

BHARAT SANCHAR NIGAM LIMITED & ANR

v.

SANDEEP CHOUDHARY & ORS.

(Civil Appeal No. 8717 of 2015)

APRIL 28, 2022

[M. R. SHAH AMASUNG B. V. NAGARATHNA, JJ.]

Bharat Sangbhidhan, 1950 – Arts. 14, 16 amasung 142—thabak ta reservation – Reserved Category gi candidate tuna General category gi candidate tagi mark henna phangba, asigumba candidates sina hanna general marakta ywhangadabani amasung makhoi sing do general category natrga reserved category oeidaba ahangba sing da thabak hapkadabani –hailhibada – Genral category gi aroibada leiba adudagi reserved category da leiriba candidate aduna mark henna phangba taragadi reserved twdaba post/seat ado makhoi na phangadabani – aduna OBC gi candidate ani general category oeina hapkadabani maramdi makhoising aduna general category gi last ta leirba candidate adudagi mark henba maramna – Maram asina makhoigi thabak ado general category da hapkhibado yenglaga reserved category gi damakta khaktuna thamba seat aduna lemhouriba reserved category gi candidate singi maraktagi happa tai haidi Respondeenmt No.1 gumba — Adubu OBC gi candidate ani general category gi khangatlaba singi list ta yaohallakpa asina khangakpagi thouwongda akaiba pirakpaga loinana general category da khallaga kuina thabak twraklaba candidate anibu louthokpa tarakii — maram asina khal ama khaihandanaba OBC category gi candidate

Respondent No.1 bu reserved category gi seat ta thabak happe amasung seniority gidi general category oeina thabak happkhraba singduna thabak hapkhiba numitagi loure – chap manana hanna general category gi thabak haplaba candidate singdusu laothoktre. – Bharat Sangbhidhan – Art. 142

Wahei amadi phrase sing – “horizontal reservation amadi “vertical reservation” gi khennaba sandokna takle.

Appeal asibu kakthatladuna, Court asina

HAIRI: 1.1 Vertical reservation category da yaoba candidate singbu “open natraga general caytegrory” da khanbayai amasung karigumba masagi mithoi mihenbagi matung inna khalba taragdi Makhoi masana hujik oeiriba category aduda paroi.[para 8.5][1018-G-H]

1.2 General category gi aroibada leiba adudagi reserved category da leiriba candidate aduna mark henna phangba taragadi reserved twdaba post/seat ado makhoina phangadabani.makha tana phongdokhibada horizontal reservation asi sijinnaba matamdasu merit na henna maru oeina lougadabani amasung karigumba STs,SCs amadi OBC candidate singna henna mark phanglaba natragamithoi mihellaba makhoising ado reserved seat nattabada khangadabani.Makha tana haibada case asida reserved category oeiba candidate 19 na reserved category nattaba seat ado makhoigini haina loubu yai merit list ta leiriba merit amadi position adugi matung inna.[Para 8.6][1019-A-C]

2. Hujikki case asida OBC category oeiba candidate anibu General category da yaohanba tarakee maramdi makhoina general category gi aroibada leiba oeina thabak happkhiba adudagi henna mithoi mihelba oeiba maramna makhoibu thabak happado reserved category gi seat ta oeina happani haina loubu yaroi Maram asina makhoigi thabak ado

general category da hapkhibado yenglaga reserved category gi damakta khaktuna thamba seat aduna lemhouriba reserved category gi candidate singi maraktagi happa tai haidi Respondenmt No.1 gumba. Karigumba asigumba thouwang asi ellaga thabak happa oeiragadi Respondent no.1 se merit ta reserved category gi seat ta thabak haplamgani. Adubu OBC candidate ani general category gi khngatlaba singgi list ta hapsillakpa asina general category da thabak hapkhraga kuina thabak twraklaba candidate anibu tanthokpa natraga louthokpa tarakii aduna apunba selection process aduda akaiba oeirakee. Maram aduna balance leinaba amadi thabak hapkhraba general category candidate anidusu thabak tagi louthoktanaba amasung chap mannaba mawong da respondent No.1-original Applicant asigisu mapham pinaba Bharat Sangbhidan gi Artcle 142 gi makhada mahak pusu thabak happle. Yathang asina nouna semdoklaba list ta Respondent No. 1 – original Applicant asi resereved category seat ta happee amasung OBC catagory gi candidate ani ado general category seat ta happa oeina loure, hanna thabak hapkhraba general category gi candidate ani dusu louthoktre. Tougumsu Respondent No.1 gi seniority asi general category candidate sing haibadi mathak ta palkhriba reserved category gi candidate sing adudagi tana merit oeiba singduna thabak hapkhiba nummitagi lougani. [Para 9][1019-C-H; 1020-A-D]

Indra Sawhney v. Uniuoin of India 1992 Supp (3) SCC 217 : [1992] 2 Suppl. SCR 454 amasung *R.K. Sabharwal v. State of Punjab* (2007) 8 SCC 785 : [2007] 8 SCC 972 --matunginna

Union of India v. Ramesh Ram (2010) 7 SCC 234 : [2010] 6 SCR 698 – akhannana

Uttranchal Public Service Commission v. Mamta Bisht (2010) 12 SCC 204 : [2010] 7 SCR 289; *Ritesh R. Sah v. Y.L Yamul* (1996) 3 SCC 253 :[1996] 2 SCR 695; *Saurav Yadav v. State of U.P* (2021) 4 SCC 542

amasung Sadhana Singh Dangi v. Pinki Asati (2022) 1 SCALE 534 – mateng louraga

Rajesh Kumar Daria v. Rajasthan Public Service Commission (2007) 8 SCC 785 : [2007] 8 SCR 972 –referred twba

