HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HONOURABLE SMT JUSTICE RENUKA YARA

WRIT PETITION NOs: 26246 and 27045 of 2024

WRIT PETITION NO: 26246 OF 2024

Between:

Vangala Vishnu Priya Reddy, D/o. V.Ravinder Reddy, Aged about 20 Years, Occ- Student, R/o. H. No.3-9-530, Sri Ram Nagar, Mansoorabad, L.B. Nagar, Hayathnagar, K.V.Rangareddy, Telangana - 500 070.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary, Health, Medical and Family Welfare Department, Secretariat Building, Hyderabad.
2. The Registrar, Kaloji Narayana Rao University of Health Sciences, Warangal.
3. The State of Telangana, Rep. by its Principal Secretary, Home Department, Secretariat Building, Hyderabad.
4. Department of Sainik Welfare, Government of Telangana, Rep. by its Director, II Floor, Sainik Aramghar, Suryanagar Colony, Somajiguda, Hyderabad - 500 082.
5. Union of India, Rep. by Ministry of Home Affairs, New Delhi.
6. N. Sampath Kumar Reddy, S/o N Venkat Reddy, aged 20 years, Occ Student, R/o. H.No. 8-3-105/1, Peddabanda, Nalgonda, Telangana.
7. Saineni Harshith Rao, S/o Saineni Chandra Sekhar Rao, aged 19 years. Occ Student, R/o.H.No.2-2-215/15/8/1, Road No.6, Royal Enclave, Alwal Circle, Macha Bolaram, Telangana- 500010

(Respondent No. 6 and 7 are impleaded as per Co. dt 05/11/2024, vide I.A. No. 4 and 6 of 2024 in W.P. No. 26246 of 2024)

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be

pleased to issue a Writ, order or direction, one more particularly in the nature of a Writ of Mandamus declaring G.O.Ms.No.66 dated 29.07.2015, **G.O.Ms.No.114 dated 05-07-2017 and the consequential G.O.Ms.No. 75 dated 04-07-2023** issued by the 1st Respondent **to the extent of** restricting the 1 percentage reservation to the children of Army, Navy and Airforce and excluding the children of BSF and CRPF as arbitrary, discriminatory and unconstitutional, violative of Article 14, 19 (1) (g) and 21 of Constitution of India and consequently direct the respondents to provide 1 % reservation in MBBS/BDS courses for the academic year 2024-25 to the children of BSF and CRPF also who are domiciled in Telangana and grant admission to the Petitioners into MBBS/BDS course on comparative merit amongst the pool consisting of children of Army, Navy **and** Airforce, BSF & CRPF for the academic year 2024-25.

(Prayer is amended as per C.O. dt 01-10-2024 in I.A. No. 2 of 2024)

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the direct the Respondents to consider the candidature of the Petitioner for reservation in MBBS/BDS courses in CAP Category for the academic year 2024-25 by including the children of BSF & CRPF also in CAP Category, in the counseling for the academic year 2024-2025, pending the disposal of the writ petition.

IA NO: 3 OF 2024

Between:

N. Sampath Kumar Reddy, S/o N Venkat Reddy, aged 20 years, Occ Student, R/o. H.No. 8-3-105/1, Peddabanda, Nalgonda, Telangana.

...PETITIONER

AND

1. Vangala Vishnu Priya Reddy, D/o. V.Ravinder Reddy, Aged about 20 Years, Occ- Student, R/o. H. No.3-9-530, Sri Ram Nagar, Mansoorabad, L.B. Nagar, Hayathnagar, K.V.Rangareddy, Telangana - 500 070.
2. The State of Telangana, Rep. by its Principal Secretary, Health, Medical and Family Welfare Department, Secretariat Building, Hyderabad.
3. The Registrar, Kaloji Narayana Rao University of Health Sciences, Warangal.

4. The State of Telangana, Rep. by its Principal Secretary, Home Department, Secretariat Building, Hyderabad.

5. Department of Sainik Welfare, Government of Telangana, Rep. by its Director, II Floor, Sainik Aramghar, Suryanagar Colony, Somajiguda, Hyderabad - 500 082.

6. Union of India, Rep. by Ministry of Home Affairs, New Delhi.

...RESPONDENTS

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to modify the order dated 4-10-2024 with a positive direction to the respondent authorities to create an additional quota beyond 1% CAP quota for accommodating the writ petitioner in the above writ petition and others; since the implead party petitioner is legitimately entitled for admission into MBBS/ BDS Course for academic year 2024-25, based on the list of eligible candidates under 1% CAP Quota prepared by the Regional Sainik Welfare Officer, Karimnagar and the Implead party petitioner is deprived of his seat due to inclusion of the name of the writ petitioner at Sl. No. 11 from out of the list of ineligible candidates applied under 1% CAP quota.

