

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 4585 of 2018

UNION OF INDIA AND ORS. ... APPELLANT(S)

Versus

PROBIR GHOSH AND ORS. ... RESPONDENT(S)

WITH

CIVIL APPEAL NOS.1441-1442 OF 2022

(@SPECIAL LEAVE PETITION (C) NOS. 30408-30409 OF 2019)

CIVIL APPEAL NOS.4586-4587 OF 2018

J U D G M E N T

V. RAMASUBRAMANIAN, J.

1. By a Notification dated 03.12.2011, the Staff Selection Commission invited applications for recruitment **(i)** of Constables (GD) in Central Armed Police Forces (CAPFs) such as ITBP, BSF, CISF, CRPF and SSB; and **(ii)** of Rifleman (GD) in Assam Rifles. Initially the number of posts sought to be filled up was notified as 39574, but the same was revised to 48802.

2. As per the Notification, the process of recruitment was to comprise of Physical Standards Test, Physical Efficiency Test, Written Examination and Medical Examination.

3. The closing date for submission of applications was fixed as 04.01.2012. However, candidates residing in North Eastern States, Jammu & Kashmir, Sikkim, a few districts of Himachal Pradesh, Andaman & Nicobar Islands and Lakshadweep were entitled to submit the applications on or before 11.01.2012.

4. The Notification made it clear that the recruitment would be based upon reservations mentioned in the Appendix, state-wise and category-wise. Apart from the reservation for OBC, SC and ST candidates, the Notification provided for reservation for candidates domiciled in Naxal and Militancy affected areas and select border districts of some states in each of the services such as ITBP, BSF etc. In fact, relaxation in the upper age limit was also granted not only for SC, ST, OBC and ex-serviceman candidates, but also for those domiciled in certain areas and those dependents of victims killed in 1984 riots or in the communal riots of 2002 in Gujarat.

5. Appendix-A to the Recruitment Notification dated

03.12.2011 showed that the vacancies were separately earmarked, **(i)** service-wise, such as Assam Rifles, BSF, CISF, CRPF, ITBP and Sashastra Seema Bal; **(ii)** State and Union Territory wise such as Andaman and Nicobar, Andhra Pradesh, Arunachal Pradesh etc.; and **(iii)** Intra-State wise for the entire State as well as Naxal affected areas/border districts of the same State. Appendix-C to the Notification indicated how the border districts of North Eastern States, Bihar, Gujarat, Himachal Pradesh, Jammu & Kashmir, Punjab and Rajasthan were also divided into one or more categories and how the vacancies are distributed among these areas. The vacancies in every service in respect of every State, under Appendix-A to the Notification were distributed further on the basis of the Rule of Reservation for OBCs, SCs and STs.

6. At the cost of repetition it must be pointed out that the total number of about 48802 vacancies were distributed service-wise, state-wise, reserved category-wise and domiciliary status-wise in respect of border districts and Naxal/Militancy affected areas.

7. Annexure-II to the Recruitment Notification contained “*Instructions for filling up the application*”. Column No.16 under

paragraph 4.0 of the said Instructions dealt with “*preference for posts*”. This Column No.16 under paragraph 4.0 of Annexure-II to the Recruitment Notification dated 03.12.2011 reads as follows:
“Candidates should carefully indicate preference for post under different forces. Option once exercised will be final and no change will be allowed under any circumstances.”

8. The format of the certificate to be produced by candidates belonging to Scheduled Castes and Scheduled Tribes, was provided in Annexure-VI. The format of the certificate to be produced by OBCs was given in Annexure VII.

9. Since vacancies were notified service-wise, state-wise and category-wise, Annexure-XII to the Recruitment Notification indicated the code numbers allotted to all the States and Union Territories and Annexure XIII separately indicated the code numbers allotted to different border districts of the North-Eastern States, Bihar, Gujarat, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan and West Bengal. Annexure-XIV provided the code numbers separately for the Naxal/Militancy affected districts in some of the States such as Andhra Pradesh, Bihar, Orissa,

Jharkhand, Chhattisgarh etc.

10. After the completion of the process of selection, the Staff Selection Commission published a Select List of candidates on 17.10.2012. Finding that their names did not find a place in the final Select List and contending that candidates who secured lesser marks than them are included in the Select List, a group of 26 persons filed a writ petition in WP (C) No.5520 of 2012 on the file of the Gauhati High Court. In addition to the contention revolving around the marks secured by them and the marks secured by some of the selected candidates, this group of 26 writ petitioners also contended that though two of them belonged to OBC category, they had been treated under the unreserved category. Therefore, these candidates sought a writ of *certiorari* to quash the final Select List of candidates, in so far as the State of Assam is concerned with a further direction to the respondents in the writ petition to prepare a fresh Select List.

