

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WP(C).No. 33397 of 2011 (Y)

PETITIONER(S):

- 1. SINI BEN, MANAPURATHU PUTHAN VEEDU
CHERUKOLE PO, MAVELIKKARA , ALAPPUZHA 690 104.**
- 2. DASAN.P.A, POTTEMTHADATHIL,
PERAMANGALAM PO, THRISSUR 680 545.**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S):

- 1. UNION OF INDIA REPRESENTED BY THE
MINISTRY OF RAILWAYS, RAIL BHAVAN, NEW DELHI 110 001.**
- 2. CHAIRMAN,CENTRAL RECRUITMENT
COMMITTEE, RAILWAY PROTECTION FORCE, MINISTRY
OF RAILWAYS, RAIL BHAVAN, NEW DELHI 110 001.**
- 3. CHIEF SECURITY COMMISSIONER,
RAILWAY PROTECTION FORCE/INTEGRAL COCH FACTORY
CHENNAI 600 038.**

**R1-R3 BY ADV. SRI.M.C.CHERIAN,SR.SC.,RAILWAYS
R1-R3 BY ADV. SRI.C.S.DIAS,SC, RAILWAYS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS

- EXHIBIT P1 COPY OF THE NOTIFICATION BEARING NO.1/2009 DATED 14/11/2009
- EXHIBIT P2 COPY OF THE RANKED LIST
- EXHIBIT P3 COPY OF THE STANDING ORDER NO.89 DATED 12/6/2009
- EXHIBIT P4 COPY OF THE HALL TICKET
- EXHIBIT P5 COPY OF THE LIST OF QUALIFIED CANDIDATES
- EXHIBIT P6 COPIES OF THE COVERS

RESPONDENTS' EXHIBITS:

- EXHIBIT R3(1) COPY OF LETER DATED 22.11.2012 ISSUED BY THE DEPUTY
DIRECTOR/SEC (E), RAILWAY BOARD, NEW DELHI ALONGWITH THE
LIST OF RECOMMENDED CANDIDATES FOR APPOINTMENT AS
INSPECTORS AND SUB INSPECTORS (PROSECUTION)

//TRUE COPY//

P.A. TO JUDGE

JV

'CR'

ANIL K.NARENDRA, J.

W.P.(C)No.33397 of 2011

Dated this the 16th day of October, 2015

JUDGMENT

The petitioners had applied for the post of Inspector (Prosecution) in the Railway Protection Force (RPF), under the Ministry of Railways pursuant to Ext.P1 notification dated 14.11.2009 issued by the Chairman, Central Recruitment Committee, the 2nd respondent herein. They have approached this Court in this writ petition seeking a writ of certiorari to quash Ext.P2 final list of the candidates provisionally selected to the post of Inspector (Prosecution) in the RPF, to the extent of non-inclusion of candidates under the categories 'Female OBC' and 'Ex-Servicemen'. The petitioners have also sought for a declaration that, they are entitled to be included in Ext.P2 final list and resultantly entitled to be appointed as Inspector (Prosecution) on the basis of the reservation provided in Ext.P1 notification. By way of an amendment, a writ of mandamus was also sought for, commanding the respondents to appoint the 2nd petitioner as Inspector

(Prosecution), by invoking Rule 6A of the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules 1979.

2. The respondents have filed a counter affidavit, to which the petitioners have filed a reply affidavit. Thereafter, the respondents have also filed an additional counter affidavit. By order dated 10.7.2015 in I.A.No.8356 of 2015, the writ petition was amended and the respondents have filed an additional counter affidavit to the amended writ petition.

3. I heard arguments of the learned counsel for the petitioner and also the learned Standing Counsel representing the respondents.

