

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.238/2000

New Delhi this the 16th day of February, 2001.

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

(3)

Harish Kumar Yadav ...Applicant
(By Advocate Shri S.K. Bisaria)

-Versus-

U.O.I. & Others ...Respondents
(By Advocate Sh. Devesh Singh, through proxy counsel
Shri Amit Rathi)

1. To be referred to the Reporter or not? YES/NO
2. To be circulated to other Benches of
the Tribunal? YES/NO

S. Raju

(Shanker Raju)
Member (J)

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(V)

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Harish Kumar Yadav,
S/o Sh. Tek Chand,
R/o Village Sirodhan,
Distt. Bulandshahr (UP)

....Applicant

(By Advocate Shri S.K. Bisaria)

-Versus-

1. Commissioner of Police,
I.P. Estate,
MSO Building,
New Delhi.
2. Union of India through
Secretary,
Dept. of Personnel & Training,
Ministry of Home,
North Block,
New Delhi.
3. Dy. Commissioner of Police,
IInd Bn., DAP
Delhi.

....Respondents

(By Advocate Shri Devesh Singh through Sh. Amit Rathi proxy
Counsel.)

ORDER

By Mr. Shunker Raju, Member (J):

The applicant, an ex-serviceman assails an order passed by the respondents whereby the candidature of the applicant for the post of Constable (Executive) in the category of Ex-serviceman has been cancelled vide an order dated 24.9.99 on the ground that the applicant is not eligible to be given appointment as a Constable (Executive) in Ex-Serviceman quota as per OM dated 14.4.87. he does not come within the ambit of an ex-Serviceman. He also assails OM dated 14.4.87 whereby w.e.f. 1.7.87 a person who has been released from Armed Force at his own request after completing five years of service has been taken out of the purview of the definition of ex-serviceman.

(5)

2. The applicant joined the Indian Army on 14.6.88 and as his family circumstances were not apt he requested for voluntary discharge and on 22.9.96 the applicant was granted the said permission at his own request. The applicant was issued a discharge book whereby the applicant has been treated as an Ex-serviceman. Though he has been discharged at his own request on extreme compassionate grounds before attaining conditions of a pensioner, yet he has been bestowed with the status of ex-serviceman by the Army.

3. The applicant duly registered himself with the Employment Exchange and in the first phase of recruitment in the year 1998 he applied for the post of Constable (Executive) in the category of Ex-serviceman. The applicant submitted all his relevant documents and the same were verified. The applicant was shocked to receive a show cause notice dated 19.8.99 at Annexure A-3 whereby it is proposed to cancel the candidature of the applicant for the post of Constable (Executive) on the ground that as the applicant had taken discharge from Army on his own request he ceased to be an ex-Serviceman as per the amended definition in pursuance of DOP&T OM dated 14.4.87. The applicant filed his reply to the show cause notice. The respondents vide impugned order dated 24.9.99 cancelled the candidature of the applicant as the applicant was not an ex-serviceman within the amended definition of ex-serviceman contained in the Ex-servicemen (Remployment in Central Civil Services and Posts) Rules, 1979 (1979 Rules for short). The applicant challenges the cancellation of his candidature on the ground that Sh.

(b)

Megha Nand who was similarly situated had been appointed and is continuing in Delhi Police Force since 16.8.94 and the applicant has been meted out a differential treatment arbitrarily. It is further contended that the applicant falls within the ambit of ex-Serviceman as what has been taken away by the notification dated 14.4.87 is the category of persons included as Ex-Serviceman vide notification dated 27.10.86 but yet within the definition contained in OM dated 14.4.87 and the rules ibid as he has served in regular Army and had been released without any result of reduction in establishment, he continues to be covered under the definition of Ex-Serviceman contained in the Rules ibid. It is further contended that the notification issued by the respondents on 14.4.87 is ultra vires and has no reasonable nexus with the object sought to be achieved.

4. The respondents in their reply took resort to OM dated 14.4.87 and contended that as the persons who were previously included as ex-Serviceman and as they have been discharged on their own request after completing five years service in the Armed Force of Union the deletion of this clause from the definition of ex-serviceman would have an effect rendering the applicant in-eligible, as before attaining the qualification of getting pension, i.e., 15 years of service the applicant has been discharged at his own request and as such is not eligible to be enrolled in the Delhi Police, in accordance with the Delhi Police (Appointment and Recruitment) Rules (for short, Police Rules). It has been further contended that according to his own averment the applicant was discharged on 22.9.95 and moved an application on 6.6.98, i.e., beyond two years

on discharge from Army and as such he is not eligible for appointment as Constable in the category of Ex-Serviceman as per the conditions laid down in the Police Rules. It has been further contended that the DOP&T OM dated 14.4.87 is perfectly valid, and as the aforesaid provision is deleted on the recommendation of an Expert High Level Committee, the OM cannot be faulted. They have further defended their action by contending that as the applicant has been released/discharged at his own request he ceases to be an ex-Serviceman in terms of OM dated 14.4.87. The respondents further contended that the applicant has also not completed the requisite service of 15 years which entitled him to be an Armed pensioner.

5. The applicant in his rejoinder reiterated his contention taken in the OA and further contended that the Army authorities issued him a certificate on 2.12.2000 whereby his date of discharge from service has been correctly mentioned as 22.9.96 as such he was very much eligible under Rule 28 of the Police Rules to apply for the post of Constable (Executive) in Ex-Serviceman quota.

