

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

MA/310/00232/2020 in & OA/310/00415/2020

Dated Tuesday the 6th day of October Two Thousand Twenty

**CORAM : HON'BLE SHRI. S. N. TERDAL, Member (J)
HON'BLE SHRI. T. JACOB, Member (A)**

(Through Video Conferencing)

1. R.Mourougavel,
2. R.Deivasigamani.Applicants

By Advocate M/s. Achari & Antoni

Vs

1.Union of India, rep by,
The Chief Secretary,
Chief Secretariat,
U.T. Of Puducherry, Puducherry 605001.

2.The Secretary to Government,
Department of Personnel and Administrative Reforms,
U.T. Of Puducherry, Puducherry 605001.

3.The Under Secretary to Government,
Department of Personnel and Administrative Reforms (Personnel Wing),
U.T. Of Puducherry, Puducherry 605001.Respondents

By Advocate Mr. R. Syed Mustafa

ORAL ORDER

(Pronounced by Hon'ble Shri. S. N. Terdal, Member(J))

Heard. MA 232/2020 filed by the applicants for joining together in a single OA is allowed.

2. This OA has been filed seeking the following reliefs:

"1. To call for records to the common order passed by the 3rd respondent in his order No. A-34015/10/2017/DP&AR (Exam)/461 dated 20.04.2020 and quash the same as highly illegal.

2. To direct the respondents to appoint the applicants to the post of Upper Division Clerk (Group C, Non Gazetted, Ministerial) under Ex-Servicemen quota in pursuance of the Notification No. A-34012/4/2015/DP&AR(Exam) dated 11.08.2015 and

3. To pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

3. The Counsel for the applicants vehemently and strenuously submits that the applicants being Ex-Servicemen, they are entitled to be considered for appointment. He submits that the impugned order is discriminatory and unreasonable. The impugned order dt. 20.04.2020 which has been challenged is extracted below :-

“ GOVERNMENT OF PUDUCHERRY
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
(PERSONNEL WING) ”

No.A-34015/10/2017/DP&AR (Exam)/461 Puducherry, dt. 20-04-2020

MEMORANDUM

Sub:DP&AR (Exam) – Direct recruitment of U.D.C. through Competitive Examination, 2015 – Disposal of common representation in compliance to the order dated 22-02-2020 of Hon'ble High Court of Judicature at Madras in Writ Petition No. 19197 of 2017.

WHEREAS Tvl. R. Mourougavel, K. Balachandar, G. Selvaraj and R. Deivasigamani, Puducherry filed Writ Petition No. 19197 of 2017 before the

Hon'ble High Court of Judicature at Madras praying for directions to the respondents to consider their representation dated 23-06-2017 and appoint them to the post of Upper Division Clerk against the existing vacancies in the Ex-Servicemen quota, within the stipulated time period fixed by the Hon'ble court;

AND WHEREAS, the Hon'ble High Court of Judicature at Madras in the order dated 22-01-2020 disposed the Writ Petition with the direction to consider the representation made by the petitioners dated 23-06-2017 on merits in accordance with law, within a period of 8 weeks from the date of receipt of the copy of the order;

AND WHEREAS, in compliance with the above said order, the common representation dated 23-06-2017 submitted by Tvl. R. Mourougavel, K. Balachandar, G. Selvaraj and R. Deivasigamani, Puducherry, the petitioners herein has been carefully examined. In the said representation they have stated that they are all Ex-Servicemen and that they appeared for the written examination held on 25-10-2015 for direct recruitment to the post of U.D.C and the list of selected candidates was published on 28-10-2015 and 50 persons had been provisionally selected for the Ex-Servicemen quota. It has been further stated therein that as per the information obtained under the Right to Information Act, out of the total number of 50 persons who were provisionally selected in the Ex-Servicemen quota for the post U.D.C in the said recruitment process, only 28 have joined and the remaining 22 posts are still lying vacant which have to be filled from the eligible persons who have applied for the post and also appeared for the written examination. The petitioners claimed that if the remaining 22 posts reserved fro Ex-Servicemen are filled with eligible candidates who have applied for the examination, they would be eligible for appointment to the post of U.D.C and therefore requested to consider them for appointment to the post of U.D.C against existing vacancies under Ex-Servicemen quota;

AND WHEREAS, this Department had conducted common written Competitive Examination for Direct Recruitment to the post of Upper Division Clerk on 25-10-2015. The result notification was published on 28-10-2015. Separate wait/reserve list was also published for all categories except Ex-Servicemen category along with the result notification dt. 28-10-2015 mentioning that it would be operated in the event of occurrence of a vacancy

caused in the select list due to non-appearance for certificate verification, non-joining of the candidate within the stipulated time allowed for joining the post or when a candidate joins but resigns or dies within a period of one year from the date of joining.

AND WHEREAS, a total number of 503 candidates were provisionally selected for the post of U.D.C including 50 Ex-Servicemen candidates. Out of 50 Ex-Servicemen candidates, the selection of 19 candidates were subsequently cancelled after certificate verification, for the reasons stated below :-

(1)	Ex-Servicemen who have already availed Ex-Servicemen quota to join Government jobs and hence ineligible for appointment	:	15
(2)	Ex-Servicemen candidates who have not joined.	:	2
(3)	Ex-Servicemen candidate who has not furnished the required certificates	:	1

	Total	:	18

One Ex-Serviceman resigned the post after joining. Appointment of 3 Ex-Servicemen candidates was kept pending for various reasons, and the remaining 28 Ex-Servicemen candidates were issued offer of appointment. Subsequently out of 3 Ex-Servicemen candidates whose cases were kept pending, two candidates were declared as ineligible and their candidature was rejected and the third candidate was appointed to the post of Upper Division Clerk. Thus out of the 50 vacancies earmarked for Ex-Servicemen, 29 posts were filled and the remaining 21 kept unfilled.