Case Law Reference

[1992] 2 Suppl. SCR 454	followed	Para 2.7
[2007] 8 SCR 972	followed	Para 2.7
[2007] 8 SCR 972	referred to	Para 2.7
[2010] 6 SCR 698	distinguished	Para 4
[2010] 7 SCR 289	relied on	Para 8.3
[1996] 2 SCR 695	relied on	Para 8.4
[2021] 4 SCR 542	relied on	Para 8.5
[2022] 1 SCALE 534	relied on	Para 8.6

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8717 of 2015

Jodhpur da leiba Rajasthan High Court ki Division Bench na Civil writ petition No. 1471 of 2013 gi tarikh 04.08.2014 ta piba Judgement amadi yathanhg dagi.

Dr. Rajeev Dhavan, Sr. Adv.(Amiscus Curiae),Gaurav Agarwal (Amiscus Curiae).

Pradeep Kumar Mathur, Chiranjeev Johri, Ankur Rastogi, Advs. na Appellant gi oeiri.

Puneet Jain, Ms. Christi Jain, Umang Mehta, Yogit Kamat, Ms. Pratibha Jain, Advs. Na Respondent gi oeiri.

Court ki judgement asi laothokhibana

M. R. SHAH, J.

Jodhpur dal eiba Rajasthan High Court ki Division Bench na Civil writ petition No. 1471 of 2013 gi tarikh 04.08.2014 ta piba singnarakliba Judgement amadi yathang asida pendaba amadi nungaitaba fouwwee. Judgement aduda Appellant oeiriba Bharat Sanchar Nigam Limited, (makhataba dadi samjillaga BSNL haina kougani) na tharkhiba writ petition ado kakthatkhi amasung Central Administrative Tribunal, Jodhpur Bench, Jodhpur (makhatabada samjillaga Tribunal haina kougani) na O.A. No.159 of 2009 da pikhiba judgement amadi yathang adubu yakhi maduda Learned Tribunal na case asida Respondent No.1 oeiriba Original applicant ki application adubu yakhi amadi hujikki case asida appellant oeiriba BSNL da Other Backward Classes (OBC) gi candidate ahangba mapham leiba taragadi hujik natraga konna lakaadaba ahangba OBC gi maphamsing niyam gi matung inna khangdok laga mahakpu khalgadabani, Appellant-BSNL na appeal asi tharakpani.

2. Hujikki appeal asi lakpa foubada thokhiba singdo tentakna makhada piri:-

2.1 Case asida private Respondent No.1 oeiriba Original Applicant na Telecom Technical Assistant (TTAs) oeinaba BSNL na tarikh 06.10.2008 da notification thoktunna kourakhiba thabakta masu sarukyakhi. Thabak asi Rajasthan Telecom Circle gi manung da direct recruitment oeina open competitive examination pangthoktuna lougadabani. Hairiba

advertisement aduna makhatana haibada thabak kouribaadugi unit gi masa masagi Secondary Switching Area (SSA) na oeigani. Hujkki case asida yetnaribasi Ajmer SSA gini Ajmer SSa da hangliba phamsing adudi:-

Sr. No	Name of SS rect. Units	No. of Posts	No. UR posts	OBC	SC	ST	PH	Ex-service
1	Ajmer	12	5	4	2	1	0	1

Recruitment asi thabak changba yaraba candidate singgi oeiba parikha ama mark 200 gi objective type ta pangthokkani. Advertisement adugi clause 13 da asumna piri:

- (i) Unreserved category candidate singgi oeima khwaidagi nemlabada chada 40 phangdaba yade
- (ii) Reserved category gi candidate singgi oeina chada 33 phanggadabani.

Exam asida general category gi candidate amatana chada 40 phangba ngamkhide, Adubu OBC gi candidate ahumdi chada 33 gi mathakta phangkhi. Hairiba OBC candidate singduna phangba mark se makhada piri:-

OBC gi khallaba Candidate sing

	Name	Mark(200 manungda)	Chada kaya
1.	Alok kumar Yadav	79.75	39.87
2.	Dinesh Kumar	77	38.5
3	Alka Saini	72.5	36.25
4.	Ved Prakash	68.5	34.25

Original applicant case asidana Respondent No. 1 oeiribana 68.25 mark phangduna OBC category gi waiting List No.1 da thamlakhi.

2.2 BSLN na tarikh 01.06.2009 da telecom circle gi makok sing da chithi ama eduna TTA parikha da pass twbagi chang asi yam nemba maramna ahangba sing asi melsilba ngamdre. Adubu thabak sing pangthoknaba mi yam wattle aduna yamdrabada phangdaba yadaba mark asi chada 10% candidate khuding makki hanthare haibasini. Asumna nouna amuk general category fangdraba yadabasi si 30% da leple aduga reserved category gina 23% da leple. Chithi adugi Clause (iii) amasing Clause (v) ta asumna hairi:-

(iii) hanna leiramba thak aduda khallaba maipaklaba candidate sing adu nouna hanthraga piiba thak ta khalba sing adudagi senior gi awangba rank da leigani.

(v) Hanna phal louthokhraba circle sing adubu maipaklaba candidate ti masing suna phangba ngamdaba sing adudi merit natrga waiting list nouna hapsilba yai mathakki pankhriba mawong asida.

