



**REPORTABLE**

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

**CIVIL APPEAL NO.10262 OF 2025**

**THE WEST BENGAL STATE ELECTRICITY  
TRANSMISSION CO.LTD  
& ORS.**

**..APPELLANT (S)**

**VERSUS**

**DIPENDU BISWAS & ORS.**

**..RESPONDENT (S)**

**J U D G M E N T**

**NONGMEIKAPAM KOTISWAR SINGH, J.**

1. The present appeal has been preferred against the judgment and order dated 07.05.2024 passed by the Division Bench of the High Court at Calcutta in MAT

69/2024 with CAN 1 of 2024, whereby the order passed by the Single Bench in WPA 26312/2023 was set aside.

**2.** The core issue involved in this appeal relates to the manner of filling of a vacancy reserved for Person with Disability with Low Vision (PWD-LV) in the Unreserved category UR (PWD-LV)<sup>1</sup>, where the recruitment notification stipulated that in case of non-availability of qualified unreserved candidate in the PWD-LV category, the vacancy will be filled up by PWD candidates of other categories as per merit.

**3.** By the impugned order, the Division Bench of the Calcutta High Court held that when a qualified unreserved PWD-LV candidate is available, the vacancy is to be filled up by the qualified unreserved candidate

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<sup>1</sup> UR (PWD-LV): Unreserved (Persons with Disabilities – Low Vision or Blindness)

only, even though there may be more meritorious PWD-LV candidates available in the reserved category of OBC-A, as per of the aforesaid stipulation in the recruitment notification.

**4.** In order to appreciate this issue involved, a brief reference to the relevant facts would be apposite.

**5.** A recruitment process was initiated by the Appellant, West Bengal State Electricity Transmission Co. Ltd., for appointment to a number of posts vide Notification No. REC/2023/01.

The said notification includes 30 vacancies for the post of Junior Engineer (Civil) Grade II, out of which 1 (one) post was meant for unreserved UR (PWD-LV) and 5 (five) posts for Other Backward Classes-A (OBC-A)<sup>2</sup> as follows.

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<sup>2</sup> OBC-A: Other Backward Class (Most Backward)

Sl.	Name of the post	UR	UR (EC)	UR (Ex-S)	UR (MS)	UR (PWD-LV)	UR (PWD-HH)	UR (PW D-D)	OBC-A	OBC -A (EC)	OBC -B	OBC -EC
7.	Junior Engineer (Civil) Gr. II	7	4	1	1	1	0	0	5	1	1	1
		SC (EC)	SC (EC)	SC (Ex-S)	ST (PWD -LV)	ST	ST (EC)	Total				
		33	2	1	1	1	0	30				

There are also two notes below the table as follows:

\* In case of non-availability of qualified UR (PWD-HH) candidate, the vacancy will be filled by PWD candidates of other categories as per merit.

# In case of non-availability of qualified UR (PWD-LV) candidate, the vacancy will be filled by PWD candidates of other categories as per merit.

**6.** The aforesaid advertisement shows that while certain number of posts are reserved under various social categories (vertical), there are reservations for special categories (horizontal) for these social categories also, that is, reservation within reservation.

Thus, 7 (seven) posts have been earmarked for the Unreserved Category, and further, in the same Unreserved Category, 4 (four) posts have been reserved

for the special category of EC<sup>3</sup> and 1 (one) post each has been reserved for the special categories of Ex-S<sup>4</sup>, MS<sup>5</sup> and PWD-LV.

In respect of the social reservation (vertical) category of OBC, it has been further sub-categorised into OBC-A and OBC-B, and horizontal reservations have also been provided for these two sub-categories.

Similarly, there are special (horizontal) reservations in respect of SCs and STs, with which we are not concerned in this case.

