

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-11039-2021 (O&M)

Date of decision: May 09, 2022

Gurpreet Kaur

...Petitioner(s)

Versus

Punjab Public Service Commission & ors.

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr.Navdeep Singh, Advocate for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

Mr.Shivoy Dhir, Senior Panel counsel for UOI-respondent No.3.

Mr. Manpreet Singh Doabia, Advocate for respondent No.4.

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MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution, *inter-alia*, for quashing of the impugned Public Notice dated 20.05.2021; whereby candidature of petitioner for recruitment to the post of Punjab Civil Services (Executive Branch) & Allied Services, for short 'PCS & Allied Services', was rejected on the premise that she is not covered under the definition of Ex-Servicemen, for short 'ESM'.

2. Facts are not in dispute.

Briefly stated, the Punjab Public Service Commission, for short 'the Commission' issued an Advertisement dated 12.12.2020 for recruitment against 75 posts of PCS & Allied Services on the basis of Punjab State Civil Services Combined Competitive Examination-2020, for short 'Competitive Examination' and out of which 11 posts were reserved

for ESM/LDESM (Lineal Descendent of ESM); [Category Code Nos.72/73], respectively.

3. Considering herself eligible, the petitioner applied under ESM category (Code No.72). She appeared in the Preliminary Screening Test held on 13.02.2020 and cleared the same. Thereafter, Main Examination was held from 01.04.2021 to 08.04.2021 and she duly appeared under roll No.20348. The result of main written test was notified on 20.05.2021, but she was declared ineligible vide impugned Public Notice dated 20.05.2021 and relevant part of the same is recapitulated as under:-

**“PUNJAB PUBLIC SERVICE COMMISSION
BARADARI GARDENS, PATIALA-147001
WEBSITE: [HTTP://PPSC.GOV.IN](http://PPSC.GOV.IN) FAX: 0175-5014831
PUBLIC NOTICE
PUNJAB STATE CIVIL SERVICES COMBINED
COMPETITIVE EXAMINATION-2020**

1. *It is for the information of the candidates who had appeared in the Punjab State Civil Services Combined Competitive Mains Examination -2020 that Roll Number wise list of candidates who have qualified for the interview is attached as Annexure A.*
2. *The interview for the ibid posts shall commence from 31.05.2021. Detailed Schedule of the interview will be uploaded on the website of the Commission shortly.*
3.
4. *The Ex-serviceman candidates are required to submit the Ex-servicemen certificate issued by the concerned District Sainik Welfare Officer and I.D. proof issued from the concerned authority of Army/ Navy/Air Force.*
5.
6. *After the ongoing scrutiny of the application forms of the candidates, the following candidates have been found ineligible for the reasons mentioned against their roll numbers :*

S.No.	Mains Roll No.	Reason of Rejection
1.	...	

2.	...	
3.	20348	Not covered under the definition of ESM

Date: 20.05.2021

Navreet Kaur Sekhon, PCS
Secretary Examinations.”

4. Aggrieved against the above impugned action of the respondent-Commission, petitioner has filed present writ petition.

5. CONTENTIONS:

BY PETITIONER:

Learned counsel contended that petitioner was granted Short Service Commission with effect from 05.09.2013 in Military Nursing Service for short ‘MNS’ and after completion of the specified term of engagement for a period of five years, she was discharged as Captain on 04.09.2018. Respondent no.2 has issued an identity card showing her as an ESM and as per service records also, she has been treated as a member of the Armed Forces of the Union; thus, petitioner is fully covered within the definition of ESM as per Rule 2 (c) of the Punjab Recruitment of Ex-servicemen Rules, 1982, for short ‘the State Rules’ and the same was duly reflected in the aforesaid advertisement. Also contended that a communication dated 21.05.2021 was sent to the respondent-Commission; but no response has been received as there seems to be some confusion at the end of respondent No.3-Director, Department of Personnel & Training, Government of India, Ministry of Personnel, Public Grievances & Pensions, North Block, Central Secretariat, New Delhi, for short ‘DoPT’, in view of the definition contained under Rule 2 (c) of the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 (P-8), for short ‘the Central Rules’. Again contended that definition contained under the Central Rules is not applicable to the instant case; rather provisions of

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the State Rules are attracted in view of the fact that former rules cover only Group 'C' and 'D' posts in Central Government; whereas present controversy relates to PCS & Allied Services, which is a group 'A' post under the State of Punjab. Again contended that in view of notification dated 13.02.2020 (P-13), the Short Service Commissioned Officer(s) from MNS released after completion of fixed term of engagement with gratuity are fully covered within the definition of ESM under the State Rules and as such the impugned rejection is wholly untenable. Also contended that in view of the provisions contained under The Military Nursing Services (India) Ordinance, 1943, for short "1943 Ordinance", the MNS is part and parcel of armed forces of Union and as such, petitioner is fully covered under the definition of ESM.