IA NO: 5 OF 2024

Between:

Saineni Harshith Rao, S/o Saineni Chandra Sekhar Rao, aged 19 years. Occ Student, R/o.H.No.2-2-215/15/8/1, Road No.6, Royal Enclave, Alwal Circle, Macha Bolaram, Telangana- 500010

...PETITIONER

AND

1. Vangala Vishnu Priya Reddy, D/o. V.Ravinder Reddy, Aged about 20 Years, Occ- Student, R/o. H. No.3-9-530, Sri Ram Nagar, Mansoorabad, L.B. Nagar, Hayathnagar, K.V.Rangareddy, Telangana - 500 070.
2. The State of Telangana, Rep. by its Principal Secretary, Health, Medical and Family Welfare Department, Secretariat Building, Hyderabad.
3. The Registrar, Kaloji Narayana Rao University of Health Sciences, Warangal.
4. The State of Telangana, Rep. by its Principal Secretary, Home Department, Secretariat Building, Hyderabad.
5. Department of Sainik Welfare, Government of Telangana, Rep. by its Director, II Floor, Sainik Aramghar, Suryanagar Colony, Somajiguda, Hyderabad - 500 082.
6. Union of India, Rep. by Ministry of Home Affairs, New Delhi.

...RESPONDENTS

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Modify the orders dated 4-10-2024, with a positive direction to the Respondent authorities to create an additional quota beyond 1 % CAP Quota, for accommodating the Writ Petitioner in above Writ Petition and 2 others; since the implead Party Petitioner is legitimately entitled for admission into MBBS/BDS Course for academic year 2024-25 based on list of eligible candidates under 1% CAP quota prepared by the Regional Sainik Welfare Officer, Karimnagar and implead party petitioner is deprived of his seat due to inclusion of Writ Petitioner's name from list of ineligible candidates applied under 1% CAP quota.

Counsel for the Petitioner: SRI A.VENKATESH, Sr. COUNSEL, &
SRI K.SRIDHAR, BOTH REP. FOR
SRI P.SRI HARSHA REDDY

Counsel for the Respondent No.1: SRI MOHAMMED IMRAN KHAN,
ADDL. ADVOCATE GENERAL

Counsel for the Respondent No.2: SRI A.PRABHAKAR RAO, SC FOR KNRUHS

Counsel for the Respondent No.3 & 4: SRI MAHESH RAJE, GP FOR HOME

Counsel for the Respondent No.5: SRI GADI PRAVEEN KUMAR,
DEPUTY SOLICITOR GENERIAL OF INDIA

Counsel for the Respondent No.6 & 7: SRI S.AGASTYA SHARMA &
SRI B.SREE RAMA KRISHNA

WRIT PETITION NO: 27045 OF 2024

Between:

1. Lakavath Bhaskar, S/o. Lakavathu Balu Naik, Aged about 20 Years, Occ. Student, R/o. H. No.1-2-49, Gudi Thanda, Sangam Village, Thungathurthy Mandal, Suryapet District, Telangana - 508 222.
2. Repana Manasa, D/o. Repana Sreenivasulu, Aged about 19 Years, Occ. Student, R/o. H. No.18-13-55/10/131/A, Patel Nagar, Chandrayangutta, Bandlaguda, Hyderabad - 500 005.

...PETITIONERS

AND

1. The State of Telangana, Rep. by its Principal Secretary, Health, Medical and Family Welfare Department, Secretariat Building, Hyderabad.

2. The Registrar, Kaloji Narayana Rao University of Health Sciences, Warangal.
3. The State of Telangana, Rep. by its Principal Secretary, Home Department, Secretariat Building, Hyderabad.
4. Department of Sainik Welfare, Government of Telangana, Rep. by its Director, II Floor, Sainik Aramghar, Suryanagar Colony, Somajiguda, Hyderabad - 500 082.
5. Union of India, Rep. by Ministry of Home Affairs, New Delhi.
6. National Ex-Servicemen and Co-Ordination Committee, Rep. by its Chairman / President Sri L. Jagan Reddy S/o Late Lingala Raghava Reddy, A/a 81 years, R/o 2-8-263/1/9/B, Raod No.3 Lane No.3 Vijaypal Colony, Waddedally, Hanumakonda 506370.

