

**(2009) 10 DEL CK 0366**

**Delhi High Court**

**Case No:** Writ Petition (Civil) No. 11941 of 2009

Prodip Kumar Mondal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision:** Oct. 6, 2009

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2009) 164 DLT 119 : (2010) 2 ILR Delhi 226

**Hon'ble Judges:** Madan B. Lokur, J; A.K. Pathak, J

**Bench:** Division Bench

**Advocate:** Sanjay Sahrawat, for the Appellant; Anil Gautam, for Resp. 1 and Naresh Kaushik, Aditi Gupta and Amita Chaudhary for UPSC, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

A.K. Pathak, J.

Vide order dated 21st May, 2009, the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as Tribunal) dismissed the Original Application No. 1433/2007 of the Petitioner. Aggrieved by this order, Petitioner has filed this writ petition under Article 226 of the Constitution praying therein that the impugned order of the Tribunal be set aside and O.A. be allowed.

2. Factual matrix of the case, as emerges from the record, indicate that the Petitioner joined as a Direct Recruit Assistant in the Central Secretariat Service. Subsequently, he appeared in the Section Officer Grade Limited Departmental Competitive Examination, 2003 (LDCE), conducted by the Union Public Service Commission (UPSC), as per the Recruitment Rules, applicable to the post of Section Officer. As per the Rules, 50% of the vacancy in a recruitment year, were to be filled through the LDCE. In the said examination for the year 2003, UPSC declared 243 candidates as successful for the promotion to the post of Section Officer. Thereafter, the Department of Personnel and Training (DOP&T), being the cadre controlling

authority requested the UPSC to release the additional list of repeat candidates of unreserved category. Pursuant to this request, UPSC released an additional list of 3 unreserved candidates namely Mr. Jasbir Singh Negi, Mr. Ranjit Kumar Srivastava and Mr. Abhay Nandan Mishra.

3. Petitioner is a Scheduled Caste (SC) candidate. He claimed that SC candidates, who had secured marks equivalent to the general standards, at par with the unreserved candidates, were not adjusted against the unreserved vacancies. Had the adjustments been made, the SC vacancies would have fallen vacant and the Petitioner could have been accommodated against one of such vacancies. In the list released by UPSC, the last unreserved candidate namely Mr. Kumar Manoj Kashyap was shown at serial No. 210. Below him only SC/ST candidates were placed. By the supplementary list furnished by the UPSC dated 15th February, 2007, Mr. Jasbir Singh Negi, Mr. Ranjit Kumar Srivastava and Mr. Abhay Nandan Mishra were recommended and they belonged to unreserved category. Mr. Jasbir Singh Negi and Mr. Ranjit Kumar Srivastava were placed between serial No. 213 and 214 and so far as Mr. Abhay Nandan Mishra is concerned, he was placed between serial No. 222 and 223, thereby he became last unreserved candidate. Petitioner claimed that the SC candidates above serial No. 222, having secured higher marks, were necessarily required to be accommodated against the unreserved vacancy and in such an eventuality Petitioner being a SC candidate would have been eligible for the post of Section Officer in the SC category.

4. As against this, case of the Respondent was that the last unreserved candidate was placed at serial No. 210 which was later on brought down to the level of Mr. A.N. Mishra an unreserved repeat candidate. 12 candidates in SC/ST categories between the serial No. 210 and Mr. A.N. Mishra, were not entitled to unreserved vacancies as they had attained that position in the list on relaxed criteria. They did not fulfil the standard set in the written part of LDCE of 200 marks, duly approved by the UPSC for unreserved candidates. All the SC/ST candidates beyond serial No. 210 were placed in the list as per the relaxed standard, accordingly, SC candidates below the rank of 210 till Mr. A.N. Mishra could not have been adjusted against the unreserved vacancies. SC candidates had already availed the relaxed standard, as per the examination rules and were to be placed against reserved posts. Therefore, they cannot claim unreserved posts.

5. Tribunal called for the records of UPSC regarding the LDCE including the marks list of 4 questioned unreserved and 11 SC and 1 ST candidates to verify as to whether the standards were relaxed in the case of SC/ST candidates below the serial No. 210 or not. Tribunal found that the standard set for unreserved category of 200 marks in written examination, was relaxed in case of all the 11 SC and 1 ST candidates, who were placed below the last unreserved category candidate namely Mr. Kumar Manoj Kashyap. Tribunal found that these 11 SC and 1 ST candidates had secured less marks in written examination. Tribunal considered the additional

affidavit by the UPSC as also the records produced before it and summarised the position of unreserved, SC/ST candidates from the serial No. 210 onwards, which for the sake of ready reference, is reproduced as under:

Rank No.	Candidate's Name	Community	Qualified under Category
210	Kumar Manoj Kashyaop	General	General in the Main List
211	Inder Jeet	SC	SC at relaxed standard in Main List
212	Shakti Shamsheer	SC	-do-
213	Biplab Kumar Naskar	SC	-do-
214	Jasbir Singh Negi	General	General in Supplementary List
215	Ranjit Kumar Srivastava	General	General in Supplementary List
216	Kuldip Kumar	SC	SC at relaxed standard in Main List
217	M. Jena	SC	-do-
218	Sunil Kumar	SC	-do-
219	Rajesh Kumar	SC	-do-
220	Amrish Kumar	SC	-do-
221	Bipin Kumar Hembrom	ST	ST at relaxed standard in Main List
222	Lakshmi Kanta Halder	SC	SC at relaxed standard in Main List
223	Raj Kumar	SC	-do-
224	Rohtas Bhankhar	SC	-do-
225	Abhay Nandan Mishra	General	General in Supplementary List
226	Sahdev Singh	SC	SC at relaxed standard in Main List
227	Pradip Kumar Pal	SC	-do-
228	Deen Dayal	SC	-do-
229	Lakhmi Chand	SC	-do-
230	Rajinder Kumar	SC	-do-
231	Rachna	SC	-do-

232	Dharkat Rungsung Luikang	ST	ST at relaxed standard in Main List
233	Ashish Kumar Tarachand	SC	SC at relaxed standard in Main List
234	Sneh Lata	SC	-do-
235	Shankar Lal Bairwa	SC	-do-
236	Sudheer Babu Motana	SC	-do-
237	Naresh Kumar	SC	-do-
238	Nithali Ram	SC	-do-
239	Surendra Kumar	SC	-do-
240	Sunita	SC	-do-
241	Rajesh Kumar Gujar	SC	-do-
242	Anjan Biswas	SC	-do-
243	Yogesh R. Patel	ST	ST at relaxed standard in Main List
244	Yoginder Kumar	SC	SC at relaxed standard in Main List

6. Tribunal also took note of Rule 8 of the Examination Rules for holding that SC candidates could not have been treated as unreserved candidates as they had attained their position in the list below Mr. Kumar Manoj Kashyap, on the basis of relaxed standards and thus could not have been placed against the unreserved vacancies.

7. We have heard the learned Counsel for the parties. We do not find any error in the impugned order of the Tribunal, which has been passed on the basis of records produced before it, as well as the rule position.

8. The Rule 8 of the Examination Rules reads as under:

8(i) After the examination, candidates will be arranged by the commission in the order of merit as disclosed by the aggregate marks finally awarded to each candidate; and in that order so many candidates as are found by the Commission to be qualified at the examination shall be recommended for inclusion in the select list for each category up to the required number.

(ii) The candidates belonging to the any of the Scheduled Caste or the schedule Tribe may to the extent of the number of vacancies reserved for Scheduled Caste and Scheduled Tribe be recommended by the Commission by relaxed standard, subject to the fitness of these candidates for inclusion in the select list for each category

irrespective of their ranks in the order of merit at the examination.

Provided that the candidates belonging to the Scheduled Caste and Scheduled Tribes who have been recommended by the Commission without resorting to any relaxation/concession in the eligibility or selection criteria, at any stage of examination, shall not be adjusted against the vacancies reserved for Scheduled Caste and the Scheduled Tribes.

9. Proviso to sub rule (ii), quoted above clearly shows that in case SC/ST candidate attains his position in the merit list without resorting to any relaxed eligibility criteria then he would be eligible to an unreserved post. In this case, the SC/ST candidates shown below Mr. Kumar Manoj Kashyap had attained ranking in the select list, on the basis of the relaxed standards and cannot claim their appointment on an unreserved post.

10. Tribunal has returned a categorical finding in this regard, on the basis of records produced before it in support of the plea taken in the counter affidavit/additional affidavit filed by the Respondent. Accordingly, we have no reason to disbelieve the plea taken by the Respondent which is supported by the records of examination.

11. We do not find any error in the view taken by the Tribunal that the reserved category candidates below Mr. Kumar Manoj Kashyap were not eligible to be placed against the unreserved vacancies, as they had attained that position on the basis of the relaxed standards. These reserved category candidates had attained lesser marks in the written examination of LDCE than the unreserved candidates and thus were not eligible to be qualified or accommodated against the unreserved post of Section Officer.

12. It is worth mentioning here that name of the Petitioner does not find mention in the select list, even after relaxed standard of eligibility criteria for SC candidates.

13. In the light of the above discussions we do not find any merit in this writ petition.

14. Dismissed.