

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01448/2018

DATED THIS THE 14th DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri Arun Kumar N.
S/o Late Nagaraju. S.
Aged about 41 years
R/at Ummathur Village and post
Chamarajanagar Taluk and District.

....Applicant

(By Advocate Sri Kalyan R.)

Vs.

1. Union of India
Ministry of Personnel Administration
North Block
New Delhi-110001
Rep by under Secretary.
2. Staff Selection Commission
Karnataka and Kerala Region (KKR)
1st Floor, 'E' Wing
Kendriya Sadan
Koramangala
Bangalore-560034.
3. Regional Director
SSC, (KKR)
1st Floor, 'E' Wing
Kendriya Sadan
Koramangala
Bangalore-560034.

....Respondents

(By Advocate Sri Sugumaran)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant in a nutshell is that he joined Indian Army on 3.1.2000 as

soldier clerk-general duty and took voluntary discharge on 31.7.2016. When 2nd respondent issued an employment notification dtd.8.10.2016(Annexure-A1) for the Combined Higher Secondary Level(10+2) Examinations, 2016 for the recruitment to the post of Postal Assistant/Sorting Assistant, Data Entry Operators, LDCs and Court Clerks, the applicant being fully eligible has submitted his application under GM-ESM quota through online on 21.10.2016(Annexure-A2) by uploading requisite documents. The mode of selection as per the notification is by conducting the test at two levels i.e. Tier-I and Tier-II and typing test. The 2nd respondent sent admission ticket(Annexure-A3) to the applicant to appear for the Tier-I test and accordingly he appeared for the test held on 19.1.2017. The applicant had secured 65 marks in the Tier-I examination(Annexure-A4). As per the cut-off marks fixed by the SSC for the Ex-S under Tier-I exam was 64.5. The 2nd respondent sent admission ticket to the applicant for Tier-II examination scheduled on 9.7.2017(Annexure-A5). The cut-off marks for Tier-II exams under the category of Ex-S was 149.50(Annexure-A6). The applicant had secured more than the cut-off marks under the category and was eligible for the typing test. After qualifying in the Tier-I and Tier-II tests, the applicant was asked to appear for the documents verification on 13.12.2017 and for the skill test on 14.12.2017(Annexure-A8). On 13.12.2017, the applicant appeared for the documents verification and the Assistant Director verified documents and issued an endorsement for having verified the documents(Annexure-A9). Thereafter he appeared for the typing test which is only qualifying in nature and the applicant qualified in the typing test(Annexure-A10). After the typing test the respondents have published the provisional list of candidates for the selection to the post wherein the applicant's name was not mentioned. Therefore, he submitted representation to the 2nd & 3rd respondents through online and a reply was received

by him through online(Annexure-A11) stating that the case of the applicant cannot be considered under the Ex-Serviceman quota.

2. The applicant submits that as per the OM dtd.14.8.2014(Annexure-A12), the person claiming Ex-servicemen quota if he has applied for more than one post at the time of his release/discharge from the armed forces and before joining any civil employment, he/she can avail of the benefit of reservation as ex-serviceman for any subsequent employment. However, to avail 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 applications for various vacancies for which he/she had applied for before the initial civil employment. He further submits that before his release/discharge from Army service, he had applied to the post of bill collector in the department of Municipal administration pursuant to the notification issued by the State Public Service Commission and he was selected to the said post as per the order dtd.30.6.2017 and was posted at CMC, Najangud, Chamarajnagar District w.e.f. 14.7.2017. As on the date of reporting for the post of bill collector, the selection process by the SSC to the combined post was under process. After joining the duty and reporting for the job as per the requirement of the OM, he had submitted his declaration dtd.13.12.2017(Annexure-A13) before conducting the typing test by the SSC and also sought permission to join the post for which SSC is making selection if he is found fit/selected in the examination. Thereafter, the Director of Municipal Administration had sent letter dtd.19.12.2017(Annexure-A14) stating that the declaration letter of the applicant was not submitted at the time of joining the duty but the same was submitted on 13.12.2017. As per the notification, the total number of vacancies reserved under Ex-S is 723 and number of candidates recommended are 407. The applicant had

marked his preference for Postal Assistant for which the total number of vacancies under Ex-S is 323 and selected 303 and still 20 posts are vacant. The 2nd respondent has published the revised selection list on 12.5.2018 with the names of the candidates. The notification does not say anything about disqualification under Ex-S quota if the candidate has selected under the civilian post by getting quota who has not furnished the details of the previous applications filed to different posts claiming Ex-S quota. The OM dtd.14.8.2014 says that the details of the applications shall be stated under the declaration but it does not say at the time of joining the civil service. In the instant case, the applicant has joined as bill collected on 14.7.2017 and gave declaration on 13.12.2017. Therefore, he complied with the requirement under the OM to claim quota and letter of the Director does not say that the applicant has not submitted the declaration. Despite being selected after clearing the exams and passing the typing test, the applicant has not been appointed. Being aggrieved by the same, he filed the present OA seeking the following relief:

a. Issue an appropriate writ or direction and quash the impugned endorsement 28.12.2017 issued by the respondent No.3 as per Annexure-A11 of the application.

b. To issue an appropriate direction by directing the respondent No.2 & 3 to consider the applicant to the post of Postal Assistant/Sorting Assistant, in accordance with law.