(Respondent No. 6 is impleaded as per Co. dt 05/11/2024, vide I.A. No. 3 of 2024 in W.P. No. 27045 of 2024)

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, order or direction, one more particularly in the nature of a Writ of Mandamus declaring G.O.Ms.No.66 dated 29.07.2015 **G.O.Ms.No.114 dated 05-07-2017** and the consequential G.O.Ms.No.**75**, dated **04.07.2023**, issued by the 1st Respondent **to the extent of** restricting the 1 % reservation to the children of Army, Navy and Air force and excluding the children of BSF and CRPF as arbitrary, discriminatory and unconstitutional, violative of Article 14, 19 (1) (g) and 21 of Constitution of India and consequently direct the respondents to provide 1 % reservation in MBBS/BDS courses for the academic year 2024-25 to the children of BSF and CRPF also who are domiciled in Telangana and grant admission to the Petitioners into MBBS/BDS course on comparative merit amongst the pool consisting of children of Army, Navy, Airforce, BSF and CRPF for the academic year 2024-25.

(Prayer is amended as per C.O. dt 01-10-2024, vide I.A.No. 2 of 2024)

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the direct the Respondents to consider the candidature of the Petitioners for reservation into MBBS/BDS courses in CAP Category for the academic year 2024-25 by including the children of BSF and CRPF also in CAP Category, in the

counseling for the academic year 2024-2025, pending the disposal of the writ petition.

IA NO: 4 OF 2024

Between:

National Ex-Servicemen and Co-Ordination Committee, Rep. by its Chairman / President Sri L. Jagan Reddy S/o Late Lingala Raghava Reddy, A/a 81 years, R/o 2-8-263/1/9/B, Raod No.3 Lane No.3 Vijaypal Colony, Waddedally, Hanumakonda 506370.

...PETITIONER

AND

1 Lakavath Bhaskar, S/o. Lakavathu Balu Naik, Aged about 20 Years, Occ. Student, R/o. H. No.1-2-49, Gudi Thanda, Sangam Village, Thungathurthy Mandal, Suryapet District, Telangana - 508 222.

2 Repana Manasa, D/o. Repana Sreenivasulu, Aged about 19 Years, Occ. Student, R/o. H. No.18-13-55/10/131/A, Patel Nagar, Chandrayangutta, Bandlaguda, Hyderabad - 500 005.

3 The State of Telangana, Rep. by its Principal Secretary, Health, Medical and Family Welfare Department, Secretariat Building, Hyderabad.

4 The Registrar, Kaloji Narayana Rao University of Health Sciences, Warangal.

5 The State of Telangana, Rep. by its Principal Secretary, Home Department, Secretariat Building, Hyderabad.

6 Department of Sainik Welfare, Government of Telangana, Rep. by its Director, II Floor, Sainik Aramghar, Suryanagar Colony, Somajiguda, Hyderabad - 500 082.

7 Union of India, Rep. by Ministry of Home Affairs, New Delhi.

...RESPONDENTS

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Registry to list both the connected WP No.26246/2024 & WP No.27045 of 2024 for expeditious hearing at the earliest, preferably during the week commencing from 16-12-2024 @ 2.15 pm or on any date during the coming weeks as may be convenient to this Hon'ble Court.

Counsel for the Petitioners: SRI A.VENKATESH, Sr. COUNSEL, &
SRI K.SRIDHAR, BOTH REP. FOR
SRI P.SRI HARSHA REDDY

Counsel for the Respondent No.1: SRI MOHAMMED IMRAN KHAN,
ADDL. ADVOCATE GENERAL

Counsel for the Respondent No.2: SRI A.PRABHAKAR RAO, SC FOR KNRUHS

Counsel for the Respondent No.3 & 4: SRI MAHESH RAJE, GP FOR HOME

Counsel for the Respondent No.5: SRI GADI PRAVEEN KUMAR,
DEPUTY SOLICITOR GENERIAL OF INDIA

Counsel for the Respondent No.6: SRI S.AGASTYA SHARMA &
SRI B.SREE RAMA KRISHNA

The Court made the following: COMMON ORDER

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HONOURABLE SMT. JUSTICE RENUKA YARA

WRIT PETITION Nos.26246 and 27045 of 2024

COMMON ORDER: *(Per Hon'ble the Acting Chief Justice Sujoy Paul)*

In these petitions, the petitioners, dependents of Border Security Force ('BSF') Personnel, have called in question the constitutionality of provisions of **the Andhra Pradesh/Telangana Unaided Non-minority Professional Institutions (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2007**, ('Rules of 2007') and **the Telangana Medical and Dental Colleges Admission, (Admission into MBBS & BDS Courses) Rules, 2017** ('Rules of 2017'), which confine the reservation of 1% seats for children of ex-servicemen and service personnel of three wings of Armed Forces viz., Army, Navy and Air Force and who domiciled in the Telangana State based on the permanent address/home-town declared by them while joining in service and as recorded in their service registers.

