Let a copy<sup>6</sup> of this order be handed  
over to the learned counsel for the  
Commission.

S.B.P.

