

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 22.3.2018

ORIGINAL APPLICATION NO. 060/01166/2016

Chandigarh, this the 1st day of June, 2018

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...
Raj Kumar Yadav aged 41 years Group-C son of Shri Bihari Lal, r/o
Village Bhagwanpur, PO Ramgarh, Tehsil and District Rewari.

....APPLICANT

(Argued by: Shri Atul Yadav, Advocate)

VERSUS

1. Union Territory Chandigarh through its Secretary, Education Department, Sector 9, Chandigarh.
2. Director Public Instructions (S) Chandigarh Administration, Sector 9, Chandigarh.

....RESPONDENTS

(By Advocate: Shri Arvind Moudgil)

ORDER

SANJEEV KAUSHIK, MEMBER (J)

Applicant in the instant Original Application, is aggrieved against the action of respondents, declaring him ineligible for consideration to the post of Trained Graduate Teacher (TGT) Social Studies, under ESM category. He also sought direction from this Tribunal to direct the respondents to consider him eligible under the category of ESM and offer him appointment.

2. Facts, which led to filing of this O.A. are that the applicant commenced his service in the Indian Air Force on 16.3.1993. He completed prescribed period of 20 years service as on 15.2.2013. He was discharged from service from 29.2.2016. The Education Department of Chandigarh Administration issued notice for filling up 112 posts of TGT (Social Study), out of which 46 were meant for General category candidates, 36 for OBC category candidates, 30 for Scheduled Castes, 3 for Physically Handicapped, 4 for Sports and 11 for ESM vide Annexure A-1. The applicant, being Ex-Serviceman and eligible applied against the post of TGT (SS). The applicant was allowed to participate in the selection process. While declaring the result of written examination, applicant scored 119 marks and was called for documents verification. After lapse of 4 months, when the applicant did not hear anything from the respondents about the result from respondents, he submitted a representation dated 4.11.2015 (Annexure A-4) for issuance of appointment letter in his favour as he secured 119 marks. When he did not receive any information on the subject, then he submitted another representation and same also unanswered. He filed application under Right to Information Act, then the applicant was informed vide (Annexure A-7) dated 23.3.2016, that his candidature cannot be considered under the ESM, as he has been issued No Objection Certificate after the closing date of online application. Hence the O.A.

3. Respondents while resisting the claim of the applicant have taken a solitary objection that he cannot be considered for

appointment under the ESM category as 'NOC' has not been issued within one year from the date of submission of application form as he was discharged from duty on 29.2.2016 i.e. beyond one year from the closing date of application i.e. 2.12.2014.

4. We have heard the learned counsel for the parties and perused the material on record.

5. The solitary issue that came up for our consideration in the instant O.A. is whether the applicant can claim the benefit of Ex-Serviceman in the facts and circumstances of the present case or not.

6. Firstly, we have to find out who are Ex-Servicemen and under the relevant provision, who can get the benefit of Ex-Servicemen while seeking civil employment under Govt. of India. Ministry of Personnel, Public Grievances and Pensions issued notification dated 27.10.1986 notifying the Rules framed under Article 309 which is called as Ex-Servicemen (Re-employment in Central Civil Services and Posts Rules, 1979. These Rules have further been amended vide notification dated 27.10.1986 by amending Rules 1986 where Rule 2 of 1979 in rule 2, for clause (c), the following clause shall be substituted which reads as under:-

“(c) 'ex-servicemen' means a person, who has served in any rank (whether as a combatant or as a non-combatant) in the Regular Army, Navy and Air Force of the Indian Union but does not include a person who has Served in the Defence Security Crops, the General Reserve Engineering Force, the Lok Sahayak Sena and the para military forces ; and

- (i) who has retired from such service after earning his/her pension; or who has been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension ; or

- (ii) who has been released, otherwise than on his own request, from such service as a result of reduction in establishment ; or
- (iii) 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 of the following categories, namely ;
 - (i) pension holders for continuous embodied service;
 - (ii) persons with disability attributable to military service; and –
 - (iii) gallantry award winners.

Explanation : The persons serving in the Armed Forces of the Union, who on retirement from service, would come under the category of 'ex-servicemen' , may be permitted to apply for re-employment one year before the completion of the specified term of engagement and avail themselves of all concessions available to ex-servicemen but shall not be permitted to leave the uniform until they complete the specified term of engagement in the Armed Forces of the Union.

Perusal of above rules makes it clear that the persons who retired from service of any 3 wings of Armed Forces after earning his or her pension can be called Ex.-Serviceman. These rules have subsequently been amended vide notification dated 4.10.2012 and new Rules come into existence namely as Ex-Servicemen (Re-employment in Central Civil Services and Posts) Amendment Rules, 2012 where the Ex-serviceman has been defined in rule 2(c) (i) (a) and an employee who has retired or discharged from such service whether at his own request or being relieved by the employer after earning his or his pension. Same reads as under:

“who has retired from such service after earning his/her pension; or who has been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension.”

Above extracted part of amended rules leaves no doubt that if an employee working under any of the three wings of Armed Forces have earned his or her pension after completion of prescribed service of 20

years and has been discharged from duty then only he/she can be called as Ex-Servicemen. In the present case, the applicant had completed the prescribed 20 years service on 15.2.2013. As per DOPT O.M. dated 3.4.1991 which governs the field of Ex-Servicemen is permitted to apply for re-employment a year before he completed prescribed period.

7. In the light of above, there is no room for confusion that a army-man can be said to be an Ex-serviceman when he was retired/discharged from service by earning his pension. For grant of Ex-serviceman benefit in public employment, as per OM dated 3.4.1991, they were permitted to apply within one year from their retirement or discharge. In the present case, the applicant has not been retired or discharged from army service, though he had completed 20 years of service, but he remained active in army service. Thus, the applicant cannot be said to be an ex.serviceman and to avail the benefit which is conferred upon to an ex.serviceman.

8. In view of above discussion, we find the present OA is bereft of any merit and the same is accordingly dismissed. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 01.06.2018

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