**7.** Thus, the aforesaid notification indicates both vertical and horizontal reservations.

The horizontal reservation pattern in the aforesaid notification indicates “compartmentalised reservations”,

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<sup>3</sup> EC : Exempted Category

<sup>4</sup> Ex-S : Ex-Servicemen

<sup>5</sup> MS: Meritorious Sportspersons

not “overall reservations”, to use the terms described in **Anil Kumar Gupta Vs. State of U.P.**<sup>6</sup>, as referred to in **Saurav Yadav Vs. State of UP**<sup>7</sup>, where the posts reserved for various categories of horizontal reservations are distributed among the vertical social reservations.

**8.** In the present case, we are concerned with the posts of UR (PWD-LV) and OBC-A.

The reservation chart, for our convenience, can be shown as follows:

1. UR (PWD-LV) - 1 post  
(to which the Respondent No.1 belongs)
2. OBC-A - 5 posts  
(to which the Respondent No.3 belongs)
3. OBC-A (EC) - 1 post
4. OBC-A (PWD-LV) - Nil  
(to which also the Respondent No. 3 belongs)

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<sup>6</sup> (1995) 5 SCC 173

<sup>7</sup> (2021) 4 SCC 542

**9.** While the Respondent No. 1 PWD-LV candidate applied under the Unreserved category for the said post of Junior Engineer (Civil) Grade-II under UR (PWD-LV) quota, it appears the Respondent No. 3 (OBC-A candidate) applied against the said 5 (Five) posts of Junior Engineer (Civil) Grade-II under the OBC-A quota.

It may be noted that there was no horizontal reservation for the PWD-LV under the OBC-A category in the said notification. However, in his application, the Respondent No. 3 also stated that he belongs to the PWD (LV) category.

**10.** In the said recruitment process for the post of Junior Engineer (Civil) Grade-II, the Respondent No.1 scored 55.667 marks, whereas, the Respondent No.3 scored 66.667 marks. Since the Respondent No.3 under OBC-A category also belongs to PWD-LV category and

obtained higher marks than the Respondent No.1, he was offered appointment to the aforesaid Unreserved post of UR(PWD-LV) and not Respondent No.1.

**11.** The said offer for appointment in favour of the Respondent No. 3 was put to challenge by the Respondent No. 1 before the High Court at Calcutta through a writ petition, WPA 26312/2023 in view of the aforesaid condition in the recruitment notification which stipulated that in case of non-availability of qualified UR (PWD-LV) candidate, the vacancy will be filled up by PWD candidates of the other categories as per merit. The Writ Court, however, after finding that the Respondent No. 3 also belonged to the PWD-LV category and had scored more marks than the Respondent No. 1, dismissed the said writ petition, vide order dated 11.12.2023.

**12.** Being aggrieved by the dismissal of the writ petition, the Respondent No.1 preferred an intra-court appeal before the Division Bench of the High Court of Calcutta, which was registered as MAT 69 of 2024 with CAN 1/2024.

**13.** The Division Bench of the High Court upon consideration of the stipulation in the notification that in case of non-availability of qualified UR (PWD-LV) candidate, the vacancy will be filled by PWD candidates of other categories as per merit, reversed the decision of the Single Bench and allowed the appeal and directed that since the Respondent No. 1, who is an unreserved candidate was available, should be given appointment to the said post under UR (PWD-LV).

**14.** The Division Bench of the High Court took the view that considering the aforesaid condition in the

recruitment notification, as there was already available a qualified unreserved PWD-LV candidate in the person of the Respondent No. 1, the said vacancy could not have been filled up by any other PWD-LV candidate belonging to other reserved categories and it should be filled up by a PWD-LV candidate belonging to Unreserved category only. According to the Division Bench, it is only when a PWD-LV candidate belonging to the Unreserved category is not available that a PWD-LV candidate belonging to other reserved categories can be considered for appointment.

**15.** We have perused the recruitment notification no. REC/2023/01.

The notification mentions that *“In case of non-availability of qualified UR(PWD-LV) candidate, the*

*vacancy will be filled up by PWD candidates of other categories as per merit”.*

The bone of contention between the contesting parties is to be traced to the said condition which has been understood differently by the Single Bench and Division Bench of the High Court.