2.3 Yamdrabada phangdaba yadaba mark ado General category gi khomthoktuna cha 30% oeihallba matung makhagi mioei manga asi thabak happa yare:-

OC da khallaba candidate sing

	Ming	Mark
1.	Neelima Sharma	79.75
2.	Deepika Chauhan	78
3.	Ankit Goyal	76.75
4.	Tapin Sharma	76.50
5.	Tarun Jain	75.25

2.4 Adubu General category gi candidate sing dagi Alok Kumar amasung Alka Saina anina henna meritorious oeirammi maram asina makhoibu reserved category OBC da happa yarammi. Hujikna Respondent No.1 oeiriba original Applicant asi OBC gi wait list ta leirammi, mahakna Tribunal da application O.A No.159 of 2009 thaduna candidate pumnamakki anouba list ama nouna khomthoklaba thak aduda semmo haina yathang twbinaba hairi amadi nouna semlaba merit list adugi matung inna thabak happinaba hairi, selection amada cut off ani leiba yahalloidabani hairi. Anouba cut off ama nouna thoklaktuna amuk khaidokpa haibasi achan mirai naiba maram chadaba thouwong ni Bharat Sangbhidan gi article 14 amadi 16 bu thugaii.

2.5 Case asi original applicant gi meikaidagi OBC gi candidate ani general category oeina hapkadabani maramdi makhoising aduna general category gi last ta leiriba candidate adudagi mark henbanina haina tharakpani. Maram asina makhoigi thabak ado general category da hapkhibado yenglaga OBC category gi damakta khaktuna thamba seat aduna merit ta lemhouriba reserved category gi candidate singi maraktagi happa tai.

2.6 S.B Civil Writ petition No. 4948 of 2009 da Rajasthan High Court na tarikh 09.02.2011 ta pikhiba judgemnet adu yenglaga Tribunal na O.A asi loisilladuna Original applicant hujikkina Respondent No.1 bu thabak khannaba haikhi karigumba OBC gi candidate hapnaba ahangba leiriba taragdi amasung makha tana hujikki natraga tungda hanglakkadaba OBC category gi seat ta mahakpu hapkhadabani hairi.

2.7 Tribunal na takhiba judgement amadi yathang aduda pendaba amasung nungaitaba faoduna BSNL na judgment amadi yathang adubu singnaraduna High Court ta writ Petition ama thakhi Court asina **Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 ; R.K. Sabharwal v. State of Punjab (2007) 8 SCC 785; amasung Rajesh Kumar Daria v. Rajasthan Public Service Commission (2007) 8 SCC 785** case ta pikhiba

yathang sing adugi mateng louraga. Adubu writ petition adu kakthatkibaga loinana BSNL na Mr. Alok kumar Yadav amadi Mr. Dinesh kumar (OBC gi candidate) pu thabak happham thokee vertically reserved twdaba post ta, mathakta pannakhriba General category dagi mark henna phanggi hairiba candidate anido General category da hapkhrab matungda. High Court na makha tana haikhibada original applicant asi OBC gi khaktuna thamliba seat ta khallamgadabani. Asumaina hairaga High Court na writ petition ado kakthatkhi. Maram asina BSNL na hujikki appeal asi tharakpani.

3. Dr. Rajeev Dhavan loinana Gaurav Agarwal Learned Amicus Curiae. Pradeep Kumar Mathur, Learned counsel hairiba BSNL gi meikaida leplibasi sing amadi Respondent No.1 gi leplibasi Shri Puneet Jain pumnamakpu akhoina tare.

4. BSNL gi Learned Counsel na Court asigi case **Union of India v. Ramesh Ram (2010) 7 SCC 234** ta pikhiba yathang adugi akanba mateng louraga hairi madudi matang duda Court asina haikhibada reserved category gi candidate ama merit ta khallaga General category da thamba taragadi makhoibu reserved category gi ahangba singduda happasu yai service awangba ama phangba yanaba service allocation matamda. BSNL gi leplibasi Learned Counsel na haiirba yathang adugi 42 suba paragraph tagi yam kanna mateng louri.

4.1 Mathakki yathang asigi mateng louraga BSNL gi leplibasi Learned Counsel na yamna kanna thamkhibase candidate ani haibadi Mr. Alok kumar Yadav amadi Mr. Dinesh kumar bu reserved category da thabak happa asi chummi haibasini.

4.2 High Court na pikhiba yathang ado chummi haina loubasi taragadi OBC candidate ani General gi khomthoklaba cut off mark tagi henna phangbado General category da oeina hapkadabani, maram asina OBC category da ahangba ani thoklaklibado original applicant hujikkina Respondent No. 1 oeiribasina mensinba tarakkee aduna list ado hongdok hongjin twrakpa tarakii amasung selection twbagi process aduda akaiba

kaya thoklakee. BSNL gi lepliba Learned Counsel na makha tana thamkhibase High Court na General category da hangliba se 5 khaktani haibase udre amadi ahangba ado hanna lona mensilkrabani, OBC candidate ani amuk hapsilba haise General category khallaba singgi list ta hanna General category ta hanna khallaba yetnangingei leitana original claimant dagi mark henna phangba ani louthokpa tarakii amadi selection process ki apunbada akaiba tarakii.

4.3 Mathakta pankhriba sing asi haiduna amasung mathak ta pankhriba yathang sing adugi mateng louraga appeal asibu yahanbinaba haijarakee.