4. By Ext.P1 notification, the 2nd respondent invited application for recruitment to the post of Inspector (Prosecution) and Sub Inspector (Prosecution) in the RPF. The number of vacancies notified in Ext.P1 notification, in the post of Inspector (Prosecution) is as follows;

	UR	OBC	SC	ST	TOTAL
Male	20	14	5	7	46
Female	2	2	1	1	6
Ex-Servicemen					6
Grand Total					58

5. As per Ext.P1 notification, 2 vacancies of Inspector (Prosecution) are reserved for 'Female OBC' and 6 vacancies for 'Ex-Servicemen'. The educational qualification and working experience prescribed in Ext.P1 notification are that, the candidate must have passed Bachelor Degree Examination in Law from a recognised University and practised as an Advocate for not less than 5 years as on the date of notification. The selection process in Ext.P1 notification includes a written test, which carries maximum mark of 180, and a viva-voce by the Recruitment Committee, which carries 20 marks, including 5 marks on documents verification. As per clause (ii) of sub-para (C) of Para.4 of Ext.P1 notification, the purpose of viva-voce is to determine the professional skill, general intelligence, awareness and alertness of the candidates and to assess their overall suitability for the post. It was also made clear that, those who do not appear for the viva-voce will not be considered in the final selection, irrespective of their performance in the written test.

6. Pursuant to Ext.P1 notification, the 1st petitioner submitted application for the post of Inspector (Prosecution) claiming reservation under the category 'Female OBC' and the 2nd

petitioner submitted application claiming reservation under the category 'Ex-Servicemen'. Their grievance in this writ petition is that, despite reservation of 2 vacancies for 'Female OBC' and 6 vacancies for 'Ex-Servicemen', no candidates under the said categories were included in Ext.P2 final list. Though Ext.P2 final list contains 2 candidates under the category 'Females' it does not contain any candidate under the category 'Female OBC' or 'Ex-Servicemen'. Further, the petitioners do not find place in Ext.P2 final list. Therefore, they would contend that, Ext.P2 final list does not reflect fulfillment of the reservation contemplated in Ext.P1 notification for the aforesaid two categories.

7. The process of recruitment pursuant to Ext.P1 notification was also subject to Ext.P3 Standing Order No.89 dated 12.6.2009 issued by the Railway Board, which deals with recruitment to the post of Inspector (Prosecution) and Sub-Inspector (Prosecution) in the RPF. Para.1 of the Standing Orders provides that, the recruitment shall be conducted in accordance with the provisions contained in the Railway Protection Force Rules, 1987, as amended from time to time. Para.6 of the Standing Order deals with determination and notification of vacancies. As per clause (iv) of

Para.6, reservation for ex-servicemen will be 10% of the vacancies. Further category-wise breakup of vacancies (SC/ST/OBC) reserved for Ex-Servicemen shall not be done. Clause (iv) of Para.6 provides further that, in case suitable ex-servicemen are not available, the vacancies may be filled up by the male candidates under unreserved (UR) category. Para.12 of the Standing Orders provides for preparation and approval of Board Sheet and Mark List. Clause (ii) of Para.12 mandates that, for inclusion in the merit list 60/100 shall be the qualifying marks for General/OBC categories and 50/100 for SC/ST categories.

8. The specific stand taken by the respondents in their counter affidavit is that, the petitioners could not secure the qualifying marks of 60/100 and as such they were not included in Ext.P2 final list. In Para.6 of the counter affidavit, the respondents have furnished the marks secured by the petitioners, which would show that, they could secure only 42.13% and 44.13% marks respectively, much below the minimum qualifying marks of 60% prescribed in Para.12 of Ext.P3 Standing Orders. Admittedly, the 1st petitioner has not secured the minimum qualifying marks of 60% for inclusion in Ext.P2 final list and there is no provision in Ext.P3

standing orders by which the candidates under the category 'Female OBC' could be considered for inclusion in Ext.P2 final list by lowering the standard of selection. Therefore, in the absence of any vitiating circumstances pointed out in the process of recruitment, the 1st petitioner could not have any legal grievance, which could be redressed by this Court in exercise of the discretionary jurisdiction under Article 226 of the Constitution of India. In that view of the matter, the 1st petitioner is not entitled for the reliefs prayed for in this writ petition.

