

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 9971/2017

..... Petitioner

versus

..... Respondents

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

%

CM No. 7425/2019 in W.P.(C) 9971/2017

W.P.(C) 9971/2017

appointment to the said vacancy in the post of SI in the SSB.

2. In view of the above, the Court substitutes the sentence in para 6 of the judgment dated 6th February 2019 to read as under:-

“Ms. Barkha Babbar, learned counsel for the Respondents, today confirmed that one vacancy resulting from one of the candidates selected for the post of Sub-Inspector (SI) in the Shasatra Seema Bal (SSB) not accepting the provisional offer of appointment, does exist.”

3. The complete text of the judgment dated 6th February 2019 with the above correction will now read as under:

“1. The Petitioner was serving in the Indian Air Force (IAF) and applied for the post of Sub-Inspector (SI) in the Delhi Police, Central Armed Police Forces (CAPFs) and Assistant Sub-Inspector (ASI) in CISF pursuant to the notice dated 9th January 2016 issued by the Staff Selection Commission (SSC) - (Respondent No.2) for recruitment. The Petitioner was successful at all stages of the selection. However, when the final result was declared on 8th September 2017, his name was not included.

2. When he approached the Respondent No.2, the Petitioner was informed that since he had not been discharged from service till the last mentioned date i.e. 5th February 2017 he was not appointed. His representation dated 21st September 2017 to the Chairman of the SSC was not responded to. This led him to file the present petition in which while directing notice to issue to the Respondents on 1st December 2017 the Court passed the following interim order:

“6. Till further orders, Respondent No.2 shall keep one vacancy available for the post for which the petitioner would have qualified, but for the ground taken that he was discharged from the service on the post of a Sergeant

in the Indian Air Force, at the end of February, 2017 though he had completed his tenure in service on 02.02.2017, after rendering 23 years of service.”

3. At the hearing on 10th January 2018 while seeking an early hearing of the petition, the Petitioner informed the Court that the Respondents had issued a notice of commencement of training of SI/Exe (Ex-Serviceman Category) from 12th February 2018 and that if the Petitioner was unable to attend the training on the scheduled date he would not only lose his seniority, but would also be left for the entire year. The Court then advanced the hearing of the petition to 31st January 2018. On that date, however, it was noted that counter-affidavit had not been filed.

4. On 14th May 2018 the Court passed the following order:

“CM APPL. 19902/2018 (bv the petitioner for early hearing)”

1. The present application has been filed by the petitioner praying for early hearing of the writ petition.

2. For the reason stated in the application, the same is allowed, the petitioner is permitted to address arguments in the main petition today itself.

3. The application is disposed of

W.P.(C) 9971/2017

1. Learned counsel for the respondents states that in compliance with the order dated 31.01.2018, she has filed a detailed affidavit on 03.05.2018, to explain as to why the petitioner who had applied as an Ex-serviceman/OBC candidate for appointment to the post of Sub-Inspectors in the Delhi Police, CAPFs and Assistant Sub-Inspectors in CISF Examination, 2016, could not be considered for selection.

2. The reason given is that the petitioner could not be treated as an Ex serviceman candidate as he was discharged from the Indian Air Force only on 28.02.2017 i.e. after the cut off date fixed by the Commission vide Notice dated 05.02.2016 (Annexure P-1). Secondly, the petitioner could not find a place in the Select List being over age in the OBC category. The affidavit states that in the OBC category, allocation has been made against all the vacancies reported by the user Department.

3. In response, learned counsel for the petitioner refers to Note-III appended to para 2 of the Notice dated 05.02.2016, issued by the respondent No.2/Staff Selection Commission to contend that the petitioner was eligible in terms of the second limb of the said Note, which requires that for any Ex serviceman of the three Armed Forces of the Union of India to be treated as Ex-serviceman for purpose of securing the benefits of reservation, "he should be in a position to establish his acquired entitlement by documentary evidence from the competent authority that he would complete specified term of engagement from the Armed Forces within the stipulated period of one year from the closing date (i.e. 05.02.2016). "

4. Learned counsel submits that the petitioner had submitted an NOC dated 05.02.2016, obtained from his employer to show his eligibility under Note-III. On a perusal of the aforesaid NOC, it transpires that the petitioner had only been permitted to register his name with the Employment Exchange to appear in any competitive examination and to apply for any civil post in Central/State Government Organizations, Para-military Forces and Public Sector Undertakings including Private Sector. However, learned counsel for the petitioner has not been able to show any certificate to establish that the Competent Authority, i.e., his

employer had certified that the petitioner had completed his specified terms of engagement with the Indian Air Force within one year reckoned from 05.02.2016.