In support of above contentions, learned counsel for the petitioner cited following legal precedents:-

- “1. *Lt R S Rebecamma, Ex MNS Vs. Zilla Sainik Officer &Ors*
2004 SCC OnLine AP 714
2. *Mohini Philip Vs. Union of India* 1991 SCC OnLine Mad 494
3. *Captain Krishna Vs. Union of India* 2010 9 SCT 857.”

By State of Punjab (Respondent Nos.1&2)

Learned State counsel while opposing the case of petitioner submitted that she has not served in the Regular Army, Navy or Air Force of the Indian Union; therefore, not covered under the definition of ESM in terms of the Central Rules. Further contended that definition of ESM given under the State Rules cannot be interpreted contrary to the Central Rules in view of the clarification issued by the Ministry of Defence, for short 'MoD' vide letter dated 10.08.2021. He further contended that even on earlier occasion also the MoD vide letter dated 31.07.2019 had clarified that identity card(s) as ESM in favour of members of MNS be not issued by the

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District Sainik Welfare Board. Again contended that petitioner has never been the member of Regular Army; rather she was released from MNS after rendering 05 (five) years of service and which is an Auxiliary Force. Thus, petitioner is not covered within the purview of ESM under the Central Rules or the Army Act, 1950, for short 'the Act'.

By Union of India (Respondent No.3)

It is contended by learned counsel that as per Allocation of Business Rules, 1961, (amended upto date), for short 'the Allocation Rules', necessary action for inclusion of members of MNS within the purview of ESM is to be taken by the DoPT on recommendations of MoD; but till date no such positive steps have been taken by the quarter concerned. Therefore, the prayer of petitioner for claiming the benefit of ESM has rightly been rejected by the Commission. Further submitted that respondent No.3 has unnecessarily been impleaded as party respondent and it is the MoD who would be the proper party to respond the petition being a Nodal Ministry in view of the provisions of the Constitution. Also contended that proposal regarding inclusion of MNS in the ambit of ESM has not yet been accepted by the competent authority and reference in this regard was made to the office memorandum dated 24.12.2019.

By Respondent No.4

Learned counsel submitted that legal issue for granting the status of ESM to the members of MNS is *sub-judice* before the Hon'ble Supreme Court in Civil Appeal No. 7417/2010 along with other connected matters; therefore, the claim of the petitioner at this stage, is not tenable and as such the petition deserves to be dismissed.

6. Heard learned counsel for the parties and perused the paper-book.

7. After hearing both sides and going through the records, the points for consideration to adjudicate the matter in controversy would be as under:—

- “(i) Whether petitioner having been released as a Short Service Commissioned Officer with gratuity from MNS is falling within the purview of ESM?*
- “(ii) Whether in view of facts and circumstances of the present case, the impugned action of the respondent-Commission thereby rejecting the candidature of petitioner for recruitment to the post(s) in question is legally sustainable?”*

8. **POINT No.(i)**

Article 246(1) of the Constitution deals with subject matter of laws to be made by Parliament and the Legislatures of States and which reads as under:-

“246: Subject-matter of laws made by Parliament and by the Legislatures of States—(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).”

Entry-2, List I-Union List of the Seventh Schedule being relevant is also extracted as under:-

“2. Naval, military and air forces; any other armed forces of the Union.”

The President of India while exercising powers under Clause 3 of Article 77 of the Constitution has made the Allocation Rules for transaction of business by the concerned department(s). The Department of Ex-servicemen Welfare, MoD deals with the matters relating to Armed Forces Veterans (Ex-servicemen) including pensioners.

