

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2015

Date of Reserving the Judgment	Date of Pronouncing the Judgment
05.03.2015	18.03.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.16942 of 2014 &
M.P.Nos.1&2 of 2014

Lt.Col.Nagarajan R.(Retd) ... Petitioner

Vs

The Government of India
Ministry of Defence
Director General of Resettlement
West Block - 4, R.K.Puram
New Delhi 110 066. ... Respondent

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the entire records relating of the respondent in Leter No.2112/SA/Emp-1 dated 9th April 2014 and quash the same and further direct the respondent to permit the petitioner's empanelment to be operational until the petitioner attains the age of 63 years.

For petitioner .. Mr.P.J.Rishikesh

For Respondent ... Mr.A.S.Chakravarthy

ORDER

The petitioner is an Ex-Serviceman, having retired as a Lt.Colonel from the Army. The petitioner has filed this Writ Petition for issuance of a writ of certiorarified mandamus to quash the order passed by the respondent dated 09.04.2014 and to permit his name to be empanelled as a Security Agency, till he attains the age of 63 years.

2.The Ministry of Defence with a view to rehabilitate the Ex-Servicemen, has formulated various schemes and one such scheme is to provide self-employment opportunity by affording employment as Security Guards/Supervisors to Ex-Servicemen, other than Officers. In this regard, the Directorate General of Resettlement (DGR) has issued Guidelines on 09.07.2012, amended vide Memorandum dated 16.01.2013. The petitioner submitted his application for being empanelled as a Private Security Agency by Application dated 24.06.2011. The Application was scrutinised and returned on 04.07.2011, with a direction to resubmit in the new format. The petitioner resubmitted the Application in the new format on 26.07.2011, which was received by the respondent on 11.08.2011. Once again the Application was returned on 05.09.2011, pointing out certain discrepancies. The petitioner resubmitted the Application after duly complying the defects pointed out on 15.10.2011. Once again the Application was returned for the third time on 31.10.2011, stating that the petitioner should obtain signature of a Class I Magistrate on the rental agreement. The petitioner had put enormous efforts and after obtaining the signature, resubmitted the same during last week of November 2011. Once again the Application was returned for the fourth time on 13.12.2011, with a show cause notice pointing out the variation in the petitioner's date of birth. The petitioner submitted his explanation and resubmitted his Application on 24.12.2011. However, no action was initiated for over three months and the petitioner sent a reminder on 06.03.2012. Pursuant thereto on 16.03.2012, the respondent has once again raised objections and kept the Application in abeyance. It is submitted that it is the fifth time objections have been made on the petitioner's Application. The petitioner complied with whatever details was called for on 30.04.2012 and was confident of being empanelled. However, once again clarification was sought for by the respondent vide communication dated 16.05.2012. The petitioner obtained necessary endorsement from the First Class Judicial Magistrate to show that the above premises is located in the Municipal Corporation area and submitted the same on 31.05.2012. Once again an objection was raised on 26.06.2012, stating that the endorsement made by the First Class Judicial Magistrate was in Handwritten format and the petitioner should produce a fresh Rental Agreement in fully typed format with attestation. This return effected after the new policy guidelines were issued by the Ministry of Defence. Once again the petitioner provided the necessary information and he was ultimately empanelled as a Security Agency on 06.09.2012.

5.In terms of the new guidelines which came into force on 09.07.2012, the Ex-Servicemen (Officers) who are empanelled under the new guidelines will automatically be dis-empanelled once they attain 60 years of age. Subsequently, the Ministry of Defence vide Office Memorandum dated 16.01.2013, issued an Amendment, stating that all individual Security Agencies and Private Limited Companies who have been empanelled prior to 09.07.2012, will be governed by the old

guidelines and the the Security Agencies in respect of age and cumulative quota of guards without being permitted to act new Directors. Thus, the Security Agencies empanelled prior to 09.07.2012 will be governed by old rule of 63 years of age/cumulative quota of 300 guards, whichever is earlier.

6.The petitioner Application for empanelment was made on 26.4.2011 and was empanelled only on 06.09.2012, thereby making him ineligible to confine beyond 60 years of age. Therefore, the petitioner submitted representation requesting to consider his empanelment as prior to the cut off date i.e. 09.07.2012, as the delay in empanelment was not attributable to him. However, the respondent by passing the impugned order has rejected the petitioner's request.