5. At this, learned counsel for the petitioner relies on the contents of the counter affidavit filed by the respondent No.3/Indian Air Force, which states in para 3 that the petitioner was eligible for an NOC on or after 03.02.2016 but he did not seek discharge from service during the intervening period i.e. from the date when he was physically issued a NOC by the Competent Authority, to the date of his scheduled discharge. As a result, the petitioner was discharged from the Indian Air Force w.e.f 28.02.2017.

6. The aforesaid position is also borne out from the discharge certificate issued by the Indian Air Force in respect of the petitioner and filed by the respondent No.2 with its counter affidavit at page 57, which clearly states that his date of discharge is 28.02.2017.

7. When confronted with the said position, learned counsel for the petitioner states that he may be permitted to obtain instructions from his client as to the nature of the documents that were submitted by him to the respondent No.2/SSC at the time of verification of the documents and if any additional document was submitted, he seeks permission to file the same.

8. At the request of the counsel for the petitioner, list on the date already fixed i.e., 14.08.2018.”

5. At the next hearing on 14th August 2018 the Court passed the following order:

“1. We have enquired from the counsel for the respondents as to what is the status of the vacancies in respect of the subject advertisement, particularly in the light of the order dated

01.12.2017, whereunder the respondent No.2/SSC was directed to keep one vacancy available for the post, for which the petitioner would have qualified.

2. Learned counsel for the respondents states that a compliance affidavit has been filed by the respondent No.1 stating inter alia that a total of 4295 vacancies were available for allocation of male candidates and against the same 4293 male candidates were selected in the final result that was declared on 08.09.2017.

3. The said affidavit does not clarify as to whether all the vacancies stood filled up on 01.12.2017, the date on which the interim order was passed, nor is the said position clear from the averments made by the respondent No.2 in para 9 of the counter affidavit, which only states that the final result of the examination had been declared on 08.09.2017 and that no post is vacant. We may add here that learned counsel for the petitioner has enclosed two documents with CM APPL. 19902/2018 that reveal that the provisional offer of appointment made by the CISF to a successful candidate was not accepted by him as he had not reported by 23.04.2018. Similarly, one of the candidates selected by the CISF had tendered his resignation vide application dated 23.03.2018 and he had duly been relieved with effect from the said date. So two vacancies ought to be available as on date.

4. Counsel for the respondents states that she may be permitted to obtain clear instructions with regard to the vacancy position as on 01.12.2017 and as on date.

5. At the request of the counsel for the respondents, renotify on 25.09.2018.”

6. Ms. Barkha Babbar, learned counsel for the Respondents, today confirmed that one vacancy resulting from one of the candidates selected for the post of Sub-Inspector (SI) in the Shasastra Seema

Bal (SSB) not accepting the provisional offer of appointment, does exist.

7. This Court has heard the submissions of learned counsel for the parties.

8. At the outset it requires to be noticed that in the notice dated 9th January 2016 issued by the SSC inviting applications for the posts in question it was stated under Note-III as under:

“For any serviceman of the three Armed Forces of the Union to be treated as Ex-Serviceman for the purpose of securing the benefits of reservation, he must have already acquired, at the relevant time of submitting his application for the Post / Service, the status of ex-serviceman (should possess ‘Discharge Certificate’) and /or is in a position to establish his acquired entitlement by documentary evidence from the competent authority that he would complete specified term of engagement from the Armed Forces within the stipulated period of one year from the Closing Date (i.e. 05-02-2016)”

9. A careful analysis of the above note would reveal that there are two distinct categories envisaged. One is an ex-serviceman who has already acquired that status and such person is expected to possess the discharge certificate even at the time of submitting his application for the post in question. The second category is a person who still in service but is in a position to establish his acquired entitlement by producing some document from the competent authority that ‘he would complete specified term of engagement from the Armed Forces within stipulated period of one year from 5th February 2016.’ The second category, therefore, pertains to a person who is even at the time of making the application continuing to serve in the Armed Forces. The stipulation is that the document produced by him should show that he would complete the ‘specified term of engagement’ within one year from 5th February 2016. This has to be distinguished from being ‘discharged’ from service.

