

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

And

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.1502 of 2016

And

W.M.P.No.1284 of 2016

1.K.Patcheppan
2.P.Ayanare
3.R.Arulselvan
4.K.Venkatesan
5.N.Sathiyaseelan
6.S.Sundararaju
7.J.Nagarajan
8.M.Karthickeyan
9.M.Sureshkumar
10.D.Sivacoumar
11.R.Rajesh
12.V.Baskaran
13.Z.Lingandam
14.V.Sankar
15.S.Poubalane

... Petitioners

1.Pondicherry Electricity Department,
Ex-Servicemen Welfare Association,
(Regd. No.473/2011) rep. by its
President A.Jagadeesan

2.Sandourajan

3.Union of India rep. by the Government of Puducherry,
Through the Chief Engineer, Electricity Department,
Puducherry.

4.The Superintending Engineer,
Electricity Department,
Puducherry.

5.The Registrar,
The Central Administrative Tribunal,
Madras Bench,
Chennai 104.

... Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari after calling for the concerned records relating to the order dated 09.04.2014 in O.A.No.1342 of 2011 passed by the fifth respondent and quash the same.

For Petitioners : Mr.M.Gnanasekar

For Respondents : Mr.V.Ajayakumar for R1 and R2
Mr.Syed Mustafa for R3 and R4
Special Government Pleader
R5 - Tribunal
O R D E R

(Order of the Court was made by HULUVADI G.RAMESH,J.)

This writ petition has been filed seeking issuance of Writ of Certiorari after calling for the records relating to the order dated 09.04.2014 in O.A.No.1342 of 2011 passed by the fifth respondent and to quash the same.

2.The case of the petitioners is that they are working as Construction Helpers in the Electricity Department, Puducherry. The fourth respondent issued a Notification on 04.11.2005 calling for applications for filling up 222 numbers of vacancies of Construction Helpers. The petitioners and 32 Ex-servicemen applied for the same. The Recruitment Committee which met on 28.12.2005 considered the cases of the petitioners as well as the Ex-Servicemen, based on the criteria laid down in the Notification dated 04.11.2005. The Recruitment Committee prepared the merit list duly considering the marks obtained by the candidates in the respective I.T.I. Category and other relevant criteria. The Ex-Servicemen who were not having ITI Certificates were considered on the basis of the equivalent Trade Certificate/ experience in the Armed Forces in Electrical/ Wireman subjects issued by the Army Authorities. The Ex-Servicemen were placed in the bottom of the seniority list as the recruitment was done on the basis of the merit.

3.It is the further case of the petitioners that the first

respondent made a representation to the fourth respondent on 30.08.2011 and thereafter approached the Central Administrative Tribunal by filing O.A.No.1342 of 2011 under Section 19 of the Administrative Tribunals Act seeking to direct the respondents therein to include the names of the applicants therein in the seniority list for the post of Construction Helper and to consider the Ex-Servicemen who got appointed as Construction Helper for further promotion to the next higher post of Helper along with the other candidates and the Tribunal vide order dated 09.04.2014 allowed the said original application.

4.It is the further case of the petitioners that the first respondent thereafter filed Contempt Petition No.10 of 2015 before the Tribunal and thereafter, the fourth respondent published the final seniority list on 03.11.2015 finalizing the seniority as per the order dated 09.04.2014 made in O.A.No.1342 of 2011. Since the petitioners objections were rejected and since they were not arrayed as respondents in the said original application they have filed this writ petition.

5.The learned counsel appearing for the petitioners would submit that in the course of selection of the candidates for the post of Construction Helper, candidates who have passed X Standard with ITI qualification are eligible and 80% quota was for candidates selected through direct recruitment and 20% quota was for Ex-Servicemen and recruitment will be based on the percentage of marks obtained in the respective I.T.I. categories plus 50% of marks obtained in SSLC or equivalent. Accordingly, since the Ex-Servicemen have not produced the certificate of two years craftsmanship in Electrician/ Wireman trade issued by Ministry of Labour and Employment, they were rightly placed at the bottom in the seniority list. Hence the impugned order needs interference.

6.The learned counsel appearing for the respondents 1 and 2 would submit that the 32 Ex-Servicemen also participated in the selection process on the basis of the Notification dated 04.11.2005. However, they were placed at the bottom of the seniority list and hence, the approached the Central Administrative Tribunal by filing the original application and the Tribunal rightly allowed the original application.

7.The learned Special Government Pleader appearing for the respondents 3 and 4 would submit that the Ex-Servicemen who were not having ITI Certificates were considered on the basis of the equivalent Trade Certificate/ experience in the Armed Forces in Electrical/ Wireman subjects issued by the Army Authorities. Accordingly, they were placed at the bottom of the seniority list in the tentative seniority list dated 07.08.2010 as the recruitment was done on the basis of the merit. Thereafter, the

Ex-Servicemen approached the Central Administrative Tribunal by filing O.A.No.1342 of 2011 and the Tribunal allowed the said original application. Hence, the fourth respondent published the final seniority list on 03.11.2015 finalizing the seniority as per the order dated 09.04.2014 made in O.A.No.1342 of 2011.

