

**Central Administrative Tribunal
Principal Bench**

TA No.8/2015

Order Reserved on: 11.05.2016
Order Pronounced on: 12.07.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Ex. Sgt Murari Lal,
S/o Shri Prabhu Dayal,
R/o RZF-2/66, Street No.2,
Nasirpur Road, Mahavir Enclave,
New Delhi-110045

-Applicant

(By Advocate: Mr. Rudra Kahlon)

VERSUS

1. Union of India,
Through its Secretary,
Ministry of Defence,
South Block, New Delhi,
PIN-110011

2. The Secretary,
Ministry of Defence (Finance)
Government of India,
North Block, New Delhi

3. Department of Personnel and Training,
Ministry of Personnel,
PG and Pensions,
2nd Floor, Lok Nayak Bhavan,
New Delhi-3

-Respondents

(By Advocate: Mr. Arun Nischal for Mr. Rajinder Nischal)

O R D E R

Dr. B.K. Sinha, Member (A)

In the instant Original Application filed under Section
19 of the Administrative Tribunals Act, 1985, the applicant

is aggrieved with non-implementation of the Government policy of 10% reservation in job for ex-servicemen. What peeves the applicant further is that instead of making appointment against the posts in regular manner or regularizing the personnel employed against these posts, the respondents have been engaging them on contract basis and terminating their service on the expiry of the period of contract.

2. The applicant has prayed for the following reliefs by means of this Original Application:-

- a) issue a writ of mandamus or any other writ, order or direction in the nature of a writ of mandamus directing the respondents to regularize the services of the petitioner on the post of Assistant in Ministry of Defence (Finance), South Block, New Delhi against the 10% quota reserved for Ex-Servicemen.
- b) Issue a writ of mandamus or any other writ, order or direction in the nature of a writ of mandamus directing the respondents 1 to 3 to implement the reservation policy of Ex-servicemen and to carve out appointments on permanent basis instead of making contractual/temporary appointments;
- c) Issue a writ of mandamus or any other writ, order or direction in the nature of a writ of mandamus directing the respondents to form a universal policy for Ex-Servicemen and Ministry of Defence retired personnel with regard to pay, postings, tenure and other ancillary business;
- d) Issue a writ of mandamus or any other writ, order or direction in the nature of a writ of mandamus directing the respondents to maintain status quo anti from 31.3.2014 with respect to the employment of the petitioner on the post of Assistant in Ministry of Defence (Finance), South Block, New Delhi;"

3. The facts of the case are that the applicant is an ex-serviceman, who was appointed against the outsourced Clerical Assistance in the Ministry of Defence (Finance) on contractual basis for a period of one year on a consolidated salary of Rs.16,000/- per month on 12.02.2013 as Assistant in the Navy Division. His services were extended till 31.03.2014. The applicant apprehending immediate termination of his service filed a Petition before the Armed Forces Tribunal, but the same was transferred to this Tribunal for want of jurisdiction.

4. The basic argument of the applicant is that the Government of India under Ex-servicemen (Re-employment in Central Services and Posts) Rules 1979 vide its various compendiums issued from time to time and recently updated on 18.09.2014 has made 10% job reservation quota for ex-servicemen in the Ministry/Central offices for class 'C' posts against which the applicant had been employed. It is the case of the applicant that the respondents are signing agreement with ex-servicemen for six months and giving break of two months approximately on temporary basis; whereas the Ministry of Defence continues to suffer a acute shortage of staff. It is further the claim of the applicant that the respondents have not

employed a single ex-serviceman against 10% quota till date. The applicant has made several representations to this effect, but to no avail. Further the ex-servicemen are only being employed up to age of 50, while retired Ministry of Defence personnel are being employed till age of 62, which makes it violative of Articles 14 and 16 of the Constitution. It has also been pleaded that the action of the respondents in discriminating between ex-servicemen and retired MOD staff for the same post/work by paying a salary of Rs.18000 and Rs.22000/- respectively amounts to violation of Article 14 of the Constitution.