11. The said writ petition WP (C) No.5520 of 2012 was taken up by a learned Judge of the Gauhati High Court along with 14 other writ petitions. All the 15 writ petitions were allowed by the

learned Judge, by a common order dated 04.01.2016.

12. Following the decision rendered on 04.01.2016 in the said batch of 15 writ petitions, the learned Single Judge also allowed other similar writ petitions by separate orders dated 26.02.2016, 14.03.2016, 21.03.2016, 30.03.2016, 31.03.2016, 06.04.2016, 06.06.2016 and 09.06.2016.

13. Aggrieved by these orders, the Union of India and the Staff Selection Commission filed an intra-court appeal before the Division Bench. It was stated in the Memorandum of Appeal that there were totally 476 candidates before the learned Single Judge in various writ petitions and that out of those candidates, 61 persons had been selected subsequently when revised results were announced.

14. However, the intra-court appeal was filed with a delay. By an order dated 24.10.2016 the Division Bench of the High Court refused to condone the delay in filing the intra-court appeal. Therefore, the Union of India and the Staff Selection Commission have come up with Civil Appeal No.4585 of 2018, challenging the order of the learned Single Judge dated 04.01.2016 passed in

WP(C) No.5520 of 2012.

15. In this appeal (Civil Appeal No.4585 of 2018) only two issues arise for consideration. They are, **(i)** whether the rejection of the OBC certificate of a few candidates on the ground that they were not in the prescribed format and the consequent categorization of those candidates as general category candidates is correct?; and **(ii)** whether candidates who have indicated preference to a particular service can be kept out of consideration for appointment to other services, despite these candidates having secured more marks than the selected candidates in those other services?

16. One candidate who was issued with an order of appointment, but which was subsequently cancelled on the ground that he did not belong to the border district to which he was selected, filed an independent writ petition before the Gauhati High Court in WP (C) No.6153 of 2013. Holding that the domicile of a person in one particular border district will not debar him from being considered for appointment in another border district, the Gauhati High Court allowed the said writ petition by a Judgment dated 16.05.2016. A petition for review was filed by the

Union of India, but the same was also dismissed. Therefore, challenging the order allowing W.P.(C) No.6153 of 2013 and challenging the order passed in the Review Petition, the Union of India and the Staff Selection Commission have come up with two civil appeals in C.A. Nos.4586-4587 of 2018.

17. One candidate approached the Delhi High Court by way of a writ petition in W.P.(C) No.8571 of 2015 contending that though he indicated his preference for one particular service, he is entitled to be considered for appointment in other services, on the basis of his own merit. This writ petition was allowed by the Delhi High Court by an Order dated 03.10.2018. The petition for review filed by the Union of India was also dismissed on 05.04.2019. As against the order passed in the writ petition and the review petition, the Union of India and the Staff Selection Commission have come up with SLP(C) Nos.30408-30409 of 2019.

18. Leave granted in SLP(C) Nos.30408-30409 of 2019.

Civil Appeal Nos.4586-4587 of 2018

19. Since the issue involved in these two appeals lies on a narrow compass, we shall take up these appeals first.

20. As we have indicated in paragraph 14 above, the respondent in this writ petition belongs to the Scheduled Tribe and is domiciled in Baksa District of Assam. In Annexure-XIII to the Recruitment Notification dated 03.12.2011, the border districts of Assam were divided into two categories. The border districts of Dhubri, Cachar & Karimganj were given Code No.“01”. The border districts of Baksa, Chirang, Kokrajhar & Udalguri were assigned Code No.“02”. Since the respondent belonged to Baksa District, he was entitled to be considered as a candidate belonging to the border districts of Assam with Code No.“02”.

21. Paragraph 2 of the Recruitment Notification stated that the state-wise and category-wise tentative number of vacancies to be filled up are indicated in the Appendix. Appendix-C to the Recruitment Notification indicated the vacancy position in respect of CT (GD) (male and female) of B.G. Districts of CAPFs. The relevant portion of Appendix-C to the Recruitment Notification, which relates to the two categories (Code Nos. 01 and 02) of the border districts of Assam are reproduced for easy reference as follows:

State	Districts falling in their area	Border Security Force (Male)					Border Security Force (Female)					Assam Rifles (Male)					INDO TIBETAN BORDER POLICE FORCE (MALE)					Shashastra Seema Bal (male)					G.Total				
		UR	OBC	SC	ST	Total	UR	OBC	SC	ST	Total	UR	OBC	SC	ST	Total	UR	OBC	SC	ST	Total	UR	OBC	SC	ST	Total	UR	OBC	SC	ST	Total
Assam	Dhubri , Cachar, Karimganj	83	42	11	19	155	20	10	3	4	37	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	103	52	14	23	192
	Baksa, Chirang, Kokrajhar & Udalguri	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	42	21	6	9	78	42	21	6	9	78

22. The last portion of paragraph 1 of the Recruitment Notification indicated the importance of the domiciliary status. It reads as follows:

“State-wise vacancies are available for candidates domiciled in the State and reservation is also available for candidates domiciled in naxal and militancy affected areas and select border districts in each CAPFs”.

