

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1088/92

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DATE OF DECISION 08-12-93

Shri K.K. Dixit. Petitioner

In person. Advocate for the Petitioners

Versus

Regional Dir. S.S.C., Bombay & Ors. Respondent

Shri M.S. Karnik for P.M. Pradhan Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri N.K. VERMA, MEMBER (ADMN.)

The Hon'ble Smt. Lakshmi Swaminathan, Member (Judl.)

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 ?

Lakshmi Swaminathan
Member (J)

N.K. Verma

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

O.A.1088/92.

Mr.K.K. Dixit.

.. Applicant.

V/s.

Regional Director (WR),
Staff Selection Commission,
Army & Navy Building,
IInd floor, M.G. Road,
BOMBAY - 400 001 & 2 Others.

.. Resppndents.

Coram : Hon'ble Shri N.K. Verma, Member (Admn.)

Hon'ble Smt. Lakshmi Swaminathan, Member (Judl.)

Appearances:

1. Applicant in person.
2. Shri M.S. Karnik, for
Mr.F.M. Pradhan, Counsel
for the Respondents.

JUDGMENT :

Dated : 8/2/1993

{ Per : Hon'ble Shri N.K. Verma, Member (Admn.) }

In this application Shri K.K. Dixit an ex-serviceman has prayed that order dtd. 10.1.1992 by the Respondents, Staff Selection Commission under the Govt. of India is contrary to law as much as it has treated the applicant not eligible for the post of Inspector of Central Excise etc. examination 1990 and is liable to be quashed. He also prayed for an interim order declaring that the applicant was eligible for appearing in the said examination and he is declared as successful candidate. The Respondents have stoutly contested this challenge.

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2.(a) Short facts of the case are that the applicant applied for taking an examination conducted by the Staff Selection Commission for recruitment to the post of Inspector of Central Excise and other services which was scheduled to be held on 2.12.1990. The requirements for the examination was age limit upto 25 years as on 1.8.1990 with concessions for ex-service-man which "meant a person, who has served in any rank whether as a combatant or non-combatant in the Regular Army, Navy and Air Force of the Indian Union and (i) who is retired from such service after earning his/her pension, or (ii) who has been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or either disability pension, or (iii) who has been released otherwise than on his own request from such service after completing the specific period of engagements, otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, and has been given a gratuity; and includes personnel of the Territorial Army of the following categories, namely

- (i) Pension holders for continuous embodied service;
- (ii) Persons with disability attributable to military service, and
- (iii) Gallantry award winners".

The educational qualification prescribed for the examination was Degree of a recognised University or equivalent. It was specifically said that "the candidates who have yet to appear at the Degree examination or whose result has been withhold or not declared on or before 1.8.1990 are not eligible." The closing date for submission completed application form was 20.8.1990.

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(b) The applicant made an application for this examination while he was working in the Indian Air Force as a Electrical Fitter and was to be released from the engagement as per note 3 under para 4 of the advertisement put in by the Staff Selection Commission saying that "For any serviceman of the three Armed Forces of the Union to be treated as Ex-serviceman for the purpose of securing the benefits of reservation, he must have already acquired, at the relevant time of submitting his application, for the post/service, the status of ex-serviceman and/or in a position to establish his acquired entitlement by documentary evidence from the competent authority that he would be released/discharged from the Armed Forces within the stipulated period of one year on completion of his assignment. (The date of submitting the application is relevant for this purpose). The explanation below this note stipulated that "the persons serving in the Armed Forces of the Union who on retirement from service, would come under the category of 'ex-serviceman', may be permitted to apply for re-employment one year before the completion of the specified terms of engagement and avail themselves of all concessions available to ex-serviceman but shall not be permitted to leave the uniform until they complete the specified term of engagement in the Armed Forces of the Union".

(c) The applicant was permitted to take the examination on the stipulated date in December, 1990 and subsequently he was also asked to appear for an interview for personality test of 25.7.1991 wherein he was told that his candidature was purely provisional and if it was found later on that he did not fulfill any of the conditions of eligibility laid down in the notice of the examination his candidature will be cancelled and no

appeal against such cancellation will be entertained. To avoid inconvenience later on he was advised to check carefully before coming to the personality test and satisfy himself that he fulfilled all the conditions of eligibility such as age, educational qualification etc. In para 3 of this letter he was also asked to bring certificates in original as well as a xerox copy including that of Degree certificate and marksheet of a recognised University with specific direction. Please note that candidates who have yet to appear at the degree examination or whose result has been withheld or not declared on or before 1.8.1990 are not eligible".