5. The respondents have filed their counter affidavit denying the averments. Two principal grounds adopted by the respondents are that this is the policy matter, which is purely within the domain of the Government. In the second instance, it has also been submitted that regular employment is made for Armed Forces personnel when posts are advertised by some recruiting agencies, like SSC, UPSC, DSSSB etc. through open competitive examination system. In the instant case, the posts under consideration have been outsourced as per the prevalent practice in various Ministries/Departments in the light of the acute shortage of regular staff. Being contractual employees and having restrictions of age, they are not regularized. The

respondents have further submitted that the military experience is not necessary for appointment against these posts. The MOD Civilian Officials having secretariat assistance are allowed to go up to age of 60 years and are later appointed as consultants on account of this experience.

6. The applicant has filed a rejoinder application where they claim that the basic fact of contractual employment against the reserved post has not been denied, whereas ESM Rules mandate 10% reservation of Group 'C' post employing regular and not contractual employment. The respondents have failed to answer as to why there are employed persons on contractual basis, whereas they are required to implement 10% reservation.

7. We have considered the pleadings of rival parties as also the documents adduced and the citations relied upon on either side and have patiently heard the arguments advanced by the learned counsel for the parties.

8. The basic issue involved in this case is that whether the relief sought falls within the policy jurisdiction of the Government and to what extent a judicial intervention would be desirable. Then there is also the issue that whether by making such appointment on contract basis, any right of the applicant is disregarded. We start our

inquiry by looking at compendium on reservation, concessions and relaxations for ex-servicemen in Central Government Services. Ex-servicemen has been defined as a person-

(i) who has served in any rank whether as combatant or non-combatant in a Regular Army, Navy and Air Force of the Indian Union, and

(a) who either has been retired or relieved or discharged from such service whether at his own request or being relieved by the employer after earning his or her pension;

or

(b) who has been relieved from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension;

or

(c) who has been released from such service as a result of reduction in establishment;

(ii) who has been released from such service after completing the specific period of engagement, 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, namely, pension holders for continuous embodied service or broken spells of qualifying service;

or

(iii) personnel of Army Postal Service who are part of Regular Army and retired from the Army Postal Service without reversion to their parent service with pension, or are released from the Army Postal service on medical grounds attributable to or aggravated by military service or circumstances beyond their control and awarded medical or other disability pension;

Or

(iv) Personnel, who were on deputation in Army Postal Service for more than six months prior to 14th April, 1987;

Or

(v) Gallantry award winners of the Armed Forces include ing personnel of Territorial Army;

Or

(vi) Ex-recruits boarded out or relieved on medical ground and granted medical disability pension.”

9. According to provision 3, the instant rules apply to all the Central Civil Services and posts of Group C and Group D and the posts upto the level of Assistant Commandant in all paramilitary forces. Provision 4 deals with the Reservation of Vacancies which read thus:-

- “(i) Ten per cent of the vacancies in the posts upto of the level of the Assistant Commandant in all para-military forces;
- (ii) Ten per cent of the vacancies in Group C posts; and
- (iii) Twenty percent of the vacancies in Group D posts, including permanent vacancies filled initially on a temporary basis and temporary vacancies which are likely to be made permanent or are likely to continue for three months and more, to be filled by direct recruitment in any year shall be reserved for being filled by ex-servicemen.

The Scheduled Castes, the Scheduled Tribes and the other Backward Class candidates selected against the vacancies reserved for ex-servicemen shall be adjusted against vacancies reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes, respectively;

Provided that if a Scheduled Caste or the Scheduled Tribe or the Other Backward Class ex-serviceman is selected against the vacancy reserved for ex-

servicemen and vacancy reserved for the Scheduled Caste or the Scheduled Tribe or the Other Backward Class, as the case may be, is not available to adjust such ex-servicemen, he shall be adjusted in future against the next available vacancy reserved for the Scheduled Caste or the Scheduled Tribe or the Other Backward Class, as the case may be.

If there is an increase in the reservation for ex-servicemen the additional vacancies that become available are to be utilized first for the appointment of disabled ex-servicemen and if all such vacancies are not utilized, they shall then be made available to the other ex-servicemen.

No vacancy reserved for ex-servicemen in a post to be filled otherwise than on the results of an open competitive examination shall be filled by the appointing authority by any general candidate until and unless the said authority:

- (viii) Has obtained a "Non availability Certificate" from the employment exchange (where a requisition is placed on an employment exchange);
- (ii) has verified the non-availability of a suitable candidate by reference to the Director General Resettlement and recorded a certificate to that effect; and
- (iii) has obtained approval of the Central Government.