8 (i) While exercising powers under proviso to Article 309 of the Constitution, the President of India framed the Central Rules (amended vide notification dated 04.10.2012) and relevant part of the same reads as under:-

“No. 39016/10/79-Estt.(C)
Government of India / Bharat Sarkar
Ministry of Home Affairs/ Grih Mantralaya
Department of Personnel and Administrative Reforms
(Karmik Aur Prashasanik Sudhar Vibhag)

New Delhi-1, the 15th December, 1979

NOTIFICATION

*In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules for **regulating the recruitment of ex-servicemen in Central Civil Services and Posts**, namely:*

1. Short title and commencement:
 - (1) These rules may be called the **Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979**.
 - (2) They shall be deemed to have come into force on the first day of July, 1979.
2. Definitions - In these rules, unless the context otherwise requires –
 - (a) "Armed Forces of the Union" means the naval, military and air forces of the Union;
 - (b) "disabled ex-serviceman" means an ex- serviceman who while serving in the Armed Forces of the Union was disabled in operations against the enemy or in disturbed areas;
 - (c) 'ex-serviceman' means a person –
 - (i) who 'has served in any rank whether as a combatant or non-combatant in the **Regular Army**, Navy and Air Force of the Indian Union, and
 - (a) who either 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;

or

- (b) *who has been relieved from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension;*

or
- (c) *who has been released from such service as a result of reduction in establishment;*

or
- (ii) *who has been released from such service after completing the specific period of engagement, otherwise than at his own request, or by way of dismissal, or discharge on account of misconduct or inefficiency and has been given a gratuity; and includes personnel of the Territorial Army, namely, pension holders for continuous embodied service or broken spells of qualifying service;*

or
- (iii) *personnel of the Army Postal Service who are part of Regular Army and retired from the Army Postal Service without reversion to their parent service with pension, or are released from the Army Postal service on medical grounds attributable to or aggravated by military service or circumstance beyond their control and awarded medical or other disability pension;*

or
- (iv) *Personnel, who were on deputation in Army Postal Service for more than six months prior to the 14th April, 1987;*

or
- (v) *Gallantry award winners of the Armed forces including personnel of Territorial Army;*

Or
- (vi) *Ex-recruits boarded out or relieved on medical ground and granted medical disability pension.”*

Perusal of Rule 2 (c) (i) & (ii) *inter-alia*, reveals that an “ex-serviceman” means a person who has served in any rank whether as a combatant or non-combatant in the Regular Army, Navy and Air Force of the Indian Union and who has been released from such service after

completing the specific period of engagement otherwise at his own request and has been given a gratuity.

There is no dispute that petitioner was granted Short Service Commission in MNS and after completion of specified period of five years, she was released from service as Captain w.e.f. 04.09.2018. Also not in dispute that petitioner has been granted the benefit of gratuity; but there is no material available on record to indicate that she had served with the Regular Army, Navy or Air Force at any point of time.

Although, it transpires from the communication dated 07.03.2019 (P-18), that recommendations of the Heads of three services, forwarded with the approval of Chairman, COSC were considered in the MoD and approved at the level of Defence Minister; but till date, no final decision has been taken for inclusion of the members of MNS within the purview of ESM by the quarter concerned.

8 (ii) Also noteworthy that on 28.03.2019, a meeting was held under the Chairmanship of Joint Secretary (Ex-servicemen Welfare) leading to certain decisions; but no favourable steps were taken for inclusion of the members of MNS within the purview of Regular Army. For reference, relevant extract of the above minutes is recapitulated as under:-

“Minutes of the meeting held under the Chairmanship of Shri Pudi Hari Prasad, Joint Secretary (ESW) on 28.03.2019 at 11:00 am to discuss grant of status of Ex-serviceman to MNS Officers and other issues pertaining to Ex-servicemen.

A meeting was held under the Chairmanship of Shri Pudi Hari Prasad, Joint Secretary (ESW) on 28.03.2019 at 11:00 am in his Chamber to discuss grant of status of Ex-serviceman to MNS Officers and other issues pertaining to Ex-servicemen.

The meeting was attended by the following officers:-

- (i) Shri G. Srinivasan, Director, DOP&T*
- (ii) Lt.Col.A Pande, AAG PS-2*

- (iii) Sh.Jitender Kumar, DS(Res-I)
- (iv) Smt.Suman Sharma, US(Res-I)

The following issues were discussed:-

1. **Grant of status of Ex-serviceman to MNS Officers**

It was informed that proposal for inclusion of Military Nursing Officers in the ambit of Ex-Servicemen (ESM) as outlined in DOP&T Notification dated the 4th October, 2012 has been taken up with twice with DOP&T after consultations with AG PS-2. However, the same has been returned by DOP&T with the suggestion to explore possibility of inclusion of MNS Officers in the Regular Army.

The representative of AG PS-2 intimated that MNS officers cannot be included in the definition of regular army because of the following reasons:-

- MNS Officers are not authorized to carry arms.
- Pay scales are different for Regular Army and MNS Officers.
- MNS Officers are not allowed to command troops.

