

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.811/2015

Reserved on : 15.09.2015.

Pronounced on:22.02.2016

**Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri Raj Vir Sharma, Member (J)**

Rabin Kumar (37 years)
S/o Sh. Ompal Singh Rana,
R/o Vill. Khera Islampur,
PO Khera Hatana,
Tehsil & Distt. Baghpat (UP). ...Applicant.

(By applicant in person)

Versus

1. SSC (NR) through its Regional Director
Staff Selection Commission (NR)
CGO Complex, Lodhi Road,
New Delhi.
2. Chairman
Staff Selection Commission
CGO Complex, Lodhi Road,
New Delhi.
3. Secretary,
DoP&T, (North Block)
Ministry of Personnel, Public Grievances
& Pension, Govt. of India, New Delhi.Respondents.

(By Advocate: Shri S.M.Arif)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA is an Ex. Serviceman and Ex. Hawaldar of the Indian Army. He had applied for recruitment against the Combined Graduate Level Examination, 2013 (CGLE, 2013, in short), notified through Annexure A-2. The last date for receipt of the applications was 15.02.2013, and the dates when the examinations were scheduled to be held were on

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14.04.2013 & 21.04.2013. Note-III below Para-5(B) of the Notification stated as follows:

"NOTE-III : 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 is in a position to establish his acquired entitlement by documentary evidence from the competent authority that he would complete specified term of engagement from the Armed Forces within the stipulated period of one year from the CLOSING DATE (i.e. 15.02.2013) or otherwise than by way of dismissal or discharge on account of misconduct or inefficiency.

EXPLANATION :An 'ex-serviceman' means a person –

- (i) who 'has served in any rank whether as a combatant or non combatant in the Regular Army, Navy and Air Force of the India 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; or
- (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 the 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 circumstance beyond their control and awarded medical or other disability pension; or

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- (iv) Personnel, who were on deputation in Army Postal Service for more than six months prior to the 14th April, 1987; or
- (v) Gallantry award winners of the Armed forces including personnel of Territorial Army; or
- (vi) Ex-recruits boarded out or relieved on medical ground and granted medical disability pension.”

2. The applicant has produced his application format Annexure A-3, in which it had been indicated that his date of discharge from the Army was to be 31.12.2013.

3. The examination concerned was thereafter postponed twice. The Tier-I Examination dated 14.04.2013 was first postponed to 28.04.2013, and, thereafter, it was further postponed to 19.05.2013. The date for the Tier-II Examination for Paper I & II, which was earlier fixed for 21.07.2013, had also been changed, and the revised date was notified as 01.09.2013, and the revised date for Paper-III was also notified as 31.08.2013. The revised dates got further changed through a Corrigendum (Annexure A-5) for the Tier-II and Tier III written examinations to be held on 28.09.2013 and 29.09.2013, because, in the meanwhile, through an order of this Tribunal dated 23.09.2013, the Notification issued for that examination had been stayed, but that stay was later vacated on 26.09.2013.

4. However, since the stay on declaration of the result was continued, the respondents could not declare the result in respect of Tier-II Examination of CGLE, 2013, as notified through Annexure A-7. Thereafter, a re-examination came to be ordered through Press Note dated 28.01.2014, and the re-examination of CGLE (Tier-I), 2013 was held on 27.04.2014 at Lucknow, Patna, Allahabad, Delhi, Jaipur, Shimla and Dehradun, because of the orders of this Tribunal. That re-examination was later held on 20.07.2014 in

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respect of those who had not appeared at the re-examination held on 27.04.2014 through Annexures A-10 & A-12. Finally, the CGLE (Tier-II), 2013, re-examination was held only on 21.09.2014, as per Annexure A-12.

5. The applicant's case is that in the meanwhile he had been discharged from the Army service, prior to that date, i.e. on 31.05.2014, and therefore, as on the date he took the re-examination, he was already an Ex-Serviceman.

6. The applicant was thereafter called for document verification on 14.02.2015 through Annexure A-13, but he was declared not suitable to obtain ex-serviceman reservation, as he had been discharged from Army service after 14.02.2014 i.e. within one year from the last date of receipt of applications on 15.02.2013, even though his actual date of discharge was later, but before the date of document verification.

