

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 15th day of February, 2011

ORIGINAL APPLICATION NO. 58/2011

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HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Gajendra Singh Rathore son of Girwar Singh, aged about 35 years, by
Caste Rajput, resident of B-19, Hari Nagar, Khirni Phatak, Jhotwara,
Jaipur.

.....Applicant

(By Advocate: Mr. D.S. Kushwaha)

VERSUS

1. Union of India through General Manager, North Western Railway, Jawahar Circle, Jagatpura, Jaipur.
2. The Assistant Personnel Officer (Recruitment & Training), Railway Recruitment Cell, North Western Railway, Head Quarter Office, Jawahar Circle, Jaipur.

.....Respondents

(By Advocate: -----)

ORDER (ORAL)

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

- (i) By an appropriate writ, order or direction, employment notice NWR ex servicemen (Annexure -1) by which the respondents laid down the condition the notification for group D post, in para no. 9.1 & 9.4 has been declared as illegal, unlawful and arbitrary apart from being most unreasonable and very kindly quashed and set aside and applicant be allowed for interview for the post of Group 'D' as per Annexure-1.
- (ii) By an appropriate writ, order or direction to the respondents be directed to have a proper panel list as per ex-servicemen candidates definition given in Para no. 8.5 in the notification because the conditions laid down in para no. 9.1 & 9.4 of the notification is harass excessively high, unreasonable, dis proportionate. The Hon'ble Tribunal may very graciously and in order to shorten a litigation, the present condition

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imposed by the respondent no. 2 is illegal against the applicant illegal and void.

(iii) Any other relief which is found just, fit and proper in the facts and circumstances of the case may very kindly be passed in favour of the applicant."

2. Briefly stated, facts of the case are that the respondents issued an Employment Notice No. 1/10 for filling of 800 Group 'D' vacancies against Ex Servicemen quota in the Pay Band- I of Rs.5200-20200 Grade Pay Rs.1800. The last date for submission of application was 20.12.2010. The applicant being eligible also submitted his application for the aforesaid post. The grievance of the applicant is that the respondents have considered his candidature as per stipulation contained laid down in Para No. 9.1 & 9.4 of the aforesaid advertisement/employment notice. The applicant has prayed that these conditions may be declared as illegal, unlawful and arbitrary. It is further pleaded that in the year 2007 (Annexure A/2), a similar notification was issued by the department for filling up of 7463 Group 'D' posts in East Central Railway but no such condition, as stipulated in Para NO. 9.1 & 9.4 was stipulated in the said panel as can be seen from Para No. 8. Thus on the basis of the aforesaid averment, learned counsel for the applicant argued that the conditions laid down in Para No. 9.1 & 9.4 of the Employment Notice No. 1/10 (Annexure A/1) be quashed and set aside and the applicant may be allowed for interview for Group 'D' as per Annexure-1.

3. We have given due consideration to the submission made by the learned counsel for the applicant. We are of the view that the applicant has not made out any case for our interference in view of the reasoning given herein below. It is not in dispute that the respondents

have issued Employment Notice No. 1/10 for filing 800 Group 'D' posts from Ex. Servicemen in the pay band of Rs.5200-20200 Grade Pay Rs.1800 thereby stipulating the eligibility criteria in the form of educational qualification, age etc. The recruitment procedure regarding which grievance has been made by the applicant has been stipulated in Para No. 9. As already noticed above, the grievance of the applicant is regarding conditions as stipulated in Para No. 9.1 and 9.4 whereby it has been stipulated that panel will be framed on the basis of length of military service and Ex.serviceman who has retired after putting in 15 years of service and has passed Army Class I certificate or equivalent will be considered eligible. We are unable to persuade ourselves as to how the criteria of preparing the panel on the basis of length of military service are arbitrary. The mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for the judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the category from which the recruitment should be made as they are matter of policy decision falling exclusively within the purview of the executive. This is what the Apex Court has held in the case of **State of A.P. vs. Sadanandam**, AIR 1989 SC 2060. Thus in view of the law laid down by the Apex Court, it is not permissible for us to interfere with the matter. The contention so raised by the learned counsel for the applicant that since in the year 2007, there was no such condition stipulated in the advertisement and the respondents should have adhere to the same criteria for the purpose of preparing panel in respect of the recruitment to be made in 2010 cannot be accepted as it is always permissible for the respondents to change its mode of

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recruitment/policy decision framed earlier. At this stage we wish to note the decision of the Apex court in the case of **Col. A.S. Sangwan vs. Union of India**, AIR 1981 SC 1545. The Apex Court has held that a policy once formulated with regard to promotion of employees in the cadre of defense forces by the Union of India is not good for ever, it is perfectly within the competence of the Union to change it, re-change it, adjust it and re-adjust it according to the compulsions of circumstances and imperatives of material considerations. There is no bar to its changing its policy formulated earlier if there are good and weighty reasons for doing so. It is entirely within the reasonable discretion of the Union of India. It may stick to the earlier policy or give it up but if it does change its policy it must do so fairly and should not give the impression that it is acting by any ulterior criteria or arbitrarily. Thus according to us, in case the respondents have taken length of military service as one of the criteria for filling up the post for the purpose of preparing the panel, it cannot be said that the respondents have not acted fairly while formulating the policy.

4. For the foregoing reasons, the OA is bereft of merit and is accordingly dismissed at admission stage with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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

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