

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 103 of 1992.
~~T.A. No.~~
~~XXXXXXXX~~

DATE OF DECISION 28/10/1994.

Shri Gajera Madhubhai Manjibhai Petitioner

Shri B.B.Gogia Advocate for the Petitioner(s)

Versus

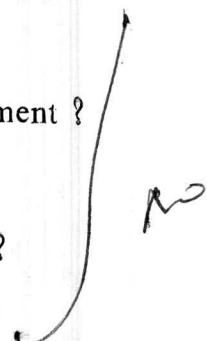
Union of India and ors. Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. V. Radhakrishnan : Member (A)

The Hon'ble ~~Mr.~~ Dr. R. K. Saxena : Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?
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Shri Gajera Madhubhai Manjibhai,
Village : Mota Ujada,
Tal.Kunkavav,
Dist. Amreli. - 364 450.

...Applicant.

(Advocate : Mr.B.B.Gogia)

Versus

1. Union of India,
Through : Secretary,
Customs & Central Excise Deptt.,
Government of India,
New Delhi.
2. Director General of Resettlement,
Ministry of Defence,
Government of India,
West Block - II, R.K.Puram,
New Delhi - 110 066.
3. Deputy Collector (P & V),
Customs & Central Excise Department,
Rajkot.

...Respondents.

(Advocate : Mr.Akil Kureshi)

J U D G M E N T
O.A.NO. 103 OF 1992.

Date : 28/10/1994.

Per : Hon'ble Mr.V.Radhakrishnan : Member (A)

The applicant claims to be a dis-abled
Ex-Servicemen from Amreli. He was considered for the
post of Sepoy in the office of the respondent no.3.
After his name was sponsored by the Employment Exchange
he was selected and issued the order of appointment -
(Annexure-A/2). He was also found medically fit.
However, he was not allowed to join duty. He received

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a letter dated 12th September, 1989, from respondent no.3, (Annexure-A/4), wherein it was stated that he was discharged from the Army service being "in-efficient soldier" and a reference had been made to Director General of Resettlement Co-ordination, Ministry of Defence, New Delhi and depending on the reply further action will be taken. He was also asked to produce the Military discharge certificate which has been produced at Annexure-A/6. The contention of the applicant is that he was discharged from Army service as he was injured due to the duties given to him in the Defence service. He had also produced copy of the letter sanctioning him dis-ability pension valid for the period he was out of employment (Annexure-A/7). He has also produced a letter from Army authorities that his dis-ability was accepted as 20% as attributable/aggravated by service for two years.

2. The applicant had earlier filed O.A./187/90, which was disposed of by directing the respondent no.2, viz., The Director General, of Re-settlement, Ministry of Defence to give a reply to respondent no.3, as to the correct status of the applicant with liberty to approach the Tribunal in case he was aggrieved by the order passed. The applicant received a letter from respondent no.3, dated 19.8.1991, that he was not

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entitled for post under the Ex-Serviceman quota as he did not come under the definition of Ex-serviceman as he had been released from Army after serving only 1 year and 4 months, (Annexure-A/10). The applicant has challenged this letter as illegal and based on non-application of mind. He stated that he has issued a appointment letter after due consideration of his status of Ex-Serviceman and after the issue of the appointment letter, the applicant cannot be denied the post. He has quoted judgment from the case decided in Gujarat High Court in the case of Vinod Kumar Hematram Dave Versus Secondary Education Tribunal and Ors. in Spl.C.A.No.2310 of 1979 decided on 14/17-12-1979. "Contract of Service-Comes into existence as soon as the offer of appointment is accepted by the employee". The applicant has stated that he was recruited in the Army and he was discharged due to injury, he suffered in Army duty and as such he comes within the definition of the Ex-Serviceman. Accordingly he has prayed for the following reliefs.

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- (A) It may be declared that the impugned order No: II/39-21/90 Estt. dtd.19-8-1991 issued by respondent No.3 is illegal, ineffective null, void and may please be quashed.
- (B) The respondents may please be directed to act upon the appointment order/offer issued to the applicant on 28th August, 1989, produced at Annexure-A/2, along-with the petition and permit the applicant to join his duties on the post of Sepoy, with all the consequential benefits from the date of such order, including salary, seniority, etc.
- (C) any other better relief/s may also be granted as deemed fit by the Hon'ble Tribunal.
- (D) The applicant may please be awarded with full cost from the respondents.

3. The respondents have filed their reply. They have not denied that the appointment letter was issued to the applicant. Their contention is that the District Sainik Welfare and Resettlement Officer, Jamnagar vide letter No.DSWO/EMP-5/X2.22/89, dated 7.12.1989, had opined that the applicant was not a Ex-Serviceman and he had been discharged as a recruit which is not a Rank in the Army. As the applicant was not considered as Ex-Serviceman he was not allowed to join in the quota fixed for them. They have stated that the appointment was subject to fulfilment of conditions and as he did not fulfil the terms and conditions as



stated in the column 2 (XIII), he was not eligible for the appointment. The condition stated in the order of appointment is, "subject to the establishment of ~~the~~ eligibility of concession/relaxation available to Ex-Serviceman with reference to the instructions issued by Govt. from time to time. The applicant was employed only as Recruit and released from the Army after one year and four months and he does not come under the Ex-Serviceman.