5. Dr. Rajeev Dhavan Learned Senior Counsel bu Gaurav Agarwal Learned Amicus Curiae na mateng panglaga amasung Respondent No.1 gi lepliba Shri Puneet Jain na kanna haibadi asigumba chayetnaba asi Court asigi **Indra Sawhney (supra)** case ta pikhiba yathang aduna konsille. Reserved category gi candidate pu general category oeina hapkadabani maramdi makhoising aduna general category gi last ta leirba candidate adudagi mark henba maramna. Maram asina makhoigi thabak ado general category da hapkhiba ado yenglaga reserved category gi damakta khaktuna thamba seat aduna lemhouriba reserved category gi candidate singi maraktagi happa tai. Hujikki case asida candidate ani maming oeina pallabada Mr. Alok kumar Yadav amadi Mr. Dinesh kumar na general category gi last ta leiriba khallaba amadi thabak hapkhraba adudagi mark henna phanggi. Aduna makhoi ani ado general category gi seat oeina hapkhigadabani. Hairiba candidate ani ase BSNL na reserved category oeina hapkhi maram asina reserved category gi candidate singda mangjaba oeirakki maramdi reserved category candidate anido general pool da oeina hapkadabani. Reserved category da Wait list ta leiriba Hujikki Respondent No.1 –original applicant asi High Court na thabak hapkadabani haibado chummi.

6. Magi magi party singi Learned Counsel dagi fajana kuina tare.

7. Court asina neinagei oeiba samlappa wahang di :-

“Karigumba reserved category candidate asina general category candidate tagi mark henna phangba taragadi asigumba reserved category candidate sing asi general category da hapkadra natraga reserved category gi candidate singi phangba quota ahangba aduda hapkadra?”

8. Mathakki wapham asi neinabada court asi yathang kharagi mateng loubu tarakkii.

8.1 **Indra Sawhney (supra)** case asigi paragraph 812 ta asumna hairi:-

“812. Eikhoigi gi mot ki matung inna 50% gi niiyam asi sotharaba kanglup singgi reservation toubada sijnnei article 16(4) gi matung inna. Matang asida sengdokchaningba amana reservation khudingmak si louna mawong matou mannade. Khudongchanabagi damakta reservation asi makhal ani thokna khaidokee madudi ‘vertical reservation’ amasung ‘horizontal reservation’ ni. Scheduled Tribes, Scheduled caste amadi Other backward class [article 16(4) gi makhada] piriba reservation asibu vertical reservation haina khangnaba yai adubu hakchang gi phibam soinaraba singda [article 16 gi clause (1) gi makhada] piriba reservation asibuna horizontal reservation kouee. Horizontal reservation asi vertical reservation gi manung da chatli—asigumba asibu interlocking reservation kouee. Kupthana hairabada hakchanggi phibam soinairaba singgi reservation article 16 gi clause (1) ga mari leinaba asi 3% leiba taragadi, Asigi quota asida khallaba mioei ado channaba category da amuk hapsilgani, karigumba SC category gi mi oeiragadi quota aduda mahakpu hapsillaga darker leiba singdo amuk semdok semjin tougani, Chap mannana mioei ado OC category gi oeiragadi, category aduda mahak thamlaga semdok semjin tougani. Horizontal reservation asi pikhraba matung dasu sotharaba kangbu singgi chada phangba

reservation adudi hongloi --- amadi honghalloidabani--- chap mannagadabani. Tongan tonganba state ta reservation asi asumaina chathaduna lakee amadi masigi thouwong asi hongdoknabagi maram leite.

8.2. **Rajesh kumar Daria (supra)** gi paragraph 8 tagi 11 foubada makhagi asumna hairi:

“8. Case asigi matang da neinadrigeida mari leinaba mityeng ani khak hanna khannaba yai. Ahanba asidi horizontal reservation gi matang dani, khudam oeina ahangba pham 200 leire amadi vertical reservation da SC gi 15% ni amasung nupi gi horizontal reservation na 30% ni, tasengna macha khaina hairabada SC gi reservation asi: “SC gi post 30 da nupi 9 oeigadabani” adubu eikhoina hanjin hanjin lalna haiba thengnei asumna: “SC gi nupa 21 nupi 9 ni apunba 30 gi manungda” . Asengbadadi nupa gi reservation leitee amadi lei haina loubasu yade.

9. Anisuba asina vertical reservation amadi horizontal reservation anigi mawongda khennaba asini. Article 16(4) gi makhada SC, ST amadi OBC da piriba Social reservation asina : “vertical reservation” ni, Article 16 (1) natraga 15 (3) gi makhada hakchanggi phibam soinairaba, nupi amadi attei da piriba special reservation asi horizontal reservation ni. Vertical reservation asida sotharaba kanglup singgi damakta article 16 (4) gi makhada thambani, sotharaba kanglup singgi candidate sing reserved nattaba post singgi damak tasu tannaba yai amadi makhoigi heithoi singthoibagi matung inna reserved nattaba post singda khalba taragadi makhoibu sotharaba kanglup singgi magi magi quota gi manung da paroi. Maram asina SC gi candidate singna masagi heithoi singthoibagi matung inna open competition gi ahangba reserved nattabada khanba taragadi SC gi khallaba masing aduna SC gi khaktuna thamba quota gi masing ga mannaraba natrga hellabsu SC gi quota adudi