2. Since the question involved in both the matters is identical, on the joint request of the parties these matters were analogously heard and are decided by way of this common order. The facts are taken from W.P.No.26246 of 2024.

Factual backdrop in W.P.No.26246 of 2024:

3. The petitioner appeared in National Eligibility cum Entrance Test ('NEET') 2024 and secured 455 marks and applied for MBBS course. Respondent No.2 issued the prospectus/regulations for admission into MBBS and BDS courses under competent authority quota for the Academic Year 2024-25. Clause E of said prospectus provides horizontal reservation for special categories wherein 1% of seats were reserved for children of Armed Forces Personnel.

4. The father of the petitioner has rendered his services in BSF [102 BN (Battalion)] since 04.06.1986 and took voluntary retirement w.e.f. 30.04.1997. The petitioner appeared for NEET 2022-23 and secured qualifying marks. In the previous prospectus also a provision was made pursuant to which, only children of Armed Forces Personnel were eligible to be considered against 1% quota. Aggrieved, the petitioner filed W.P.No.41918 of 2022 before this Court. The said Writ Petition was disposed of on the basis of submissions made on behalf of the State Government that the children of the BSF Personnel shall also be considered and benefit of reservation as set out in the Rules will be extended. Recording the said submission of the Government, the aforesaid

Writ Petition was disposed of on 28.11.2022 (Annexure P-6). However, the petitioner could not secure a seat in the Academic Year 2022-23 because of her low merit.

5. Since in both the present Writ Petitions the Rules of 2007 and Rules of 2017 are coming in the way of petitioners for consideration against 1% quota, the petitioners have assailed G.O.Ms.Nos.66, 114 and 75 dated 29.07.2015, 05.07.2017 and 04.07.2023 respectively.

6. The principal ground of challenge to the aforesaid provisions is that Border Security Force (BSF), Central Industrial Security Force (CISF), Central Reserve Police Force (CRPF), Indo-Tibetan Border Police (ITBP) and Sashastra Seema Bal (SSB) etc., are part of Central Armed Police Force ('CAPF'). This is reflected in Official Memorandum ('O.M.'), dated 18.03.2011 (Annexure P-10). Another O.M., dated 23.11.2012 shows that Cabinet Committee on Security has approved the proposal to declare retired CAPF Personnel as ex-CAPF Personnel. The impugned Rules whereby the benefit of reservation of 1% in seats is confined to children of personnel of Army, Navy and Air Force are discriminatory and bad in law.

Contention of the petitioners:

7. Sri A. Venkatesh, learned Senior Counsel and Sri K. Sridhar, learned counsel representing Sri P. Sri Harsha Reddy, learned counsel for the petitioners, urged that **The Border Security Force Act, 1968** ('BSF Act') provides constitution and regulation of Armed Forces of union for ensuring security of border of India and the matters connected therewith. Section 4 of the BSF Act clearly provides about the formation of Armed Force i.e., BSF for ensuring the security of borders of India. Thus, for all practical purposes BSF is an Armed Force of the country. BSF, as name suggests takes care of sensitive areas of borders of the country and personnel working therein are subjected to same kinds of hardship and sacrifice their lives. Thus, depriving the children of BSF personnel from reservation of 1% seats is arbitrary, unjust and amounts to unreasonable classification, which hits Article 14 of the Constitution.

8. The next submission of the learned Senior Counsel for the petitioners is based on O.M. dated 23.11.2012 (Annexure P-11). In paragraph No.2 of this O.M., it is mentioned that based on the designation of the ex-CAPF Personnel, the State/Union Territory Governments may extend suitable benefits to them, on the lines of

benefits extended by the State/Union Territory Governments to the ex-service men of the Defence Forces. Although, in paragraph No.2 of this O.M., the word 'may' is used, learned Senior Counsel submits that in the context it is issued, the same must be read as 'shall'. Thus, the State Government is under an obligation to consider the children of BSF/CAPF employees also while providing reservation in seats.

9. Reliance is placed on the order of Andhra Pradesh High Court in **Tummala Supriya v. National Medical Commission**[1] (Annexure P-15) to submit that the Government after obtaining instructions made a statement before the said High Court that children of CAPF Personnel shall be considered for reservation for the purpose of MBBS course in the session 2024-25. After having taken such a stand before the Andhra Pradesh High Court, it is not proper for the respondents to take a different stand before this Court.

10. It is submitted that in the previous round of litigation in W.P.No.41918 of 2022, the Government gave an assurance which reads thus:

[1] W.P.Nos.16563 of 2024 and batch, decided on 29.08.2024.

> "Learned Special Government Pleader appearing for the 2nd respondent had informed this Court that the children of Border Security Force are also to be considered under the category of 'Children of Armed Personnel' and the benefit of reservation has been set out in the Rules and therefore the same would be extended to the petitioner."