8. Heard the arguments advanced on either side and perused the materials available on record.

9. Admittedly, the fourth respondent had issued a Notification dated 04.11.2005 calling for applications to the post of Construction Helpers, reserving 20% of the posts for Ex-Servicemen. It is useful to refer hereunder the educational qualification and selection process as notified in the Notification dated 04.11.2005:

'Educational Qualification:

- (i) A pass in SSLC or its equivalent and
- (ii) 2 years Craftmanship Certificate in electrician/ Wireman trade issued by the Ministry of Labour and Employment Government of India or its equivalent.'

Selection Process:

- (i) The recruitment will be based on the percentage of marks obtained in the respective I.T.I. Categories plus 50% of marks obtained in SSLC or equivalent.

- (ii) 10 marks will be added in respect of those candidates who have completed Apprenticeship in the Electricity Department or in any Company / Industry, sponsored by the Labour Department under the Apprentices Act, 1961.

- (iii) There will be an addition of 1 mark for every year of seniority based on the registration of ITI certificate in the Employment Exchange limited to 10 marks

Total 170 marks

- (iv) There will be a reduction of 5% of marks in I.T.I. for every subsequent attempt.'

10. The Recruitment Committee prepared the merit list duly considering the marks obtained by the candidates in the respective I.T.I. Category and other relevant criteria. The Ex-Servicemen who were not having ITI Certificates were considered on the basis of the equivalent Trade Certificate/ experience in the Armed Forces in Electrical/ Wireman subjects issued by the Army Authorities. Accordingly, the Ex-Servicemen were placed at the bottom of the tentative seniority list as the recruitment

was done on the basis of merit. Apprehending that their names would not be considered for promotion to the next higher post of Helper on the basis of the seniority list, the Ex-Servicemen approached the Central Administrative Tribunal by filing O.A.No.1342 of 2011 and the Tribunal allowed the said original application.

11.It is useful to extract hereunder the relevant portion of the order dated 09.04.2014 made in O.A.No.1342 of 2011:

"In the final seniority list which the learned counsel for the applicant submitted at the time of hearing, it could be seen that in the earlier instance names of the ex-servicemen were shown in appropriate places in the seniority list and not at the bottom of the seniority list. The only reason now assigned by the respondents for placing the names of the ex-servicemen enbloc at the bottom of the seniority list is on account of the fact that they have not produced the certificate of two years craftsmanship in Electrician/ Wireman trade issued by Ministry of Labour and Employment. In as much as these candidates had the equivalency certificate issued by the Ministry of Defence and further the Director of Sainik Welfare has certified that they were qualified for consideration for appointment in response to the said notification, we do not find any reason as to why the respondents should not consider these candidates on par with the other selected candidates and assign them appropriate places in the seniority list. We also find that in the final seniority list issued by the respondents under the Ref.No.1-2/ED/Estt./A.4/2010 dated 19.12.2011 names of all the ex-servicemen are shown at the bottom of the seniority list and it is also stated that the final seniority list is subject to the outcome in the present OA. In the light of the above position, we are of the considered view that the ends of justice would be met if a direction is issued to the respondents to place the selected ex-servicemen candidates for the post of Construction Helper (Work Charged) in the said recruitment process in appropriate place as per their merit in the ratio, if any, applicable. With the above directions, the OA is allowed with no order as to costs."

12. Thereafter, the fourth respondent has published the final seniority list on 03.11.2015 finalizing the seniority as per the order dated 09.04.2014 made in O.A.No.1342 of 2011. The order of the Tribunal goes against the petitioners herein who were selected through direct recruitment based on merit.

13. So far as the fixation of inter se seniority is concerned, there is no criteria adopted. According to us, inter se seniority has to be fixed based on merit.

14. In that view of the matter we are of the view that the order of the Tribunal dated 09.04.2014 in O.A.No.1342 of 2011 needs modification. We hereby direct the respondent Authorities to take into consideration the similar method of selection process adopted for direct recruitment to be adopted for Ex-Servicemen also, so that there would not be any violation or discrimination of their rights.

15. After conducting the test as prescribed to the direct recruitment, the respondent Authorities have to take into consideration the marks obtained by the Ex-Servicemen in the test as well as 50% of the marks obtained by them in the X Standard so that there would not be any violation or discrimination. Thereafter, inter se seniority list has to be prepared and similar Rules are to be followed for both direct recruitment and Ex-Servicemen so that there would not be any discrimination or arbitrariness among the candidates from direct recruitment as well as the ex-servicemen.

16. The test shall be conducted within a period of six weeks from the date of receipt of a copy of this order. Thereafter, results will be announced and inter se seniority will be fixed as per the marks calculated between the direct recruitment as well as 20% reservation quota for Ex-Servicemen as per the Rules. The test for Ex-Servicemen shall be conducted as that of the direct recruitment only in the present case.

17. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is also closed.

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Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Engineer,
Union of India the Government of Puducherry,
Electricity Department,
Puducherry.
- 2.The Superintending Engineer,
Electricity Department,
Puducherry.
- 3.The Registrar,
The Central Administrative Tribunal,
Madras Bench,
Chennai 104.

+lcc to Mr.V.Ajaya Kumar, Advocate, S.R.No.42819
+lcc to Mr.M.Gnana Sekar, Advocate, S.R.No.42621

W.P.No.1502 of 2016
And
W.M.P.No.1284 of 2016

GSP (20/07/2018)



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