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

+ **W.P.(C) 5693/2017**

MAJOR UPINDERJIT KAUR (RETD). Petitioner

Through: Mr. Rajendra Kumar, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Kirtiman Singh, CGSC with
Mr. Parth Semwal, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

% **ORDER**
04.02.2019

SANJEEV NARULA, J.:

1. Petitioner, an Ex-Service person, has been denied registration for empanelment of a Security Agency on the ground that she has not completed specific term of engagement for Short Service Commissioned Officer. Aggrieved with the decision of the Respondents, she has filed the present petition under Article 226 of the Constitution of India seeking direction for setting aside the rejection order and consequential orders for empanelment of her Security Agency.

Facts

2. The brief facts of the case are not in dispute. The Petitioner joined Army Ordnance Corps in Indian Army on 24th August 1996 as a Woman Short

Service Commissioned Officer for a period of five years. She opted and was granted an extension for another five years. In 2004, there was a change in the policy of the Government and additional extension of four years of service to women officers was granted subject to their willingness. The Petitioner exercised this option and her term was extended by an additional four years, upto 23rd August 2010.

3. On account of certain personal difficulties, the Petitioner sought release from service in 2009. Her request was acceded to and she was released “at her own request” w.e.f. 8th January 2009 after completing a period of more than twelve years of service.

4. As an Ex-Service person, the Petitioner applied for post-retirement benefits under the re-settlement scheme of Director General of Re-settlement (DGR), Ministry of Defence. She submitted an application dated 8th February 2016 for registration/empanelment of Security Agency. Her application was rejected by the Respondents on the ground that she had not completed specific term of engagement for Short Service Commission and hence she did not come in the category of Ex-Servicemen (ESM) as per DoP&T notification dated 4th October 2012.

5. Aggrieved with the aforesaid rejection, Petitioner has filed the present petition.

Submissions

6. Mr. Rajendra Kumar, learned counsel appearing on behalf of the

Petitioner, at the outset, submitted that the question involved in the present petition has been decided by a judgment of a coordinate bench of this Court dated 9th February 2017 passed in W.P.(C) 7302/2016 (**Major Kapil Sawhney v. Union of India & Ors**). He submitted that this Court has already held that a Short Service Commissioned Officer of the Indian Army is covered by the definition of “Ex-Servicemen” occurring in Ex-Servicemen (re-employment in Central Civil Services and Posts) Amendment Rules, 2012 and it makes no distinction between Ex-Servicemen who have retired and those who have been released/discharged. He submits that the ratio of the said judgment is that a broader and wider meaning has to be given to the word “retired” given in Rule 2 (c)(ii) of the Ex-Servicemen Rules, 2012 and therefore the ground of rejection of the Respondents is contrary to the aforesaid decision. He further submits that the Respondents’ understanding is completely misplaced, as the reasoning given for denying her the benefit of the re-employment scheme is based on an untenable ground that the Petitioner was released from service “at her own request”, construing that as a disqualification. Mr. Kirtiman Singh, learned counsel appearing on behalf of the Respondents on the other hand, submitted that the judgment of this Court in **Kapil Sawhney** (supra) is not applicable to the present case and distinguished the same on the ground that in the case of **Kapil Sawhney** (supra), the Petitioner therein was issued an entitlement certificate by the Army Head Quarters and an ESM ID, erroneously on account of oversight. He submits that this Court therefore decided the said case in view of its peculiar facts, relying upon the aforesaid two documents. He further submitted that a Short Service Commissioned Officer who quits during the initial term of engagement would not be

entitled to get the status of Ex-Servicemen (ESM). Similarly, if the Officer who is granted extension of service after completion of his/her initial period of engagement would also not get such a status, if he/she quits service at “his own request” during such extended period of service. Mr. Kirtiman Singh submitted that during the extended period of engagement, Petitioner took advantage of the exit clause of the contract term by quitting the service with the two months notice. She therefore left the service at her own request and cannot be extended the same benefits that would accrue to a Short Service Commissioned Officer who completes the extended period of service by honoring the terms and conditions of the contract.

Findings and Analysis

7. It is evident that the peculiar question that arises for consideration in the present petition was also the specific question that arose for consideration before this Court in the said case of ***Kapil Sawhney*** (supra), where this Court examining the definition of “Ex-Servicemen” has inter alia observed as under:

“15. Under Rule 2(c) of the Ex-serviceman (Re-employment in Central Civil Services and Posts)/ Amendment Rules 2012, m 'ex-serviceman' has been defined to mean a person who has served in any rank in the Indian Army, whether as a combatant or non-combatant, and 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.

16. There can be no discrimination between those who retire or are discharged or relieved at the instance of the employer and those who are released at their own request.

17. For the benefit of being treated ex-serviceman, the minimum requisite service is five years. The definition of an Ex-serviceman in sub-paragraph 3 of the Office Memorandum dated 14.04.1987 that an 'ex-serviceman' means a person who has served in any rank whether as a combatant or non combatant in the Regular army **who has been released otherwise than on his own request, is thus to be interpreted to exclude only officers who are released on request before completion of the period of five years and/or in course of their regular service before completion of the term for which they were appointed, and not those who are released on request during the period of their extension.**

18. The writ petition is thus allowed. The petitioner shall be treated as an 'ex-serviceman'. The order dated 26.09.2011 declining to register the name of the petitioner under the Rehabilitation Scheme is set aside. The petitioner shall be granted all the benefits of an ex-serviceman including the registration of his name under the Rehabilitation Scheme and the benefits of resettlement and reservation of jobs for 'ex-serviceman'."

8. This Court has negated the contention of the Respondent that such Ex-Service persons who are released at their own request, are not entitled to the benefits of Ex-Servicemen. The Court in ***Kapil Sawhney*** (supra), has held that the aforesaid expression has to be interpreted to exclude only such Officers who are released on request before completion of a period of five years and such condition would not be applicable to those who are released on request during the period of their extension. In the present case as well, the Petitioner has completed her initial term of five years and was released during her extended tenure. In fact, she was on her second extension of four years after having completed her first extension period of five years. We do

not find merit in the submission of the counsel for the Respondents that the judgment of this Court in ***Kapil Sawhney*** (supra) is not applicable. The distinguishing facts highlighted by the Respondents have no relevance to ratio of the aforesaid decision and in its applicability to the facts of the present case. In view of the foregoing discussion, we have no hesitation to hold that the Petitioner is entitled to similar relief in view of the decision of this Court in ***Kapil Sawhney*** (supra) and accordingly, we find that the order dated 4th March 2016 rejecting the Petitioner's application for empanelment is erroneous. Accordingly, the same is set aside. A mandamus is issued to Respondents directing them to register and process the application of the Petitioner for empanelment of Security Agency in respect of her application dated 8th February 2019. The consequential orders be passed within a period of four weeks from today.

9. In the facts of the present case, there shall be no order as to costs.

SANJEEV NARULA, J.

S.MURALIDHAR, J.

FEBRUARY 04, 2019/nk