10. What has happened in the Petitioner's case is evident from the counter-affidavit filed by Respondent No.2 on 25th January 2018 in the present case. It is admitted that the Petitioner did produce a discharge certificate showing that he had been discharged from the Air Force on 28th February 2017. It is also admitted that a No Objection Certificate (NOC) was issued by the Air Force to the Petitioner on 5th February 2016 permitting him to apply for the government jobs. A copy thereof has been enclosed with the counter-affidavit.

11. In the counter-affidavit filed by Respondent No.3 the facts pertaining to the Petitioner have been set out in para 4 as under:

“4. The Petitioner was enrolled on 03 Feb 1994 with an Initial Regular Engagement (RE) upto 02 Feb 2014 and subsequently he was granted extension of service for a period of 03 years upto 02 Feb 2017 (extended RE). In accordance with the Government of India, Ministry of Defence letter No. A/16097/AG/PS-2(C)/3323/D(AG) dated 15 June 1974 reproduced as Appendix 'A' (refer to AFO 110/77) Petitioner was due for discharge from the Indian Air Force on 28 Feb 2017 (afternoon of the last date of the month in which his date of discharge falls) and accordingly proceeded on discharge on 28 Feb 2017 (A/N). Accordingly Petitioner was struck off from the strength of Indian Air Force with effect from 01 March 2017. Once a person is discharged from service his discharge date cannot be altered.”

12. It is evident from the above admitted facts that the Petitioner's term of initial regular engagement ended on 2nd February 2014. The three years extension was ending on 2nd February 2017. Therefore, plainly, the Petitioner fulfilled the requirement set out in Note-III of the recruitment notice dated 9th January 2016 viz., that he would complete the specified term of engagement within one year from 5th February 2016. The discharge was given effect to on 28th February 2017 since that was the practice of the Government of India. The discharge is always on the last date of the month in which the date of discharge falls. However, the

admitted position even according to Respondent No.3 is that his term of engagement was up to 2nd February 2017. The Respondents also do not dispute that the Petitioner was eligible for NOC 'on or after 3rd February 2016'. Where the Respondents have erred is in contending that he did not seek discharge from the IAF from the date that he was physically issued the NOC prior to the date of his scheduled discharge. The Petitioner's term of engagement was anyway coming to an end on 2nd February 2017 which was within a year from the scheduled date i.e. 5th February 2016. He had sought an NOC which was issued to him on 5th February 2016. Therefore, he fulfilled the condition in Note-III completely.

13. Consequently, the Court is of the view that Respondent No.2 was in error in rejecting the candidature of the Petitioner for appointment as SI/Exe in the Ex-Serviceman Category.

14. Mr. Kakkar, learned counsel for the Petitioner sought to raise an issue as regards the actual number of vacancies for ex-servicemen. However, the Court is not inclined to examine the said question in the present petition for the simple reason that during the pendency of the present petition the Respondents were asked to keep one vacancy available for the Petitioner. Further, pursuant to the order dated 14th August 2018, the counsel for the Respondent has confirmed that one vacancy is indeed available for the Petitioner against which he can be accommodated.

15. Consequently, the Court has no difficulty in directing the Respondents to appoint the Petitioner as SI/Exe against the available vacancy forthwith. It is made clear that the Petitioner would not be entitled to any arrears of pay. However, for the purposes of seniority his appointment date would notionally be counted from the date of appointment of the earliest of the others in his batch.

16. The consequential orders to be issued not later than 31st March 2019. The writ petition is allowed in the above terms. The pending application is disposed of. No costs."

4. The application is disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 19, 2019

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