11. In view of candid statement made in the previous round, the State is not justified in depriving the petitioners from the fruits of 1% reservation. In support of aforesaid submission, learned Senior Counsel for the petitioners relied upon the judgment of the Supreme Court in **D.S. Nakara v. Union of India**[2] and recent judgment of Supreme Court in **Union of India v. Justice (Retd.) Raj Rahul Garg**[3]. It is submitted that the respondents have created an artificial classification/distinction amongst the Armed Force Personnel and Central Armed Police Force Personnel, which cannot sustain judicial scrutiny on the constitutional principle. Learned Senior Counsel also highlighted the fact that in various other courses, the Government of Telangana gave reservation to both i.e., children of Armed Force Personnel and CAPF Personnel.

Stand of the Respondents:

12. Sri Mohammed Imran Khan, learned Additional Advocate General, submits that the order of the Andhra Pradesh High Court in **Tummala Supriya** (supra) is based on concession and no

[2] (1983) 1 SCC 305
[3] 2024 SCC OnLine SC 321

principle of law is laid down. Thus, the said order is of no assistance to the petitioners. So far, order of this Court in previous round in W.P.No.41918 of 2022 is concerned, it is urged that this order is also based on the submission of the Special Government Pleader appearing for respondent No.2. However, after that Rules have been amended and therefore, this previous order will not improve the case of the petitioner.

13. Sri Mohammed Imran Khan, learned Additional Advocate General, for respondent Nos.1 to 3; Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India, for respondent No.5; Sri Mahesh Raje, learned Government Pleader of Home, for respondent No.4 and Sri S. Agastya Sharma and Sri B. Sree Rama Krishna, learned counsel for un-official respondents, who are children of Army, Navy and Air Force officers and next in merit to the petitioners, opposed the prayer and took a common stand that the BSF/Paramilitary Forces and main Armed Forces viz., Army, Navy and Air Force are governed by different sets of Acts and Rules. Their recruitment methods, conditions of service and pay scales etc., are different. The Paramilitary Forces work under the Ministry of Home, whereas the Armed Forces are governed by the directions of Ministry of Defence. By placing reliance on the

judgment of Delhi High Court in **Viney Chaudhary v. Union of India**[4], it is urged that the policy decision for providing reservation to the wards of ex-servicemen was upheld and for the same reasons no interference is warranted.

14. Learned Additional Advocate General heavily relied on the Order of Ministry of Defence dated 25.02.2025, to bolster the submission that Paramilitary Forces cannot be equated with Armed Forces and it is open to the Government to provide reservation without affecting the existing reservation for the Armed Forces category.

15. It was common stand that the personnel in Army, Navy and Air Force are recruited at a young age of 17-21 years and they serve for a short period of duration i.e., 5 to 15/20 years. They are compulsorily discharged on *completion of the terms of service* at young age of 35 to 40 years. Very few of them, who get promotion to higher rank, get an increment of two years, on each such promotion. In any case, most of them are retired, discharged or released from the Army, Navy and Air Force in their middle age of 40 to 50 years, whereas the personnel of CAPF i.e., CRPF, BSF,

[4] 2023 LawSuit(Del) 2255

CISF, Assam Rifles, etc., serve till the age of superannuation of 60 years.

16. It is further contended that released, retired or discharged personnel of Armed Forces have to strive hard for their re-employment on release from Army, Navy and Air Force. Thus, they are not in a position to provide proper parental guidance to their children when it is most needed. On the other hand, since CAPF Personnel serve till 60 years of service, they do not face such crisis.

17. The reservation in hand, admittedly, is a horizontal reservation. This reservation is provided only to the children of Armed Forces and other dependents. The Paramilitary Force cannot claim share as within 1% quota of seats. In support of this submission, Sri S. Agastya Sharma and Sri B. Sree Rama Krishna, learned counsel for un-official respondents, placed reliance on the decision of the cabinet which is reflected in O.M. dated 18.03.2011, which distinguishes between Armed Forces of India and Central Armed Police Forces (CAPF).

18. Learned Additional Advocate General placed reliance on the Division Bench judgment of coordinate Bench in W.P.Nos.18674 of

2023 and batch and urged that although in different context, the impugned G.O.Ms.No.75, dated 04.07.2023 was not interfered with.

19. The parties have confined their arguments to the extent indicated above.

20. We have bestowed our anxious consideration on the rival submissions and perused the record.

Findings:

21. Before dealing with rival contentions, it is apposite to consider the Rules, which are being questioned. By way of G.O.Ms.No.66, dated 29.07.2015, the Rules of 2007 were amended by inserting the following provision:

> "In the said rules for item (iv) of sub-rule (a) of rule (3), the following shall be substituted namely:-
>
> > "1% for the Children of Ex-Servicemen and the Serving Personnel of the three wings of the Defence service viz., Army, Navy and Air Force subject to the condition that the said Ex-Servicemen etc., who are domiciled in Telangana based on the Permanent address/Home town declared by them while joining the service and as recorded in their service register.""