Director, DOP&T appreciated the problem and suggested that the proposal may again be referred to DOP&T with detailed reasoning. Accordingly, AAG PS-2 was requested to furnish their comments in writing so that the matter may be taken up again with DOP&T.

2.

.....

3.

.....

4. **Proposal to include Short Service Commissioned Officers who obtained release from service at their own request during the extended period of engagement in the category of ‘Ex-Servicemen’**

It was informed that based on the decision of Hon’ble High Court of Delhi in WP(C) No.7302/2016 filed by Major Kapil Sawhney Vs. UOI and others, this Department had suggested that all Short Service Commissioned Officers who have completed the initial term of engagement may be accommodated in the definition of ‘Ex-Serviceman’ by amending the definition as in Para 2 (c)(ii) of the DOP&T

Notification dated 04.10.2012. The file is being referred to DOP&T for amendment of their Notification dated 04.10.2012. Director, DOP&T after perusing the draft suggested to redraft the language to bring more clarity in the proposal. Thereafter only the proposal may be referred to DOP&T.”

Again noteworthy that in furtherance of the decision at point No.4 (*ibid*), the definition of ‘ex-servicemen’ was slightly amended while inserting proviso to Rule 2 (c) (ii) vide gazette notification dated 13.02.2020, in the following manner:-

**“MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND
PENSIONS
(DEPARTMENT OF PERSONNEL AND TRAINING)
NOTIFICATION
New Delhi, the 13th February, 2020**

G.S.R. 116 (E).—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 namely:-

1. Short title and commencement:-

(1) *These rules may be called the Ex-servicemen (Re-employment in Central Civil Services and Posts) Amendment Rules, 2020.*

(2) *They shall come into force on the date of its publication in the Official Gazette.*

2. In the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979, in rule 2, in clause (c) in sub-clause (ii), the following proviso shall be inserted, namely:-

“Provided that Short Service Commissioned Officers released from service after completing initial terms of engagement otherwise than by way of dismissal or discharge on account of misconduct or inefficiency and have been given gratuity shall be eligible to the status of Ex-servicemen;”

[F.No.36034/1/2019-Estt.(Res)]

SUJATA CHATURVEDI, Addl.Secy.”

No doubt, as per the proviso reproduced hereinabove, the Short Service Commissioned Officers released from service after completing initial term of engagement and have been given gratuity, are to be treated as eligible to the status of ESM; but the basic condition of rendering service in the “Regular Army” still remains intact, which petitioner does not fulfill.

8 (iii) Also necessary to mention here that phrase “Regular Army” has not been defined under the Central Rules, but Section 3 (xxi) of the Act (Act No.46 of 1950), says as under:-

“3(xxi) "regular Army" means officers, junior commissioned officers, warrant officers, non-commissioned officers and other enrolled persons who, by their commission, warrant, terms of enrolment or otherwise are liable to render continuously for a term military service to the Union in any part of the world, including persons belonging to the Reserve Forces and the Territorial Army when called out on permanent service”.

From perusal of definition clause reproduced hereinabove, it is nowhere discernable that members of MNS are falling within the purview of “Regular Army”.

8 (iv) Concededly, the MNS was raised under the provisions of 1943 Ordinance and relevant part of the same (published in AIR Manual, 6th Edition, 31st July, 2018) reads as under:-

“An Ordinance to constitute a force to be called the Indian Military Nursing Service as part of the Armed Forces of the Union.

“3. Constitution of Military Nursing Services (India).—

(1) There shall be raised and maintained, in the manner hereinafter provided, as part of the armed forces of the Union and for service with the Indian

Military Forces as an auxiliary force which shall be designated the Military Nursing Services (India).

(2) *The Military Nursing Services (India) shall comprise two corps, namely, the Indian Military Nursing Services and the Army in India Nursing Service Reserve.*

5. **Members to be of commissioned rank**— *All members of the Indian Military Nursing Service shall be of commissioned rank and shall be appointed as officers of the Indian Military Nursing Service by the Central Government by notification in the Official Gazette.”*

Undoubtedly, the title of the 1943 Ordinance says that MNS was constituted as part of the armed forces of the Union; still further, Section 3 thereof lays down that “*MNS shall be raised and maintained as part of the armed forces of the union*”; but at the same time, it is clearly stipulated that MNS shall be an “*auxiliary force*”.

