

12.9.2007

Mr. Vinod Boyal, Prosy Counsel for
Mr. Virendra Lodha, Counsel for applicant
None present for respondents Nos 1 & 2
Ms. Dilshad Khan, Prosy Counsel for
Mr. S.S. Haeser, Counsel for respondent No. 3

2008.1.2.2008

Heard the learned Counsel for the
parties.

For the reasons dictated separately,
the OA is disposed of.

Kneemay
(Tarsem Lal)
Member (A)

(M. L. Chauhan)
Member (I)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 12th day of September, 2007

ORIGINAL APPLICATION No.186/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.TARSEM LAL, ADMINISTRATIVE MEMBER

Durga Prasad Yadav,
s/o Shri Radha Kishan Yadav,
r/o 2, Sri Ram Nagar-B,
Kalwar Road,
Jhotwara Road,
Jaipur.

.. Applicant

(By Advocate: Shri Vinod Goyal, proxy counsel to Shri
Virendra Lodha)

Versus

1. Union of India through Accountant General
(A&E), Rajasthan, Bhagwan Das Road, Jaipur
2. Union of India through the Dy. Accountant
General, Administration (A&E), Rajasthan,
Bhagwan Das Road, Jaipur
3. Union of India through the Joint Secretary,
(SCT), Department of Personnel and Training,
Ministry of Personnel, Public Grievances and
Pension, North Block, New Delhi.

.. Respondents

(By Advocate: Ms Dilshad Khan, proxy counsel for Mr.
S.S.Hasan)

O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- i) by an appropriate order or direction the Hon'ble Tribunal may kindly call for the entire record pertaining to applicant to denial of salary w.e.f. July/Aug, 1995 on the post of L.D.C., fixation, seniority and all other consequential benefits.
- ii) By further appropriate order or direction, respondents be directed to release the arrear of salary, fixation, seniority etc. persons similarly situated qua the applicant had been given appointment with all consequential benefits thereto.
- iii) That any order passed during the pendency of the O.A. by the official respondents prejudice/against the interest of the applicants, the same may kindly be taken on record and be quashed and set aside;
- iv) Any other order or direction which the Hon'ble Tribunal may deem fit and proper, the same may kindly be passed in favour of the applicant.
- v) Cost of the OA may kindly be granted."

2. Briefly stated, facts of the case are that the applicant sought voluntary retirement on compassionate grounds in the capacity of Dafadar from the office of SKT Armoured Regiment. The Staff Selection Commission (SSC) issued an advertisement for recruitment to the post of LDC which was published in Employment Exchange dated 17.4.1993. In response to the said advertisement, the applicant applied for recruitment of Clerk in 1993 as an ex-serviceman candidate. He was admitted to appear in the written test of the examination on provisional basis without pre-examination and scrutiny of his application as

stipulated in para 26 of the notice. The applicant was declared qualified in the said examination and subsequently admitted for typing test on provisional basis subject to verification of his eligibility before declaration of the final result. During the course of actual scrutiny of his application i.e. before declaration of the final result, it was found that he had claimed status of ex-serviceman and had sought relaxation in upper age limit on that ground. In support thereof applicant submitted a photocopy of the discharge certification book issued by the Indian Army. From perusal of this certification it was observed that the applicant was discharged from the Indian Army on 31.10.1992 at his own request on compassionate grounds. Thus, according to the respondents in view of the provisions contained in the existing relevant Government orders in force, the persons who were discharged at their own request from the Armed Forces w.e.f. 1.7.87 were not to be treated as ex-serviceman within the ambit of the definition of the term 'ex-serviceman'. Since the applicant was discharged from Indian Army on 31.10.92, thus as per Government of India OM dated 14.4.1987, the applicant was not treated as ex-serviceman. Accordingly, candidature of the applicant was cancelled by the SSC vide memorandum dated 6.9.94.

The applicant made a representation against this order which was duly examined and the reply was sent

to the applicant vide memorandum No.4/1/93-ENR dated 8/16.11.94. Thereafter the applicant filed OA No. 45/95 which OA was decided by this Tribunal vide order dated 21.4.99 and the respondents were directed to consider representation of the applicant. The respondents were not supplied the copy of the judgment by the Registry of the CAT, Jaipur or from the applicant. Subsequently, applicant filed a Contempt Petition No. 22/2000. The Department of Personnel and Training vide letter dated 30.3.2001 has drawn attention to the OM dated 9/10.10.1995 and requested to consider the claim of the applicant in the light of the above OM.

The grievance of the applicant in this OA is that persons similarly situated have been given appointment on the post of LDC in the month of July/August, 1995 whereas the applicant has been given appointment for the first time vide order dated 10.10.2001 after delay of more than 6 years. As such, similar relief should also be extended to him.

