

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.4006 OF 2013

New Delhi, this the 9th day of August, 2017

CORAM:

HON⁰BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

AND

HON⁰BLE MS.NITA CHOWDHURY, ADMINISTRATIVE MEMMBER

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Bijender Singh Dahiya,

s/o Sh.Satpal Singh,

R/o H.No.421, Sec-23,

Sonepat, Haryana

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Applicant

(By Advocate: Mr.M.K.Bhardwaj)

Vs.

Commissioner of Police & others through:

1. The Commissioner of Police,
Police Hq, IP Estate,
New Delhi.

2. The Dy.Commissioner (Recruitment Cell),
Police HQ, IP Estate,
New Delhi

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Respondents

(By Advocate: Mr.Amit Anand)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

It is the case of the applicant that as an ex-serviceman candidate, he had been selected for the post of Constable (Exe.) Male in Delhi Police. While undergoing training for the post of Constable (Exe.)

Male in Delhi Police, he had applied for selection and appointment to the post of Sub Inspector (Exe.) Male in Delhi Police, in response to the Advertisement issued by the Delhi Police in November 2007. He was granted permission to appear in the recruitment examination for the said post. As he had qualified in the written examination, the Delhi Police had called him to appear for interview. Accordingly, he had appeared in the interview. As per the result of the recruitment examination declared by the Delhi Police, he had not been selected. In response to an application made by the applicant under the RTI Act, the Delhi Police, vide letter dated 6.8.2008, informed him as follows:

- õ(1) Final Cut off marks Ex-Serviceman-UR category is 79.
- (2) You scored total 87 marks i.e. 80 in Written test, 2 for NCC and 5 in interview.
- (3) Your name could not be considered for selection against the vacancies meant for ex-serviceman category as you had already secured employment in Delhi Police as Constable (Exe.). As per GOI's instructions contained in Swamy's Establishment & Administration, under head õEx-servicemenö, you could not be given second time benefit of reservation for the post of S.I.(Exe.) in Dehi Police. However, you were given admissible relaxation in upper age and you could not make the grade under Open/UR category.ö

2. Being aggrieved by his non-selection for the post of Sub-Inspector in Delhi Police against ex-servicemen quota, the applicant had earlier filed OA No.788 of 2009. The Tribunal had dismissed OA No.788 of 2009, as being withdrawn by the applicant, vide order dated 27.3.2009, which is reproduced below:

Challenged OM dated 02.05.1985 has not even been placed on record. When confronted with the position, Mr. Bhardwaj, counsel representing the applicant seeks to withdraw this Original Application with liberty to file fresh one wherein a copy of O.M. dated 02.05.1985 would be annexed.

2. With leave and liberty, as asked for, this Original Application is dismissed as withdrawn.

Accordingly, the applicant had filed OA No.2051 of 2009. The Tribunal had allowed O.A.No.2051 of 2009, vide order 4.3.2010. Challenging the Tribunal's order dated 4.3.2010 (ibid), the respondents had filed W.P. (C) No. 5054 of 2010. Setting aside the Tribunal's order dated 4.3.2010 (ibid) and restoring OA No. 2051 of 2009 for re-decision by the Tribunal, the Hon'ble High Court of Delhi had disposed of W.P. (C) No. 5054 of 2010, vide order dated 19.11.2010, which is reproduced below:

1. The impugned order is too cryptic and does not even bring out the issue which arose for consideration and what surprises us is that in spite thereof a decision has been rendered.

2. The respondent is admittedly an ex-serviceman and taking benefit of his status of being an ex-serviceman took appointment as a Constable under the Delhi Police. While on probation he applied for to be appointed as a Sub-Inspector.

3. Issue whether respondent could be treated as an ex-serviceman came up.

4. According to the petitioner having been appointed to a civilian post, i.e., Constable, the respondent lost status of an ex-serviceman and henceforth could not claim benefit of being an ex-serviceman.

5. The respondent urged to the contrary. Neither party were at variance that the issue noted to be decided with reference of office memorandum dated 07.11.1989 and 02.04.1992 which were in supersession of an earlier office memorandum dated 02.05.1985.

6. The Tribunal has simply referred to the aforesaid facts without extracting the language of the office memorandum dated 07.11.1989 and 02.04.1992, much less discussing the contents thereof. In fact OM dated 02.04.1992 has not even been noted.