9. As far as the 2nd petitioner is concerned, he could secure only 44.13% marks as against the minimum qualifying mark of 60% prescribed in Ext.P3 Standing Orders. However, the 2nd petitioner would contend that, the candidates under ex-servicemen category could be considered for inclusion in the final list even after lowering the standard of selection, once it is found that sufficient number of candidates belonging to that category are not available on the basis of the general standard for selection.

10. The Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 (hereinafter referred to as 'the Re-employment Rules') regulates the recruitment of ex-servicemen in

Central Civil Services and Posts. Rule 3 of the Re-employment Rules, provides that, the rules shall apply to all the Central Civil Services and posts, Group 'C' and Group 'D' and to the posts of the level of Assistant Commandant in all paramilitary forces. Later, by the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Amendment Rules, 2012, notified in the Gazette of India dated 4.10.2012, Rule 3 of the Re-employment Rules was substituted, as per which the rules shall apply to all the Central Civil Services and Posts and the posts upto the level of Assistant Commandant in all paramilitary forces.

11. Rule 4 of the Re-employment Rules deals with reservation of vacancies. As per sub-rule (1) of Rule 4, 10% of the vacancies in the posts of the level of Assistant Commandant in all paramilitary forces; 10% of the vacancies in each of the categories of Group 'C' posts and of such posts in each Group 'C' Service; and 20% of the vacancies in each of the categories of Group 'D' posts and of such posts in each Group 'D' service, including permanent vacancies filled initially on a temporary basis and temporary vacancies which are likely to be made permanent or are likely to continue for 3 months and more, to be filled by direct recruitment in any year, shall be

reserved for being filled by ex-servicemen. The first proviso to sub-rule (1) of Rule 4 provides that, the percentage of reservation so specified for ex-servicemen in a category of posts shall be increased or decreased in any one recruitment year to the extent to which the total number of vacancies reserved for ex-servicemen, Scheduled Castes and Scheduled Tribes (including the carried forward reservation for SC and ST) and for any other categories taken together, falls short or is in excess, as the case may be, of 50% of the vacancies in that category of posts filled in that year. The second proviso to sub rule (1) provides further that, in case of an increase in the reservation for the ex-servicemen under the preceding proviso, the additional vacancies so made available for them shall be utilized first for the appointment of disabled ex-servicemen and if any such vacancies still remain unfilled thereafter, the same shall then be made available to other ex-servicemen.

12. Sub-rule (2) of Rule 4 of the Re-employment Rules provides that, out of the vacancies reserved for being filled by ex-servicemen, vacancies shall be reserved for candidates belonging to the Scheduled Castes and Scheduled Tribes in accordance with such orders as are issued in this behalf by the Central Government from

time to time. The proviso to sub-rule (2) provides further that, if any ex-servicemen belonging to the Scheduled Caste or Scheduled Tribe is selected, his selection shall be counted against the overall quota of reservations that shall be provided for the Scheduled Castes or Scheduled Tribes in accordance with the orders issued by the Central Government from time to time.

13. Sub-rule (3) of Rule 4 of the Re-employment Rules mandates that, no vacancy reserved for ex-servicemen in a post to be filled otherwise than on the results of an open competitive examination, shall be filled by the Appointing Authority by any general candidate, until and unless the said authority has obtained a 'Non-availability Certificate' from the employment exchange (where a requisition is placed on an employment exchange); has verified the non-availability of a suitable candidate by reference to the Director General Resettlement and recorded a certificate to that effect; and has obtained approval of the Central Government.