3. Notice of this application was given to the respondents. Respondent Nos. 1 and 2 and respondent No.3 have filed separate replies. The facts as stated are not disputed. The stand taken by the respondent 1 and 2 in the reply is that as per the existing relevant Government order viz. memorandum dated 14.4.87, persons who were discharged on their own

request from Armed Forces w.e.f. 1.7.87 cannot be treated as ex-serviceman within the ambit of the definition of the term 'ex-serviceman'. It is further stated that the applicant was discharged from Indian Army on 31.10.1992 and thus as per Government of India OM dated 14.4.1987, the persons who were discharged from military services at their own request w.e.f. 1.7.87 cannot be treated as ex-serviceman and thus, candidature of the applicant was rightly cancelled by the SSC vide memorandum dated 6.9.94. Similarly, the representation of the applicant was also rightly rejected and thus, he cannot claim that he should be appointed w.e.f. July/august, 1995.

Regarding disposal of the representation of the applicant pursuant to the order passed by this Tribunal in OA No.45/95, the stand taken by the respondents is that the representation of the applicant was not received by the Department. It is stated that copy of the order/judgment dated 21.4.1999 was not received either from the Registry of the CAT or from the applicant. Subsequently, the Department of Personnel and Training vide their letter dated 17.1.2000 forwarded the notice of contempt of court received by them from the advocate of the applicant and on perusal of the same, it was noticed that the applicant had made a fresh representation within one month of issuance of the CAT order but the same was not received by the SSC. Accordingly, the SSC sent a

telegram dated 4.2.2000 to the applicant to send a copy of the representation alongwith copy of the judgment immediately. It is further stated that the applicant instead of sending requisite papers to the SSC sent the same to the Department of Personnel and Training (DOPT). The DOPT did not forward the said papers to the SSC at that point of time. It is further stated that the DOPT vide letter dated 30th March, 2001 sent a copy of CP No. 27/2000 and also drawn attention of the DOPT OM dated 9/10.10.95 whereby it was clarified that Armed Forces personnel retired/released at their own request but after having earned their pension will be included in the term ex-serviceman and it was requested that the claim of the applicant be considered in the light of this OM. Accordingly, letter of appointment was issued to the applicant by the Office of Accountant General (A&E) on 10.10.2001. It is further stated that request of the applicant to count his service w.e.f. July/August, 1995 cannot be acceded to as he was appointed only w.e.f. 10.10.2001.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. It is not in dispute that the applicant appeared in the 1993 examination conducted by the SSC for recruitment to the post of LDC and at that time DOPT OM dated 14.4.87 was in vogue. According to this OM, persons who were discharged at their own request from

the Armed Forces w.e.f. 1.7.1987 were not to be treated as ex-serviceman within the ambit of the definition of the term 'ex-serviceman'. Since the applicant was discharged after that date i.e. on 31.10.1992, as such, as per OM dated 14.4.1987 the applicant could not have been treated as ex-serviceman as per the definition of the 'ex-serviceman'. Thus, according to us, we see no infirmity in the memorandum dated 6.9.94 whereby candidature of the applicant was cancelled by the SSC. The definition of the ex-serviceman in the Ex-serviceman (Re-employment in Central Civil Services and Posts), Rules, 1979 was revised vide OM No.36034/6/94-Estt (SCT) dated 9/10.10.95 and it was clarified that Armed Forces Personnel who are released/retired on their own request will be included in the term 'ex-serviceman' defined for the purpose of reservation in the posts under the Government. We have perused the aforesaid OM which has been placed on record by the learned counsel for the respondents. This OM is prospective in nature, as such, the applicant cannot take assistance from this memorandum whereby the definition of ex-serviceman in the Ex-servicemen (Re-employment in Central civil Services and Posts) Rules, 1979 has been revised.

Needless to add that the revised definition will be applicable in respect of the posts where the recruitment is made after 9/10.10.1995. The applicant had appeared in the recruitment for the post of LDC in

the year 1993 i.e. prior to this date of coming in force of the revised definition of ex-serviceman, as such, the case of the applicant has to be considered in the light of the relevant provisions/instructions prevalent at that time of recruitment/selection for the post and not on the basis of subsequent policy decision/order whereby the definition of ex-servicemen has been changed, which is the case as pleaded by the applicant in this OA.

6. Thus, according to us, the applicant is not entitled to any arrear of salary, fixation and seniority w.e.f. July/August, 1995, as the benefit of revised definition of Ex-servicemen, pursuant to OM dated 9/10.10.1995, cannot be made applicable to the case of the applicant.

7. With these observations, the OA is dismissed with no order as to costs.

Tarsem Lal
(TARSEM LAL)

MEMBER (A)

M.L.Chauhan
(M.L.CHAUHAN)
MEMBER (J)

R/