

**(2025) 12 OHC CK 0015**

**Orissa HC**

**Case No:** Writ Petition (C) No. 22914, 22915, 23061, 23063 Of 2015, 459, 568, 15241, 18652, 6592 Of 2016

Chinmaya Pasayat & Ors

APPELLANT

Vs

Union Of India & Others

RESPONDENT

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**Date of Decision:** Dec. 17, 2025

**Acts Referred:**

- Constitution Of India, 1950-Article 14, 15(3), 16(1), 16(4)
- Ex-Servicemen (Re-Employment In Central Civil Services And Posts) Rules, 1979- Rule 3

**Hon'ble Judges:** Dr. S.K. Panigrahi, J

**Bench:** Single Bench

**Advocate:** i. Khunjamayum Bimoti Devi v. State of Manipur & Others, 2024 INSC 733, ii Rajesh Kumar v. State of Bihar (2013) 4 SCC 690, iii Ran Vijay Singh v. State of U.P (2018) 2 SCC 357, iv Rajesh Kumar Daria v. Rajasthan Public Service Commission (2007) 8 SCC 785, v Court in Saurav Yadav v. State of Uttar Pradesh (2021) 4 SCC 542, vi Anil Kumar Gupta v. State of Uttar Pradesh 1995 (5) SCC 173, vii University of Cochin v. N.S. Kanjoonjamma & Ors (1997)4 SCC426, viii Indira Sawhney v. Union of India (2000) 1 SCC 168

**Final Decision:** Allowed

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**Judgement**

Dr. S.K. Panigrahi, J

1. Since common question of facts and law are involved in all the above-mentioned Writ Petitions, the same were heard together and are being disposed of by this common judgment. However, this Court felt it apposite to deal with the W.P.(C) No.459 of 2016 as the leading case for proper adjudication of all these cases.

2. In W.P.(C) No.459 of 2016, the petitioners are challenging the selection process to the post of Security Guard T&S Grade G of Mahanadi Coalfields Limited.

**I. FACTUAL MATRIX OF THE CASE:**

3. The brief facts of the case are as follows:

(i) A notice of employment for the position of Security Guard T&S Grade G was issued by Mahanadi Coalfields Limited vide an advertisement dated 19.02.2014, for 303 vacancies. Of these, 158 posts were allocated to the General category, while 145 posts were reserved, in accordance with the State Quota outlined in the Office Memorandum dated 05.07.2005 and the guidelines issued on 29.01.2023 by the Department of Personnel and Training, with the reservation as follows: 16% for Scheduled Castes (SC), 22% for Scheduled Tribes (ST), and 12% for Other Backward Classes (OBC). Therefore, the seats reserved were as follows: 33 posts for Scheduled Castes (SC), 66 posts for Scheduled Tribes (ST), and 36 posts for Other Backward Classes (OBC).

(ii) Advertisements for the Security Guard T&S Grade G post were also published in different newspapers, dated 19.02.2014, with a note that reservation for SC, ST, OBC, Physically Handicapped, and Ex- Servicemen would apply as per the rules and guidelines of the Government of India.

(iii) The eligibility criteria for the post were fixed as Indian nationals who are Ex-Army/Ex-BSF personnel, NCC/A certificate holders, or Sportsman of All India repute, with Matriculation or an equivalent qualification from a recognized Board.

(iv) A written test was conducted, followed by an interview, and a select list was published.

(v) The petitioners, who are NCC/A certificate holders and met the eligibility criteria, qualified the written test but did not find their names on the select list after the interview.

(vi) The select list contained a 'Note No. 2,' which stated that reservation for Ex-Servicemen had been applied in accordance with the Government of India guidelines and purportedly included a 24.5% reservation.

(vii) Aggrieved by the provision of reservation to Ex-Servicemen, which was allegedly contrary to the advertisement dated 19.02.2014 and resulted in the total reservation exceeding 50%, the petitioners have approached this Court in the present writ petition.

## **II. SUBMISSIONS ON BEHALF OF THE PETITIONERS:**

4. Learned counsel for the Petitioners earnestly made the following submissions in support of his contentions:

(i) The petitioners submitted that the reservation for Ex-Servicemen granted by Mahanadi Coalfields Limited was unlawful, as the employment notice dated 19.02.2014 did not specify any such reservation. While the notice explicitly outlined reservations for candidates belonging to SC, ST, and OBC categories, no provision was made for Ex-Servicemen. The recruitment process must strictly adhere to the

terms of the advertisement, and any deviation therefrom would render the process impermissible.