23. Note-III under para 2 of the Recruitment Notification reads as follows:

“As the vacancies have been allotted to the concerned States/UTs, candidates are required to submit domicile certificates of the States indicated by them in the application at the time of the medical examination.”

24. Paragraph 4(C) of the Recruitment Notification contained instructions regarding the *“process of certification and format of certificates”*. The relevant portion of paragraph 4C reads as follows:

*“...Candidates belonging to the State/UT will only be considered for recruitment in their respective State/UT on production of valid “Domicile Certificate” issued by the competent authority so authorized by the concerned State/UT to prove their domiciliary status. **Since the State of Assam is not issuing Domicile Certificate/PRC, candidates belonging to the state of Assam are not required to submit the same.** However, their selection will be subject to verification of*

residential status from the concerned District Authorities. West Pakistani refugees who have settled in J & K but have not been given the status of J & K citizen of the State will be recruited without the condition of having a domicile certificate from the designated authority of the J & K State.”

25. Admittedly the respondent in these two civil appeals belonged to the border district of Baksa which came under Code “02”. As per Appendix-C to the Notification, the vacancies for the border districts coming under Code “02” of the State of Assam were “nil” in respect of BSF (Male and Female), Assam Rifles (Male) and ITBP (Male). Therefore, he could not have been considered for the vacancies earmarked for the border districts of Assam coming under Code “01”.

26. But unfortunately the High Court, in the impugned order, proceeded on a curious reasoning that all border districts are liable to be treated alike and that once a person is found to belong to one border district, he is entitled to be considered in respect of all border districts.

27. The aforesaid reasoning of the High Court, if accepted, will tantamount to tampering with the Recruitment Notification.

Once vacancies are earmarked separately for different categories of border districts, even in the Recruitment Notification, it is not possible to hold that all border districts are to be treated alike. Different considerations may weigh with the recruiting authorities for categorizing the border districts into two types. Therefore, the High Court was not justified in granting relief to the respondent on the ground that he must be considered as a person domiciled in the border district where vacancies were available, though he belonged to another border district, to which no vacancy was notified.

28. Relying upon one portion of paragraph 4(C) of the Recruitment Notification which we have extracted in paragraph 24 above (*in bold letters*), it is contended by the learned counsel for the respondent that when the State of Assam was admittedly not issuing domicile certificates, it is not proper to discriminate between 2 different categories of border districts.

29. But we are not impressed with the above argument. The requirement to produce a domicile certificate stands on a

different footing from the categorization of border districts. Paragraph 4(C) of the Recruitment Notification dispenses with the requirement of certificate, in so far as the State of Assam is concerned. But it does not make the categorization of border districts inapplicable.

30. Therefore, the Civil Appeal Nos. 4586 and 4587 of 2018 are allowed and the impugned orders passed in W.P.(C) No.6153 of 2013 and in the review application are set aside. The writ petition filed by the respondent shall stand dismissed.

Civil Appeal No. 4585 of 2018 & Civil Appeals arising out of Special Leave Petition (C) Nos.30408-30409 of 2019

31. As we have indicated in paragraph 13 above, two questions arise for consideration in C.A.No.4585 of 2018. Only one question arises for consideration in the other Civil Appeals arising out of the judgment of the Delhi High Court.

32. The question that is common to the appeal arising out of the judgment of the Gauhati High Court and the appeals arising out of the Delhi High Court is whether candidates who have indicated

preference for a particular service can be kept out of consideration for appointment to other services, despite such candidates having secured more marks than the selected candidates in those other services.

33. In Column No.16 under paragraph 4.0 of Annexure-II, which is the brochure containing instructions for filling up the application, candidates were called upon to carefully indicate preference for the post under different Forces. It was also made clear that option once exercised will be final and that no change will be allowed thereafter.