7. Accordingly, we dispose of the writ petition setting aside the impugned order dated 04.03.2010. We restore OA No.2051/2009 with a direction that the OA would be re-decided after noting the rival contentions extracting the contents of OM dated 07.11.1989 and 02.04.1992, highlighting the relevant phrases thereof upon which parties rely. The OMs would be interpreted, with reasons, and then applied to the facts before the Tribunal and then conclusion would be drawn.
8. Needless to state this Court express no opinion on the merit of the controversy.
9. No costs.ö

OA No.2051 of 2009, on being restored, was taken up for hearing on 10.5.2012 when the Tribunal had disposed of the same, vide order dated 10.5.2012, which is reproduced below:

öLearned counsel for applicant submits that since he has filed this OA based upon the OM dated 2.5.1985, which OM has subsequently been superseded by OMs dated 7.12.1989 and 2.4.1992 and the validity of the subsequent OM has not been challenged in this O.A., the applicant wants to withdraw this OA with liberty reserve to him to make appropriate representation before the authorities in the light of the subsequent OMs dated 7.12.1989 and 2.4.1992.

2. In view of what has been stated above, the applicant is permitted to withdraw this OA, which shall stand disposed of in the aforesaid terms. Needless to add that we have not gone into the merits of the case as the learned counsel for applicant wants to withdraw this OA for agitating the claim before the appropriate authorities at the first instance. It is also observed that in case the representation is filed by the applicant raising his claim within fifteen days from the date of receipt of a copy of this order, the appropriate authority shall decide the same within a period of three months from the date of receipt of representation from the applicant. No costs.ö

Accordingly, the applicant had made a representation dated 19.05.2012 claiming his selection for the post of Sub Inspector in Delhi Police as an ex-servicemen candidate against vacancy meant for ex-servicemen on the basis of the O.Ms. dated 7.12.1989 and 2.4.1992. The respondents considered the

applicant's representation dated 19.5.2012, but rejected the same by memo/order dated 28.6.2012 which is reproduced below:

OFFICE OF THE COMMISSIONER OF POLICE, DELHI
No.3329/Rectt. Cell (AC-II)/PHQ, dated Delhi, the 28.6.2012

To

Shri Bijender Singh Dahiya,
S/o Shri Satpal Singh,
R/o House No.421, Sector-23,
Sonapat, Haryana 131001

Subject: Direct recruitment for the post of SI (Exe.) Male-2007 in Delhi Police & Reg.OA No.2051/2009-titled Bijender Singh Dahiya Vs. UOI & Ors.

Memo.

With reference to your representation dated 19.05.2012 forwarded his Hdqrs. on the direction of Hon'ble CAT's order dated 10.5.2012 in OA No.2051/2011(sic).

To fill up 692 posts including of Sub Inspector (Exe.) in Delhi Police-2007, an advertisement was got published in the leading Newspapers on 4.10.2007 and Employment News dated 20.10.2007 including reservation to SC, ST/OBC and ex-servicemen is made as per GOI's instructions on the subject. 10% vacancies are reserved for departmental candidates amongst serving Constables, Head Constables and Asstt. Sub Inspectors with minimum five years service. Direct recruitment to the post of Sub Inspector (Exe.) Male in Delhi Police is made under rule 7 of Delhi Police (Appointment & Recruitment) Rules, 1980.

You have applied for the post under Ex Servicemen General Category but your name was not considered for selection against the vacancies meant for ex-servicemen, as you had already secured employment in Delhi Police as Constable(Exe) for the recruitment-2007 against Ex-servicemen category. In Govt. of India, DOPT's O.M. o.36034/6/90-Estt.(SCT) dated 2nd April, 1992 provides that:

Ex-servicemen candidates who have already secured employment under the Central Government in Groups -C and -D will be permitted the benefit of age relaxation as prescribed for Ex-servicemen for securing another employment in a higher grade or cadre in Group -C/-D under the Central Government. However, such

candidates will not be eligible for the benefit of reservation for Ex-servicemen in Central Government Jobs.ö

Accordingly, benefits of age relaxation under said OM was given to you and considered under Open Genl. Category. You have secured 87 marks whereas last candidate of Open Genl. Category was secured 128 marks. Hence, you were not selected.

In view of above facts your request/representation has been considered but could not be acceded to.