haptri haina adumak pagani. Khaktuna thamlaba quota adu loinamak haptri haina pagani open competition category da khankhiba sinngdugi mathakta.(takliba Indra Sawhney [Indra Sawhney v. Union of India 1992 Supp (3) SCC 217], R.K. Sabharwal v. State of Punjab [(2007) 8 SCC 745], Union of India v. Virpal Singh Chauhan [(1995) 6 SCC 684], Ritesh R. Sah v. Y.L. Yamul [(1996) 3 SCC 253]. Vertical (social) reservation na sijinnaba neeyam sing ado Horizontal (special) reservation da sijjanaroi. Nupi singgi special reservation ama SC gi social reservation gi manung da thamba taragdi, merit ki matung inna ahanbada Scheduled Caste ki quota gi masing ado sunaba khallaba matungda Special reservation kanglup ki Scheduled Caste Nupi gi masing khangdokkani. Karigumba Scheduled Caste nupi gi masing aduna Special reservation quota aduga mannaraba natraga hellamlaba makha tana khangatlaroi, adubu watlamba taragadi watliba nupi masing ado khangatlaga hannagi Scheduled Caste ki list adugi mameida leiba sing do wathoubagi nouna khangatpadugi chap manaba masing louthokkani. Asumba mawong asida horizontal (special) reservation ga vertical (social) reservation ga khennei. Maram asina Vertical reservation quota gi makhada merit ta khangatlaba nupi singdo horizontal reservation gi masing thibada yaogani.. Khudam amaga loinana makhada utli.

Karigumba SC gi 19 post reserved thamba taragadi(masigi manungda 4 di nupi oeigadabani) , mithoi mihenbada khwai henba 19 gi list ama hanna semgani khalba yaraba maipaklaba candidate singgi manung dagi. List aduda karigumba candidate 19 adugi manung da SC gi candidate nupi 4 yaoramba taragadi, list ado nouna semdok semjil touraroi nouna SC nupi candidate hapchilduna, Nakan amaromda SC candidate 19 gi list aduda nupi candidate ani khaktang yaoramba taragadi, list aduda leiba mathanggi SC nupi candidate ani loukhattuna list aduda chalhalgani amadi loukhatkhriba adugi chap mannaba masing da SC list adugi mameida makhada leiba sing ado

kakthatkani, khangatlaba SC candidate 19 gi list ta nupi candidate 4 yaohalnabagi damakta.(adubu khangatlaba SC candidate 19 ki list nupi 4 dagu henna yaoraba masagi merit ta makhoi ado list aduda adumak yaohangani amadi phangpham thokpa SC nupi candidate 4 dagi helle haina kakthatpa yade).

10. Case asida general category da khangadaba candidate si 59 ni,masigi manung da 11 di nupi gi dammakta khak ae. Khallba yaraba maipaklaba candidate 261 manunda ahanbagi 59 gi merit list sembada nupi 11 yaoee, general category gi nupi gi quota aduga chap mannana yaore. Maram asina makha tana nupi candidate khalbagi darker leitre nupi gi special reservation gi makhada. Adubu RPSC na twramliba asidi merit ki matung inna ahanbagi candidate 48 ki list semmi (nupi 11 yaoba) aduga lemhouriba general category post 11 aduna nupi candidate ngakta hapsilli. Maduna general category gi candidate 59 khabada nupi 22 yaore, masagi merit ta khaba (khalaba singgi list ta Sl. Nos. 2,3,4,5,9,19,21,25,31,35 amasung 41 oeiba candidate) ta nattana attopa 11 (Sl. Nos. 54,61,62,63,66,74,75,77,78,79 amasung 80 oeiba candidate) asina general category nupi quota gi makhada khalli. Masidi tasengna yade lalli. RPSC na Selection twbagi mawong asidi nupi gi chada 20% vertical reservation thambaga mannare, vertical reservation gi manung da leiba horizontal reservation oeibagi mahutta.

11. Mannana, OBC gi post 24 asidasu RPSC na 19 ama merit ta khalli nupi candidate ahum yaona. Makha tarakpada nupi candidate 5 amsu “OBC Nupi” category da khalli, hanna 3 yaokhrabanina wathouriba 2 adutang hapsil bagi mahutta. Asumna Selection list ta yaoba OBC candidate 24 gi manungda nupi candidate 8 yaoee. Achumba thouwangda tourabadi ahanbagi 24 gi list ama merit ta semdoklaba matung da nupi kaya yaobage yenglaga wathouba masing adu khaktamak hapsilgadabani quota mapung fanaba.

(pukning chingsinli)

8.3 Uttranchal Public Service Commission Vs. Mamta Bisht, (2010)

12 SCC 204 case asida high court na loukhiba phirep ti reserved catgory candidate asi masi mithoi mihenbagi matung inna general category gi seat ado phangba yai amadi phanglabadi mahakpu reserved category gi masing da tharoi. High court na pikhiba judgemnet ado yaraduna court asina paragraph 3,4,13 amadi 15 makha gi asumna phongdokhi:

“3. Post 42 gi manung da 26 amana general category da happi amasung 16 amana reserved category da happi. Nupi candidate khara general category da khalli amadi attopa kharana Uttranchal da leiba mioei ama oeibagi horizontal reservation gi khalbagii kannaba phangkhre. Uttaranchal High Court ta Writ Petition No. 780 of 2003 (M/B) asi Respondent No.1 tarikh 31-07-2003 da thokhiba select list ado kakthatpiyu haiduna pendraduna tharakpani, Uttanchal da leiba nupi candidate singna mark henna phangba yaoba sing ado general category gi khangtpada chalhagadabani amasung challamlabadi Respondent No.1 asi Uttaranchal da leiba nupi singgi khaktuna thamba quota da mahak asi khallamgadabani. Makha tanaa petition aduda hairi madudi horizontal reservation gi kannaba phangduna khallaba nupi candidate sing adugi marakta nupi candidate kharadi application form thajilba matamda domicile certificate ywrakhide adubu makhoina hairiba certificate ado konna matam kharagi matung da pijilakhi amadi madubu ayaba pikhi.