**16.** As mentioned above, there were 5 (five) posts reserved for OBC-A category in the post of Junior Engineer (Civil) Grade-II. The said 5 (five) posts reserved for the OBC-A were filled by OBC-A candidates in order of merit. The Respondent No. 3 though belonged to OBC-A category was not appointed, as it appears that there were more meritorious OBC-A candidates above him.

**17.** However, as the Respondent No. 3 also belonged to the PWD-LV category, by virtue of his better merit position than the Respondent No. 1, he was offered

appointment by the appellant authority to the said 1 (one) Unreserved post of UR (PWD-LV).

**18.** This act of the appellant authority to appoint the Respondent No. 3 in the post of UR (PWD-LV) was questioned by the Respondent No.1 before the High Court premised on the condition stipulated in the recruitment notification referred to above, by contending that since the Respondent No.1 was a qualified PWD-LV under the Unreserved category, during his availability, no other candidate from any other reserved category could have been considered for appointment, and the Respondent No.1 should have been given appointment. This contention was dismissed by the Single Bench, but accepted by the Division Bench of the High Court.

**19.** As we proceed to examine the implications of this condition in the recruitment notification, we will revisit

the law relating to reservation, particularly with reference to filling up of unreserved vacancies by reserved candidates.

**20.** In view of the multifaceted nature of reservation in India, a unique service law jurisprudence spurred by Constitutional mandate has emerged. Reservations have been classified into two categories, namely, vertical and horizontal, with respect to which certain judicial norms have evolved through a series of landmark decisions. The definitions and interrelationship between the two kinds of reservations have been succinctly described in the landmark case of ***Indra Sawhney Vs. Union of India***<sup>8</sup>, in the following words,

“812. ....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

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<sup>8</sup> 1992 Supp (3) SCC 217

reservations cut across the vertical reservations - that is called inter-locking 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 S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) 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.....”

**21.** In respect of vertical reservation, the social reserved category posts are to be filled by the candidates belonging to that social category only and not by others. However, with reference to the Unreserved or Open category posts, there is no such restrictions as it could be filled up by anyone from any category and there could be movement from one reserved category to the Unreserved category based on merit, which is called mobility in reservation. This movement from a reserved category to the unreserved, however, will not affect the quota for the reserved category. This principle has been

indicated by this Court in **Indra Sawhney**<sup>9</sup> (supra) in the following words,

“811. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

**22.** This legal position pertaining to social (vertical) reservation, mobility and special (horizontal) reservation has taken firm roots and has been restated in clear terms in the case of **Saurav Yadav v. State of U.P.**,<sup>10</sup> as follows:

“59. The features of vertical reservations are:

59.1. They cannot be filled by the open category, or categories of candidates other than those specified and have to be filled by candidates of the social category concerned only (SC/ST/OBC).

59.2. Mobility (“migration”) from the reserved (specified category) to the unreserved (open category) slot is possible, based on meritorious performance.

59.3. In case of migration from reserved to open category, the vacancy in the reserved category should be filled by another person from the same specified category, lower in rank.

59.4. If the vacancies cannot be filled by the specified categories due to shortfall of candidates, the vacancies are to be “carried forward” or dealt with appropriately by rules.

60. Horizontal reservations on the other hand, by their nature, are not inviolate pools or carved in stone. They are

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<sup>9</sup> (1992) Supp (3) 217

<sup>10</sup> (2021) 4 SCC 542

premised on their overlaps and are “interlocking” reservations [ The expression used by B.P. Jeevan Reddy, J., in *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217: 1992 SCC (L&S) Supp 1.] . As a sequel, they are to be calculated concurrently and along with the inviolate “vertical” (or “social”) reservation quotas, by application of the various steps laid out with clarity in para 21.3. The first rule that applies to filling horizontal reservation quotas is one of adjustment i.e. examining whether on merit any of the horizontal categories are adjusted in the merit list in the open category, and then, in the quota for such horizontal category within the particular specified/social reservation.