AND WHEREAS, 25 marks had been fixed as minimum cut-off mark for Ex-Servicemen candidates in the competitive examination conducted in 2012 for direct recruitment to the post of U.D.C / Senior Clerk. However, all the vacancies earmarked for Ex-Servicemen in the said examination could not be filled up due to non-availability of candidates with the required cut-off mark prescribed by the Departmental Recruitment Committee. Resultantly out of 12 vacancies reserved for Ex-Servicemen 4 vacancies could be filled up. Hence, in the recruitment examination held in 2015, based on the request of the Department of Sainik Welfare and the Ex-Servicemen Welfare Association, it was decided to fill all the 50 vacancies earmarked for Ex-Servicemen with relaxed standard by going down till 50th Ex-Servicemen candidate was available,

in recognition of their devoted, G.O.Ms No. 47 dated 15-09-2010 of the Home Department, Puducherry. Accordingly the selection list was prepared up to the candidate who secured 12.25 marks. The Departmental Recruitment Committee also decided not to keep waiting list, as going below this level would adversely affect the efficiency of public service.

AND WHEREAS, the petitioners in the Writ Petition 19197 of 2017 had applied for the post of U.D.C. in the recruitment examination, 2015 under 'Ex-Servicemen' category and got marks as detailed below :

Sl. No.	Name of Petitioners	Marks obtained
1	R.Mourougavel (Petitioner No.1)	7.5
2	K.Balachandar (Petitioner No. 2)	10.5
3	G.Selvaraj (Petitioner No. 3)	11
4	R.Deivasigamani (Petitioner No. 4)	8.75

AND WHEREAS, all the four Petitioners have got very low marks far below the last Ex-Servicemen candidate's cut-off mark of 12.25 and it was the conscious decision of the Departmental Recruitment Committee not to keep Waiting List as the cut-off mark was already lowered to 12.25 and wait list, if any for Ex-Servicemen category with further lower marks with single digit would not be in public interest;

AND WHEREAS, the Government decided on 03-12-2017 to stop the operation of the Wait List of all categories since more than two years had elapsed from the date of publication of results on 28-10-2015. Ex-servicemen reservation is a Horizontal reservation. As no Ex-Serviceman candidate was kept in the waiting list as aforesaid, the 19 vacancies caused due to non-appearance for certificate verification / rejection and resignation of the Ex-Servicemen were filled with candidates of respective category under vertical reservation from the wait / reserve list, with the approval of competent authority, as detailed below :-

UR	MBC	OBC	BCM	EBC	Total
7	5	5	1	1	19

As on date, the recruitment process was over and the select list/wait list ceased to be operative since 03-12-2017.

AND WHEREAS, the selection of candidates for the vacancies reserved under Meritorious Sports was made on the basis of their achievements in sports in the order of preference based on their performance, winning of medals / securing of places up to 3rd place as provided in the Office Memorandum No. 14034/1/95-Estt.(D), dated 04-05-1995 of the Ministry of Personnel, Public Grievances and Pension (DoP&T), Government of India, New Delhi and there was no written examination for their selection, as notified in the recruitment notification dated 11-08-2015. The Selection of Meritorious Sports Person quota was made in accordance with the rules in force and it is in no way connected with the selection of candidates under Ex-Servicemen category;

AND WHEREAS, it is the settled legal position that even mere empanelment or inclusion of name in the select list does not create an indefeasible right of appointment. Such being the case, the petitioners who have not at all been empanelled cannot claim appointment as a matter of right. The conscious decision of the Departmental Recruitment Committee not to fill up the vacancies for bonafide and appropriate reasons cannot be questioned by unsuccessful candidates and the state is under no legal duty to fill up or any of the vacancies and it is not open to challenge unless the decision is malafide and arbitrary.

NOW, THEREFORE, in view of the reasons stated above, the four petitioners namely (i) Thiru. R. Mourougavel, (ii) Thiru. K. Balachander, (iii) Thiru. G. Selvaraj and (iv) Thiru R.Deivasigamani were not found eligible for the post of Upper Division Clerk. Accordingly, the common representation dated 23-06-2017 submitted by the petitioners to this Department is rejected.

(BY ORDER)

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**(V. JAISANKAR)
UNDER SECRETARY TO GOVERNMENT**

To

- 1) Thiru. R. Mourougavel,
No. 74, Kamaraj Salai,
Poornankuppam, Puducherry -605007.
- 2) Thiru. K. Balachander,
No. 41, New Street, Guru Nagar,

Madukarai & Post, Puducherry -605105.

- 3) Thiru. G. Selvaraj,
No. 10, Madha Koil Street,
Thattanchavady, Puducherry -605009.
- 4) Thiru. R. Deivasigamani,
No. 13, Throwpathi Amman Nagar,
Murungapakkam, Puducherry -605004.

Copy to:

Thiru R. Syed Mustafa,
Govt. Pleader for Puducherry at High Court of
Judicature at Madras,
Old Legal Aid Building,
High Court Campus, Chennai -600104.

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4. We have perused the above order. The order, in our view is a reasoned and speaking order. We are of the view that it is not unreasonable and discriminatory in nature.

5. In view of the above, the OA is dismissed. No costs.

(T.Jacob)
Member(A)

(S.N.Terdal)
Member(J)

06.10.2020

SKSI