

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO.4132/2011

NEW DELHI THIS THE 23RD DAY OF SEPTEMBER, 2016

**HON'BLE SHRI P.K. BASU, MEMBER (A)
HON'BLE DR BRAHM AVTAR AGRAWAL, MEMBER (J)**

1. Bipin Singh
H.No.-WZ 245B Raj Nagar
Part-Two, Palam Colony,
New Delhi-110077.
2. Chander Shakher,
C/o Goyal Ji
RZF 461 Mahatma Gandhi Marg,
Raj Nagar Part-Two,
Palam Colony,
New Delhi-110077.
3. Naresh Kumar Sharma,
WZ 160B IIIrd Floor,
Naraina Village,
New Delhi-110028.
4. Pawan Kumar Sharma,
C/o Jain Niwas Gali No.13,
WZ 1028 -A Sadh Nagar Palam,
New Delhi-110077.
5. Iswar Singh,
C/o 160b 1st Floor,
Naraina Village,
New Delhi-110028.
6. Dheerpal Singh,
WZ 22 Naraina Village,
New Delhi-110028.
7. Sukanta Mukherjee,
R/o H. No.RZ199b,
Maya Niwas Raj Nagar
Part-Two, Palam Colony,
New Delhi-110077.Applicants

(By Advocate: Mrs. Priyanka Bhardwaj for Mr. M.K. Bhardwaj)

VERSUS

Govt. of NCT of Delhi & Ors through:

1. The Chief Secretary,
Govt. of NCT of Delhi,
I.P. Estate,
New Delhi.
2. The Secretary DSSSB,
FC-18, Institutional Area,
Karkardooma, Delhi.
3. The Secretary,
Ministry of Defence,
South Block, New Delhi.
4. The Secretary,
DOP&T, North Block,
New Delhi.
5. The Directorate General
Resettlement,
Ministry of Defence,
West Block No.4,
New Delhi-110066.
6. The Directorate of Ex-Servicemen
Affairs, DHQ, MOD (Navy), 6th Floor,
Chanakya Bhawan, Chanakya Puri,
New Delhi.
7. Municipal Corporation of Delhi,
Through its Commissioner,
Civic Center, New Delhi.
8. Directorate of Education,
Govt. of NCT of Delhi,
Through its Director. ...Respondents

(By Advocate: Mr. R.K. Jain and Ms. Ritika Chawla)

ORDER (Oral)

HON'BLE SHRI P.K. BASU, MEMBER (A):

The applicants had appeared for the post of Assistant Teacher and Assistant Teacher (Primary) under post code

nos.70/09 & 71/09 against the advertisement issued by DSSSB in 2009. At that point of time, the respondents had provided reservation for ex-servicemen, along with age relaxation. Some of the aspiring candidates approached this Tribunal and challenged the Advertisement 2009 on the ground that the said Advertisement had been issued after implementation of the 6th Pay Commission recommendation, which was implemented w.e.f. 01.01.2006 and the 6th Pay Commission recommendation was for classification to the post of Assistant Teacher as Group 'B' instead of Group 'C'. The main agitation of the applicants in the litigation was that in case of classification as Group 'B', the cut off age limit of 27 years would increase to 30 years. The applicants in those OAs had made the prayer for classification as Group 'B', so that they could take advantage of the enhanced age.

2. The respondents state that as a result of the Tribunal's order dated 13.09.2011, the rules were amended in 2011, and the post of Assistant Teacher was classified as Group 'B' with age limit 30 years but reservation for ex-servicemen was removed.

3. It is stated by learned counsel for the respondents that the examination finally took place in 2013, and since reservation for ex-servicemen was applicable only for Groups 'C' and 'D' posts in accordance with the revised rules, as the post had been classified in Group 'B', no reservation for ex-servicemen could be offered.

4. In support of this claim, learned counsel for the applicants has contended as follows:-

- i) The advertisement was originally issued in the year 2009 and, therefore, any recruitment should be in accordance with the rules applicable at that point of time and not subject to amendment Rules of 2011.
- ii) The respondents have thereafter again amended the Rules in 2012, in which Rule-5 of the original rule has been amended as follows:-

"(5) (a) For appointment to vacancies in Group B (Non-Gazetted), Group C or Group D posts in Central Government, an ex-serviceman shall be allowed to deduct the period of actual military service from his actual age and if the resultant age does not exceed the maximum age limit prescribed for the post for years, he shall be deemed to satisfy the condition regarding age limit."

5. It is argued that it is clear from the above quoted amendment that Group 'B' (Non-Gazetted) has also been included for the purpose of grant of age relaxation for ex-servicemen and, therefore, there is no ground for rejecting the claim for reservation of ex-servicemen.

6. In her reply, learned counsel for the respondents relied upon Rule 2012 amended Rules, which reads as follows:-

"They shall come into force from the date of their publication in the Official Gazette."

7. It is stated that it would be clear from the notification that the reservation for ex-servicemen was made, *inter alia*, for Groups 'C' and 'D' posts. It is clarified that Rule 5, as amended, was only for the purpose of granting age relaxation for ex-servicemen. It is, therefore, contented that amendment 2012 is not at all relevant in the case and in fact amendment 2011 is relevant according to which reservation for ex-servicemen is not permissible as the post is classified as a Group 'B' post.

8. We have heard the learned counsel for the parties, perused the pleadings and given our thoughtful consideration to the matter.

9. We are persuaded by the argument of the learned counsel for the applicants that since advertisement was published in the year, 2009, the Recruitment Rules, as applicable on that date, should govern the recruitment. Even otherwise, the classification into Groups 'B', 'C' and 'D' is only based on pay-scales and, therefore, it should not take-away the basic purpose of reservation for ex-servicemen. The Assistant Teacher before the classification as Group 'C' and Assistant Teacher after classification as Group 'B' are not different creatures just because the pay-scale was revised after implementation of the 6th Pay Commission. The said post was re-classified in PB-2 with Grade Pay of Rs.4200/ and have got classified as Group 'B'. In our

considered view, the respondents are only trying to take shelter behind certain technicalities.

10. In view of the above, OA is allowed with a direction to the respondents to fill up the vacancies of 2009 advertisement in accordance with the Rules prevalent at that time. The said advertisement had stipulated reservation for ex-servicemen and, in case the applicants are otherwise qualified and eligible, they should be issued appointment letter giving consequential benefits in pay fixation and seniority with respect to their immediate junior mentioned in the merit list. However, pay and allowances are payable to them from the date of their actual joining. A time frame of three months is fixed from receipt of a certified copy of this order for compliance. No costs.

(DR BRAHM AVTAR AGRAWAL)
MEMBER (J)

(P.K. BASU)
MEMBER (A)

/JK/