7. Aggrieved by this, the applicant represented to the respondents through Annexures A-14 and A-15 dated 17.02.2015. The applicant's case is that under the DoP&T OM dated 25.02.2014, a compendium of Instructions has been issued on reservation, concessions and relaxations for Ex-servicemen, under which a service-man must have been discharged from his Army/Navy/Air Force service, before his appointment against a civil post, and the applicant fulfils this condition, as he had been discharged from service 9 months prior to the date of his document verification.

8. The applicant has taken the following grounds in his OA:-

- (a) delay on the part of the respondents is fatal to his interest;
- (b) he was eligible for being counted as an ex-serviceman at the time of applying for CGLE-2013, and it was only that he was discharged

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from service sometime later, on 31.05.2014, but much before the document verification;

(c) the only requirement for his being counted as an ex-serviceman is that he should have been discharged, and he had been duly discharged;

(d) because normally the recruitment process takes more than one year, therefore, if there is any delay, benefit in respect of such delay should go to the Ex-serviceman, and

(e) because it is not possible for an ex-serviceman to ensure his discharge from service substantially prior to his joining any civil job.

9. In the result, the applicant has prayed for the following reliefs:

"(i) to direct the respondent No.1 to consider applicant as eligible ex-serviceman for SSC CGL-13 and allow him for document verification for same.

(ii) to pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

10. He had also prayed for interim relief, but the same had not been granted to him.

11. The respondents filed their counter reply on 12.08.2015. In this, they had pointed out the aforesaid Note-III below Para 5 (B), as reproduced above. It was submitted that as per above prescription, the applicant was called for verification of his documents on 14.02.2015, and during the document verification he was not found suitable to obtain Ex-serviceman reservation, due to the fact that his discharge from service was only on 31.05.2014, while for availing the benefit of ex-serviceman, it was necessary

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that he must have been discharged either at the time of submitting his application for the post/service, on or before one year prior to that date of verification i.e. before 14.02.2014, within one year of last date of receipt of applications on 15.02.2013. It was submitted that the applicant had to complete the prescribed period of Army Service at least 15 years within a year from the last date of receiving application, and having applied as per the provisions of the notice, and after conclusion of the recruitment, he cannot now challenge the clear-cut provisions of the Employment Notice. Considering that the recruitment took longer time, it was submitted that there was no reason for not complying with the conditions for recruitment as given out in the Employment Notice. All the contentions and the submissions of the applicant were, therefore, denied, and it was prayed that the OA is liable to be rejected, with heavy costs.

12. The applicant filed his rejoinder on 27.08.2015. He had once again relied upon the DoP&T OM at Annexure A-16 of the OA, which states as follows:

"No. '36034/3/2013-Estt.(Res.)
Government of India Ministry of Personnel,
Public Grievances and Pensions
Department of Personnel and Training

North Block, New Delhi
Dated the 25th February, 2014

OFFICE MEMORANDUM

Subject: Issue of Compendium of instructions on reservation for ex-servicemen.

This Department has been in the process of issuance of a compendium on instruction on reservation, concessions and relaxations for Ex-servicemen in Central Government Services. In this regard, the Department of Ex-servicemen Welfare may refer to their O.M. No. 28(66)/2013/D (Res.I) dated 17.07.2013 and 18.09.2013. The compendium has now been finalized covering various notifications and Office Memoranda issued on

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reservation, concessions and relaxations for Ex-servicemen in Central Government Services. A copy of Compendium is enclosed.

Enclo.: As above."

13. It was submitted that the applicant had completed his prescribed period of Army Service on 08.07.2013, and though he was discharged from service sometime later, on 31.05.2014, it was within one year before the actual appointments under CGLE, 2013 were made. He had, therefore, claimed the applicability of the above cited DoP&T OM, and submitted that non-consideration of his candidature as ex-serviceman in CGLE, 2013, is totally unjustified, as he stood discharged from service one year before the actual appointments, and 9 months before the date of document verification. He had, therefore, submitted that the OA may be allowed with costs.

14. Heard. The case was argued on the lines of the pleadings, as already reproduced above in detail, and during the course of their arguments the portion of the Recruitment Notification dated 19.01.2013 reproduced in the opening paragraph was pointed out by the learned counsel for the respondents, and the contents of the DoP&T OM dated 25.02.2014 (supra) were pointed out by the learned counsel for the applicant.

