

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : February 06, 2015*

+ **W.P.(C) 2275/2012**

PRAMOD KUMAR Petitioner
Represented by: Mr.D.K.Sharma, Advocate

versus

UNION OF INDIA & ANR Respondents
Represented by: Mr.Rajan Sabharwal, Advocate with
Mr.Raghav Sabharwal, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The Ministry of Railways issued an advertisement, published in the Employment News 14-20 November, 2009 inviting applications for appointment by direct recruitment to the post of Inspector (Prosecution) and Sub-Inspector (Prosecution). Of the 58 vacancies notified for the post of Inspector (Prosecution), 6 were shown as reserved for ex-servicemen. Of the 7 vacancies notified for the post of Sub-Inspector (Prosecution), 1 was shown as reserved for ex-servicemen.

2. The only concession shown towards ex-servicemen in the advertisement was the relaxation in age as per orders issued by the Government of India from time to time. It was indicated in the advertisement that the eligible candidates would be subjected to a written test of 180 marks followed by a viva-voce having 20 marks. The petitioner took the written test and duly appeared in the viva-voce.

3. As per standing order No.89, dated June 12, 2009, 60% was the specified qualifying marks for all candidates other than those belonging to the Scheduled Castes and Scheduled Tribes; for whom the qualifying marks prescribed was 50%.
4. When the results were declared, name of no ex-servicemen appeared in the select list.
5. The grievance of the writ petitioner, though not specifically pleaded in the writ petition, is that the qualifying marks : 60% prescribed for general category candidates could not be treated as the benchmark for qualifying marks for ex-servicemen and for which reliance has been placed upon the decision of the Supreme Court reported as 1994 Supp (2) SCC 55 State of Orissa Vs. Mohd. Yunus & Ors. in which decision the Supreme Court had observed, in paragraph 3, as under:-

“3. The only question that arises for consideration in this appeal is whether the respondent could be treated on a par with members of the Scheduled Castes and Scheduled Tribes for lowering the standard for selection by the Public Service Commission. The tribunal following the judgment of the Full Bench of Punjab and Haryana High Court in the case of AIR 1977 P&H 56 Jagdish Rai Vs. State of Haryana directed that the respondent is entitled to the same benefits. We are unable to agree with the tribunal and the ratio in the Full Bench judgment. The members of the SCs and STs have been given benefit by operation of Article 16(4) of the Constitution. Any concession or relaxation in their favour is in compliance of the constitutional mandate to provide adequate representation of them in any service or posts under the State. Any other category other than SCs and STs cannot be put on a par with them in the matters of relaxation of the conditions for recruitment or other conditions. It is stated by Mr Mehta, learned counsel for the State that the Commission has put a minimum of 780 marks as qualifying marks for the general candidates. The respondent admittedly belongs to the general category. Though three posts have been reserved for ex-servicemen, if a candidate who

belongs to ex-servicemen gets eligibility by securing 780 minimum marks, irrespective of the fact whether he/they comes by general selection or not, by virtue of reservation made to the ex-servicemen, he/they become eligible for consideration. This relaxation has been made in contradistinction with other general candidates but for which the respondent would be ineligible. The fixation of the general standard marks prescribed for the general candidates would undoubtedly be a handicap to the ex-service personnel who are made to compete with youngsters after several years of service put in the defence service. The State Government and the Public Service Commission are directed to consider the desirability to fix a lesser standard than that of the general candidates as ex-servicemen have served the nation in its defence and in the process they may not come on a par with the general candidates. Therefore, some relaxation in their behalf would be necessary to meet the exigencies of coping up with the reservation given to them. Otherwise, reservation would be illusory. The State Government in consultation with the Public Service Commission would decide this issue within a period of three months from the date of the receipt of this order and thereafter consider the case of the respondent accordingly.”

6. A perusal of the aforesaid paragraph 3 of the decision in Mohd.Yunus's case (supra) reveals that the Supreme Court recognized the constitutional mandate of providing adequate representation in service of posts under the State to members of the Scheduled Castes and Scheduled Tribes and thus it being permissible for the State to accord concession or relaxation in favour of members of the Scheduled Castes and Scheduled Tribes. The Supreme Court categorically opined that for service or posts under the State, ex-servicemen cannot claim parity with members of the Scheduled Castes and Scheduled Tribes, but recognized that the fixation of general standard marks prescribed for general candidates would undoubtedly be a handicap to the ex-service personnel who are made to compete with youngsters after several years of service put in the defence service. The

State Governments and the Public Service Commissions were directed to consider the desirability to fix a lesser standard than that of the general candidates whenever posts were reserved for ex-servicemen.

7. In the absence of a decision taken by the Railway Authorities to prescribe a lower qualifying percentage for ex-servicemen for the recruitment in question, it would be difficult to grant any relief to the petitioner. The petitioner secured 103.25 marks out of 180 marks and 8.25 marks out of 20 marks in the written and the viva-voce respectively. Thus he secured 55.75% marks. He was therefore not found to be attaining the mandatory 60% marks and hence was not empanelled for selection as either an Inspector (Prosecution) or a Sub-Inspector (Prosecution).

8. Another argument was advanced by learned counsel for the petitioner, and in respect of which there are no pleadings in the writ petition. The argument was premised on the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979. Rule 6A introduced on March 01, 1986 was relied upon. The Rule reads as under:-

“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.”

9. The Rule is directory and not mandatory in nature and permits the lowering of a standard for selection for ex-servicemen subject to the condition that such relaxation will not affect the level of performance by ex-servicemen. No relief can be granted to the petitioner with reference to the said Rule on account of there being no pleadings in the writ petition with

reference to the Rule in question. Had there been pleadings to said effect in the writ petition, the respondent would have had an opportunity to deal with the situation contemplated by the Rule and make pleadings in rebuttal regarding a level of performance expected to be maintained by ex-servicemen in the prosecution department of the Indian Railway.

10. The writ petition is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 06, 2015
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