**23.** In the horizontal reservation there is also the concept of *overall reservation* and *compartmental horizontal*, which has been explained in **Anil Kumar Gupta**<sup>11</sup> (supra) in the following manner:

“15. On a careful consideration of the revised notification of 17-12-1994 and the aforementioned corrigendum issued by the Lucknow University, we are of the opinion that in view of the ambiguous language employed therein, it is not possible to give a definite answer to the question whether the horizontal reservations are *overall reservations* or *compartmentalised reservations*. We may explain these two expressions. Where the seats reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not intertransferable, it would be a case of compartmentalised reservations. We may illustrate what we say : take this very case; out of the total 746 seats, 112 seats (representing fifteen per cent) should be filled by special reservation candidates; at the same time, the social reservation in favour of Other Backward Classes is 27% which means 201 seats for OBCs; if the 112 special reservation seats are also divided proportionately as between OC, OBC, SC and ST, 30

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<sup>11</sup> (1995) 5 SCC 173

seats would be allocated to the OBC category; in other words, thirty special category students can be accommodated in the OBC category; but say only ten special reservation candidates belonging to OBC are available, then these ten candidates will, of course, be allocated among OBC quota but the remaining twenty seats cannot be transferred to OC category (they will be available for OBC candidates only) or for that matter, to any other category; this would be so whether requisite number of special reservation candidates (56 out of 373) are available in OC category or not; the special reservation would be a watertight compartment in each of the vertical reservation classes (OC, OBC, SC and ST). As *against this*, what happens in the overall reservation is that while allocating the special reservation students to their respective social reservation category, the overall reservation in favour of special reservation categories has yet to be honoured. This means that in the above illustration, the twenty remaining seats would be transferred to OC category which means that the number of special reservation candidates in OC category would be  $56 + 20 = 76$ . Further, if no special reservation candidate belonging to SC and ST is available then the proportionate number of seats meant for special reservation candidates in SC and ST also get transferred to OC category. The result would be that 102 special reservation candidates have to be accommodated in the OC category to complete their quota of 112. The converse may also happen, which will prejudice the candidates in the reserved categories. It is, of course, obvious that the inter se quota between OC, OBC, SC and ST will not be altered.”

**24.** In the present case, though the reservation pattern as indicated in the advertisement is of compartmentalised reservation, it may not be necessary to dwell on that aspect much further, as the issue

involved in the present case is only about the mobility of a PWD-LV candidate from a reserved category of OBC-A to the Unreserved horizontal category of UR(PWD-LV).

**25.** In the present case, there is no horizontal reservation for the PWD-LV category under the social category of the OBC-A category, but there is a horizontal reservation for the PWD-LV under the Unreserved or Open category. The question that arises for consideration is what should be the method of filling up such horizontal reservation for PWD-LV, which falls under the Unreserved or Open category.

**26.** The correct answer can be arrived at once we understand the scope of reservation for a special category (horizontal) of PWD-LV falling under the Unreserved or Open category.

For this, it is also necessary to understand the meaning and scope of the “Unreserved” or “Open” category of reservation.

**27.** In reservation law, it is well settled that Unreserved/Open category does not refer to any social/communal category like SCs, STs or OBCs. In other words, any post falling under the Unreserved or Open category does not pertain to any particular social category; it provides an open field or pool meant for the world at large, in the sense that it is open to all candidates, irrespective of whether one belongs to any social or special category or not.

**28.** In our view, when we talk of horizontal or special reservation pertaining to the Unreserved category, a similar position will prevail. This characteristic or attribute of the Unreserved or Open category will

continue to apply even under the horizontal/special reservation, under the Unreserved category only with the exception that it will be qualified by the nature of the special category for which it is meant. In other words, when the special (horizontal) reservation is applied to the Unreserved/Open category, it will be open to all candidates irrespective of the social category, provided they are also endowed with the character of the same special (horizontal) categorisation. Thus, a post earmarked for special (horizontal) reservation under the Unreserved category will be open to every candidate possessing the attribute or character of the special (horizontal) reservation.