4. In view of the above, he is found neither entitled for concession extended to Ex-Serviceman and nor eligible for the appointment. The applicant has filed rejoinder. Wherein he has reproduced a definition of Ex-Serviceman as given in Ex-Serviceman (Re-employment in Central Civil Service and Posts) Rules 1979. The definition of Ex-Serviceman is given in Rule 2 at Clause (c) which is reproduced below :

"Ex.serviceman" means a person, who has served in any work (whether as a combatant or as non-combatant) in the Armed Force of the Union, including the Armed Forces of the former Indian States but excluding the Assam Rifles, Defence Security Corps, General Reserve Engineering Force, Lok Sahayak Sena and Territorial Army, for a continuous period of not less than six months after attestation and -

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- (i) has been released, otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency or has been transferred to the reserve pending such release, or
- (ii) has to serve for not more than six months for completing the period of service requisite for becoming entitled to be released or transferred to the reserve as aforesaid, or
- (iii) has been released at his own request after completing five years service in the Armed Forces of the Union."

From the above he contends, that is covered by the definition and as such he is entitled for being treated as Ex-Serviceman. Further, he has enclosed a copy of the judgment of Allahabad High Court, Civil Misc. Writ Petition No. 3555 of 1991 decided on 27.3.1992, which is under challenge, Shanker Charan Tripathi and another Versus Public Service Commission and another. According to which the applicants were allowed to appear in the examination under the principles of promissory estoppel. Here also he contends that the respondents are estopped in withdrawing the offer of appointment made to him.

5. Mr. B. B. Gogia, for the applicant argued that the applicant came within the definition of Ex-Serviceman even though he was recruit and also the respondents were governed by promissory estoppel as they have



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issued the appointment letter. Mr. Akil Kureshi denied that the respondents were bound by any promise as the appointment letter had clearly stated that the appointment was subject to fulfilment of conditions of being Ex-Serviceman. The applicant did not fulfil the conditions as he was only the recruit and hence it was withdrawn.

6. After going through the arguments the question to be decided is whether the definition given in the Ex-Serviceman (Re-employment in Central Civil Services and Posts) Rules, 1979, would cover the present application.

"Ex-Serviceman" means a person, who has served in any work (whether as a combatant or as non-combatant) in the Armed Force of the Union, including the Armed Forces of the former Indian States but excluding the Assam Rifles, Defence Security Corps, General Reserve Engineering Force, Lok Sahayak Sena and Territorial Army, for a continuous period of not less than six months after attestation and -

(i) has been released, otherwise than at his ~~own~~ request or by way of dismissal or discharge on account of misconduct or inefficiency or has been transferred to the reserve pending such release, or



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- (ii) has to serve for not more than six months for completing the period of service requisite for becoming entitled to be released or transferred to the reserve as aforesaid, or
- (iii) has been released at his own request after completing five years service in the Armed Forces of the Union."

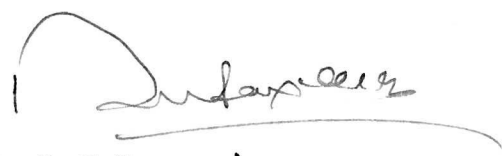
It is seen that the applicant had worked as a recruit and he was discharged due to dis-ability he had suffered during that period. He was also granted dis-ability pension. He was not dismissed or removed on account of misconduct or inefficiency. His character has been described as exemplary in the discharge certificate-Annexure/A/6 in column no.5, he has been treated as fit for civil employment. He has also been directed that application for assistance in finding employment should be made to Employment Exchange at Amreli. There ^{was} ~~may be~~ no bar against his re-employment as Ex-Serviceman. Keeping in view the definition as given above and taking into account the dis-ability pension granted to him, there can be no doubt that he should be considered as Ex-Serviceman and accordingly entitled for concession for re-employment as Ex-Serviceman. Accordingly, we pass the following order :

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ORDER

The impugned order of the respondents dated 19.8.1991-Annexure-A/10, is quashed and set aside. The respondent no.3 is hereby directed to allow the applicant to join the post of duty as Sepoy if vacancy is available and in case no vacancy is available he should be taken in the next vacancy which may occur. The respondents should comply with the directions within a period of three months from the date of receipt of this order. No order as to costs.


(Dr.R.K.Saxena)
Member(J)


(V.Radhakrishnan)
Member(A)

ait.

Received
Date 15/8/95
Inward No. 1018
Date 18/9/95
Central Administrative Tribunal
Ahmedabad Bench.

From

The Assistant Registrar,
High Court of Gujarat,
Ahmedabad-380 009.

To

The Registrar,
Central Administrative Tribunal,
Opp. Sardar Patel Stadium,
Navrangpura,
Ahmedabad-9.

Sir,

I am directed to forward herewith a letter dated 17-8-1995, received from the Registrar, Supreme Court of India, New Delhi, which is mis-sent to this High Court.

Yours faithfully,



(M.S. Nandrajog)
Assistant Registrar.