Again, Section 5 of the 1943 Ordinance talks about the appointment and grant of Commission to the members of MNS by the Central Government vide notification in the official gazette; whereas the Commission and appointment in the “Regular Army” is to be granted under Section 10 of the Act, and which reads as under:-

“10. Commission and appointment. *The President may grant, to such person as he thinks fit, a commission as an officer, or as a junior commissioned officer or appoint any person as a warrant officer of the regular Army.”*

Concededly, the petitioner was granted Commission in MNS under Army Instructions No.17/96 (amended on 02.11.2007), which are administrative in nature, and she was never granted the Commission under the provisions of Section 10 of the Act. Moreover, this fact is clearly

evident from para 2 of the appointment letter dated 12.08.2013 (P-2), which reads as under:-

“2. You have been selected for grant of Short Service Commission in the Military Nursing Service, under the terms and conditions of service laid down in Army Instruction 17/96 as amended vide GOI letter No.4(3)/2007/D(Med) dt. 02 Nov.2007, for a period of 5 years in the initial instance, further first extension of 5 years, second extension of 04 years (total 14 years) at the discretion Govt. of India, subject to condition that such extension will not be extended beyond the age of 56 years. The appointment will be subject to character verification from civil authorities.”

In view of the above, there remains no doubt that petitioner had never been granted Short Service Commission under the Act as a member of “Regular Army”; rather she was inducted with the MNS under the Army Instruction No.17/96, which is only an “auxiliary force” and till date, the same has not been made as a part of the “Regular Army”.

8 (v) Also relevant to mention here that the Hon’ble Supreme Court in **Jasbir Kaur & Ors vs. Union of India & Ors** (2003) 8 SCC 720, while dealing with the controversy relating to Dress-Code prescribed for the members of MNS, in para 13 thereof, held that it *“is a separate class, sui generis, even though an auxiliary force of the Indian Military, is an undeniable fact. The historical background in which this force was established and the legal provisions applicable to it leave no manner of doubt that notwithstanding that it is a part of the Indian Army, IMNS is a distinct but separate class by itself.”*

Again it is necessary to mention here that legal issue as to whether members of MNS are to be treated as ESM is pending consideration in Civil Appeal No.7417/2010 (**UNION OF INDIA & ORS. Vs.**

MAJ. GEN. USHA SIKDAR) along with other connected matters and the Hon'ble Supreme Court after noticing **Jasbir Kaur's** case (supra), on 29.03.2017, passed the following order:-

“Ordinarily, we would have addressed the controversy regard being had to the provisions contained in the Army Act, 1950 (for short, 'the 1950 Act') and Indian Nursing Military Services Ordinance, 1943, but in the course of hearing, it was submitted by Mr. R. Balasubramanian, learned counsel appearing for the Union of India that after delivery of the impugned order, the Armed Forces Tribunal, New Delhi (for short, 'the tribunal') vide judgment dated 22 nd February, 2011, in O.A. No.576 of 2010 has taken a different view and dismissed the claims of the likes of the respondents. Learned counsel would submit that the controversy has been put to rest by a two-Judge Bench decision in Jasbir Kaur and Others vs. Union of India and Others (2003) 8 SCC 720.

Mr. Colin Gonsalves, learned senior counsel and Mr. P.D.P. Deo, learned counsel appearing for the respondents would submit that the judgment in Jasbir Kaur (supra) requires reconsideration, inasmuch as the Court has been guided in entirety by the provisions contained in the Indian Military Nursing Services Rules, 1943, though the same has been impliedly repealed. It is their stand that they have been appointed and further promoted under the 1950 Act and, in any case, the Ordinance would not be applicable to them.

In the course of hearing, we have been apprised that when the matter was pending before the High Court, it has directed a High Level Committee to look into the grievances of the respondents. After coming into force of the Armed Forces Tribunal Act, 2007 (for short, 'the 2007 Act'), the writ petition stood transferred to the tribunal and the impugned judgment came to be passed. We have also been apprised that the report of the Committee consisting all the heads of three Services, was submitted some time in the year 2006.

What is urged before us by the respondents is that there are series of Gazette notifications and the orders passed in the name of the President of India and other competent authorities

conferring the equal status to the members of the Military Nursing Services. The claim is that a time has come that they should be treated as part of the regular army regard being had to the concept of gender justice and affirmative provisions enshrined under the Constitution of India. Additionally, it is canvassed that they would come within the category of combatant, since at the time of war or other difficult times, they have to go and take care of the soldiers or other injured persons at the cost of their life. It is also contended that there are circumstances when they are some times required to go into the war zone to look after the severely injured persons for the purpose of nursing. In essence, the contention is when there is rendition of such priceless service, there should not be denial of benefit.