Sd/

DY. COMMISSIONER OF POLICE
ESTABLISHMENT, DELHIö

Hence, the applicant has filed the present OA No.4006 of 2013 seeking the following reliefs:

- öi) To quash and set aside the impugned order dated 28.06.2012.
- ii) To direct the respondents to declare the applicant as selected candidates as per his merit and issue further directions to issue him offer of appointment on the basis of his merit with all consequential benefits including arrears of pay.
- iii) To allow the O.A. with costs.
- iv) Any other orders may also be passed as this Honöble Tribunal may deem fit and proper in the existing facts and circumstances of the case.ö

3. Resisting the OA and justifying the decision taken by them, vide impugned order, dated 28.6.2012, the respondents have filed a counter reply. The applicant has filed a rejoinder reply thereto..

4. We have carefully perused the records and have heard Mr.M.K.Bhardwaj, the learned counsel appearing for the applicant, and Mr.Amit Anand, the learned counsel appearing for the respondents.

5. Mr.M.K.Bhardwaj, the learned counsel appearing for the applicant, took us through the order dated 7.6.2007 issued by the

respondents whereby, on his selection as an ex-servicemen candidate, the applicant was offered appointment to the post of Constable (Exe.) Male in Delhi Police. It was submitted by Mr.M.K.Bhardwaj that from the aforesaid order dated 7.6.2007 it is clear that the applicant's appointment to the post of Constable (Exe.) Male in Delhi Police was purely temporary and liable for termination without assigning any reasons thereof. It was also stipulated that the applicant would be on probation for a period of two years from the date of his appointment. Therefore, as per the clarification issued by the DoP&T, vide its O.M. dated 7.11.1989, the instructions contained in the DoP&T's O.M. dated 2.5.1985 shall not apply to the applicant who was appointed to the post of Constable (Exe.) Male in Delhi Police purely on temporary basis and whose services were liable to be terminated by the respondents without assigning any reason therefor. In view of this, on his appointment as Constable (Exe.) Male in Delhi Police on purely temporary basis, the applicant's status as ex-serviceman for the purpose of selection and appointment to the post of Sub Inspector (Exe.) Male did not cease at the relevant point of time, and he was entitled to be considered as an ex-servicemen candidate for selection and appointment to the post of Sub Inspector (Exe.) Male in Delhi Police. The applicant had scored 87 marks whereas the last selected ex-servicemen candidate had scored 79. Therefore, the applicant ought to have been selected and appointed to the post of Sub Inspector (Exe.) Male as an ex-servicemen candidate.

6. *Per contra*, Mr.Amit Anand, the learned counsel appearing for the respondents, submitted that the applicant was selected and offered appointment to the post of Constable (Exe.) Male in Delhi Police against an existing vacancy which was meant for ex-servicemen category, vide order dated 7.6.2007. The applicant was given the benefit of ex-servicemen at the time of his selection and appointment to the post of Constable (Exe.)Male in Delhi Police. The applicant's such appointment was not on casual/contract/temporary ad hoc basis. Therefore, as per the instructions contained in the DoP&T's O.M. dated 2.5.1985, the applicant's ex-servicemen status for the purpose of his selection and re-employment/appointment to the post of Sub Inspector (Exe.) Male in Delhi Police ceased. Thus, there is no illegality or infirmity in the decision taken by the respondents in not considering the applicant as an ex-servicemen candidate for selection and appointment against ex-servicemen vacancy and in considering the applicant as an Open General Category candidate after granting him age relaxation in terms of the OM dated 2.5.1985(ibid). During the course of hearing, Mr.Amit Anand also produced before us a photocopy of the extract from the applicant's Service Book wherein it has been mentioned that the applicant has been confirmed in service with effect from 11.6.2009.

7. In the present O.A., the following issues arise for our consideration:

- (1) Whether the applicant's selection and appointment to the post of Constable (Exe.) Male in Delhi Police as an ex-servicemen candidate and in the vacancy meant for ex-servicemen was on casual/contract/temporary ad hoc basis and he could have been removed from such service at any time by the Delhi Police;
- (2) Whether the applicant's status as ex-servicemen for the purpose of his re-employment in Government ceased on 11.6.2007 when he joined the post of Constable (Exe.) Male in Delhi Police, consequent upon his selection and appointment as an ex-servicemen candidate, by availing of the benefit of reservation for ex-servicemen;
- (3) Whether the applicant could be treated as an ex-servicemen category candidate for selection and appointment to the post of Sub Inspector (Exe.) Male in Delhi Police pursuant to the advertisement in question; and
- (4) Whether the applicant was entitled to the reliefs sought by him in the O.A.