7.The learned counsel for the petitioner after elaborately referring to the facts set out above, pointed out that in terms of Office Memorandum, on 09.07.2012, is a Guidelines for functioning of DGR empanelled Ex-Servicemen for Security Services and under clause 7(e) of the Guidelines, the DGR will examine the empanelment request and any/all deficiencies in the application will be intimated to the ESM online/ through the letter within a week of receipt of the application and also be displayed in the Official website. Further all observations of the Application will be intimated at one go, piecemeal observation will not be permitted. Further, in terms of clause 7(f), it is stated that the empanelment will be done within 15 days of the completed Application form along with required documents and the list of required documents will be hosted in the DGR Website. Therefore, it is submitted that the respondents unreasonably returned the petitioner's Application repeatedly and each time with a new reason clearly violating the provisions of their Guidelines, which stipulates the procedure to be followed. Therefore, it is stated that for all purposes, the petitioner should be treated to have been empanelled within the cut off date entitled to continue till he attains 63 years of age. Further, it is submitted that there is clear violation of clause 7(f) of the Guidelines, which stipulates that empanelment will have to be done within 15 days from the date of receipt of completed Application form. The learned counsel further submitted that the petitioner's Application should not have been returned on the ground that 'hand written' endorsement made by the Metropolitan Magistrate, which however with great difficulty the petitioner had obtained. With the above submissions, the learned counsel prayed for setting aside the impugned order and for issuing necessary directions as sought for.

8.The learned Standing Counsel appearing for the respondent by referring to the new instructions given by the Ministry elaborately referred to the factual details and submitted that the petitioner while resubmitting his application on 26.7.2011, did not rectify all the observations raised by the Department and therefore, it was

returned on 05.09.2011. In the meantime Office Memorandum dated 29.9.2011 was issued for streamlining the working of DGR Scheme. The petitioner resubmitted his Application on 15.10.2011 and in the light of the Office Order dated 18.10.2011, the petitioner was directed to resubmit the Application vide communication dated 31.10.2011. The petitioner resubmitted his Application as per the new revised check list of documents and that was returned since there was variation in the date of birth given in the documents vide letter dated 13.01.2011. The petitioner resubmitted his Application with clarification regarding his date of birth by letter dated 24.12.2011, received by the Office of the respondent on 30.12.2011 and on 23.01.2012, at the E & R Cell, DGR. Therefore, it is submitted that the contention of the petitioner that he rectified all defects raised in the petition dated 13.12.201, is incorrect with regard to his date of birth. The delay was not on the part of the DGR, but, because of incomplete and incorrect documents submitted by the petitioner. The petitioner resubmitted his Application on 30.04.2012, without rectifying the observations made in the letter dated 16.03.2012 and therefore, he was asked to resubmit the documents vide letter dated 16.5.2012. Once again the petitioner resubmitted his Application on 31.05.2012, rectifying the observations with regard to date of birth. Further, it is submitted that though the date of birth issue was rectified, he did not rectify the observations with respect to location of the shop in a commercial area of the Municipal Corporation or Development Authority. Therefore, the Application was returned on 26.06.2012 and the complete Application rectifying all observations was received at DGR on 19.07.2012 vide petitioner's letter dated 11.07.2012. In the meantime, a new Office Memorandum regarding empanelment of Security Agencies was issued by the Ministry of Defence on 09.07.2012, fixing the age limit. Therefore, the petitioner's case was considered in accordance with same and found that he is not entitled to continue on attaining the age of 60 years since he was empaneled after 09.07.2012.

9. Heard Mr.P.J.Rishikesh, learned counsel appearing for the petitioner and Mr.A.S.Chakravarthy, learned Counsel, appearing for the respondent and perused the materials placed on record.

10. Two issues would fall for consideration in this Writ Petition. Firstly, as to whether the petitioner's empanelment would stand affected on account of the amendment to the Guidelines issued on 09.07.2012, since the order empanelling him as Security Agency was passed on 06.09.2012, after the cut off date fixed vide amendment dated 16.01.2013. The second issue would be as to whether the manner in which the petitioner's Application was dealt with was in accordance with the Guidelines issued by the Ministry of Defence on 09.07.2012.

11.The date on which the Application was submitted by the petitioner, the dates on which the Applications were returned and resubmitted are not in dispute. Likewise, it is not disputed that the formal order of empanelment was issued on 06.09.2012. Taking up the second issue first, it has to be seen as to whether the Application submitted by the petitioner was processed in accordance with the Guidelines issued by the Ministry of Defence. Though the Office Memorandum dated 09.07.2012, issued by the Ministry of Defence is in the nature of Guidelines, it is in fact the Rule governing the empanelling process of Ex-Servicemen for Security Services. The procedure is stipulated to ensure fairness and transparency. Two clauses under the Guidelines could be relevant for the purpose of this case viz. Clause 7(e) and Clause 7(f), falling under Chapter 'Empanelment', which reads as follows:

"7.Empanelment:

DGR will follow the prescribed procedure as below for registration/empanelment of security agency scheme:

...

(e)DGR will examine the empanelment request and any/all deficiencies in the application will be intimated to the ESM online/through a letter within a week of receipt of the application and it will also be displayed on the DGR website. All observations on the application will be intimated at one go, piecemeal observation will not be permitted.