14. Sub-rule (1) and sub-rule (2) of Rule 4 of the Re-employment Rules was substituted by the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Amendment Rules, 2012 . A proviso was also added after sub-rule (3) of Rule 4 by the

Amendment Rules, 2012. Sub-rule (1) and sub-rule (2) of Rule 4 as substituted and the proviso to sub-rule (3) of Rule 4 as added by the Amendment Rules, 2012 read thus;

"(1) 10% of the vacancies in the posts upto of the level of the Assistant Commandant in all para-military forces, 10% of the vacancies in Group 'C' posts; and 20% of the vacancies in Group 'D' posts, including permanent vacancies filled initially on a temporary basis and temporary vacancies which are likely to be made permanent or are likely to continue for three months and more, to be filled by direct recruitment in any year shall be reserved for being filled by ex-servicemen."

"(2) The Scheduled Castes, the Scheduled Tribes and the Other Backward Class candidates selected against the vacancies reserved for ex-servicemen shall be adjusted against vacancies reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes, respectively:

Provided that if a the Scheduled Caste or the Scheduled Tribe or the Other Backward Class ex-servicemen is selected against the vacancy reserved for ex-servicemen and vacancy reserved for the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes, as the case may be, is not available to adjust such ex-serviceman, he shall be adjusted in future against the next available vacancy reserved for the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes, as the case may be."

"(3) xxx xxx xxx

Provided that in case of recruitment to the vacancy reserved for ex-servicemen in the Central Para Military Forces, the reserved vacancy remained unfilled due to non-availability of eligible or qualified candidates, the same shall be filled by candidates from non-ex-servicemen category".

15. Rule 6A of the Re-employment Rules inserted by the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Amendment Rules, 1986, notified in the Gazette of India dated 1.3.1986 provides for lower standard for selection of candidates belonging to ex-servicemen. Rule 6A provides that, in the case of direct recruitment, if sufficient number of candidates belonging to the ex-servicemen are not available on the basis of general standard to fill all the vacancies reserved for them, candidates belonging to the category of ex-servicemen may be selected under a relaxed standard of selection to make up the deficiency in the reserved quota subject to the condition that such relaxation will not affect the level of performance by such candidates.

16. Rule 7 of the Re-employment Rules provides for amendment to recruitment rules. Rule 7 mandates that, all rules regulating the recruitment of persons to Group 'C' and Group 'D'

posts and services under the Central Government shall be subject to the provisions of the Re-employment Rules and shall be construed accordingly. Further, going by Rule 8 of the Re-employment Rules, if any question arises as to the interpretation in the said rules, the question shall be decided by the Central Government and the decision of the Central Government shall be final.

17. The Central Government have notified the Re-employment Rules in order to provide necessary facilities for the resettlement of ex-servicemen who have given the best part of their life for the safety and security of the nation; on noticing that almost all ex-servicemen require help and assistance for resettlement and that, they require a second career as they are young and active and their responsibilities and obligations are at the peak when they retire from service at the age of 35 to 54 years, depending on their rank. The Re-employment Rules notified by the Central Government, being statutory in nature, should be scrupulously followed while making recruitment to the Central Civil Services and posts which fall within the purview of Rule 3. It is more so when Rule 7 mandates that, all rules regulating recruitment to the posts and services under the Central Government, which fall within the purview of Rule 3, shall be

subject to the provisions of the Re-employment Rules and shall be construed accordingly.

18. In the case on hand, the pleadings and materials on record would show that, though 6 vacancies of Inspector (Prosecution) in the RPF were reserved in Ext.P1 notification for re-employment of ex-servicemen, none of the candidates under the said category could find place in Ext.P2 final list. In view of the mandate of Rule 7 of the Re-employment Rules, the respondents were statutorily bound to conduct process of recruitment pursuant of Ext.P1 notification dated 14.11.2009, subject to the provisions of the aforesaid Rules, as it stood prior to its amendment by the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Amendment Rules, 2012. As I have already noticed, Rule 6A of the Re-employment Rules provides that, if sufficient number of candidates belonging to the ex-servicemen are not available in a recruitment, on the basis of general standard to fill all the vacancies reserved for them, candidates belonging to the said category may be selected under a relaxed standard of selection to make up the deficiency in the reserved quota, subject to the condition that such relaxation will not affect the level of performance by such