**29.** The difference in the concept of Unreserved/Open category in the vertical, and that in the horizontal reservation under the Unreserved category is that, in

respect of vertical reservation, the Unreserved/Open quota does not belong to any of the social categories and is open to all irrespective of the social categorisation. On the other hand, with respect to the special (horizontal) reservation under the Unreserved/Open category, it means that, although it is also open to all social categories, such a candidate must also belong to the same special (horizontal) category.

**30.** Thus, if the Unreserved/Open post is meant for the special category of Persons with Disabilities, it means that the said post will be open to all candidates of all vertical social categories, whether SC, ST or OBC, provided such candidates are also Persons with Disabilities. Thus, all candidates, whether SC, ST or OBC, but who are Persons with Disabilities, are equally entitled to compete for the post meant for Persons with

Disabilities falling under the Unreserved category, the rationale being that all those who are similarly situated must be treated equally.

**31.** The principle of migration in reservation will be applicable in this scenario also. Thus, even though there are candidates under the Unreserved category who are Persons with Disabilities, if there are more meritorious candidates belonging to any of the social categories like SC, ST or OBC who are also Persons with Disabilities, such more meritorious persons from the SC, ST or OBC category can be appointed against the Unreserved quota meant for Person with Disabilities by virtue of merit.

**32.** This principle has been indicated by this Court in **Saurav Yadav**<sup>12</sup> (supra) in para 60 therefore, wherein it

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<sup>12</sup> (2021) 4 SCC 542

was held that the first rule that applies to filling horizontal reservation quotas is one of adjustment i.e. examining whether on merit any of the horizontal categories are adjusted in the merit list in the open category, and then, in the quota for such horizontal category within the particular specified/social reservation.

**33.** However, the vice versa will not be true. Thus, if a post is reserved for Persons with Disabilities (PWD) for the social category of OBC-A, only Persons with Disabilities under the OBC-A category can apply, and no other PWD candidates belonging to ST, SC, or Unreserved category can be considered, since the reservation is compartmentalised.

**34.** Similarly, candidates belonging to other special (horizontal) categories like PWD-HH<sup>13</sup> (Hearing impairment) or Ex-Serviceman (Ex.S) or Exempted Category (EC) will also not be eligible to apply for the post meant for PWD-LV even if it is under the Unreserved category, as the said Unreserved post is reserved for PWD-LV category only, and not for other horizontal categories like PWD-HH, Ex.S or EC. Thus, only those qualified as PWD-LV can be considered.

**35.** In the present case, the Respondent No.3 though belongs to OBC-A category also falls under PWD-LV category of horizontal reservation. Since the post under Unreserved category is reserved for PWD-LV category, the Respondent No.3 has also the right to be considered for appointment to the said post of PWD-LV under the

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<sup>13</sup> PWD-HH: Person with Disabilities (Hearing Impairment)

Unreserved category. The Respondent No.3 can always stake a claim for the said post by virtue of being in the category of PWD-LV on the basis of merit. Similarly, had there been any other SC or ST candidate who also belongs to the PWD-LV category, he could have also been considered for the post of UR (PWD-LV). But it appears that there were no such PWD-LV candidates from other social categories like SC or ST and even if so, were not found meritorious enough to be considered.

**36.** The aforesaid principles have to be kept in mind in understanding the implication of the aforesaid condition in the recruitment notification, that in case of non-availability of qualified UR (PWD-LV), the vacancy will be filled up by other categories of PWD-LV as per merit.

**37.** This condition has to be read and understood in consonance with and not contrary to the well-established principles of law relating to appointment to Unreserved posts and the law of migration to Unreserved posts.

**38.** Thus, this horizontally reserved post of PWD-LV falling under the Unreserved category can be filled by any PWD-LV candidate belonging to any social reserved category, as this post of PWD-LV under the Unreserved category is also open to all PWD-LV candidates belonging to any social reserved category. In other words, any candidate belonging to any social category can compete for this post so long as they belong to the PWD-LV category. The principle of mobility will also apply when filling the said post of UR (PWD-LV).

**39.** This legal position is fortified by the other note appended to the recruitment notification, which provides

that in case of non-availability of a qualified UR (PWD-HH) candidate, the vacancy will be filled by PWD candidates of other categories as per merit. Since this post of UR (PWD-HH) is reserved for the special category of PWD-HH, all such candidates who are also categorised as PWD with Hearing disability, belonging to any social category can also apply.