6. We have carefully gone through the rival contentions of the parties and perused the material on record. Rule 28 of Delhi Police (Appointment and Recruitment) Rules, 1980 which deals with an Ex-serviceman in Delhi Police is reproduced as under:

"28. Enlistment of ex-soldiers, ex-policemen and reservists.--(1) Re-enlistment shall be permissible only in the rank of constable and past service will count for pension as per provisions of rules 18 and 19 of the CCS (Pension) Rules, 1972:--

(a) Ex-servicemen and ex-members of all Police forces of States or Union Territory, who were paid from the Central/State revenues may be re-enlisted as constables at the discretion of the appointing authority if their discharge certificate shows previous service as Good or of higher classification, provided that (a) they present themselves within two years of their previous discharge, (b) they conform to the physical and educational standards laid down for recruits from open market, (c) they are medically fit for police service according to the standards prescribed for recruits and (d) their age on the date of re-enrolment is below 30 years. The age limit prescribed in this para may, in special cases, be relaxed upto 40 years by the Commissioner of Police.

(b) Cavalry and infantry reservists of the Indian Army, below the age of 30 years, may be enrolled, provided that their military service records shows good conduct, and they are exempted from annual military training by the Defence authorities.

(c) Reservists of other branches of the Indian Army may also be enlisted in the Police; provided that the conditions of their reserve service and periodical training do not interfere with their police duties.

(d) The total number of all classes of reservists shall not exceed five percent of the sanctioned strength of constables. They shall be released from employment as soon as mobilization is ordered so as to enable them to rejoin the colours."

7. In accordance with the provisions *ibid*, an ex-Serviceman may be re-enlisted as a Constable if his discharge certificate shows previous service as Good and he presents himself within two years of his discharge and also till the age of 30 years relaxable upto 40 years and is also conforming to the physical and educational service. The definition of an ex-Serviceman is nowhere defined in these rules. The aforesaid rules does not preclude a person within the definition of an ex-serviceman if he is released or discharged from Army on his own request. In face vide an OM dated 15.11.96 the persons who have been discharged at their own request after completing five years in the Armed Forces or Union were included and deemed to be

(9)

an ex-Serviceman. But vide subsequent notification dated 14.4.87 the aforesaid provision is deleted. But the fact remains that a person who served in Army in any rank irrespective of the period rendered in the Army would be deemed to be an ex-Serviceman within the definition of ex-Serviceman as defined in the Re-employment Rules, which are statutory in nature and framed under Article 309 of the Constitution of India. The only exception is that a person who has been released otherwise than his own request from such service as a result of reduction in establishment would not be treated as an ex-Serviceman. In our considered view the aforesaid provisions relied upon by the respondents to deprive the applicant his appointment as an ex-serviceman on the post of Constable (Executive) would not be applicable to the case of the applicant. In order to bring out a person from the purview of the definition of ex-Serviceman he should have been released from Army as a result of reduction in establishment on his own request. In the instant case the applicant was discharged from Army after completing a service of more than 8 years on his own request on compelling compassionate grounds. In our view the applicant case is not covered under the aforesaid clause and would be an ex-serviceman by virtue of his being served in any rank in the regular Army, which is not disputed in the instant case. Apart from it, while issuing the discharge certificate the applicant has been accorded the status of an ex-serviceman by the Army authorities despite being aware of OM dated 14.4.87 which was very much in existence at the time when the discharge certificate had been issued to the applicant. Once the applicant is treated as an ex-Serviceman by the Armed Forces or Union and is amenable to the definition of ex-serviceman under

(20)

certificate the applicant has been accorded the status of an ex-serviceman by the Army authorities despite being aware of OM dated 14.4.87 which was very much in existence at the time when the discharge certificate had been issued to the applicant. Once the applicant is treated as an ex-Serviceman by the Armed Forces or Union and is amenable to the definition of ex-serviceman under clause 2 (c) of the Rules the respondents' action to deprive him of the benefit of ex-serviceman by taking resort to OM dated 14.4.87 is not justified. The notification dated 14.4.87 has not added any new definition to an ex-serviceman but rather it had taken away the provisions whereby certain categories of persons have been bestowed the status of ex-serviceman vide an OM dated 27.10.86. The fact remains that this OM has not affected or modified the definition of an ex-serviceman contained in Rule 2 (c) of the Re-employment Rules, 1979. In our view the respondents have mis-interpreted the provisions contained in OM dated 14.4.87 and without application of mind to the definition contained in Rule 2 of the Re-employment Rules, illegally cancelled the candidature of the applicant.

8. As regards the challenge to OM dated 14.4.87 is concerned, in view of the observations made above it will be a futile exercise to adjudicate this legal issue of the applicant.

9. There is another aspect of this case as, provisions of Rule 28 (c) allow enrolment of Reservists of other branches of the Army as a Constable if the condition

(21)

of their reserved service and periodical training do not interfere with their police duties and this would be limited to 5% of the sanctioned strength of the Constables. From the perusal of the discharge certificate issued to the applicant we find that the applicant has been treated as a Reservist and has been given a liability to serve for a period of two or three years on attainment of 40/45 years, whichever is earlier. As such the applicant also qualifies for being enrolled as a Constable (Executive) in Delhi Police being a Reservist of the other branches of the Indian Army.

10. Having regard to the above discussion we set aside the order of cancellation of candidature of the applicant dated 24.9.99 and direct the respondents to appoint the applicant as Constable (Executive) under Rule 28 of the Delhi Police (Appointment and Recruitment) Rules, 1980 forthwith. The applicant shall also be entitled for all consequential benefits. The respondents are directed to comply with the above directions within a period of two months from the date of receipt of a copy of this order.

11. The O.A. is accordingly allowed, but without any order as to costs.

S. Raju

(Shanker Raju)
Member (J)

"San."

V.K. Majotra
(V.K. Majotra)
Member (A)