

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**1. CM-9640-2015 and
CM-1037-2015 in/and
C.W.P. No. 14199-2014 (O&M)
Date of Decision : 06.08.2015**

Major Bharat Bhan Petitioner

Versus

State of Haryana & another Respondents

**2. C.W.P. No. 14243-2014 (O&M)
Date of Decision : 06.08.2015**

Sharad Tuli Petitioner

Versus

State of Haryana & another Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Amandeep Singh Talwar, Advocate
for the petitioner in CWP-14199-2014.

Mr. Sanjeev Manrai, Senior Advocate with
Mr. Sanjay Dhiman, Advocate
for the petitioner in CWP No.14243-2014.

Mr.Ashok Singh Chaudhary, Addl. A.G., Haryana.

Mr. Kanwal Goyal, Advocate for respondent No.2.

Mr. A.K.Walia, Advocate
for the applicant in CWP No.14199-2014.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

CM-9640-2015 in CWP-14199-2014

This is an application for placing on record the document Annexure A-1.

It is stated that on the last date an order had been passed directing the petitioners to place on record the contract of their re-employment. Learned counsel states that there is no specific contract but the re-employment is covered by Annexure A-1.

In the circumstances, CM is allowed. Document (Annexure A-1) is taken on record.

Learned counsel appearing for respondent No.2 has also placed on record a copy of a notification dated 04.10.2012 whereby certain amendments have been made in the Ex-Serviceman (Re-employment in Central Civil Services and Posts) Rules, 1979 and the same is taken on record as Mark 'A'.

CM-1037-2015 in CWP-14199-2014

This is an application under Order 1 Rule 10 read with Section 151 CPC for permission to be impleaded as respondent No.3.

The applicant claims that his chances of selection would be jeopardized in case the petition is allowed. It is not disputed that till date even the results have not been declared. In the circumstances the apprehension of the applicant is not based on any record since the final

result has not been declared.

In the circumstances I see no reason to implead the applicant as a party. Application is dismissed.

CWP Nos.14199 and 14243 of 2014

This order shall dispose of the above mentioned two writ petitions. Since common questions of law and facts are involved therein, they are being decided by this common order.

Both the petitioners were appointed as Short Service Commissioned Officers. Both of them had completed their initial tenure of five years and were in their extended tenure of further five years. It was at that stage that they applied for the post of Dental Surgeon Class-II under the category of ex-serviceman. They were declared ineligible since they were still in service. The claim of the petitioners is that they are entitled for reservation under the ex-serviceman quota in the light of rule 2 (C) of the Ex-serviceman (Re-employment in Central Civil Service and Posts) Rules, 1979, as amended by Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated 27.10.1986 read with notification dated 04.10.2012.

Rule 2 (c) of the un-amended notification is as follows :-

2. In Rule 2 of the Ex-servicemen (Reemployment in Central Civil Services and Posts) Rules, 1979, for clause (C) the following clause shall be submitted, namely :

“(c) 'Ex-Servicemen' means a person, who has served in any rank (whatever 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 Corps, 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

(ii) 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

(iii) who has been released, otherwise than on his own request, from such service as a result of reduction in establishment; or

(iv) 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 the 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.

The amended rule states as follows :-

2. *In the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979*

(1) In rule 2, for clause (c), the following clause shall be substituted namely :-

(c) An 'ex-serviceman' means a person -

(i) who has served in any rank whether as a combatant or non-combatant in the Regular Army, Navy and Air Force of the Indian Union, and

(a) who either has been retired or relieved or discharged from such service whether at his own request or being relieved by the employer after earning his or her pension; or

(b) who has been relieved from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or

(c) who has been released from such service as a result of reduction in establishment;

or

(ii) 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, namely, pension holders for continuous embodied service or broken spells of qualifying service;

or

(iii) personnel of the Army Postal Service who are part of Regular Army and retired from the Army Postal Service without reversion to their parent service with pension, or are released from the Army Postal service on medical grounds attributable to or aggravated by military service or circumstance beyond their control and awarded medical or other disability pension;

or

(iv) Personnel, who were on deputation in Army Postal Service for more than six months prior to the 14th April, 1987;

or

(v) Gallantry award winners of the Armed forces including personnel of Territorial Army;

or

(vi) Ex-recruits boarded out or relieved on medical ground and granted medical disability pension."

Learned counsel for the petitioners have further relied upon clause 4 (d) of the policy (Annexure P-I) to contend that the petitioners can at any time during the period of their extended service beyond the contractual period apply for any type of appointment.

Clause 4 (d) of the policy regarding NOC for leaving the Army for Civil Appointments is as follows :-

"4 (d)Any time during the period of their extended service beyond the contractual period; those who are selected for civil jobs would normally be sanctioned release from Army Service, at the discretion of Army Headquarters."

Learned counsel for the respondents have not been able to dispute the said policy.

Even the documents dated 11.12.2013 (Annexure P-I) and 16.07.2014 (Annexure P-8) shows that the petitioners have got no objection certificates from the competent authority and therefore the claim of the petitioners is covered by the said explanation.

Both the petitions are allowed. In the circumstances the respondents are directed to consider the petitioners as ex-servicemann and proceed further in the matter.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

06.08.2015

Pooja Sharma-I

**(AJAY TEWARI)
JUDGE**