

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT SITTING AT GWALIOR

Original Application No. 419 of 2002

Gwalior, this the 29th day of October, 2003

Hon'ble Shri Shanker Raju, Judicial Member  
Hon'ble Shri Sarveshwar Jha, Administrative Member

Arvind Kumar Rai, S/o. Shri  
Sanandan Rai. ... Applicant  
(By Advocate - Shri M. Rao)  
V e r s u s

Union of India, through  
Secretary, Ministry of  
Defence, New Delhi,

and three others. ... Respondents

(By Advocate - Shri Arun Katare)

O R D E R (Oral)

By Sarveshwar Jha, Administrative Member -

The applicant has prayed for quashing of the orders of the respondents appointing respondents Nos. 3 and 4 and also for filling up the post of Cook in the respondents' organisation by starting the process of selection afresh in accordance with law, providing opportunity to the applicant for participating in the process of the said selection and appointment.

2. The facts of the matter, briefly, are that the applicant, who is an Ex-Sgt (Clk-PA) in the Indian Air Force and who retired from the Air Headquarters (RKP), New Delhi on 30.11.1999, applied for being considered against the advertisement issued by the respondents (Annexure A-1) for recruitment to the two posts of Cook vide his application dated 10.10.2001 (Annexure A-2). He was of the view that he was eligible<sup>and</sup>/fit in all respects for being called for interview for selection for the said posts. He was, however, not called for interview on account of his being over-aged.

To support this position, the applicant has referred to the noting made on the covering letter of the Zilla Sainik Kalyan Karyalaya, copy of which is placed at Annexure A-4 to the DA.

3. The applicant has, however, submitted that his age was within the limit prescribed for the post of Cook, as his date of birth according to matriculation certificate is 09.01.1959 and on the date of interview, i.e., 25.10.2001, his actual age was 43 years. According to him, as per Rule-5 of the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979, if the period of defence service, i.e., 21 years and 7 days rendered by the applicant is deducted, his age comes to be 21 years 9 months and 9 days, i.e., about 22 years. The relevant extract from the said rules has been given under Para 4.5 of the O.A.

4. The matter appears to have been made a little misleading, when this aspect of the matter has not been revealed in the reply of the respondents and, instead, the case of the applicant does not seem to have been considered by the respondents on the ground that the vacancies <sup>in the posts</sup> of Cook as per the said advertisement were to be filled up from amongst the candidates who belonged <sup>to</sup> scheduled tribe and general categories and that the same were not reserved for Ex-Servicemen. It is further noted that while the respondents finally have not recruited the persons belonging to scheduled Tribe or general categories and have in the process selected/filled posts from amongst the OBC category, they have not clarified whether they have done so by de-reserving the posts which were essentially reserved for scheduled tribe and general candidates. In this connection, it is relevant to refer to what has been submitted by the applicant in paragraph 5.5 of his application. They have

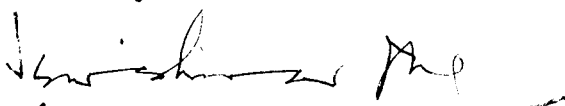
also not clarified whether they were not required to follow the provisions as laid down in the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules 1979 in the case of the applicant who happened to be an Ex-Serviceman, while taking a view on whether he should have been called for interview for the said post. The respondents have not commented on the qualifications held by the applicant nor <sup>on</sup> the fact that he had been recommended for the said post by the District Soldier Board, Gwalior (Annexure A-4 to the OA). The points which were raised by the applicant in his application, a copy of which is placed at Annexure A-7, have also not been attended to by the respondents while giving him a reply vide Annexure A-6, which is absolutely non-speaking and cryptic. It is also amazing that the Directorate General Re-settlement, Ministry of Defence have not cared to respond to the letter (Annexure A-9) addressed by the applicant to them seeking their intervention in the matter.


5. From the reply which the respondents have given in para 5.6 of their counter, it is observed that they considered the applicant against the next batch of 4 vacancies on the 19th December, 2002, but they found him to be unsuitable for the job owing to lack of job experience or knowledge in the trade of Cook.

6. This position taken by the respondents appears to be quite unclear and unconvincing in the light of the statement made by the applicant in paragraph 4.3 of his OA in which he has submitted that he has done a six months certificate course in Cookery from Hotel Agra Ashoka as a sponsored candidate of the Director General of Resettlement in the pre-release course. It is expected that any course in Cookery would have a component of practical job train-

ing. The facts of the matter could have been ascertained from the Directorate General of Re-settlement who had sponsored the applicant for the said post or from the institution (Hotel Agra Ashoka) who imparted the necessary training and awarded the certificate after having completed the course in Cookery. It is not clear whether this aspect had been gone through carefully by the respondents.

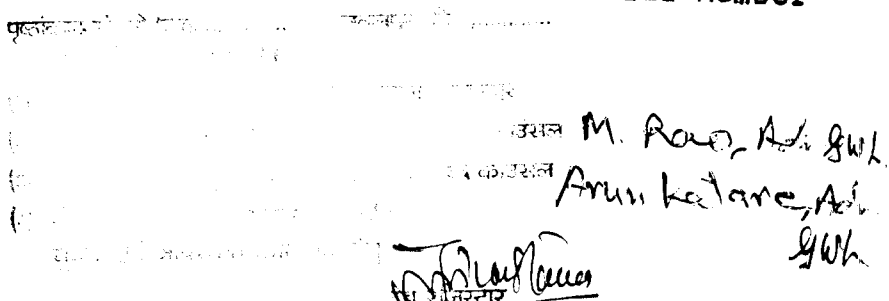
7. After considering the facts and the background of the case and keeping in view the materials on record and after hearing the learned counsellor of both the sides, we are of the considered opinion that the matter has not been dealt with and considered properly by the respondents under the relevant rules. We are also of the view that their order dated the 27th December, 2001 (Annexure A-6) is un-meritted, being absolutely non-speaking and unreasoned and, therefore deserves to be quashed. We, accordingly, dispose of this OA with directions to the respondents to reconsider the matter with reference to the provisions of Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979, keeping in view the qualifications held by the applicant, which he has acquired <sup>after</sup> having been sponsored by the Directorate General of Re-settlement. They are further directed to dispose of the matter by issuing a reasoned and speaking order within a period of two months from the date of receipt of this Order. There shall be no order as to costs.

  
(Sarveshwar Jha)  
Administrative Member

  
(Shanker Raju)  
Judicial Member

"SA"

*Forwarded  
on  
2/11/02*

  
M. Rao, Asst. Secy.  
Amun Kataria, Asst. Secy.  
GWH