**40.** It may also be noticed that even though there are other horizontal reservations for categories like PWD-LV, EC, Ex-Servicemen in respect of other social categories like SC, ST and OBC-B in the recruitment notification, no such stipulation is provided for these categories but only for the Unreserved category. It is for this reason that, with respect to compartmentalised horizontal reservation for these social categories, there cannot be any adjustment or migration from other social categories. Such vacancies

have to be filled up by candidates in that particular social category qualifying the specific horizontal category. On the other hand, as long as any such horizontal reservation is provided for the Unreserved category, it will be open to all candidates who also belong to the same special category of horizontal reservation.

**41.** The Division Bench of the Calcutta High Court, however, has taken the view that this condition in the recruitment notification prevents the filling up of the vacancy in the UR (PWD-LV) category from any other social category if a qualified unreserved candidate is available.

This view is not in consonance with the principle as discussed above. This view presupposes the fallacious position that 'Unreserved' category is another

communal or social or special category as distinct from other reserved categories. However, there is no communal or social or special category under the nomenclature “Unreserved”. It merely denotes the remaining vacancies or percentages of posts available after accounting the posts/percentages under different reservation categories. The only condition attached to this Unreserved/Open category in the present case is that it is meant only for candidates belonging to the horizontal PWD-LV category, i.e., it is specially reserved for persons who are categorised as PWD-LV. The Unreserved post/vacancy for PWD-LV is available and open to all, irrespective of the social category they may belong to, provided they also belong to the same special category of PWD-LV. As the said post falls under the Unreserved category, it is to be filled up purely on merit.

Merit is the co-attendant and inseparable attribute of appointment to any post under the “Unreserved” category. As a consequence, every person belonging to any social reserved category, can compete with others, including those under the “Unreserved” category and can be appointed against such Unreserved post, so long as they belong to the special PWD-LV category, as it is the condition that the post under the Unreserved category is reserved for the horizontal category of PWD-LV.

**42.** The individual status of such a reserved candidate as regards his social/communal categorisation, however, will remain unaffected for all other purposes. For example, if any OBC/SC/ST candidate by virtue of his merit is appointed to an Unreserved/Open post by virtue of his merit, he will continue to remain in the

OBC/ST/SC category as the case may be. He would not lose his identity as OBC/SC/ST for all other purposes, and this will also not affect the extent of reservation in respect of his original reserved category.

**43.** Thus, what is stipulated in the recruitment notification is merely stating the obvious. Certainly, if there is no eligible and qualified unreserved candidate available under PWD-LV category, this vacancy can be filled by anyone belonging to any social reserved category, but belonging to PWD-LV category. Thus, it cannot be read to insist that so long as any PWD-LV candidate under the Unreserved category is available, there will be an absolute bar to consider any other meritorious PWD-LV candidate belonging to any of the social reserved categories and only such Unreserved category PWD-LV candidate can be appointed

irrespective of the merit. Such an interpretation, as adopted by the Division Bench of the Calcutta High Court, flies in the face of the well-settled principle of law for filling up Unreserved posts and law of migration as discussed above. If any Unreserved candidate (belonging to PWD-LV) available, is found to be below in merit to any other reserved candidate (belonging to PWD-LV), such PWD-LV candidate belonging to the Unreserved category cannot steal a march over the more meritorious PWD-LV candidate from the reserved category as it would defy the principle of merit, which is the sole criterion for appointment under the Unreserved category. Therefore, such less meritorious PWD-LV candidate under the Unreserved category has to give way to the claim of a more meritorious PWD-LV candidate from any other reserved social categories for the said

post of UR (PWD-LV), as was correctly held by the Single Bench of the High Court. Any contrary view would be patently arbitrary being opposed to the equality clause under Articles 14 and 16 of the Constitution of India.

