

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.No.1649 of 2018

1.S.Alagesan

.... Appellant/Petitioner

-vs-

1.Govt. Of Tamilnadu

Rep. by its Secretary,
Personnel and Administrative,
Reforms (R) Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.Tamil Nadu Public Service Commission,

Rep. by its Secretary, Park Town,
Chennai - 600 003.

3.The Principal Secretary, Home Department,

(Transport II), Secretariat,
Chennai - 600 009.

4.The Transport Department,

Rep. by its Secretary to Government,
Secretariat, Chennai - 600 009.

5.Transport Department,

Rep. by its Commissioner,
Chepauk, Chennai - 600 005.

6.V.Padmapriya

7.P.Sathya

8.S.Rajarajeswari

9.S.Gunasekaran

10.A.Moahmed Meera

11.A.K.Tharaneethar

12.G.Rajkumar

13.B.Arunkumar

.... Respondents/ Respondents

Write Appeal filed under Clause 15 of Letter Patent against the order in W.P.No.35760 of 2016 dated 14.06.2018 on the file of the High Court of Judicature at Madras.

Prayer in W.P.No.35760 of 2016:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorarified Mandamus Calling for the records relating to the Provisional Select list dated 19.08.2016 on the

file of the 2nd respondent pursuant to the Notification bearing No. 24/12 dated 25.06.2012 and quash the same in so far as the condidates selected in the place of the petitioner and direct the 2nd respondent to conduct interview to the petitioner and select the petitioner if he is otherwise eligible to be appointed for the post of Motor Vehicle Inspector Grade II in the Tamil Nadu Sub-Ordinate Service (Code 068) and pass such further order.

For Appellant : Mr.Father Xavier Arulraj
Senior Counsel
for C.V.Ramachandramurthy

For Respondents: Mr.M.Loganathan

J U D G M E N T

[Judgment of the Court was delivered by P.T.ASHA, J.]

This is a classic case where the proverbial red tapism attempts to overshadow the merit of the candidate, who is none other than an ex-serviceman, participated in the Kargil War.

2. The above Writ Appeal is filed challenging the dismissal of the Writ Petition filed by the appellant in W.P.No.35760 of 2016 challenging the Provisional Select list dated 19.08.2016 published by the 2nd respondent pursuant to the notification bearing No.24/12 dated 25.06.2012 and direct the 2nd respondent to call him for the interview and select him if he is otherwise eligible for appointment to the Post of Motor Vehicle Inspector Grade II in the Tamil Nadu Sub-ordinate Service (Code 068).

3. Overview of the Appellant's experience and merit:

3.1.The appellant is an Ex-Serviceman (Sergeant-Senior Non- Commissioned Officer) from the Indian Air Force having served the force for a period of 20 years from 01.12.1986 to 30.11.2006. The appellant has the distinction of having been a part of the Kargil War as he was attached to the 2nd Core Army Base (Asia's Biggest Tank Division) workshop at Ambala. The appellant also has the distinction of having served in the Desert border area using the Air Force's highly advanced equipment fitted vehicles in extreme situation. In recognition of the service rendered by him, the appellant has to his credit the following commendations:

i)The Air Officer Commanding - In - Chief, Western Air Command, New Delhi commendation medal.

ii)Long Service Medal

iii)Independence Medal

iv)Assam - Bengal Medal

v)Appreciation Certificate from the Commander, 09

Tactical Air Centre, Ambala.

The character assessment given by the Air Force to the appellant was "Exemplary".

3.2. During his work in the Indian Air Force, it is seen that the appellant has driven various types of Vehicles belonging to India, France, Russia and Chekoslovakia and therefore having a varied skilled experience. The appellant also appears to be a multi linguistic, being able to converse in Tamil, Malayalam, Kanada, English as well as Hindi.

4. The case of the appellant:

4.1. The appellant who has the varied experience as narrated above had submitted application for the post of Motor Vehicle Inspector Grade II, in response to the notification issued by the 2nd respondent on 25.06.2012. The appellant had appeared for the written examination that was held on 26.08.2012 and he had scored a total of 158 marks as against the total marks of 200.

4.2. Along with the certificates forwarded to the respondents, the appellant had also enclosed the certificate of Diploma in Automobile Engineering and experience certificate issued by the Indian Air Force. These certificates were sent in response to the letter dated 5.4.2013, calling upon the appellant to forward the documents. Thereafter the appellant did not receive any communication from the 2nd respondent. The 2nd respondent had hurriedly called some of the other applicants for oral test for appointment vide their notification dated 16.02.2015, stating that the test was to be held on 05.03.2015. Pursuant to the publication of written test 42 candidates were called for oral test as against the 17 vacancies.

4.3. The appellant came to learn that his candidature was not accepted on account of the fact that his Educational Qualification namely Diploma in Automobile Engineering and experience certificate issued by the Indian Air Force was not considered as equivalent to the Diploma in Automobile Engineering in Tamil Nadu and that the experience certificate issued by the Indian Air Force was not approved by the Government of Tamil Nadu. The appellant would submit that several Ex-Servicemen were considered vide G.O.Ms.No.106, dated 11.06.1999 by the 2nd respondent. Therefore, the non-consideration of the appellant's Educational qualification and experience was without reason and discriminatory.

4.4. The appellant would further contend that on account of 20 years of service with the Indian Air Force he was entitled to additional marks in the oral test and considering that Motor Vehicle Inspector Grade I & II are also a Uniformed Service as per Rule 427 of the Tamil

Nadu Motor Vehicle Rule, 1989, he was entitled to weightage in the oral test.

