

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No. 5560 of 2017
and
W.M.P.No.5913 of 2017

Manoj Kumar

...Petitioner

Vs.

1. Union of India,
Rep. By the Secretary,
Ministry of Defence,
101, South Block,
New Delhi - 110 011.
2. The Major General (Ordnance Services),
HQ Southern Command, Pune,
Maharashtra - 908 791.
3. Army Ordnance Corps (Records),
Thirmulgiri, Secunderabad,
Andhra Pradesh - 900 453.
4. The Commandant,
Ordnance Depot, Avadi,
Chennai - 600 055.
5. The Registrar
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 104.

...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to the Order dated 14.07.2016 passed in O.A. No. 596 of 2015 on the file of the 5th respondent herein and quash the same consequently directing the Respondent authorities to appoint the petitioner in the Storekeeper post as called vide Notification within specified time.

For Petitioner : Mr. M. Chidambaram

For Respondents : Mr. V. Balasubramanian
SPC for R1 to R4
R5 - Tribunal

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner was one of the candidates who was invited for attending interview for the post of Storekeeper pursuant to the recruitment vide Notification dated 25-31.12.2010. There was no further progress made since the respondent authorities took a stand that the petitioner did not have the requisite age qualification as per the Rules though the Notification by inadvertence said otherwise. Aggrieved over the same, the petitioner approached the Tribunal and thereafter this Court in WP No. 6922 of 2014 and on 04.06.2014, the following order was passed:-

"16. As already pointed out above, the upper age limit in terms of the 2nd impugned notification for the post of Storekeeper was fixed as 18-25 years as on 14.01.2011 and on that date, the petitioner was aged about 25 years and 8 months and by applying Central Civil Services and Civil Posts (Upper Age limit for Direct Recruitment) Rules, 1998, the upper age limit is fixed as 27 years and in that event, the petitioner is eligible in terms of age prescription. The Delhi High Court has also held so in the above cited decision.

17. In the result, this Writ Petition is allowed and the order dated 12.12.2013 made in O.A. No. 943 of 2012 is set aside and the official respondents are directed to consider the claim of the writ petitioner/original applicant in terms of the Employment News notification dated 28.04-04.05.2012, subject to the fulfillment of other terms and conditions for recruitment to the post of Storekeeper and also subject to clarification from the Headquarters of the Ministry of Defence and Army, New Delhi in respect of SRO. 17/2012. The official respondents are also directed to consider and inform the decision taken to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

2. In compliance with the order, the impugned order dated 16.03.2015 has been passed inter alia stating that request made by the petitioner is not feasible for consideration since a policy decision has been made to fill up the vacancies by promotion among the departmental candidates through competitive examination to be conducted internally. This has given a

subsequent cause of action in filing the application before the Tribunal. The Tribunal, rejected the contention advanced by the learned counsel for the petitioner and hence the present writ petition.

3. The learned counsel appearing for the petitioner would submit that he was found to be qualified by fulfilling all the criteria. Though, he was the only one eligible, the subsequent decision was taken during the pendency of the proceedings. The bar with respect to the age requirement cannot be put against the petitioner as the said issue has been set at rest by the order of the Division Bench of this Court referred supra. Therefore, the writ petition will have to be allowed.

4. Learned counsel appearing for respondents 1 to 4 would submit that the Division Bench was conscious about the decision taken subsequently and that is the reason why it has been observed that the respondents 1 to 4 will have to consider the claim of the petitioner by taking note of SRO No. 17/2012. This being the policy decision, no interference is required.

5. Admittedly, the petitioner has not been selected. He has not been called for the interview. In the mean while, during the pendency of the proceedings, the decision was taken not to have any direct recruitment to the post of Storekeeper but to give promotion to the in-service candidates through departmental examination. The petitioner does not have a vested right to the post. In view of the policy decision made, the very Notification itself goes. This Court cannot direct the respondent authorities to appoint the petitioner who has not even undergone the process of interview which could not be done in view of the decision taken.

6. Thus, inasmuch as no right having been accrued in favour of the petitioner, we did not find any error in the order of the Tribunal warranting interference. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

ssm/mmi

To

1. The Secretary,
Ministry of Defence,

101, South Block,
New Delhi - 110 011.