4.Respondent No.1 na haiba thamkhiba wapham ado High Court na yakhi selection gi record sing yenglaba matung amadi horizontal reservation gi khudong chaba phanglaga khalliba candidate singgi aroiba aduna general category gi aroiba candidate tagi mark henna phangii. Maramsina hairiba candidate ado general category gi ahangbada da happham thokee amasung respondent no. 1 asibuna Uttaranchal gi nupi singgi horizontal reservation ki khudong chaba

piduna thabak adu changbagi khudong chaba pifam thokee. Maram asina appeal asi lakhi.

13. High Court na writ petition asi yabagi maramdi horizontal reservation asi vertical reservation gi manungdasu reserved category candidates (social) singbu kananaba sijinnaba asigini amadiasumna hairi:

‘Mathakki asi yenglaga, Neetu Joshi (Sl. No. 9, Roll No. 12320) asi lannana respondent no. 3 haidi commission na Uttranchal nupi general category gi seat 5 khakpada yaohallami adubu mahakki mahakki merit ta general category candidate oeina yao gadabani amadi manga suba candidate oeina petitioner asibu Uttranchal nupi general category seat ta khallamgadabani.’

Neetu Joshi haiba asi petition asigi respondent oeide. Mahakpu respondent oeihannabagi damakta application amadi thajilkhre adubu application ado yakhre haibagi paodam amata leite. Maipaklaba candidate kharasu case asigi wayel da saruk yahanaba court asigi mamang da hotnakhre adubu court asina yakhidre.

14. Horizontal reservation sijinnaba gi matangda high court na loukhiba phirep ado court asina *Rajesh Kumar Daria v. Rajasthan Public Service Commission* (2007) 8 SCC 785 gi makhada piriba aien singga onnei, court asina case aduda thamkhibada: (SCC pp. 790-91, para 9)

9. Anisuba asina vertical reservation amadi horizontal reservation anigi mawongda khennaba asini. Article 16(4) gi makhada SC, ST amadi OBC da piriba Social reservation asina :”vertical reservation” ni, Article 16 (1) natrag 15 (3) gi makhada hakchanggi phibam soinairaba, nupi amadi attei da piriba special reservation asina horizontal reservation ni. Vertical reservation asida sotharaba kanglup singgi damakta article 16 (4) gi makhada thambani, sotharaba kanglup singgi candidate sing reserved nattaba post singgi

damak tasu tannaba lounaba hotnaba yai amadi makhoigi heithoi singthoibagi matunggi inna reserved nattaba post singda khalba taragadi makhoibu sotharab kanglup singgi magi magi quota gi manung da paroi. Maram asina SC gi candidate singna masagi heithoi singthoibagi matung inna open competition na ahangba seat reserved nattabada khanba taragadi SC gi khallaba masing aduna SC gi khaktuna thamba quota gi masing ga mannaraba natrga hellabsu SC gi quota adudi haptri haina adumak pagani. Khaktuna thamlaba quota adu loinamak haptri haina pagani open competition category da khankhiba singdugi mathakta.(takliba *Indra Sawhney* [*Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217], *R.K. Sabharwal v. State of Punjab* [(2007) 8 SCC 745], *Union of india v. Virpal Singh Chauhan* [(1995) 6 SCC 684], I [(1996) 3 SCC 253]. *Vertical (social) reservation da sijinnaba neeyam sing ado Horizontal (special) reservation da sijjanaroi*. Nupi singgi special reservation ama SC gi social reservation gi manung da thamba taragdi, merit ki matung inna ahanbada Scheduled Caste ki quota ki masing ado sunaba khallaba matungda Special reservation kanglup ki Scheduled Caste Nupi gi masing khangdokkani. *Karigumba Scheduled Caste nupi gi masing aduna Special reservastion quota aduga mannaraba natraga hellamlaba makha tana khangatlaroi*, adubu watlamba taragadi watliba nupi masing ado khangatlaga hannagi Scheduled Caste ki list adugi mameida leiba sing do wathoubagi nouna khangatpadugi chap manaba masing louthokkani. *Asumba mawong asida horizontal (special) reservation ga vertical (social) reservation ga khennei*. Maram asina Vertical reservation quota gi mahhada merit ta khangatlaba nupi singdo horizontal reservation gi masing thibada yaogani.

15. Mathakki sing asi yenglaga, High Court ki judgment amadi yathang asi *Rajesh Kumar Daria v. Rajasthan Public Service Commission* (2007) 8 SCC 785 na semkhiba aien aduga channadre. Matang asida singnarakliiba judgment amadi yathnag asi chatna handaba tarakee amadi

madugi makha taba yathang sing adusu kannadaba amasung chatnaba yadaba oeire. Maram asina appeal asi mai pakle amadi yare. *Mamta Bisht v. State* [WPMB No.780 of 2003, yathang piba numit 26-10-2005] ta High Court na pikhiba judgemnet amadi yathang ado chatnahandre, sel amata thiroi.”

(Pukning chingsilli)

8.4 Court asigi larger bench na **Indra Sawhney (supra)** amasung **R.K Sabharwal (supra)** da pikhiba yathangsing adu yenglagaga **Ritesh R. Sah v. Y.L Yamul (1996) 3 SCC 253** da makhagi asumna phongdhokki paragraph 13 dagi 16 foubada :

13. Candidate amana masagi merit ki matung inna yaorabadi, mana yaoraklibada Scheduled Caste natraga Scheduled Tribe natrga attopa reserved category amata pafam thokte maramdi Article 16 (4) da piriba sangbhidhan wakhallon adugi mayokta oeirakkani.