In view of the aforesaid submissions and keeping in view the fact that the report was submitted a long back, we would like the heads of the three Services to meet for the purpose of having a fresh look into the aspects as is put forth before us and send their decision/recommendation to the Government and upon which the Government shall take a decision. We are sure that the three heads of the Services shall take into consideration the concern expressed by the respondents with regard to their status, equality and duty. We may only add that the Committee so constituted shall remain sensitive to the issues and, if necessary, may give suggestions for necessary steps to be taken by the Union of India. While taking the decision, the Committee need not be guided by any of the impugned orders, for their duty basically would be to deal with the grievances of the respondents for the purpose of amelioration, if it is possible. As we are reconstituting the Committee, we request the Committee to take a decision within a period of two months and we expect that the Government shall not take any decision on the basis of the earlier report and will await the receipt of the report of the newly constituted Committee.”

As per the web-site of Hon’ble Supreme Court, all the above matters are still pending.

In view of the above discussion, this Court is of the opinion that petitioner has not served in any rank of the Regular Army, Navy or Air Force and she having been released as a Short Service Commissioned Officer from MNS with gratuity, is not falling within the purview of ESM.

9. POINT No.(ii)

The respondent-Commission while issuing the impugned public notice has rejected the candidature of the petitioner for the post(s) in question on the premise that she is not covered under the definition of ESM. It was vehemently contended by learned counsel for the petitioner that in view of the definition contained under Rule 2 (c) of the State Rules and which was duly mentioned in the advertisement also, she is very much entitled for the benefit of reservation being an Ex-Short Service Commissioned Officer from the MNS. For reference, the relevant part of State Rules are extracted as under:-

- "2. **Definitions** - In these rules, unless the context otherwise requires 'Armed Forces of the Union' means the Naval, Military and Air Forces of the Union of India;*
- (a)*
- (b)*
- (c) **Ex-Serviceman**" means a person who has served in any rank, whether as a combatant or a non-combatant in the Naval, Military and Air Force of the Union of India (hereinafter referred to as the Armed Forces of the Union of India), and who has:*
- (i) retired or released from such service at his or her own request after earning his or her pension; or*
- (ii) been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or*
- (iii) been released, otherwise than on his own request, from such service as a result of reduction in establishment; or*

(iv) been released from such service after completing the specific period of engagement otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, and has been given a gratuity;

But does not include a person who has served in the Defence Security Corps, the General Reserve Engineering Force, the Lok Sahayak Sena and the Para Military Forces, but includes personnel of the Lok Sahayak Sena of the following categories, namely:-

- a) pension holders for continuous embodied service*
- b) persons with disability attributable to military service*
- c) gallantry award winners.”*

10. Learned counsel for the petitioner while pressing into service Rule 2 (c) (iv) of the State Rules, forcefully contended that petitioner has been released from service after completing the specific period of her engagement with gratuity and as such she is very much entitled for the benefit of reservation as ESM.

11. At the first blush, the contention seems to be attractive; but the same is not acceptable for the following reasons:-

- (i) As already concluded under point No.1, the petitioner being member of MNS is not falling within the purview of ESM. Although, in the definition clause of ESM under the State Rules, the phrase '**Regular Army**' is not specifically mentioned; but Article 254 of the Constitution, *inter-alia*, says that if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

- (ii) In view of the discussion made under point No.i of this order, the matters relating to Armed Forces Veterans (Ex-Servicemen) are to be dealt with by the Department of Ex-servicemen Welfare, MoD and the definition of an ESM contained under the State Rules is to be read in harmony with the Central Rules and not in derogation of the same.
- (iii) Still further, the DoPT upon recommendations of Department of Ex-servicemen Welfare, MoD, in the light of controversy pending before the Hon'ble Supreme Court, issued office memorandum dated 24.12.2019 for examination of the matter for inclusion of MNS in the ambit of ESM; but till date, no positive decision has been taken to that effect and the memorandum being relevant, is extracted as under:-

*"No.36034/1/2018-Estt(Res)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training*

*-.
North Block, New Delhi
Dated: the December 24, 2019*

OFFICE MEMORANDUM

Subject: Grant of status of Ex-Servicemen to Military Nursing Service Officers –reg.

Reference is invited to OM No.28(87)2018/D(Res-1), dated 04.12.2019, of Department of Ex-Servicemen Welfare, regarding a proposal for inclusion of Military Nursing Service Officers (MNS) in the ambit of Ex-Servicemen (ESM).

