

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.81/2001.

Monday this the 11th day of November 2002.

CORAM:

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

M.M.Thampi,
Kalathiparambil House,
Poya P.O.,
Thrissur District,
Pin.-680773.

Applicant

(By Advocate Shri M.R.Rajendran Nair)

Vs.

1. Union of India represented by its
Secretary to Government of India,
Ministry of Defence, New Delhi.
2. The Administrative Officer,
O/o The Commander Works Engineer,
Kataribagh, Military Engineering Service,
Naval Base, Kochi-682 004.
3. The Director,
Directorate of Sainik Welfare,
Vikas Bhavan, Thiruvananthapuram.
4. Babu K.K., Peon,
O/o the GE, Fort Kochi,
Military Engineering Service, Kochi.
5. Mohan Das K.D., Peon,
O/o the Chief Engineer,
Military Engineering Service,
Naval Base, Kochi.

Respondents

(By Advocate Shri M.R. Suresh, ACGSC(R.1-3)

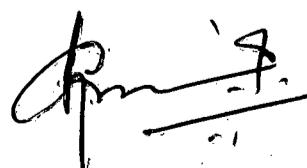
The application having been heard on 11th November 2002,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant aggrieved by non-consideration of his
candidature to the post of Peon under the respondents filed this
O.A. seeking the following reliefs:

- i. To call for the records relating to the appointments of
respondents 4 and 5 and quash the same,



- ii. Declare that the applicant is entitled to be appointed against one of the post of Peon reserved for OBC as per the guidelines issued to the effect,
- iii. Direct the respondents to grant appointment to the applicant against one of the posts of Peon reserved for OBC, and
- iv. Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- v. Grant the cost of this Original Application.

2. According to the averments in the O.A. the applicant was an Ex-Serviceman who is discharged from service in the year 1994 due to the amputation of his right arm below his elbow in an accident while on duty and accordingly he claimed that by A-1 letter of the Sainik Welfare Board he was accorded priority 1 category for further employment. The first respondent called the applicant for interview to the post of Peon on 14.10.2000. He claimed that he was the only person from amongst those who were called for interview who possessed priority 1 category of disabled Ex-serviceman. The applicant belonged to Other Backward Community. The General Secretary of National Ex-servicemen Coordination Committee sent A-4 letter to the first respondent sponsoring the case of the applicant. The first respondent by A-5 letter dated 13.12.2000 replied to the General Secretary National Ex-servicemen Co-ordination Committee informing him that the applicant had not been selected by the Board of Officers as Peon and one of the three posts of Peons, two vacancies were reserved for Ex-servicemen (OBC) and one post was for general category. He claimed that his candidature was not considered for the three posts and the respondents 4 & 5 were appointed even though they did not fall under Priority-1 category. The applicant claimed that he is entitled for the right as per the provisions contained in the Re-employment of Pensioners



(Civilians and Ex-servicemen) Compilation of Swamy's and he being an OBC.

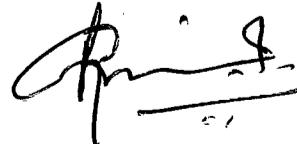
3. The respondents filed reply statement resisting the claim of the applicant. They admitted that out of the three vacancies, one was for the general open quota and the other two were reserved for OBC Ex-servicemen. According to them there was no quota for handicapped Ex-serviceman out of the three vacancies released. For the two vacancies reserved for the OBC Ex-servicemen a total of 69 eligible (all OBC Ex-Servicemen) names sponsored by various authorized agencies were called for interview. Out of this, 49 attended the interview and the position of the applicant was 26 in order of merit and hence he was not recommended by the Board for appointment. He could secure the 40th position for the 1 vacancy in general quota out of 122 personnel attended in the interview and hence the Board had not recommended his name for appointment in general quota. Regarding the applicant's averments that the General Secretary of National Ex-servicemen Coordination Committee had taken up the matter in a representation before the Ist respondent whereas A-4 letter produced by the applicant showed that this was addressed to the 2nd respondent stating that the applicant had been interviewed on 14.9.2000 with reference to second respondent's letter No.13009/192/101/E B dated 25.9.2000. They averred that no interview with the applicant took place on 14.9.2000. It was also submitted by them that no letter was issued by the first respondent viz., Ministry of Defence to the General Secretary , National Ex-servicemen Coordination committee as averred by the applicant. A-5 letter had been issued by the 2nd respondent to

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the General Secretary National Ex-servicemen Co-ordination Committee. The respondents averred that 3% of vacancies of Peons were rightly worked out and reserved by the Chief Engineer, Southern Command, Pune for handicapped/disabled persons as per the standard operating procedure issued by higher authorities on recruitment of Group 'D' employees and one vacancy so reserved was allotted to the Chief Engineer (Navy) Mumbai by the Chief Engineer, Southern Command, Pune vide letter dated 22.7.2000 and the same was published in Employment News. The applicant being a handicapped with priority No.1 should have applied for the same for consideration and as according to them as he had not applied for the said post he was not eligible for consideration against that post. It was averred that Swamy's compilation or for that matter Swamy's complete manual as referred to by the applicant in the O.A. did not constitute any authority to the department to follow. It was submitted that the applicant had not only been superseded by the respondents 4 and 5 but by another 23 numbers belonging to the Ex-servicemen OBC candidates. According to them, the application had been filed by the applicant without any material evidence to establish that he was a deserving candidate to be appointed over others. In the circumstances the O.A. was liable to be dismissed, they submitted.