In case of recruitment to the vacancy reserved for Ex-servicemen in the Central Para Military Forces, the reserved vacancy remained unfilled due to non-availability of eligible or qualified candidates, the same shall be filled by candidates from non ex-servicemen category."

Where the posts reserved for ex-servicemen are not filled by the candidates who are ex-servicemen, the number of posts not so filled are to be added to the number of posts to be filled in the next year without disturbing the general policy of reservation.

10. Here, we take the note of the fact that the regular reservations are only made through the system of open advertisement and recruitment through recruiting agency, like UPSC, SSC, DSSSB etc. Here as a matter of policy, the posts have been decided to be outsourced through agency. We have also taken note of the contention of the respondents that the regular recruitment can only be made through some recruiting agencies like SSC, UPSC, DSSB etc. and since there is a heavy pressure on these agencies leading to a huge backlog, the recruitments do have to be made on contract basis, keeping in light the requirement of work in the Ministries. In this regard, we take note of the case decided by the Hon'ble Supreme Court in **Villianur Iyarkkai Padukappu Maiyam Vs. Union of India**, (2009)7 SCC 561 which held that *"there is very limited scope of judicial review in matters pertaining to policy making or economic policies, the courts can only interfere when the policies are contrary to statutory provisions or to the Constitution of India."* Here the applicant has claimed that the decision of the Government is violative of Articles 14 and 16 of the Constitution. In this regard, it is reiterated that it is the Government which decides issues like whether reservation is to be made; how much reservation is to be made; what will be mode of recruitment; what will be the ratio of contractual employment or regular employment

through channel of advertisement; regular employment can only be made through recruiting agencies like SSC, UPSC, DSSSB etc.; recruitment through outsourcing agency is accepted form of employment within the Government which ensures availability of manpower in a time bound advertised manner. As such, it cannot be claimed that the process is illegal. However, it conceded in favour of the applicant that more the regular employment, the happier they will be because the terms of engagement of regular employment are superior to the contractual employees.

11. In the **State of Kerala vs. Kerala Rare Earth and Minerals Ltd. & Ors.** 2006(2) KLT 899, the Hon'ble Supreme Court set aside the order of the Hon'ble High Court of Kerala interfering with the decision of the State Government to reserve certain beaches for exploitation of given minerals on the ground that the matter related to formulation of economic policy should best be left to the State Government concerned. We are to note that though right of equality has been declared as the basic feature of the Constitution, Article 14 is admonition to the State and does not directly confer any right on person as some of the other articles e.g. Article 19 does. The obligation thus imposed on the State no doubt ensures for benefit of all

persons for a necessary result of the operation of this article, they all enjoy equality before law.

12. In **Indira Nehru Gandhi vs. Raj Narain**, AIR 1975 SC 2299, Article 14 was accepted as a part of the basic feature of the Constitution. This Article by assuming equality before the law and equal protection of law provided shell and kernel skin and the core of the principle of equality. On the other hand, Article 16 while it proclaims equality of opportunity in matters of public employment is not averse to rational reasonable differentia being in such employment.

13. In **Islamic Academy of Education vs. State of Karnataka**, AIR 2003 SC 3724, the Hon'ble Supreme Court held that *"an affirmative action may be constitutionally valid by reason of Articles 15(4) and 16(4) and various directives of State Policy; but the Court cannot ignore the constitutional morality which embraces itself the doctrines of equality. It would be constitutionally immoral to perpetuate inequality among majority people of the country in the guise of protecting Constitutional rights of backward and downtrodden. All the rights of these groups are part of the rights to social development, which cannot render national interest and public interest subservient to the right of an individual or right of a community."* Therefore, right of equal

opportunities in public employment cannot be said to be eroded on account of disarrangement made by the State of recruiting some people through outsourced agencies.

14. Having considered the matter in this perspective, we find that the OA is devoid of merit and is accordingly dismissed without costs. However, the Government is well advised to revisit the issue as the ex-servicemen have devoted their best years to the service of the nation and a regular employment in the Government is a prized position and take appropriate decision that the right vested in the reserved seat does not go abegging.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

/lg/