2. *The above-mentioned proposal has again been examined by this Department. In this context, it is decided that the Department of Ex-servicemen Welfare may examine the case in the light of outcome of Civil Appeal, titled UOI & ors V/s Maj Gen Usha Sikdar case, filed by Union of India and similar other cases, with regard to grant of Ex-servicemen status to Military Nursing Service Officers.*

*Sd/-S.P.Pant
Deputy Secretary to the Government of India*

*Ministry of Defence Tel.2309 3074
Department of Ex-Servicemen Welfare,
(Shri Jitender Kumar, Dy.Secretary (Res.-I)
Sena Bhawan, New Delhi".*

12. Again, Kendriya Sainik Board, MoD, Government of India vide their memo dated 10.08.2021 clarified that the MNS persons do not form part of the Regular Army, Navy and Air Force, hence they are not covered under the definition of ESM status and the memo reads as under:-

*“Kendriya Sainik Board
Ministry of Defence
Government of India
West Block-IV, Wing-VII
R.K.Puram
New Delhi-110066*

*No.021/Policy/Punjab/Vol-I Dated 10.Aug.2021
Director,
Defence Services Welfare-cum-Secretary
Rajya Sainik Board,
Punjab Sainik Bhawan,
Sector 21-D, Chandigarh-160 022*

Clarification regarding definition of ex-servicemen (ESM)

1. *Refer to your letter No.55/29/2017-MS/193 dt.28 Jun. 2021.*
2. *Clarifications are as under:-*
 - (a) *MNS PERSONS: As per notification issued by Govt. of India, Ministry of Personnel, Public Grievances and Pensions dated 04 Oct. 2012, a person who has served in any ranks whether as combatant or non combatant in the regular Army, Navy and Air Force of the Indian Union will be treated as ex-servicemen. The MNS persons does not form part of regular Army, Navy and Air Force. Hence, MNS officers are not covered under the definition of Ex-servicemen status.*
 - (b) ***Ex-Cadets:-*** *As per Ministry of Defence, Department of Ex-servicemen Welfare, D (Res-I) vide their ID Note No.12/1/2005/D(Res) dt. 02/05 Sep 2011, the competent authority has not approved the proposal for granting Ex-Servicemen status to disabled cadets.*

*Sd/-Shikher Chandra,
Captain(IN)
Director (Policy), KSB”*

Since the final decision regarding inclusion of member of MNS

within the definition of ESM is to be taken by the MoD, but till date nothing

fruitful has been done by the quarter concerned; therefore, definition of ESM contained under the State Rules cannot be read beyond the scope of the Central Rules.

13. The argument raised by learned counsel for the petitioner that she has been issued an identity card as an ESM by the competent authority is also not helpful in view of the communication dated 31.07.2019 issued by the MoD; whereby it was clarified that officers of MNS have not been granted ESM status and the communication being material is extracted as under:-

*“Tele: 26188098
FAX: 26192362*

*GOVERNMENT OF INDIA
MINISTRY OF DEFENCE
KENDRIYA SAINIK BOARD
WEST BLOCK-IV, WING –VII
R.K.PURAM NEW DELHI-110066
061/Gen Policy/KSB/A 31 Jul, 2019
Director DSW Secretary RSB of
All States/ UTs*

*ERRONEOUS ISSUE OF ESM IDENTITY CARDS AND
APPOINTMENT OF MNS OFFICERS IN SAINIK BOARDS IN
RSB/ZSB.*

- 1. In the recent past a few instances have come to light wherein ESM/related Identity Cards have been issued to retired MNS Officers. It is also observed that some States/ UTs have appointed such officers in Rajya/Zila Sainik Boards in appointments reserved for retired ESM Officers.*
- 2. As per the current definition of ESM promulgated by DOPT (The apex. Authority for this purpose) MNS officers have not yet been granted Ex-servicemen status.*
- 3. This letter supersedes all other correspondence on the issue. This Sectt. Letter No.2 (2)/Policy/KSB/A dated 08 Jul. 2014 is hereby cancelled.*

*Sd/-Ajay Sharma,
Commander
JD Policy.”*

Even the MoD with reference to request of respondent No.4 vide letter dated 12.01.2022 intimated that grant of ESM status to the MNS officers is under consideration with the DoPT and same shall be processed as per the outcome of Civil Appeal No.7417 of 2010 and the aforesaid letter reads as under:-

*"No.28(12)2022/D(Res-I)
Government of India
Ministry of Defence
Department of Ex-servicemen Welfare
D(Res-1)*

*Sena Bhawan, New Delhi
Dated the 12th January, 2022.*

To

*Ms.Irwan Kour,
1025, Phase I, Urban Estate,
Jalandhar, Punjab*

Subject: ESM status to MNS Officers

Sir/Madam

Reference is invited to your representation dated 7 Jan 2022 in connection with the above subject.