34. The preference for BSF was to be indicated by the alphabet "A". The preference for CISF, CRPF, SSB, ITBP and Assam Rifles are to be indicated respectively by the alphabets "B", "C", "D", "E" and "F". The respondents are candidates who have clearly indicated their preference to one service only. Some candidates have indicated preferences to multiple services, as there was no prohibition under the Recruitment Notification to do so.

35. What the Staff Selection Commission did was, to confine the

consideration of candidates who indicated preference only to one service, to that service only. Candidates who indicated multiple preferences were considered for all those services and depending upon the cut off marks, they were allotted to any one of the services.

36. Unfortunately, the respondents in these appeals indicated preference only to one service. They did not secure more than or equal to the cut-off mark for that service in the category to which they belonged. It is true that candidates who secured lesser marks than these respondents have been selected in other services, but it was because of the expression of their openness for appointment to any service, even at the time of submitting the application. The respondents have become wiser after the event.

37. The High Court proceeded on the basis that the candidates cannot be pinned down to the preference indicated in the application form and that appointing persons who secured lesser marks and rejecting those who secured higher marks on this ground, would be violative of Article 14 of the Constitution.

38. In doing so, the High Court clearly overlooked Column No.16 under paragraph 4 of Annexure-II, to the Notification. This is clearly erroneous.

39. However, the learned counsel for the respondents relied upon a decision of the Division Bench of the Patna High Court in **Ram Bilash Ram** vs. **State of Bihar and others**¹ and the decision of the Allahabad High Court in **Bindhyachal Kumar Singh** vs. **Union of India and others**.²

40. In **Ram Bilash Ram** (supra), the High Court of Patna interpreted the word “preference” to mean a mere indication of a choice and held that the same cannot be taken to indicate the rejection of other options. The relevant portion of the judgment reads as follows:-

“ 11. So, the ordinary meaning of “preference” is to give priority to one over another. It would mean that by giving preference to one the person shows his liking for it over the others. This does not mean that by giving preference or priority to one, he shows his dislike for others and opts against them. So, if the appellant gave preference to some services/posts, it cannot be said that he has withdrawn his candidature for the rest of the services/posts. Any contrary inference drawn on

1 1986 SCC OnLine Pat 268

2 2013 SCC OnLine All 9828

the basis of preference list would be opposed to the principle of natural justice. If one says that he prefers a five-roomed house, it cannot be interpreted to mean that he would not accept a four-roomed house if no five-roomed house is made available to him. The term "preference" always indicates that the person has a choice to make. It cannot be interpreted to mean that if he is not offered the thing for which he has shown his preference, he will not accept the other things offered to him for which also he was otherwise eligible and for which also he was candidate from the very beginning. If the applicant had no choice left with him, as he was not found suitable for the services/posts for which he had shown preference, it cannot be said that he has abandoned his claim for the rest of the services, as it cannot be presumed that he would prefer to remain unemployed, if he did not get services/posts of his choice."

But in paragraph 12 of the said decision itself, the High Court made it clear that "***it would have been a different matter had there been a rule or instruction to the contrary***". In the case on hand the instructions were very clear and hence the decision of the Patna High Court will not apply.

41. In ***Bindhyachal Kumar Singh*** (supra), the Allahabad High Court was concerned with a case where the candidate left the column relating to preference, blank. Therefore, the High Court held that in the absence of any condition or instruction to the

effect that if any column in the application form is left blank, the application form would be rejected, and the approach adopted by the Staff Selection Commission was not correct. Therefore, the said case is also not on par with the case on hand.

42. As a matter of fact, a similar question came up for consideration before this Court in ***Union of India*** vs. ***M.V.V.S Murthy***³. The candidate in that case preferred Indian Administrative Service in the Civil Services Examination, 1983. He was actually selected for IPS. He did not accept it but chose to appear for the next year Examination. When he could not make it in the next year examination, he gave a representation seeking at least to be allotted to IPS for the CSE '83 batch on the ground that candidates who had secured lesser marks than him have been allotted to IPS in CSE 1983. When it was not accepted, he approached the court, but this Court rejected his claim.

43. Paragraph 5 of the said decision clinches the issue and it reads as follows:-

3 (1987) Supp.SCC 371

“5. Indisputably the respondent confined his preference only to the Indian Administrative Service. The note appearing below column 22 in the application form reads thus:

“In respect of the services/posts not covered by the entries above, it will be assumed that you have an equal preference for those services/posts. You will therefore, be considered for any of those services if you cannot be allotted to the services of your preference.”