(ii) The petitioners submitted that it is a settled position of law that the total reservation should not exceed 50% of the total vacancies, as laid down in *Indira Sawhney v. Union of India*. [ (2000) 1 SCC 168] By including the Ex-Servicemen reservation, the total reservation exceeded the 50% ceiling, amounting to 74.5%, with 16% for SC, 22% for ST, 12% for OBC, and 24.5% for Ex-Servicemen.

(iii) The petitioners contended that if any reservation for Ex-Servicemen was to be provided, it ought to have been in the form of horizontal reservation, in line with the guidelines issued by the Government of India. Instead of being allocated horizontally across the SC, ST, and OBC categories, the Ex-Servicemen were adjusted solely within the General category. This misapplication resulted in a substantial reduction in the number of General category posts available for other eligible candidates.

(iv) Mahanadi Coalfields Limited had misapplied the principle of horizontal reservation in the recruitment process. Moreover, the claim made by the respondents that the selected Ex-Servicemen candidates had not availed of any age relaxation was factually incorrect. Out of the 74 candidates selected under the 24.5% horizontal reservation for Ex-Servicemen, 50 candidates had availed of age relaxation. Nevertheless, all these candidates were adjusted solely within the General category, which constituted a clear misapplication of the horizontal reservation policy.

(v) The petitioners submitted that Mahanadi Coalfields Limited inconsistently applied reservation policies by following the State Government's reservation policy for SC, ST, and OBC categories while simultaneously adhering to the Central Government's policy for Ex-Servicemen. The petitioners contended that the Ex-Servicemen reservation should have been limited to 3% under the State policy. However, the respondents allocated 24.5% in line with the Central policy, thereby adopting inconsistent standards and aggravating the violation.

(vi) The petitioners further submitted that the recruitment process, which began in 2014, had caused significant delays, resulting in undue hardship. Having qualified the written test and interview, they had been awaiting consideration for their appointments. The petitioners contended that their case should be sympathetically considered as a person's right should not be extinguished due to the efflux of time.

### **III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:**

5. The Learned Counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:

(i) The advertisements published in various newspapers on 19.02.2014 included a provision for 24.5% reservation for Ex-Servicemen, in accordance with the Ministry

of Defence circular dated 04.06.2014. The petitioners, having been aware of this reservation, participated in the selection process and, therefore, are precluded from challenging its validity at this stage.

(ii) The petitioners' contentions regarding the omission of details of reservation cannot be sustained, and the entire recruitment process of 2015 cannot be vitiated on this basis alone, as the omission is inconsequential. To buttress this argument, reliance was placed on the Supreme Courts observations in *University of Cochin v. N.S. Kanjoonjamma & Ors*[(1997)4 SCC426], where it was expressed that omission to mention that it was a special recruitment for reserved posts in the advertisement is inconsequential.

(iii) Mahanadi Coalfields Limited, being a Central Public Sector Undertaking (CPSU)/ has adhered to the Central Governments policy regarding Ex-Servicemen reservation. The state policy for the reservation of SC (16%), ST (22%), and OBC (12%) was applied as per the Office Memorandum dated 05.07.2005 by the Government of India.

(iv) The petitioners failed to meet the basic cutoff criteria for consideration for employment. The cutoff marks for the last candidate in different categories were stated as follows: UR: 42.5, OBC: 37.5, SC: 34.5, ST: 24.5, and ESM-Gen: 31.5. The petitioners have scored significantly less than the cut off marks and therefore do not fall within the zone of consideration. Therefore, their claims lack merit.

#### **IV. COURTS REASONING AND ANALYSIS:**

6. Heard Learned Counsels for the parties and perused the documents placed before this Court.

7. The central issue that demands determination in the present case is whether the 24.5% horizontal reservation for Ex-Servicemen, as mandated by the Ministry of Defence Circular dated 04.06.2014, has been correctly implemented in the recruitment process for the post of Security Guard T&S Grade G by Mahanadi Coalfields Limited.