14. *Mandal Case* hainasu khangnaba *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217, Court na makhagi asumna thamkhi (SCC p.750 para 4)

“811 matang asida akhoina ningsingadabadi article 16(4) gi makhada piba reservation asi communal reservation gum mathou twde. Scheduled caste member kharana apunbagi changyenda masagi mithoi mihenbana khallba taragadi makhoi ado Scheduled caste ki quota da khabani haina paroi, makhoi ado apunba changyenggi gi candidate haidi general gumna lougani.’

15. *R.K. Sabharwal v. State of Punjab (2007) 8 SCC 745* ta Court asigi constitutional Bench amana thabak happada promotion pibada amadi roster point pibada reservation thambagi matang da lakpa wahang singbu neinari amasung asumna phongdhokhi : (SCC p. 750, para 4)

4 Reservation gi chada oeigadaba chang ama leplabadi akaknaba cadre amagi amasung roster aduna reserve point taklabadi , reserve

point da thoklakliba post ado reserved category dagi mensilgadaba oeiragadi general category gi candidate adugi post ado phangba supya yararoi. Attopa meikei amada reserved category gi candidate singna reserved nattaba post tannaba yai amadi karigumba post aduda thabak haplabadi makhoigi masing ado reserved thamba post masing aduda paroi. Bharat Sangbhidhan gi article 16(4) ki makhada State lei ngakna thabak happada sotharaba kanglup ki missing state service singda matik chana ywdriba oeiba taragdi makhoigi yenglaga masing hengatnaba niyam sembagi sakti adu piri. Maram asina Sotharaba kanglup amagi masing suna matik chana State service ta yaorabra yaodriba haibase State lei ngakna lepchagadabani. State Lei ngak na madu twbada sotharaba kanglup singgi mee masing kayam leiba amadi makhoina State service ta kaya yaoribage haibado yengani. State lei ngakna mathakta hairiba sing asi khangdoknaba twgadaba mathou sing touraga khanglaba matung Cha da kaya sotharaba kanglup adugi khaktuna thamgadage quota oeina lepthokkani amadi reservation adu soidanammakki ingadabani.. Lepkhraba percentage ado member khara general category da thabak hapkhre natraga promotion pikhre haina hongdokpa yaroi. Mathakta ta palkhriba adugumna Backward class ki reserved twkhraba roster point singdo hairiba class dugi thabak happa natraga promotion piraga hapkadabani. Genral category gi candidate amata sotharaba kanglup reserved twkhraba slot ta happa yade. Sotharaba kanglup ki mioei kaya general gi seat ta haplakpa asina State service ta State Lei ngakna hairiba kanglup adugi reservation ado adumak chattaraga leikhigadra haiba wahang asi khannanigei oeirakkii adubu reservation gi hannagi cha da asuk reserved twgadabani haina thamkhiba neeyam sing ado leiriba makhei hannagum chattnagani. Sotharaba Kanglup ki mi kaya kaya haplakpa natrga promotion pirakpa taragasu general category post ta reserved twkhraba chang adudi tadana adumak happa tai general da yaoriba adugi mathakta.

16. *Union of india v. Virpal Singh Chauhan* [(1995) 6 SCC 684] (SCC at Pp.705) ta asumna haikhi madudi Scheduled Caste amdi Scheduled tribe ki post masing leppada reserved category da yaoba candidate ti oeiba adubu thabak ado khallakpada natraga promotion karakpadadi masagi merit matung inna oeirakpa, reservation neeyamgi matung inna nattaba oeiragadi makhoibu reserved category candidate ni haina masing paroi.

8.5 Court asigi anouba yathangda **Saurav Yadav Vs. State of U.P. (2021) 4 SCC 542** case asida hannagi vertical reservation da pikhiba judgement singdo yenglaga thamkhi madudi vertical reservation category amada hekta yaoba candidate amana “open natraga general”category da khalba yai. Makha tana haibada adugumba candidate ado masagi merit ta khalba oeiragdi makhoibu makhoina yaoriba reserved category gi quota gi masing pabada yaoba yaroi.

8.6 Court asina manarap toubu mot ekui kuidriba **Sadhana Singh Dangi Vs Pinki Asati, (2022) 1 SCALE 534** ta phongdhokhi. Case asida General category gi aroibada leiba adudagi reserved category da leiriba candidate aduna mark henna phangba taragadi reserved twdaba post/seat ado makhoina phangadabani. Makha tana phongdokhibada horizontal reservation asi sijinnaba matamdasu merit na henna maru oeina lougadabani amasung karigumba STs,SCs amadi OBC candidate singna henna mark phanglaba natraga heithoi singthoiraba makhoising ado reserved seat nattabada khangadabani.Makha tana haibada reserved category oeiba candidate singna na reserved category nattaba seat ado malkhoigini haina loubu yai merit list ta leiriba merit amadi position adugi matung inna.[

9.Court asina Mathakta palkhriba yathang sing asi semkhiba aien sing adu yenglaga amadi case asida thokliba oeiriba sing asisu neinaraba matung khangbada OBC category oeiba candidate ani haidi Mr. Alok kumar yadav amasung Mr. Dinesh kumar General category da yaohanba tarakee maramdi makhoina general category gi aroibada leiba oeina thabak

hapkhiba adudagi henna mithoi mihenba oeiba amadi makhoibu thabak happado reserved category gi seat ta oeina happani haina loubu yaroi Maram asina makhoigi thabak ado general category da hapkhiba ado yenglaga reserved category gi damakta khaktuna thamba seat aduna lemhouriba reserved category gi candidate singi maraktagi happa tai haidi Respondent No.1 gumba. Karigumba asigumba thouwang asi ellaga thabak happa oeiragadi Respondent no.1 se merit ta reserved category gi seat ta thabak haplamgani. Maram asina High Court na Mr. Alok kumar yadav amasung Mr. Dinesh kumar bu General category da hapkadabani amadi respondent No. 1 asina reserved category candidate oeiba amadi reserved category gi waiting list ta Sl. No. 1 oeiba maram mahak asisu reserved category da thabak hapkadabani haikhibado lalde