**44.** Therefore, in our considered opinion, what the aforesaid condition in the recruitment notification would mean is that even though qualified PWD-LV candidates under the Unreserved category may be available, if there is a PWD-LV candidate belonging to other social reserved category available who is better in merit than the Unreserved PWD-LV candidate available, the said post is to be filled up by the more meritorious reserved PWD-LV candidate by ignoring the claim of the less meritorious Unreserved candidate by virtue of merit. Qua a vacancy/post under “Unreserved” category for the PWD-LV candidates, all PWD-LV candidates are equal

and have similar rights even if they belong to different social reserved categories, and the most meritorious amongst them has to be preferred.

**45.** The aforesaid position results from the application of the principle enumerated in **Saurav Yadav's**<sup>14</sup> case wherein this Court explained the manner in which horizontal reservation is to be filled, under which it has to be first examined whether on merit any of the horizontal category can be adjusted in the open category, and then in the quota of the horizontal category within the particular social reservation. Thus, it has to be ascertained whether the Respondent No. 3 can be adjusted against the PWD-LV vacancy in the Unreserved category by virtue of his merit, which has been done and was adjusted, as he was more meritorious than anyone

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<sup>14</sup> (2021) 4 SCC 542

else including the Respondent No. 1 in the Unreserved category. The second situation of adjustment against the horizontal category within the social category will not arise in the present case, as there is no horizontal reservation for the OBC-A category.

**46.** There is one more aspect of reservation law which may be looked into when it relates to migration to the Unreserved category.

Providing reservation of appointment for posts in favour of any backward class of citizens is guaranteed under Article 16 of the Constitution of India, and it has also been well settled that the reservation is in the nature of affirmative action and is not an exception to the principle of equality. Such special provisions have been made to provide an equitable setting to level up the weaker sections so that the real or factual equality can

be ensured and does not remain illusory as observed by this Court in ***Neil Aurelio Nunes (OBC reservation) vs. Union of India***<sup>15</sup>. Further in respect of reserved categories, the law permits relaxation of certain qualifications for appointment, however, subject to the condition that such relaxation does not destroy the essential standard requirements, for example, as regards requirements relating to age or experience etc. Such relaxations have been provided to enable such classes to catch up with the rest of the society. Such relaxation, however, will be confined for the purposes of appointment within the reserved categories and cannot be made applicable for appointment under Unreserved/Open category for the reason is that in respect of Unreserved/Open category, the essential

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<sup>15</sup> (2022) 4 SCC 1

qualifications or conditions required for recruitment must be equal in all respects and merit being the only decisive factor.

**47.** Thus, a reserved PWD-LV candidate being offered an appointment against an Unreserved PWD-LV vacancy/post must not have availed any relaxation in the eligibility criteria stipulated for the Unreserved PWD-LV category. If he had availed such a relaxation, he certainly cannot be considered to be a qualified candidate *qua* the unreserved post, as has been explained by this Court in ***Deepa E.V. vs. Union of India***<sup>16</sup>, reiterated in ***Union of India vs. Sajib Roy***<sup>17</sup>.

**48.** In the present case, nothing has been brought to our notice that the Respondent No. 3, though, was more

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<sup>16</sup> (2017) 12 SCC 680

<sup>17</sup> 2025 INSC 1084

meritorious than the Respondent No. 1 had availed any relaxation qua the essential qualifications for the said post of UR (PWD-LV).

**49.** In view of the above discussion, it is clearly evident that the Division Bench of the Calcutta High Court had misunderstood the implication of the aforesaid condition in the recruitment notification.

**50.** Consequently, for the reasons discussed above, the appeal succeeds, and the impugned judgment and order dated 07.05.2024 passed by the Division Bench of the High Court of Calcutta in MAT 69/2024 with CAN 1 of 2024 is set aside, restoring the decision of the Single Bench dated 11.12.2023.

The appeal is accordingly allowed.

Pending application (s) if any, stands disposed of.

.....**J.**  
**(SANJAY KAROL)**

.....**J.**  
**(NONGMEIKAPAM KOTISWAR SINGH)**

**NEW DELHI;**  
**APRIL 07, 2026.**