8. Before delving into the specific application of the Ex-Servicemen reservation, it is imperative to first examine the underlying principle of horizontal reservation and its intended implementation. In *Indra Sawhney* (supra), the Supreme Court, drawing a distinction between horizontal and vertical reservations, provided a comprehensive exposition of the concept. It is clarified that horizontal reservations intersect with vertical reservations, forming an interlocking framework. Crucially, they do not affect the total percentage allocated to vertical reservations. The relevant paragraph is produced hereinbelow:

**812. There are two types of reservations, which may, for the sake of convenience/ be referred to as vertical reservations and horizontal reservations. The reservations in favour of Scheduled Castes, Scheduled**

**Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains and should remain the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.**

9. The provision under the Ministry of Defence Circular dated 04.06.2014, mandating a 24.5% reservation for Ex-Servicemen, is of a special nature and fundamentally distinct from social reservations typically allocated to Scheduled Castes, Scheduled Tribes, and Other Backward Classes. Unlike social reservations, which seek to address historical injustices and disadvantages suffered by certain groups, the Ex-Servicemen reservation is specifically designed to honor and benefit those who have served in the armed forces. It is, therefore, a horizontal reservation, cutting across the vertical categories of General, SC, ST, and OBC, ensuring that Ex-Servicemen receive equitable opportunities within each of these categories without disturbing the overall structure of vertical reservations.

10. The Supreme Court, in *Anil Kumar Gupta v. State of Uttar Pradesh* [1995 (5) SCC 173] had provided a detailed procedure for the application of horizontal and vertical reservations in recruitment processes as hereinunder:

**18. The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied in case it is an overall horizontal reservation no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/ accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall/ may be satisfied or may not be satisfied.)...**

11. In the context of the application of both horizontal and vertical reservation, the Supreme Court in *Saurav Yadav v. State of Uttar Pradesh* [(2021) 4 SCC 542] clarified that a person belonging to an intersection of vertical-horizontal reserved categories who secures sufficient merit to qualify without relying on the vertical reservation would be considered as qualifying in the general (open competition) category. Such a candidate cannot be excluded from the horizontal quota in the general category, as their merit qualifies them independently of the vertical reservation.

12. In the same vein, in *Rajesh Kumar Daria v. Rajasthan Public Service Commission* [(2007) 8 SCC 785], the Supreme Court observed:

**9. Social reservations in favour of SC, ST and OBC under Article 16(4) are vertical reservations. Special reservations in favour of physically handicapped, women, etc./ under Articles 16(1) or 15(3) are horizontal reservations. Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. (Vide *Indra Sawhney* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , *R.K. Sabharwal v. State of Punjab* [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] , *Union of India v. Virpal Singh Chauhan* [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and *Ritesh R. Sah v. Dr. Y.L. Yamul* [(1996) 3 SCC 253] .) But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of Scheduled Caste women. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.**

13. Upon reviewing the facts and materials on record, it is observed that the Ex-Servicemen candidates in the present recruitment for the posts of Security Guard T&S Grade G have been placed in the General category vacancies within the select list.

14. Horizontal reservations are intended to cut across vertical reservations. Proper implementation requires accommodating Ex-Servicemen within their respective vertical categories (General, SC, ST, OBC) without disturbing the overarching reservation structure.

15. The correct approach for application of such reservation would be: first, filling the Open Competition quota (50%) based on merit; second, filling the social reservation quotas (SC, ST, and OBC); and third, identifying how many candidates under Ex-servicemen category have already been selected. If the horizontal reservation quota is met through these selections no further action is needed. However, if it remains unfulfilled, the required number of Ex-servicemen category candidates must be adjusted within their respective social reservation categories by replacing an equivalent number of candidates.

16. The adjustment of 31 Ex-Servicemen candidates from OBC-NCL, SC, and ST categories into the General category contravenes the provisions of the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979. Rule 3 of the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 mandates that Ex-Servicemen selected for vacancies reserved for SC, ST, or OBC must be adjusted within those categories. If no vacancies are available, such candidates must be adjusted in the next available reserved vacancy.

Here, horizontal reservation has been erroneously applied vertically, with all such candidates placed exclusively in General category vacancies.