Adubu OBC candidate ani general category gi khangatlaba singgi list ta hapsillakpa asina general category da thabak hapkhraga kuina thabak twraklaba candidate anibu tanthokpa natraga louthokpa tarakii aduna apunba selection process aduda akaiba oeirakee. Maram aduna balance leinaba amadi thabak hapkhraba general category gi candidate anidusu thabak tagi louthoktanaba amasung chapmannaba mawong da respondent No.1- original Applicant asigisu mapham pinaba Bharat Sangbhidan gi Article 142 gi makhada mahak pusu thabak hapse. Yathang asina nouna semdoklaba list ta Respondent No. 1 – original Applicant asi reserved category seat ta happee amasung OBC category gi candidate ani Mr. Alok kumar yadav amasung Mr. Dinesh kumar na general category seat ta happa oeina loure, hanna thabak hapkhraba general category gi candidate ani dusu louthoktre. Aduga Respondent No.1 gi seniority asi general category candidate sing haibadi mathak ta palkhriba reserved category gi candidate sing adudagi tana merit oeiba singduna thabak hapkhiba nummitagi loughani.

10.BSNL gi Learned counsel na mateng louriba court asigi **Ramesh Ram (supra)** gi yathang adugi matang dadi, hairiba yathang ado hujikki khutta leiriba case sida oeiriba thokliba sing asiga channade sijinnaba yaroi. Case ani asigi khennbasi oeiriba thokliba sing asida erai laina ui. Hairiba

case adudadi Union Public Service Commission gi Civil Service Parikha gi Civil Service Parikha gi neeyam Rule 16(2) neinabani. Rule 16(2) na asumna hairi:-

“16(2)Service allocation gi matamda, Scheduled Caste, Scheduled Tribe natrga OBC gi candidate unreserved category da khangatkhibado Lei ngakna reserved category da hapchilba yai makhoina khanjaba henna pamjaba service ado phangnaba.”

Hairiba case asidi Civil service kini masidadi khallaba candidate singgi tongan tonganba pamjaba service preference kaya lei, case amada general category candidate tudagi reserved category gi candidate tuna meritorious oeiraba mark henna phanglabasu mahak ado adumak reserved category da khalba oeina loubu yai, henna wangba service mahakki apamba ado phangnaba. Maram asina asigumba candidate ta reserved category oeijanaba khudong chaba ado pigani general candidate dagi henna merit leiba taragasu. Hujikki case asida asigumba preference ki matang yaode.Paragraph 42 da Rule 16 (2) asi sandokna takle makha gi asumna:-

42. Eikhoigi mot matung inna Rule 16(2) ki kannaba fangliba MRC candidate singbu reserved category da hapsilliba ado reserved category gi pool da masing thigani quota parakpa matam da. MRC gi candadite singna general gi seat thadoklamba sing ado general category candidate sing da piri. Masi amata ngairaba oeithopa yaba solution oeigani maram di general category gi seat sing(MRC candidate singna thadoklamba) singdo rank makhada leiba reserved category candidate ta piba taragadi apunba khaktuna thamba quota gi masing asi apunba seat masinggi chada 50% dagi henllagani. Maram asina MRC candidate sing do reserved category da happada karisu akaiba ude.

BSNL gi mateng oeina hairiba yathang asi case asida sijinnaba asi akhoina thagatpham thokee **Indra Sawhney (supra)** amadi attopa mathakta piriba yathang sing sijinnaduna yetnarakpada.

11. Mathaki sing asi yenglaga amadi piriba mathakki maram sing asi na appeal asi maithire amasung appeal asi kakthatpham thokle amadi asumna kakthatle. High Court na pikhiba yathang ado chummi madudi Mr. Alok kumar yadav amasung Mr. Dinesh kumar buna General category candidate tagi mark henna phangba oeibanina General category da thabak hapkadabani amadi OBC category ki khaktuna thamba seat sing ado OBC category gi lemhouriba candidate singgi maraktagi hapkadabani. Maram asina respondent No. 1 – original applicant bu adugumba post ta thabak happhami thokee. Bharat Sangbhidan gi Article 142 gi makhada general category da thabak hapkhraba candidate anibu tanthokpa natraga louthokpa twraroi list ado semdoklakpada makhoina kuina thabak twrakliba ado yenglaga. Tougumsu Respondent No.1 gi seniority asi general category candidate sing haibadi mathak ta palkhriba reserved category gi candidate sing adudagi tana mark phangba candidate singduna thabak hapkhiba nummitagi lougani.

Masiga loinana hujikki appeal asi kakthatle, Adubu oeiriba amadi thokliba singsi yenglaga, sel thinaba yathang amta pide.

12. Loisildrigei mamangda akhoina Dr. Rajeev Dhavan, Learned Senior Advocate amadi Gaurav Agarwal Learned Advocate anibu Amiscus Curiae oeina Court asibu mateng pangbagi damakta thagatli amadi twbimal khangba utchari.

Appeal asi kakhatle.