4. Applicant filed a rejoinder.

5. Even though notice was issued to the respondents 4 and 5, none appeared on their behalf nor any reply statement was filed by them.

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6. Heard the learned counsel for the parties. Learned counsel for the applicant took us through the factual aspects as contained in the O.A.. He submitted that the applicant was eligible for priority 1 consideration for appointment against Ex-servicemen quota in terms of Government of India Ministry of Home Affairs, Department of Personnel and Administrative Reforms O.M. No.39016/5/81-Estt(C) dated 21.2.1981 appearing in page 14 to 16 of Swamy's Compilation on Re-employment of Pensioners (Civilians and Ex-Servicemen), Fifth Edition 1994. It was submitted that as per the said O.A., the disabled Ex-Servicemen who was sponsored by the Ex-Servicemen Cell of the DGE & T or Employment Exchange, should not be refused employment provided he fulfilled the minimum requirements of the job. He submitted that in this case the applicant had been sponsored by the Employment Exchange and as per A-6 discharge certificate the applicant was in medical category EEE.

7. Learned counsel for the respondents reiterated the points made in the reply statement. He submitted that the respondents' definite case was that the applicant could get priority only against physically handicapped recruitment and the vacancies which were earmarked for which the 2nd respondent had made recruitment were not for physically handicapped vacancies and the applicant could not get any priority.

8. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record. We find from the pleadings in the Original application and the

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submissions of the learned counsel for the applicant that the applicant is claiming priority on the basis of item (e) appearing in page 16 of Swamy's compilation referred to above. The said item (e) reads as under:

"(e) Disabled ex-servicemen sponsored by the DGE & T or Employment Exchange should not be refused employment.-When a disabled Defence Services personnel is available and is sponsored by the Ex-Servicemen Cell of the DGE & T or the Employment Exchanges, he shall not be refused employment, provided he fulfils the minimum requirements of the job. The posts reserved for Ex-servicemen/disabled ex-servicemen and those which are to be utilized for the recruitment of the priority categories should not be filled through any other source without first making a reference to Ex-servicemen Cell of the DGE & T or the Employment Exchanges, and DG Resettlement, Ministry of Defence, and obtaining a non-availability certificate."

9. On going through the said compilation we find that this item (e) is appearing under Government of India's order No.2 again appearing under the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules 1979 and this would lead us to the conclusion that the "words" and "phrases" used in the Government of India's decision under item (e) has to be with reference to the rules referred to in that book. The definition of Disabled Ex-serviceman is given under Rule 2 (b) as follows:

(b) "disabled ex-serviceman" means an Ex-serviceman who while serving in the Armed forces of the Union was disabled in operations against the enemy or in disturbed areas:"

10. From the above, it is evident that a disabled ex-serviceman is an Ex-serviceman who while serving in the Armed Forces of the Union was disabled in operations against the enemy or in disturbed areas.

11. From the materials placed before us it is not clear to us

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whether the applicant is a disabled Ex-serviceman as per this definition. According to the applicant's averment he was disabled due to the amputation of his right arm below his elbow in an accident while on duty. Further the respondents' definite case is that the compilation of Swamy's is not any authority for them to act on the same. But at the same time they have not averred that such an order did not exist.

12. In the light of the above, we are of the considered view that the grievance of the applicant has to be looked into by the first respondent, Secretary, Ministry of Defence keeping in view the relevant Government orders on the subject.

13. Accordingly, we direct the first respondent, Secretary Ministry of Defence to look into the grievance of the applicant as contained in the O.A. and a copy of the comprehensive representation to be submitted by the applicant within one month from today and communicate the result of the consideration within a period of three months from the date of receipt of the representation from the applicant, in accordance with the Government of India's instructions on the subject, by an appropriate order.

14. O.A. stands disposed of as above with no order as to costs.

Dated the 11th November 2002.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the letter No.7377/Emp-1/96/DSW dated 5.8.1996 issued by the 3rd respondent to the applicant.
2. A-2: True copy of the call letter NO.13009/192/101/EIB dated 25.9.2000 issued by the Technical Officer for the CWE, Kochi-4 to the applicant.
3. A-3: True copy of the OBC certificate dated 6.9.2000 issued by the Tahsildar, Kodungalloor to the applicant.
4. A-4: True copy of the representation No.NEXCC/we1/KPS/2000 dated nil submitted by Mr.K.P.Saidalavi, General Secretary of the National Ex-servicemen Co-ordination Committee, Kerala, Kochi-16 to Shri V.V.Ravindran (Tech Officer) MES, C/o.CWE, Kataribagh, Naval Base, Kochi-4.
5. A-5: True copy of the letter No.13009/818/EIB dated 13.12.2000 issued by the Technical Officer for the Commander Works Engineer, Kataribagh, Naval Base, Kochi -4 to the General Secretary National Ex-servicemen Co-ordination Committee.
6. A-6: True copy of the Combined Certificate of discharge and recommendations for Civil Employment.

Respondents' Annexures:

1. R-1: Copy of letter No.132402/59 LRS-2000/760/E1B(S) dated 22nd July 2000 (Appendix B) issued by Chief Engineer, Southern Commandant Pune.
2. R-2: Copy of letter No.120045/2998/EIB (S) dated 2.8.2000 Chief Engineer Southern Commandant, Pune.
3. R-3: Copy of the order 120045/302/FIB(S) office of the Chief Engineer (Navy) Naval Base P.O., Kochi-4.

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