4.5. The appellant would therefore contend that the omission to call him for the oral test was on account of the fact that the Certificate of Diploma in Automobile Engineering issued by the Indian Air Force and as also the experience certificate was not equivalent to the certificate of Diploma in Automobile Engineering given by the Directorate of Technical Education, Tamil Nadu and this finding was absolutely erroneous and liable to be quashed. The appellant would therefore contend that he was left with no other alternative except to approach this Court.

5. Counter affidavit filed by the 2nd respondent:

5.1. The respondents would submit that the appellant who was an Ex-serviceman had claimed the Diploma in Automobile Engineering obtained in the Air Force equivalent to the Diploma Qualification prescribed for the post. He had enclosed the relevant Government Order, driving licence and a copy of the experience certificate in repairing, servicing and test driving the vehicles since July 1988. His experience certificate was sent for verification through the Regional Transport Officer, Poonamallee, Chennai, to the Air Force Station at Avadi. The Regional Transport Officer, Poonamallee, had thereafter submitted a report which reads as follows:

"Genuineness of the Experience Certificate in respect of service No. 689750-N Ex Sgt. S. Alagesan, could not be confirmed as subject certificate was not issued by this Unit"

5.2. This fact was placed before the commission. The commission had taken a decision that all those cases which fall under the category "could not be decided" cases be rejected. Accordingly the application of the appellant was rejected. In addition to the above response of the Regional Transport Officer, Poonamallee, it was also found that the appellant had suppressed details of his earlier experience and his employment with the Government in his online application.

6. Submissions :

6.1. Father Xavier Arulraj, learned Senior Counsel appearing on behalf of the appellant drew the attention of this Court to the work experience of the appellant and also the letter issued by the Mechanical Transport Training institution, Air Force Station, Avadi, Chennai dated 28.03.2017, confirming the genuineness of the certificate issued by the Indian Air Force. He would submit that despite the above the appellant was not considered for appointment.

6.2. The learned senior counsel would further submit that a mere perusal of the experience certificate issued by the Indian Air Force to the appellant would demonstrate the variety of vehicles that the appellant has used, which besides others include, Tractors, Fork Lifters and Refuellers etc,. He would therefore contend that the non inclusion of the appellant in the final list was absolutely uncalled for and discriminative.

7. Discussion:

7.1 The experience certificate which has been produced for our scrutiny clearly demonstrates the categories of vehicles that the appellant had driven. It is seen that starting from the Motor Cycles and the Light Vehicles, the appellant had driven 3 Ton load capacity Vehicles, Aircrew Van, 6.5 Ton to 12 Ton load capacity vehicles, Domestic Crash Fire Tenders, Refuellers, Tractors and Fork Lifters.

7.2 The workshop verification proforma which has been forwarded by the Mechanical Transport Training Institute, Air Force Station, Avadi dated 28.03.2017, to the Regional Transport Officer, Poonamallee, also shows the variety of specialised training that the appellant has undergone and the driving practice that he has undergone in the Air Force. The Training Officer of the Air Force Station, Avadi has opined as follows:

"the individual has undergone for driving practice in various Light Motor Vehicles, Heavy Goods Vehicles, Heavy Passenger Vehicles (both petrol and diesel engine vehicles) the individual has authorized for road test the vehicles after repair and servicing in Mechanical Transport Repair and Servicing Section (MTR&S Workshop)."

7.3 It is also seen that the appellant has been authorised for road test after vehicles were repaired and serviced in the Mechanical Transport Repair and Servicing Section of the Unit. Therefore the work experience of the appellant is varied and it is not known as to how his candidature has not been considered by the respondents.

7.4 The respondents had rejected the appellant's candidature on two grounds:

a) The first ground relates to the failure to obtain the genuineness of the experience certificate which was forwarded by the Regional Transport Officer to the Air Force Station, Avadi. This was on account of the fact that the same had been returned with the following endorsement:

"Genuineness of the Experience Certificate in respect of service No.689750-N Ex Sgt. S. Alagesan, could not be confirmed as subject certificate was not issued by this Unit"

<https://hcservices.ecourts.gov.in/hcservices/> From the documents it is seen that though the Air

Force Station had originally communicated that the certificate had not been issued by the Unit, thereafter, when the respondents had forwarded the papers with all the relevant documents on 07.03.2017, they have verified the records and issued the letter dated 28.03.2017 to the Regional Transport Officer, Poonamallee, Chennai informing them that the Experience Certificate was issued to the appellant by the Unit. They had also attached the workshop verification proforma which would clearly detail the experience of the appellant.

b) The second ground of rejection was that the appellant had not disclosed his employment with the Government. A perusal of the online application would clearly disclose that in answer to the column "Are You Employed", the appellant has stated "Yes". Therefore there was no suppression on the part of the appellant and the defense taken by the respondents therefore fails.

7.4. In these circumstances and the factual background, the learned Single Judge was not justified in dismissing the Writ Petition. We are therefore of the view that the order passed by the learned Single Judge is liable to be set aside.

8. We are informed by the counsel for the respondents that pursuant to the interim orders of this court, one post has been kept vacant. We direct the respondents to consider the candidature of the appellant for the post of Motor Vehicle Inspector. The respondents shall consider the experience of the appellant which has been described in detail in the foregoing paragraphs. The respondents shall complete this exercise with a period of two months from the date of receipt of a copy of this Judgement.

9. The Writ Appeal is allowed on the above lines. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Personnel and Administrative,
Reforms (R) Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 600 003.

3. The Principal Secretary, Home Department,
(Transport II), Secretariat,
Chennai - 600 009.

4. The Secretary,
Transport Department,
Secretariat, Chennai - 600 009.

5. The Commissioner,
Transport Department,
Chepauk, Chennai - 600 005.

+1cc to Mr.M.Loganathan , Advocate SR.No. 51426
W.A.No.1649 of 2018

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A.SK(02/07/2019)



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