17. In the present case, the reservation scheme is one of overall horizontal reservation, not compartmentalized horizontal reservation, thereby eliminating the need for separate application within each vertical category. The overall horizontal reservation criteria must be adhered to, ensuring that all Ex-Servicemen are appropriately accommodated within their respective vertical categories without disturbing the overarching reservation structure.

18. While it is acknowledged that Ex-Servicemen, if qualifying on merit, may be placed in the General category, this is not the situation in the present case. The cut-off for ESM-General candidates have been set at 31.5, significantly lower than the General category cut-off of 42.5. This disparity undermines the claim of merit-based placement and highlights the incorrect application of vertical reservation principles.

19. Although the recruitment process took place in 2015 and a considerable amount of time has elapsed, and while this Court is not inclined to revisit whether all the

petitioners have met the cut-off, the improper application of horizontal reservation cannot be disregarded.

20. It is well established that the rules of recruitment cannot be altered midway, unless explicitly permitted by the applicable rules or the advertisement. In cases where such a change is permitted, it must comply with the requirements of Article 14 and satisfy the test of non-arbitrariness. Any alteration in the recruitment process must be made in a manner that does not disadvantage any candidate or create an unequal playing field.

21. Additionally, it is essential to recognize that the recruitment process for the position of Security Guard T&S Grade G took place in 2015, and a substantial amount of time has since passed. The selected candidates have been actively serving in these roles for a considerable period. Consequently, any remedial action at this juncture must account for the established tenure of these appointees. Therefore, alternative arrangements should be made to address any irregularity in the recruitment process in a manner that rectifies the situation without causing undue prejudice to the positions of those appointed pursuant to the original advertisement.

22. In *Ran Vijay Singh v. State of U.P.*, [ (2018) 2 SCC 357] the Supreme Court addressed a case involving multiple evaluations due to an erroneous answer key, which led to the preparation of three sets of results. Recognizing that candidates would suffer regardless of whether the original results or the third set were adopted, the Court chose a middle path. It declared the third set of results while safeguarding the positions of candidates appointed under the original declaration, even if they were unsuccessful as per the third set. To accommodate the newly selected candidates, the Court directed the creation of supernumerary posts.

23. In the same vein, in *Rajesh Kumar v. State of Bihar*, [ (2013) 4 SCC 690] the Supreme Court extended protection to candidates already working who did not qualify after re-evaluation, observing that they should not be ousted from service but should instead be placed at the bottom of the list of selected candidates. The Court expressed:

**"21. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment**



**letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list."**

24. In *Khunjamayum Bimoti Devi v. State of Manipur & Others*, [2024 INSC 733] the Supreme Court upheld the Manipur High Courts decision which annulled the selection of 242 OBC candidates for Primary Teacher posts due to the retrospective application of reservations. However, acknowledging the hardship faced by teachers who had already served for over 13 years, the Court left the decision regarding their retention to the discretion of the Manipur government.

25. Consequently, this Court is of the considered view that it would not be judicious or equitable to direct the removal of candidates who were erroneously extended the benefit of the 'vertical' application of the ex-servicemen quota. The Court recognizes that such an order may disproportionately affect individuals who relied in good faith on the administrative interpretation of the quota, potentially causing irreparable harm to their professional and personal stability. Furthermore, the principle of non-retroactivity in administrative corrections supports refraining from penalizing candidates for errors not attributable to them. Hence, any corrective action should aim to address future processes without unduly prejudicing those who have already been integrated into the system under a bona fide misunderstanding of policy.

#### **V. CONCLUSION:**

26. Based on the aforementioned analysis of both factual and legal aspects, it is hereby directed that the candidature of the petitioners shall be reconsidered in a fresh recruitment exercise.

27. The said process shall be conducted without displacing or jeopardizing the appointments of ex-servicemen who were erroneously appointed by the Opposite Party against these posts. Such appointments of the ex-servicemen shall be regularized by creating supernumerary posts. The petitioners, upon their appointment pursuant to this order, shall be accorded seniority over those ex-servicemen occupying the supernumerary posts.

28. The entire exercise shall be completed expeditiously and in accordance with rules of recruitment.

29. Accordingly, all the above-mentioned Writ Petitions are **allowed**.

30. Interim order, if any, passed earlier, in any of the Writ Petitions, stands vacated.