22. The Rules of 2017 were introduced in supersession of earlier Rules of 2007 by way of G.O.Ms.No.114, dated 05.07.2017. These Rules of 2017 were amended by way of G.O.Ms.No.75, dated

04.07.2023. In no uncertain terms, it was made clear that horizontal reservation of 1% is confined to the children of CAP/ex-servicemen to the extent of 1%. The relevant not reads thus:

> "Note: **The above reservation is applicable only to the children of Ex Servicemen and Serving Personnel of the three wings of the Armed Forces viz., Army, Navy and Air Force** who are domiciled in Telangana based on the permanent address/home town declared by them while joining the service and as recorded in their service register."
>
> (Emphasis Supplied)

23. A conjoint reading of G.O.Ms.No.66 (Annexure-P1) and G.O.Ms.No.75 leaves no room for any doubt that benefit of 1% horizontal reservation is confined to the children of Armed Forces viz., Army, Navy and Air Force.

24. The interesting conundrum in the instant case is whether the petitioners/children of BSF Personnel are sailing in the same boat. In other words, whether the children of CAPF Personnel can be treated at par with the children of Army, Navy and Air Force. Ancillary legal question is whether classification made by the respondents between children of Armed Forces and CAPF Personnel is a reasonable classification or not and whether there exists any *intelligible differentia* for the same, more-so, when the respondents have given the benefit of reservation in different

courses in Telangana to both children of Armed Forces as well as children of CAPF.

25. Litmus test on this aspect was laid down way back in **Charanjit Lal Chowdhury v. Union of India**[5]. This principle was reiterated by the Constitution Bench in **Budhan Choudhry v. State of Bihar**[6]. Relevant portion reads thus:

> "5. ...It is now well-established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. The contention now put forward as to the invalidity of the trial of the appellants has, therefore to be tested in the light of the principles so laid down in the decisions of this Court."
>
> (Emphasis Supplied)

26. This principle is consistently followed in **A.P. Dairy Development Corporation Federation v. B. Narasimha Reddy**[7] and **Amandeep Singh Saran v. State of Chattisgarh**[8].

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[5] 1950 SCC 833
[6] (1954) 2 SCC 791
[7] (2011) 9 SCC 286

27. Thus, to examine the legality of classification, two conditions must be satisfied. *First*, there must be an *intelligible differentia* which distinguishes persons grouped together from other left out of the group. The phrase *intelligible differentia* means difference capable of being understood (See **State of West Bengal v. Anwar Ali Sarka**[9]). *Second*, the *differentia* must have a rationale relation to the object sought to be achieved by the law, that is, the basis of classification must have a nexus with the object of classification (See **Indra Sawhney v. Union of India**[10]; **State of Kerala v. N.M. Thomas**[11]; **Ram Krishna Dalmia v. S.R. Tendolkar**[12] and **Bhudhan Choudhry v. State of Bihar**[13]).

28. The aforesaid litmus test still holds the field in view of recent Seven Judge Bench judgment of Supreme Court in **State of Punjab v. Davinder Singh**[14].

29. Needless to emphasize that the Supreme Court laid down the said tests while interpreting Article 14 of the Constitution. This Article talks about 'equality before the law and equal protection of

[8](2024) 6 SCC 541
[9](1952) 1 SCC 1
[10]1992 Supp (3) SCC 217
[11](1976) 2 SCC 310
[12]1958 SCC OnLine SC 6
[13](1954) 2 SCC 791
[14](2025) 1 SCC 1

the laws'. However, both are different in content and sweep (See **Indra Sawhney**(supra)). Equality before law does not mean that the same law must apply to everyone. It provides that same law should apply to those who are similarly situated (see **GauriShanker v. Union of India**[15]). Likewise, the expression 'equal protection of law' envisages that among equals, laws must be equally administered. Equality, thus, by no stretch of imagination, can entail sameness. There must be a parity of treatment under parity of conditions (see **Indra Sawhney**(supra)).

30. If the present matter is tested on the envil of aforesaid principles, it will be clear like noon day that admittedly, the personnel engaged by Army, Navy and Air Force are governed by different set of Acts/Rules and their service conditions are different than the service conditions of BSF/CAPF personnel. The tenure of service of Army, Navy and Air Force personnel is different than the BSF personnel.