15. We have given our anxious consideration to the facts of the case. It is clear that at the time of applying for the CGLE, 2013, the applicant had anticipated his date of discharge from Army to be 31.12.2013, as mentioned in the relevant column of the application form as reproduced at Annexure A-3. If the applicant had stood discharged from service on the declared date, i.e. 31.12.2013, that would have been within the stipulated period of one year from the closing date of receipt of the applications, as per the

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Advertisement published i.e. on 15.02.2013. In fact, his discharge on any date upto 14.02.2014 would not have created any problem for him, both in terms of the Employment Notification, and in terms of the DoP&T OM dated 25.02.2014 (supra) at Annexure A-16.

16. The difference between the two Notifications is that while the Employment Notification stated that for the purpose of securing the benefits of ex-serviceman reservation, a candidate must have either already acquired the status of ex-serviceman, and /or should be in a position to establish his having acquired such entitlement within the stipulated period of one year from the closing date of the receipt of the applications, otherwise than by way of dismissal or discharge on account of misconduct or inefficiency. This is a negative prescription. However, the portion of the compendium circulated on 25.02.2014 through Annexure A-16 is in a positive language, stating only that the candidate concerned should complete the prescribed period of fifteen years' Army Service within a year from the last date for receiving applications in connection with any Special Recruitment/Examination, etc. prescribed by the competent authority. Therefore, while the DOP&T Compendium only required the applicant to complete the period of 15 years of service, and thus acquire the eligibility for discharge within the prescribed period, and the DoP&T OM does not take into account any scenario, in which the discharge from Army service is much after the cut off date, which is the last date for receipt of applications in response to an advertisement.

17. In the applicant's case, he served not for just 15 years, but 10 month 24 days thereafter also, after which only he was discharged on 31.05.2014. This extra service of his for 10 months and 24 days, after he attained the

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eligibility for seeking discharge or completion of 15 years of service, is what has created the problem in this case.

18. Therefore, while in terms of the DoP&T Compendium circulated on 25.02.2014, through Annexure A-16, the applicant was eligible for applying for the post of ex-serviceman category, if he were to have completed 15 years of service within a year from the last date of receipt of the applications, which, in fact, the applicant did. However, the Note-III below Rule 5(B) of the Recruitment Notification had clearly stated that for the purpose of getting himself treated as an Ex-serviceman, and securing the benefits of appropriate reservation, he should have not only completed the required 15 years' service, but he should also have acquired the status of an Ex-serviceman, and should have been in a position to establish his having acquired such entitlement, by way of documentary evidence from the competent authority that he would complete the specified term of engagement from the Armed Forces within the stipulated period of one year from the closing date (i.e. 15.02.2013), otherwise than by way of dismissal or discharge on account of misconduct or inefficiency.

19. Many people, who would otherwise have been eligible to apply for the Ex-serviceman quota, must not have even applied for the posts after finding themselves disqualified under this prescription given in Note-III.

20. It is clear that the applicant had not acquired the status of an Ex-serviceman within one year from the closing date of receipt of the applications, which was 15.02.2013, i.e. by the date 14.02.2014, but had rather acquired that status 3 ½ months later, as per Annexure A-1. Therefore, it is clear that on a combined reading of the DoP&T Compendium circulated on 25.02.2014 circulated through Annexure A-16, and the Note-III

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below Rule 5(B) of the Recruitment Notification, the applicant cannot be held to be eligible to have qualified for the Ex-serviceman quota, which he would have been otherwise eligible for, if he had been discharged from the service on 31.12.2013, as had been cited by him in his Application Format Annexure A-3, or had been discharged even 1½ months thereafter, till 14.02.2014, within one year of the last date of filing of the applications.

21. It is a hard decision, but law is harsh, and the Apex Court has held that the Courts cannot grant relief to a party on humanitarian grounds, contrary to law, as was held in **State of Tamilnadu and Others** vs. **St.Joseph Teachers Training Institute** 1991 SCC (3) 87. It has also been held by the Supreme Court in **Man Singh** vs. **State of Haryana and Others** AIR 2000 SC 2481, that any act of the repository of powers, whether legislative, or administrative, or quasi-judicial, is open to challenge only if it is so arbitrary or unreasonable, that no fair minded authority could ever have made it.

22. We do not find that the actions of the respondents have in any manner been arbitrary or unreasonable, and the conclusions that could have been arrived at on a joint reading of the Employment Notification, along with the DoP&T Compendium and the Instructions, and therefore, we cannot term it to be arbitrary. Therefore, the OA is dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

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