(d) The applicant appeared for the interview on 25.7.1991 wherein his eligibility was questioned and he was asked to give an undertaking that he was permitted to appear for interview provisionally subject to clarification. He was to be discharged from the Indian Air Force only on 31.8.1991 after extending ^{the} period of engagement by 18 days. According to his own statement he was to complete 15 years of service on 13.8.1991 i.e. beyond the date of the interview. His case for selection could not be processed by the Staff Selection Commission because he had not completed 15 years of service on that date to qualify in the terms of ex-serviceman. Besides he was not also a deemed graduate on 1.8.1990 or even on the closing date of application i.e. 20.8.1990 which was the essential requirement for the educational qualifications. He was therefore not declared successful in the examination. On his enquiries later on through legal notice, he was informed by the impugned order that he could not be treated eligible for the above mentioned examination due to following reasons:-

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- "(i) He was not discharged from service within one year of sending his application for the examination. The last date of receipt of applications being 20.8.1990, his date of discharge (31.8.91) happens to exceed the period of one year.
- (ii) He did not complete the service of 15 years on 1.8.1990 to get the benefits of Department of Personnel & Training O.M.No.15012/3/82-Estt(D) dated 12.2.86 and to be treated as a Graduate. Para 10 of the detailed Notice for the aforesaid examination clearly states that the candidate should possess the educational qualification of Degree as on 1.8.90".

3. The matter was heard at length. The applicant appeared in person and pressed his candidature on two grounds. He submitted that as per the explanation in para 4 of the advertisement he was permitted to apply for re-employment one year before the completion of the specific conditions of the engagements and avail of all concessions available to ex-serviceman except that he was not permitted to leave uniform until he completed the specific term of conditions of the Armed Forces of the Union. Secondly the Respondent No.1 i.e. Regional Director of the Staff Selection Commission had already agreed to his plea that he was eligible for taking the examination and he was accordingly allowed to appear for interview and personality test. He reiterated that he availed the concession of applying a year an advance of his actually being discharged and he was having the educational qualification of a certificate from the Air Force giving him the educational qualification of graduate certificate for Group 'C' post in any reserved vacancy. This certificate was issued on 19.7.1991 indicating that applicant had served the Indian Air Force for 15 years and 18 days from 14.8.1976 to 31.8.91

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The applicant could not satisfy the contentions of the Respondents that on the crucial date of 1.8.1990 or even 20.8.1990 he did not have the certificate which was equivalent of a Degree. The applicant insisted that the concessions given to him under the explanation par 4 covered even this educational qualification. However, the applicant could not rebut the arguments that the certificate given by the Air Force authorities on 19.7.1991 could not have retrospective effect of equivalence of a Degree for Group 'C' post. The certificate signed on 19.7.1991 indicates that his exact 15 years would have completed on 13.8.1991. Even this does not help him as on the date of interview he had neither been discharged of engagement in the Military nor did he have educational qualification of equivalent of recognised degree on the date prescribed by the Staff Selection Commission i.e. 1.8.1990. The concessions under the explanations related to the age limit prescribed under para 4. No concessions have indicated in regard to educational qualification. The respondents main contention was that he did not have the requisite educational qualification when he made an application for the examination. Permission for sitting the written examination is normally given without detailed scrutiny of the qualification of the intending candidates and even interview letters were issued only provisionally leaving the candidates to satisfy themselves before coming to the interview that they had all the required qualifications. Therefore the onus of satisfying the respondents that the applicant had the required qualifications for appearing at the examination was squarely on the applicant himself, which he failed to do.

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4. In view of the arguments made by the learned Counsel for the respondents, we find no merit in the contention of the applicant that he was qualified to be selected for the post advertised by the Staff Selection Commission. The application fails and is dismissed. There will be no order as to costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (JUDL.)

N.K. Verma
(N.K. VERMA)
MEMBER (ADMN.)

H.