3. The respondents, on the other hand, have submitted in their reply statement that the applicant in response to the notification dtd.8.10.2016 made by the SSC for Combined Higher Secondary Examination 2016 to fill up the vacancies of various Group-C posts, has applied through online and the same was provisionally accepted and he was called for appearing for Examination. As per para-6 of notification, Ex-servicemen who have already secured employment in civil side

under central government in Group-C posts on regular basis after availing of the benefit of reservation given to ex-servicemen for their re-employment are not eligible for fee concession. However, he/she can avail of the benefit of reservation as Ex-servicemen for subsequent employment if he/she immediately, after joining civil employment, gives 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 as mentioned in OM dtd.14.8.2014(Annexure-R2) issued by DoPT. Whereas the applicant has not made declaration as required at the time of joining the former employment but only on 13.12.2017 i.e. after a lapse of 5 months from the initial employment vide Director's letter dtd.19.12.2017(Annexure-R3). While conducting document verification, it is clear that he was working with Directorate of Municipal Administration(Govt. of Karnataka) as Bill Collector w.e.f. 14.7.2017 on his immediate discharge from Army. Thus the applicant had already availed Ex-serviceman benefit/quota while assuming the initial job. As such, he was not entitled for Ex-serviceman benefit for second time and therefore was considered as General candidate for which he did not score the required minimum percentage of marks. Hence, there is nothing wrong in the reply/endorsement given to the applicant on 28.12.2017. The decision of the respondents is absolutely correct in accordance with the instructions and there was no violation of the fundamental rights guaranteed under Article 14, 16 and 21 of the Constitution of India. Therefore, the OA being devoid of merit is liable to be dismissed.

4. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small compass. The applicant is a post graduate in Kannada Literature and was working

as a bill collector in the Department of Municipal Administration, Karnataka Government since July 2017. In 2016, he had applied for the Combined Higher Secondary Level Examinations for recruitment to the post of Postal Assistant etc. As per Annexure-A12, ex-serviceman who get a civil employment after discharge by availing ex-serviceman quota can be eligible for subsequent posts in civil employment provided that the ex-serviceman as soon as he/she joins any civil employment should give self declaration/undertaking to the concerned employer about the datewise details of applications for various vacancies for which he/she had applied before joining the initial civil employment. The applicant had joined the Karnataka Government post on 14.7.2017 but had informed the department about his application for the Combined Higher Secondary Level Examinations conducted by Staff Selection Commission only after a delay of 5 months. Annexure-A12 OM has been issued with the specific purpose of enabling the ex-servicemen to aim for better jobs on the civilian side so as not to lose the benefit of being an ex-serviceman as soon as he joins his first job on the civil side. However, the caveat that as soon as a person joins he should inform the employer about the various applications he has already made is ostensibly with the purpose of enabling the employer to understand that it is likely that the ex-serviceman might leave their organisation and join elsewhere if he gets further employment. This is an enabling provision for the ex-serviceman to improve his job prospects and it is possible that the second job being under the Central Government, the applicant might have felt that the job holds out better prospects for him. The only mistake he had committed was that he had not intimated his first employer as soon as he joined but later after 5 months. This is too small an infraction for the benefit to be denied to an ex-serviceman especially since he has qualified in two tests as well as in the skill test

prescribed for the post. It is also seen that all the posts in the category for which he has applied have also not been filled up. Therefore, considering the fact that the applicant is an ex-serviceman and due to ignorance or otherwise he had failed to inform the first employer, the same need not be held as a serious infraction to deny him the benefit he is requesting for.

5. The OA is therefore allowed. The respondents are directed to issue necessary orders within a period of three(3) months from the date of issue of this order. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

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Annexures referred by the applicant in OA.No.170/01448/2018

- Annexure-A1: The copy of the notification and relevant portion of notification dtd. 7.11.2016
- Annexure-A2: The copy of the acknowledgment dtd.21.10.2016
- Annexure-A3: The copy of the admission ticket dtd.19.01.2017
- Annexure-A4: The copy of the list of cut off marks published by the SSC dtd.1.6.2017
- Annexure-A5: The copy of the admission ticket dtd.9.7.2017
- Annexure-A6: The copy of the cut off marks notification issued by the SSC dtd.13.10.2017
- Annexure-A7: The copy of the list of eligible candidate
- Annexure-A8: The copy of the call letter dtd.9.11.2017
- Annexure-A9: The copy of the acknowledgment dtd.13.12.2017
- Annexure-A10: The copy of the marks list dtd.2016
- Annexure-A11: The copy of the Email letter dtd.22.12.2017
- Annexure-A12: The copy of the OM dtd.14.8.2014
- Annexure-A13: The copy of the declaration dtd.13.12.2017
- Annexure-A14: The copy of the letter dtd.19.12.2017
- Annexure-A15: The copy of the staff selection list dtd.16.2.2018
- Annexure-A16: The copy of the relevant portion notification dtd.12.5.2018

Annexures with reply statement:

- Annexure-R1: Undertaking dtd.13.12.2017
- Annexure-R2: Copy of the OM dtd.14.8.2014
- Annexure-R3: Copy of Directorate of Municipal Administration, Karnataka dtd.19.12.2017