2. The Major General (Ordnance Services),
HQ Southern Command, Pune,
Maharashtra - 908 791.

3. Army Ordnance Corps (Records),
Thirmulgiri, Secunderabad,
Andhra Pradesh - 900 453.

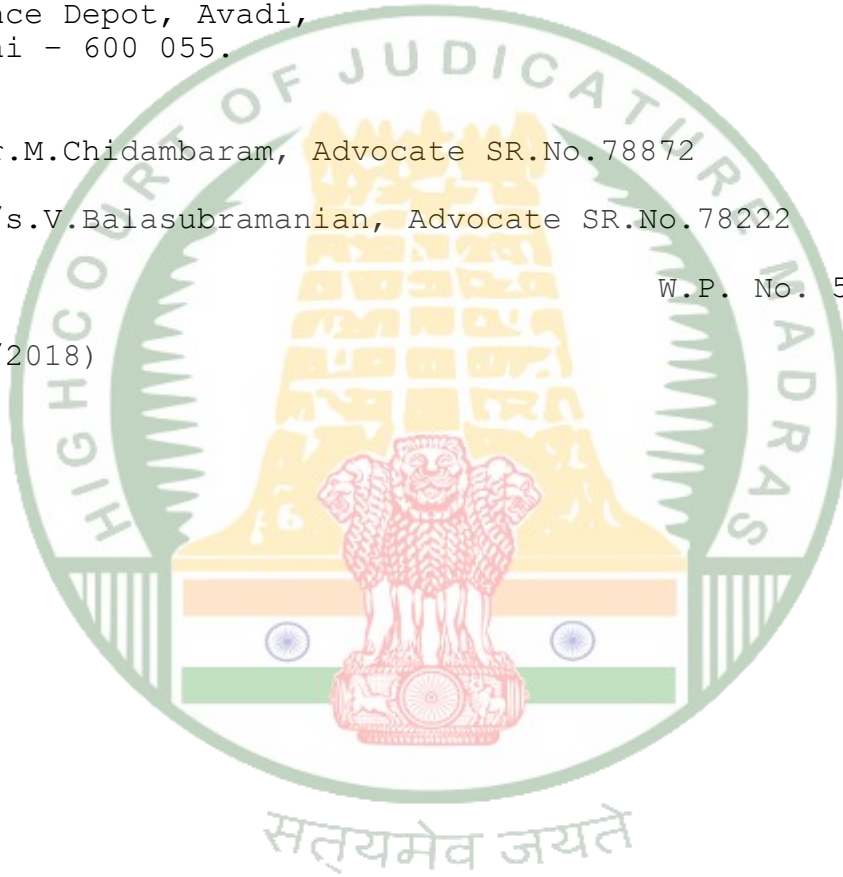
4. The Commandant,
Ordnance Depot, Avadi,
Chennai - 600 055.

+1cc to Mr.M.Chidambaram, Advocate SR.No.78872

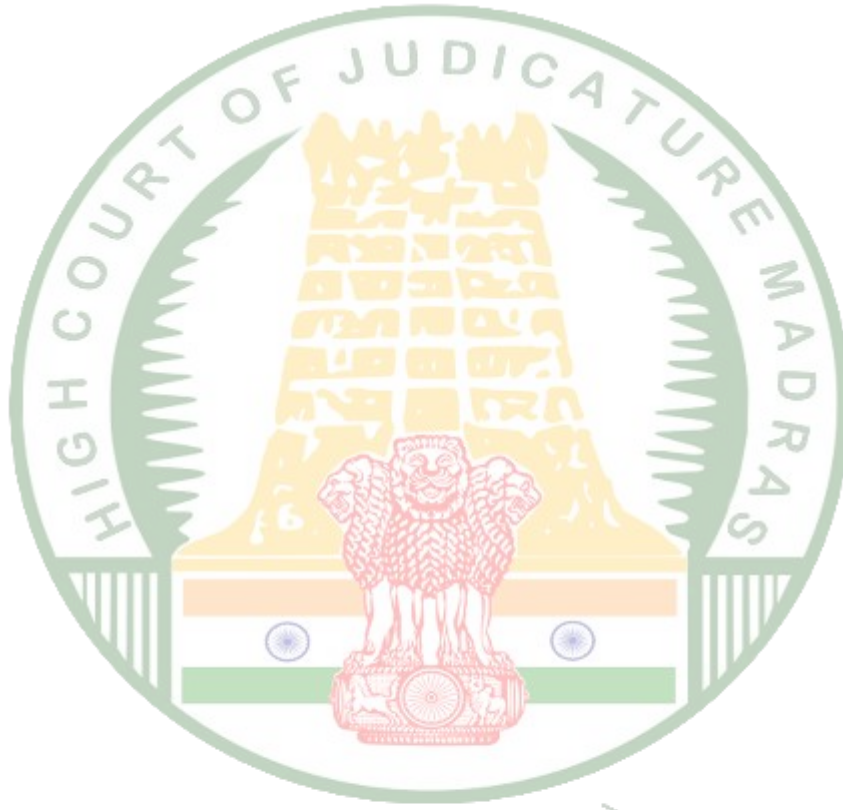
+1cc to M/s.V.Balasubramanian, Advocate SR.No.78222

W.P. No. 5560 of 2017

SPD(CO)
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