Issue No.1:

8. Admittedly, after his discharge/retirement from the Indian Air Force, the applicant had applied for selection and appointment to the post of Constable (Exe.) Male in Delhi Police as an ex-servicemen candidate.

Consequent to his selection for appointment to the post of Constable (Exe.) Male in the vacancy meant for ex-servicemen, the respondents issued order dated 7.6.2007 offering appointment to the applicant on the post of Constable (Exe.) Male in Delhi Police. The said order dated 7.6.2007 is reproduced below:

õORDER

On the basis of the result of written test/interview and also having been declared medically fit by the competent medical authority, the undersigned, as empowered under Delhi Police (Appointment and Recruitment) Rules, 1980, hereby offer appointment to Bijender Singh Dahiya 444662 as Constable (Exe.) Male in Delhi Police on purely temporary basis in the pay scale of Rs.3050-75-3950-80-4590 plus usual allowances as admissible to the Central Govt. employees in an existing vacancy and subject to satisfactory verification of character & antecedents. He shall be posted/allocated directly to PTC/PTS, Jharoda Kalan, New Delhi for basic training.

His appointment has been made under the Delhi Police Act, 1978 and will be governed by the Rules made thereunder. He will also be governed by the Central Civil Service (Temporary Service) Rules, 1965 and CCS (Conduct) Rules 1964.

His appointment is also subject to the following terms and conditions:

1. The order of appointment is to be valid on execution of an agreement bond with regard to refund of salary, cost of uniform, capitation charges etc. in case he leaves the department without completing 5 years of service if confirmed, from the date of his appointment.
2. His appointment is subject to the caste/tribe certificate being verified through proper channels and if the verification reveals that the claim of belonging to SC/ST/OBC, as the case may be, is false, the services will be terminated forthwith without assigning any further reason and without prejudice to such further action as may be taken under the provisions of law for production of false certificate.
3. His appointment will be liable for termination if the facts given by him in the Declaration Form/Undertaking are found to be incorrect in any material aspect and he will be further liable to refund the money spent on his training or given to him from the State Exchequer. He shall also be

debarred from Govt. Services in future, besides initiation of legal action against him.

4. He will be on probation for a period of two years from the date of his appointment.
5. His appointment is purely temporary and liable for termination without assigning any reasons thereof.
6. His basic training is for one year or as may be decided by the Commissioner of Police, Delhi.
7. No trainee shall be accepted/allowed for training at PTC/PTS after 10 days of commencement of training except in exceptional circumstances and with the prior approval of the Special/Joint Commissioner of Police, Training, Delhi.
8. He shall not be passed into the ranks/sent to the District/Unit to which he is allocated for drawal of pay unless he has successfully completed the training and has passed-out of the PTS.
9. He is required to qualify in the final examinations conducted at the end of the training course. A second chance may be given to him if he fails. His services will be terminated under Rule 5 of the CCS(Temporary Services) Rules, 1965, if he does not qualify despite two opportunities.
10. If he is found medically unfit to start his training or develop illness/unfitness while under training and is unable to continue the training, he will be required to proceed on medical leave with or without pay as per his entitlement and will be required to commence/recommence the training with the next available batch.
11. If he fails to attend 85% of the classes, during initial training, his services will either be terminated or he will be required to undergo full training with the next batch of Recruit Constables as decided on merit by Special/Joint Commissioner of Police, Training, Delhi. He is required to proceed on leave with or without pay as per his entitlement till the training of the next batch of recruit Constables Commences.
12. His joining duty earlier than others will not confer any benefit in the matter of seniority. His inter-se seniority will be fixed later on.
13. No increment will be released if he does not successfully complete his basic training course.

In case the conditions prescribed in this offer of appointment are acceptable, he is directed to join as Constable (Executive) and report to Principal, Police Training School, Wazirabad, Delhi for his basic training on 11.06.2007, failing which the offer of appointment will be treated as cancelled.