candidates. However, a reading of the counter affidavit and the additional counter affidavits filed by the respondents would make it explicitly clear that, even without considering the question as to whether the candidates belonging to the category of ex-servicemen could be selected under a relaxed standard of selection to make up the deficiency in the reserved quota as provided under Rule 6A of the Re-employment Rules, the respondents proceeded with the selection process and filled up 6 vacancies reserved for re-employment of ex-servicemen by candidates under unreserved (UR) category, by taking recourse of clause (iv) of Para.6 of Ext.P3 Standing Order issued by the Railway Board, which provides that, in case suitable ex-servicemen are not available, the vacancies may be filled up by the male candidates under unreserved (UR) category.

19. In view of the mandate of Rule 7 of the Re-employment Rules, Ext.P3 Standing Order will be subject to the provisions of the Re-employment Rules and it can only be construed accordingly. Therefore, the stand taken by the respondents that, in the absence of eligible candidates under ex-servicemen, 6 vacancies reserved for that category was reverted to unreserved (UR) category and as such 6 unreserved candidates included in Ext.P2 ranked list were given

appointment, cannot be legally sustained.

20. However, as rightly pointed out by the learned Standing Counsel for the respondents, the petitioners have not chosen to challenge the appointment given to those 6 unreserved candidates against the vacancies reserved for ex-servicemen and they are also not made parties to this writ petition. In that view of the matter, the 2nd petitioner is also not entitled for the reliefs prayed for in this writ petition.

21. In **Som Prakash Rekhi v. Union of India (1981 (1) SCC 449)** a Three-Judge Bench of the Apex Court held that, social justice is the conscience of our Constitution, the State is the promoter of economic justice, the founding faith which sustains the Constitution and the country is Indian humanity. The public sector is a model employer with a social conscience not an artificial person without soul to be damned or body to be burnt. Later, in **Gurmail Singh and others v. State of Punjab and others, (1991 (1) SCC 189)** the Apex Court reiterated that, the State as a model employer is expected to show fairness in action.

22. Viewed in the light of the law laid down by the Apex Court in the aforesaid decisions, the Indian Railways, which is one of the

biggest employers in India with more than 14 Lakh employees, should act as a model employer and show fairness in action. But, in the instant case, instead of scrupulously following the mandatory requirements under the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979, which is having statutory force, the respondents proceeded with the process of recruitment, even without considering the question as to whether the candidates belonging to the category of ex-servicemen could be selected under a relaxed standard of selection to make up the deficiency in the reserved quota, as provided under Rule 6A and filled up 6 vacancies reserved for re-employment of ex-servicemen by candidates under unreserved (UR) category, by taking recourse of clause (iv) of Para.6 of Ext.P3 Standing Order. When Rule 7 mandates that, all rules regulating recruitment to the posts and services under the Central Government, which fall within the purview of Rule 3, shall be subject to the provisions of the Re-employment Rules, the respondents should have scrupulously followed the mandatory requirements under the said Rules keeping in mind that, the Re-employment Rules was enacted by the Central Government to provide necessary facilities for the resettlement of ex-servicemen who have given the

best part of their life for the safety and security of the nation.

In that view of the matter, though the 2nd petitioner is also not entitled for the reliefs prayed for, this writ petition is disposed of directing the respondents to scrupulously follow the provisions under the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979, while making recruitment to the posts which fall within the purview of Rule 3 of said Rules, keeping in mind the object sought to be achieved by the enactment of such statutory provisions.

No order as to costs.

Sd/-
ANIL K.NARENDRA, JUDGE

jv/skj

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P.A to Judge