31. The O.M. in document No.I-45020/2/2011-Pers-II, dated 18.03.2011 shows that CAPF and Armed Forces of the Union are two different classes. Pertinently, the stand taken in the counter of respondents that service conditions and tenure of services of

[15](1994) 6 SCC 349

Armed Force Personnel and CAPF Personnel are different, could not be rebutted by the petitioners. The only submission strenuously advanced by the learned Senior Counsel for the petitioners is based on Section 4 of the BSF Act. However, this is no more *res integra* that if method of recruitment and service conditions are different, a different classification or sub-classification does not infringe equality clause as enshrined in Article 14 of the Constitution.

32. In **All India Station Masters' & Asstt. Station Masters' Association v. Railways**[16], the issue before a Constitution Bench of the Supreme Court was whether 'Roadside Station Masters' could be differentiated from Guards for the purpose of promotion to the higher post of Station Masters. Answering the issue in the affirmative, the Supreme Court opined that the Station Masters and Guards did not form an integrated class since they were recruited and trained separately. Thus, a distinction between the two classes was held not to be violative of the equality code which only requires the State to treat equals equally.

[16]1959 SCC OnLine SC 83

33. In **Katyani Dayal Dayal v. Union of India**[17], it was poignantly held that Assistant Officers of Railway recruited through a competitive examination and those who recruited on the recommendation of the Unions Public Service Commission do not form an integrated homogeneous class because the objects of recruitment, the tenure and even the appointing authority are different. As noted above, in the instant case also, the Act which governs the services, the method of recruitment, the conditions of services and tenure of Armed Forces and CAPF are different and by no stretch of imagination, it can be said that the Armed Forces viz., Army, Navy and Air Force and BSF/CAPF forms a homogenous class. Thus, it cannot be said that if 1% reservation is confined to only three forces, it amounts to dividing a homogeneous class and amounts to creating a class within same class.

34. So far judgment of **D.S. Nakara** (supra) on which heavy reliance is placed by petitioners, suffice to note that in recent judgment in **Davinder Singh** (supra), the Seven Judge Bench considered this judgment in **D.S. Nakara** (supra). It was noted that in the case of **D.S. Nakara** (supra), the argument was that

[17] (1980) 3 SCC 245

those retiring before the designated date were a class, distinct from those retiring after that date. In the backdrop of cut-off date, the arguments were considered. Putting it differently, in **D.S. Nakara** (supra), the Supreme Court questioned the rationale of classifying the beneficiary class based on the date of retirement. Here, the cut-off date is not an issue and hence, the judgment of **D.S. Nakara** (supra) is of no help to the petitioners.

35. The next reliance was placed on the judgment of Supreme Court in **Justice (Retd.) Raj Rahul Garg** (supra). This judgment deals with claim for addition to the period during which respondents therein served as a Judge of High Court to be added to the length of her service as a Member of District Judiciary. This judgment is not an authority for the purpose of deciding the claim of present petitioners when they claim equality with personnel of different forces governed by different set of Act/Rules and service conditions.

36. So far, judgment of Andhra Pradesh High Court in **Tummala Supriya** (supra) is concerned, suffice it to say that, no principle of law is laid down in this order. The order is passed based on the statement of Special Government Pleader and hence, this order cannot be a reason to examine the constitutional validity of the

impugned Rules. Likewise, in the previous round of litigation, in W.P.No.41918 of 2022, a concession was given by learned Special Government Pleader in favour of the petitioners. Interestingly, this matter was decided on 08.11.2022. Thereafter, by G.O.Ms.No.75 with effect from 04.07.2023, the Rules of 2017 were amended and aforesaid 'note' was specifically appended. Thus, any concession or oral statement given prior to amendment in the Rules will not cut any ice. In the previous round also, no principle of law is laid down by this Court. Thus, these orders cannot be a reason to declare the impugned Rules as *ultra vires*.

37. No doubt, in certain courses in the State of Telangana, the Government in addition to children of Army, Navy and Air Force provides reservation to the children of CAPF as well. However, the courses are different. Such a decision to provide reservation is based on expert opinions. Merely because in some courses reservation is extended to both categories, neither equality between the two is established nor any enforceable right, is created in favour of the present petitioners. Both the categories are different can be gathered from the recent order of Government, which reads thus:

"F. No. 13(4)/Court/2024/D(Res-II)
Government of India
Ministry of Defence
Department of Ex-Servicemen Welfare

Room No.231, B-Wing
Sena Bhawan, New Delhi
Dated: 25th Feb, 2025

To

Secretary
Directorate of Higher Education
Government of N.C.T. of Delhi
BTE Complex, Muni Maya Ram Marg, Pitampura, Delhi-34

Subject: Inter-se priority for reservation/preference to the wards of Armed Forces Personnel by States/UTs for admission to Medical/Professional/ Non-Professional Courses

Sir,

Please refer to Ministry of Defence, Department of Ex-Servicemen Welfare letter No 6(1)/2017-Res-II dt 21.05.2018 (copy enclosed) regarding Inter-se priority for reservation/preference to the wards of Armed Forces Personnel by States/UTs for admission to Medical/Professional/ Non-Professional Courses. The said policy was formulated with a view to recognize and honour the sacrifices made by the Armed Forces Personnel in the service of nation.