Accepting the terms and conditions of the said offer of appointment, the applicant joined his basic training 11.06.2007. It was clearly stated in the aforesaid order/offer of appointment that the applicant was appointed against an existing vacancy in the post of Constable (Exe.) Male in Delhi Police. Although it was mentioned in the aforesaid offer of appointment that the applicant's appointment was on purely temporary basis, that the applicant would be on probation for a period of two years from the date of his appointment, and that the applicant's appointment was purely temporary and liable for termination without assigning any reasons therefor, yet such terms/conditions did not by themselves make the appointment of the applicant as on 'casual/contract/temporary ad hoc basis'. Appointment on 'casual/contract/temporary ad hoc basis' is made only as a stop-gap measure and/or for any specified period. In the absence of any mention in the aforesaid order dated 7.6.2007 that the applicant's appointment was on 'casual' or 'contract' or 'temporary ad hoc basis', it would be preposterous to say that the applicant's appointment as Constable (Exe.) Male in Delhi Police was on 'casual/contract/temporary ad hoc basis', and that the applicant could be removed by the Delhi Police at any time. The aforesaid offer/order dated 7.6.2007 contained the terms and conditions which are usually mentioned in each and every offer/order of appointment issued by a Government organization/Department to a candidate who is selected for appointment to a post/service. The fact that the applicant was duly appointed to the post of Constable (Exe.) Male in Delhi Police is clearly borne out by

his Service Book, the extract of which has been produced before us. It is seen from the extract of the Service Book that the applicant had joined as Constable (Exe.) Male in Delhi Police on 11.6.2007 and he was confirmed in service w.e.f. 11.6.2009. In the above view of the matter, issue no.1 is decided against the applicant and in favour of the respondents.

Issue No.2:

9. For deciding issue no.2, it is necessary to refer to DoP&T's O.Ms. No.36034/27/84-Estt.(SCT) dated 2.5.1985, No.36034/21/87-Estt.(SCT) dated 7.11.1989, No.36034/6/90-Estt.(SCT) dated 2.4.1992, which are reproduced below:

(i) DoP&T's O.M.No.36034/27/84-Estt.(SCT) dated 2.5.1985:

Subject: Reservation for ex-servicemen in Group 'C' and 'D' posts/services ó Clarification regarding second time benefit.

The undersigned is directed to refer to this Department's marginally noted Office Memoranda and Notification regarding reservation for ex-servicemen in Group 'C' and Group 'D' posts/services, and to say that references have been received in this Ministry seeking clarification on the point whether an ex-serviceman would continue to get the benefits as provided in the various orders and instructions issued from time to time even after having secured employment in the civil services after his release or discharge from the Armed Forces. In other words, whether an ex-serviceman can apply again for any vacancy reserved for ex-servicemen in the Central Government service and claim all the benefits admissible to ex-servicemen even if he is holding a civil post after his release/discharge, as the case may be.

2. The matter has been carefully considered and it has now been decided that once an ex-serviceman has joined the Government job on civil side after availing of the benefits given to him as an ex-serviceman for his re-employment, his ex-serviceman status for the purpose of re-employment in Government ceases. On his joining the civil employment, he is

deemed to be a civil employee and will accordingly be entitled to only such of the benefits like relaxation of age etc. as admissible to civil employees in the normal course in accordance with the existing instructions in this regard, subject to his fulfillment of the conditions governing the grant of such benefits.

3. Ministry of Finance, etc., are requested to bring the contents of this Office Memorandum to the notice of all the attached and subordinate offices under their control.ö

(ii) DoP&Tø O.M.No.36034/21/87-Estt.(SCT), dated 7.11.1989:

öSubject: Second time benefit to ex-servicemen for reservation in Groups -Cø and -Dø posts/services not allowed.

In this Departmentø O.M.No.36034/27/84-Estt.(SCT) dated 02.05.1985, it was decided that the second time benefit of ex-servicemen will not be admissible to those ex-servicemen who have already availed of the benefit of ex-servicemen on their first re-employment in civilian posts. On the request made by the Directorate General of Resettlement, Ministry of Defence, that the decision contained in the above OM dated 02.05.1985 should not be made applicable to those ex-servicemen who have been re-employed or are re-employed by the Private Companies/Autonomous Bodies/Public Sector Undertakings and Government offices on casual/contract/temporary ad hoc basis and who can be removed from such service at any time by the employer concerned, the matter has been reconsidered by this Department and it has been decided that the provisions contained in this Departmentø O.M.No.36034/27/84-Estt.(SCT) dated 02.05.1985 shall not apply to those ex-servicemen who have been re-employed or are re-employed by Private Companies/Autonomous Bodies/Public Sector Undertakings/ Government Offices on casual/contract/temporary ad hoc basis and who can be removed from such service at any time by their employer concerned.ö

(iii) DoP&Tø O.M.No.36034/6/90-Estt.(SCT) dated 2.4.1992:

Subject: Benefit of age concession to ex-servicemen who have already joined Govt. service for applying for employment in a higher grade/cadre under the Central Govt. group C & D.