(f)Empanelment will be done with 15 days of receipt of the completed application form along with the required documents. List of documents required for empanelment of security agency scheme will be hosted on DGR website. "

12.As and when an Application is submitted requesting empanelment, in terms of the Guidelines the said Application has to be examined and if there is any deficiency, the same has to be intimated to the applicant either online or through letter with a period of one week of the receipt of the Application and should be displayed in the official website. The noteworthy feature of the Guideline is that all such deficiencies or observations on the Applications should be intimated at one go, piecemeal observations will not be permitted. This procedure is to ensure that the Application is dealt with fairly and the incumbent is being informed within a week about all deficiencies or observations in his Application. This procedure is being followed by the Courts and Tribunals when Petitions/Appeals are filed in the Registry. This is to intimate the person filing the Petition/Appeal as to what are all

the defects he has to rectify and what compliances to be done to be indicated at the first instance itself.

13. From the facts set out in the preceding paragraphs, it is evident that clause 7(e) of the Guidelines was totally ignored. The petitioner's application for empanelment was returned more than six times. The respondent in their counter/written instructions would state that the petitioner did not comply with all the defects which were pointed out. However, the communications sent to the petitioner returning the Application does not say so. One can take judicial notice of the fact that if a Registry of a Court or Tribunal, returns the Petition or Appeal for various reasons and if the petitioner re-present the papers complying with only few of the returns, and not all, the Registry will make an endorsement by returning the petition/appeal, directing compliance of the previous return. However, such procedure was not adopted in the instant case.

Therefore, clause 7(e) of the Guidelines has been violated in the case of the petitioner. Clause 7(f) stipulates the time within which the completed Application Forms will have to be considered for empanelment. The respondent would state that because of the amendment to the Guidelines, there were certain issues and that apart the petitioner did not submit his Application along with all required documents in all respects and therefore, he cannot rely upon clause (f) of the Guidelines.

14. The petitioner's Application was returned on 13.12.2011, which was the fourth return. The only defect pointed out is regrading the variation of date of birth and the petitioner was directed to show cause within 15 days as to why his Application for empanelment for security services should not be rejected. The alleged earlier defects were not reiterated in the show cause notice dated 13.12.2011. The petitioner submitted his reply. While considering his reply and keeping in abeyance the petitioner's application, a communication was sent on 16.3.2012, intimating the petitioner that his Application will be held not processed till submission of rectified documents resolving the variation in date of birth from the competent authority. Not stopping with that, two more observations were made regarding the rental agreement and submission of Form No.26 AS.

15. It is to be pointed out that the aforesaid two observations were not mentioned earlier. Subsequently, after the petitioner effecting necessary compliance regarding the date of birth, after about three months by communication dated 16.3.2012, it was stated that the rental agreement does not specify the location of the shop in a commercial area and the copy of the corrigendum issued by CCDA is not eligible. Subsequently, they reiterated the issue regarding

his rental agreement and the location of property by another notice dated 26.6.2012.

16.It appears that the respondent was insisting upon the endorsement from the First Class Magistrate on the rental agreement. Under normal circumstances, no such endorsement is being made, but, curiously enough in the instant case, such endorsement was made. This rental agreement dated 14.11.2011, was attested by the Magistrate. In page No.2 of the Rental Agreement, the Magistrate by handwriting mentioned that the place of business is located in a commercial area, notified by the Chennai City Municipal Corporation. He has attested the endorsement with his full signature and official seal. However, the respondent took exception to the same stating that it has to be in 'type written'. Therefore, the petitioner prepared another rental agreement and obtained attestation from the same Magistrate and produced the same. Therefore, the petitioner's Application was fully complaint in all respects by end of November 2011, when he submitted the rental agreement with proper endorsement, which was attested by the Metropolitan Magistrate, George Town, Chennai. One defect which was earlier pointed out was with regard to the variation of the date of birth, was explained to the satisfaction of the respondent much prior to 26.06.2012. Therefore, the petitioner's application was complete in all respects and could not have been treated under the new Regulations solely on the ground that the rental agreement initially produced had an endorsement which was 'hand written' though the Metropolitan Magistrate signed and attested the handwritten endorsement. Therefore, for all purposes, the rental agreement initially produced by the petitioner shall be held to be valid.

17.In the light of the above, the Writ Petition is allowed, the impugned order is set aside and the respondent is directed to treat the petitioner as a Security Agency empanelled prior to 09.07.2012, governed by the old Guidelines on Security Agencies in respect of age and cumulative quota of guards and other parameters. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Government of India
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Director General of Resettlement
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+1 cc to M/s.P.J.Rishikesh, Advocate,SR.15716.

+1 cc to Mr.A.S.Chakravarthy, Advocate,SR.15395.

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