2. It has come to the notice of this Ministry that Directorate of Higher Education, Government of NCT of Delhi is extending the reservation benefits under this category to the wards of paramilitary/police personnel as well. Consequently, this Ministry has been receiving several representations from Armed Forces regarding the dilution of the existing Defence quota.

3. In this regard, it is requested that the reservation/preference under the Defence quota, as envisaged in the Ministry's letter dated 21.05.2018, be maintained exclusively for the wards of Armed Forces personnel. If the Government of NCT of Delhi wishes to extend similar benefits to the wards of **Paramilitary forces** personnel, a separate quota may kindly be introduced for them without affecting the existing reservation for the Armed Forces category.

4. It is requested that necessary instruction be issued to ensure adherence to the existing policy guidelines for Defence quota. A line of confirmation on the action taken may be shared with this Ministry at the earliest.

Yours Faithfully,

(Vinay Pratap Singh)
Under Secretary to the Govt. of India
Tele: 2301 2675"

(Emphasis Supplied)

38. Learned Senior Counsel for the petitioners while referring to paragraph No.2 of the O.M. dated 23.11.2012 (Annexure P-11) urged that the word 'may' must be read as 'shall', this O.M. reads thus:

"NO. 27011/100/2012-R&W
Government of India
Ministry of Home Affairs
Police Division-II
[Resettlement and Welfare Directorate)
2 3 NOV 2012
North Block, New Delhi-01
Dated the, 23rd November, 2012

OFFICE MEMORANDUM

Subject:

Designating the retired Central Armed Police Force (CAPF i.e. CRPE, BSF, CISE. ITBP and SSB) personnel as "Ex-Central Armed Police Force personnel (Ex-CAPF personnel).

There has a demand from various fora that the retired Central Armed Police Force (CAPF) personnel may be given the status of Ex-CAPF personnel. Accordingly a proposal was sent to the Government for their consideration. Cabinet Committee on Security has approved the proposal of this Ministry to declare retired Central Armed Police Force personnel from **Central Reserve Police Force (CRF), Border Security Force (BSF), Central**

Industrial Security Force (CISF), Indo-Tibetan Border Police (ITBP) and Sashastra Seema Bal (SSB) as "Ex-Central Armed Police Force personnel" (Ex-CAPF personnel).

2. Based on such designation, the State/UT Governments concerned **may** extend suitable benefits to them on the lines of the benefits extended by the State/UT Governments to the Ex-Servicemen of Defence Forces.

(Dinesh Mahur)
Director (Personnel)
Ph: 2309 2933"

(Emphasis Supplied)

39. A conjoint reading of the aforesaid O.M. and recent order of Government in F.No.13/(4)/Court/2024/D (Res-II), dated 25.02.2025, shows that these are administrative orders/executive instructions. The legislative competence for issuing the Rules is not called in question. No administrative orders/executive instructions can be said to be binding *de hors* the Rules. Thus, we are unable to persuade ourselves with the line of argument of the learned Senior Counsel for the petitioners that in O.M. dated 23.11.2012 directions issued are in mandatory terms to provide reservation to ex-CAPF Personnel wards.

40. In our judgment, the respondents have satisfied the twin test. The classification is reasonable and based on *intelligible differentia*. There is a clear object sought to be

achieved to provide reservation of 1% seats to children of Armed Forces i.e, Army, Navy and Air Force. The basis of classification has a nexus with the object of the classification.

41. In view of forgoing analysis, the impugned Rules cannot be said to be unconstitutional in nature infringing the equality clause enshrined in Article 14 of the Constitution. Thus, both the petitions are **dismissed** and as a consequence, the *ad interim* order stands vacated although, reluctantly. There shall be no order as to costs. Miscellaneous applications, if any pending, shall stand closed.

SD/-L.LAKSHMI BABU
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

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(For His Lordships Kind Perusal)
and
One Fair Copy to the Hon'ble SMT JUSTICE RENUKA YARA
(For Her Ladyships Kind Perusal)

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HIGH COURT

DATED: 18/03/2025

COMMON ORDER

WP.Nos.26246 and 27045 of 2024



DISMISSING BOTH THE WRIT PETITIONS,

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