The undersigned is directed to refer to this Departmentø O.M.No.36034/27/84-Estt.(SCT) dated 2.5.05 wherein it has been clarified that on an ex-servicemen joining civil appointment he is deemed to be a civil employee and will accordingly be entitled to only such of the benefits like relaxation of age etc. as admissible to civil employees, in

accordance with the existing instructions in this regard. Representations have been received requesting the Govt. to reconsider the above decision. The matter has also raised by the Staff Side of the National Council (JCM) suggesting that at least the benefit of age relaxation should be allowed to those ex-servicemen candidates who have joined a civil post under the Govt. of India and who wish to improve their career prospects.

2. The matter has been examined in this Department in consultation with Ministry of Defence and the Department of Public Enterprises and it has now been decided that such of those ex-servicemen candidates who have already secured employment under the Central Government in Groups C & D will be permitted the benefit of age relaxation as prescribed for ex-servicemen for securing another employment in a higher grade or cadre in Group C/D under the Central Govt. However, such candidates will not be eligible for the benefit of reservation for ex-servicemen in Central Govt. jobs.

The above decision is in modification of provision of this Department's O.M.No.36034/27/84-Estt.(SCT) dated 2.5.85.

Ministry of Finance etc. are requested to bring the contents of this O.M. to the notice of all concerned.

Hindi version will follow.ö

From a plain reading of the above three OMs issued by the DoP&T, it is evident that once an ex-serviceman has joined the Government job on civil side after availing of the benefits given to him as an ex-servicemen for his re-employment, his ex-serviceman status for the purpose of re-employment in Government ceases. It is found by us that the applicant was selected and appointed to the post of Constable (Exe.) Male in Delhi Police by availing of the benefits of ex-serviceman on 11.6.2007. While continuing in service of Delhi Police as a Constable (Exe.) Male, he responded to the Advertisement for Sub Inspector (Executive)-Male Recruitment-2007 issued by the Delhi Police and applied as an ex-serviceman for selection in November 2007. Although the applicant was given age relaxation in terms of the O.M.dated

2.4.1992, the benefit of reservation for ex-servicemen in Central Government jobs was not available to him. In other words, having been selected and appointed to the post of Constable (Exe.) Male in Delhi Police and having already joined the service as Constable (Exe.) in Delhi Police by availing of reservation benefit of ex-servicemen, the applicant was not eligible for the benefit of reservation for ex-servicemen for selection and appointment to the post of Sub Inspector (Exe.) Male in Delhi Police. In view of our finding on issue no.1 that his appointment as Constable (Exe.) Male in Delhi Police was not on casual/contract/temporary ad hoc basis, the status of the applicant as an ex-serviceman for the purpose of his re-employment in Government had ceased on 11.6.2007 when he had joined as Constable (Exe.) Male in Delhi Police consequent upon his selection and appointment by availing of the reservation for ex-servicemen.

Issue No.3:

10. In view of the provisions contained in DoP&T's O.Ms. dated 2.5.1985 and 2.4.1992 (ibid) that once an ex-serviceman has joined the Government job on civil side after availing of the benefits given to him as an ex-serviceman for his re-employment, his ex-servicemen status ceases and that such ex-serviceman will not be eligible for the benefit of reservation for ex-servicemen in Central Government jobs, and further in view of our findings on issue nos. 1 and 2, we hold that the applicant was not eligible for the benefit of reservation for ex-servicemen and, therefore, he could not have been treated as an ex-serviceman candidate for the purpose of selection

and appointment to the post of Sub Inspector (Exe.) Male in Delhi Police. Accordingly, issue no.3 is decided against the applicant and in favour of the respondents.

10.1 During the course of hearing, Mr.M.K.Bhardwaj, the learned counsel appearing for the applicant, also took us through the DoP&T's O.M. No. 36034/1/2014-Estt.(Res.) dated 14.8.2014, which has been filed by the applicant along with his rejoinder. The said O.M. dated 14.8.2014 is reproduced below:

Sub: Benefit of reservation to Ex-servicemen, who applies for various examinations/vacancies before joining civil posts/services in the Government job on civil side.