*The real meaning of this note appears to us to be that if preferences given by the candidate are not available to be accommodated on the basis of the results of the candidate's preference in the selection examination, instead of being rejected he would be available to be considered for the other service. As already pointed out, the Civil Services Examination is a combined examination for several services and when a vacancy is not available within the field of the candidate's choice, it is open to the Central Government to consider the candidate for other services. The effect of this note is not that preferences given by a candidate securing a place lower to the respondent would not be entitled to his preference because he has been placed below the respondent in ranking. **If ranking alone is to be the test, preferences would have no meaning.** On the other hand, the procedure that preferences are acceptable with reference to the position in the final list till vacancies in the services preferred are exhausted is the most logical one and meets the requirements of the scheme. Merely because the respondent was placed at the 280th place in the merit list and someone else placed at No. 291 was being offered the Indian Police Service in keeping with his preference, would not give the respondent any cause of action...”*

44. Therefore, the High Court was clearly wrong in granting relief to the respondents **(i)** by diluting the significance of

preferences given by candidates; and **(ii)** in nullifying the effect of the instructions contained in Column No.16 of paragraph 4 of Annexure-II to the Recruitment Notification.

45. Coming to the second issue which arises only in respect of two respondents in Civil Appeal No.4585 of 2018, the case of the appellant is that those two candidates produced caste certificates to show that they belonged to the OBC category, but those certificates were not in the format prescribed in Annexure-VII, to the Recruitment Notification. It is the argument of the appellant that paragraph-4 of the “*important instructions to candidates*” in the Recruitment Notification made it clear that certificates in respect of these claims should be in the format prescribed.

Paragraph 4 reads as follows:-

“4. Candidates seeking reservation benefits as SC/ST/OBC/ExS must ensure that they are entitled to such reservation as per eligibility prescribed in the Notice. They should also be in possession of the certificates in the format prescribed by Government of India in support of their claim when the copies of the certificates will be sought after the Written Examination.”

46. The High Court rejected the contention of the appellant on

the ground that what is of importance is the substance and not the form and that a certificate holder has no control over the format of the certificate.

47. Defending the judgment of the High Court, it is contended by the learned counsel for the respondents that so long as the status of the respondents is not disputed by the Staff Selection Commission, it is not open to them to raise hyper-technical objections on the basis of the format in which the certificate is produced. This is especially so when the candidates have no control over the authorities who are competent to issue the certificates. Therefore, the learned counsel for the respondents submitted that the order of the High Court in respect of the candidates belonging to OBC category, does not call for any interference.

48. It is true that the power to issue caste certificates vests with the officers of the State Government and that there is no uniformity in this regard. Therefore, some leverage has to be given.

49. But the case of the appellant in the above appeal is that the indication regarding non-creamy layer status in the caste certificate is one of substance and not of form. The very eligibility to seek the benefit of reservation would depend upon the non-creamy layer status.

50. However, the respondents have filed as Annexure R-8, along with their application for vacating the stay (I.A.No.76255 of 2018), a caste certificate which actually contains a declaration about the non-creamy layer status of one of the respondents. On the basis of this certificate it was contended by the learned counsel for the respondents that the certificate was actually in the format prescribed in Annexure-VII to the Notification.

51. But we do not know whether what is produced before us as Annexure R-8 along with I.A.No.76255 of 2018 was the caste certificate actually produced by that respondent. If this is the certificate that he had actually enclosed to his application, there would have been no occasion for the High Court to examine whether the objection relates to substance or mere form. At this

level, in an appeal before the highest Court, it is not possible for us to look into this question of fact. This is especially so since the recruitment relates to uniformed services, where physical fitness of the incumbents is of utmost importance. A period of more than 10 years have now passed from the date of Notification. Therefore, at this stage it is not possible to enter into disputed questions of fact and grant relief to those two respondents.

52. In view of the above, these appeals are also liable to be allowed. But before we do so, we must deal with one last contention of Mr. Siddharth Dave, learned senior counsel for the respondents. Inviting our attention to the fact that by the order impugned, the High Court disposed of 15 writ petitions, but the appellants have chosen to file only one appeal against one of those writ petitions. It was contended by the learned senior counsel that after having allowed the common order passed in other writ petitions to attain finality, it is not open to the appellants to blow hot and cold.

53. In normal circumstances, the above argument would have

really appealed to us as it is legally well founded. But in this case even admittedly some of the petitioners who approached the court have been granted relief, due to the revision of Merit List. It means that each of the candidates who were before the High Court had some distinguishable feature and some of them got the relief even from the appellants. Therefore, the contention that the appellants cannot blow hot and cold in respect of a few candidates may not hold water.

54. Therefore, the appeals are allowed and the impugned order of the High Court is set aside. There will be no order as to costs.

.....J.
(Hemant Gupta)

.....J
(V. Ramasubramanian)

New Delhi
February 17, 2022