In terms of this Department's Notification No.39016/10/79-Estt.(C) dated 15th December, 1979 as amended from time to time and which was last amended vide Notification No.36034/1/2006-Estt.(Res.) dated 4th October, 2012, the benefit of reservation to ex-servicemen is available at ten per cent of the vacancies in Group C posts and twenty per cent of the vacancies in Group D posts in all the Central Civil Services and posts. Benefit of reservation is also extended at ten per cent of the vacancies in the posts up to of the level of Assistant Commandant in all para-military forces to be filled by direct recruitment.

2. Vide this Department's O.M. No.36034/27/84-Estt.(SCT) dated 02.05.1985, it was decided that once an ex-serviceman has joined the Government job on civil side after availing of the benefits given to him as an ex-serviceman for his re-employment, his ex-serviceman status for the purpose of re-employment in Government would cease. It was also decided that on his joining the civil employment, he would be deemed to be a civil employee and would accordingly be entitled to only such of the benefits like relaxation of age etc. as admissible to civil employees in the normal course. Vide this Department's O.M. No. 36034/21/87-Estt.(SCT) dated 07.11.1989, it was clarified that the instructions of 02.05.1985 shall not apply to those ex-servicemen who have been re-employed or are re-employed by private companies/autonomous bodies/public sector undertakings/government offices on casual/contract/temporary

ad hoc basis and who can be removed from such service at any time by their employer concerned.

3. An ex-serviceman at the time of his release or discharge from the armed forces normally applies for more than one vacancy, but in case he/she joins any civil employment due to early declaration of results/selection, he/she is not entitled for the benefit of reservation for ex-servicemen for subsequent employment. It has been brought to the notice of this Department that the aforesaid instructions are affecting the chances of ex-servicemen in the case of direct recruitment for subsequent suitable employment.

4. The matter has, therefore been considered in consultation with Department of Ex-servicemen, Ministry of Defence. It has now been decided that if an ex-serviceman applies for various vacancies before joining any civil employment, he/she can avail of the benefit of reservation as ex-serviceman for any subsequent employment. However, to avail of this benefit, an ex-serviceman as soon as he/she joins any civil employment, should give self-declaration/undertaking to the concerned employer about the date-wise details of application for various vacancies for which he/she had applied for before joining the initial civil employment. Further, this benefit would be available only in respect of vacancies which are filled on direct recruitment and wherever reservation is applicable to the ex-servicemen.

5. The above Orders shall take effect from the date of issue of this Office Memorandum.

6. All the Ministries/Departments are requested to bring the above instructions to the notice of all appointing authorities under their control, for information and compliance.ö

The reliance on the aforesaid OM dated 14.8.2014 is wholly misplaced. Paragraph 5 of the O.M. dated 14.8.2014 clearly stipulates that the order/decision of the Government shall take effect from the date of issue of the O.M., i.e., 14.8.2014. Therefore, the O.M. dated 14.8.2014 is not applicable to the case of the applicant. Furthermore, by availing of the benefit of reservation for ex-servicemen, the applicant had been selected and appointed as Constable (Exe) Male in Delhi Police and he had joined the said post/service on 11.6.2007. He had applied for selection and appointment

to the post of Sub Inspector in Delhi Police pursuant to the Advertisement issued by the Delhi Police in November 2007, i.e., after about 5 months of his joining the post of Constable (Exe.) Male in Delhi Police.

10.2 Accordingly, we decide issue no.4 against the applicant and in favour of the respondents.

Issue No.4:

11. In view of our findings on issue nos. 1, 2 and 3, we have no hesitation in holding that there is no infirmity in the decision taken by the respondents in not considering the candidature of the applicant as an ex-serviceman candidate and in treating him as an Open General Category candidate for the purpose of selection and appointment to the post of Sub Inspector in Delhi Police. Having scored 87 marks as against 128 marks scored by the last selected candidate of Open General Category in the recruitment examination for selection and appointment to the post of Sub Inspector in Delhi Police, the applicant cannot be said to have any grievance against his non-selection. Thus, the impugned order dated 28.6.2012 remains unassailable, and the applicant is not entitled to the reliefs sought by him in the O.A.

12. Resultantly, the O.A., being devoid of merit, is dismissed. No costs.

(NITA CHOWDHURY)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