- 2. In this regard, it is intimated that as per the present definition of ESM issued by DOP&T vide notification dated 4th October, 2012 (copy enclosed), MNS officers are not covered under definition of ESM. The matter is under consideration in consultation with DOP&T. However, the same will be processed further in the light of outcome of Civil Appeal No.7417/2010, filed by Maj Gen Usha Sikdar case, and similar cases, with regard to grant of Ex-Servicemen status to MNS Officers. The matter is subjudice and presently under consideration of this Department.*

- 3. For your information please.*

Encl: As above.

Thanking you,

*Yours faithfully,
Sd/-(Suman Sharma)
Under Secretary (Res-I)
Telefax: 2379 3365"*

14. Although, learned counsel for the petitioner tried to persuade this Court that benefit of ESM in the State of Punjab is granted by the respondent-Commission under the State Rules to the army veterans and specific affidavit dated 03.03.2022 to that effect has already been filed in the matter; but the same is not helpful in view of the conclusion recorded at point No.1. Even the reference of the State Rules in the advertisement would also be of no consequence for the members of MNS till they are included in the definition of ESM by the MoD.

The argument that the Central Rules are applicable only to Group 'C' & 'D' posts in Central Government; whereas the State Rules deal with the benefit of reservation in the State of Punjab for Group 'A', 'B', 'C' & 'D' posts, would also be of no help for the reason that a person who is covered within the ambit of ESM under the Central Rules, can only claim the benefit of ESM under the State Rules and not beyond that. In other words, for claiming the benefit of ESM under the State Rules, one should be covered under the definition of ESM as provided in the Central Rules. Since till date, members of MNS have not been treated as ESM under the Central Rules, therefore, petitioner cannot claim any benefit of reservation under the State Rules.

15. No doubt, State of Punjab is empowered to frame the State Rules, but in view of the provisions contained under Articles 246, Entry 2, List I-Union List, (Seventh Schedule), it cannot enlarge the meaning of ESM beyond the definition given under the Central Rules. Thus, mere admission or acknowledgement in the affidavit by the respondent-Commission that reservation is to be granted to the ESM under the State Rules, would not be construed that members of MNS are also to be granted the benefit of reservation as ESM.

16. The judgments cited by learned counsel for the petitioner are also not helpful in view of the fact that Central Rules were amended on 04.10.2012 and definition of ESM was restricted to the persons who have served in the “Regular Army”. It was further clarified by way of subsequent notifications issued by the MoD from time to time that members of MNS are not covered under the definition of ESM. Moreover, the issue is still pending before the Hon’ble Supreme Court in Civil Appeal No.7417/2010 along with other connected cases; therefore, the legal precedents cited by the petitioner would not serve any purpose for claiming the benefit of reservation as ESM.

17. No doubt, the members of MNS are serving the nation for the last about 80 years and it is also not in dispute that despite being females, they are rendering services in extreme difficult situations; sometimes in most unfavourable weather conditions at high altitudes; yet they have not been according the status of ESM for claiming certain benefits which are available to the Armed Forces Veterans and that certainly may be a cause of heart burning.

This court will also take judicial notice of the fact that the then Defence Minister of India in written reply to Shri Anubhav Mohanty in Rajya Sabha on 11.08.2015, acknowledged disparity in applicability of Army Act vis-à-vis MNS in the following manner:-

*“Press Information Bureau
Government of India
Ministry of Defence*

11 August-2015 13:19 IST

Disparity in Applicability of Army Act on MNS

Military Nursing Service is a part of Armed Forces Medical Services as an auxiliary service which is governed by Military Nursing Service Rules, 1944 framed under (The Indian) Military Nursing Service Ordinance, 1943.

Therefore, all the provisions of the Army Act are not applicable to MNS.

There is disparity in applicability of the Army Act between the officers of MNS and those of regular Army as these are two separate cadres. The disparity in applicability of the Army Act between officers of the above mentioned two different cadres stems from the difference in legal provisions governing them. However, it is ensured that all rules and regulations applicable to MNS are adhered to all times.

This information was given by Defence Minister Shri Manohar Parrikar in a written reply to Shri Anubhav Mohanty in Rajya Sabha Today.

DM/NAMPI/RAJ”.

In view the above, the members of MNS deserve sympathetic consideration for redressal of their grievance; but inevitable conclusion would be that till date, they have been treated as ESM by the quarter concerned. Therefore, in such a situation, the petitioner is not entitled to claim the benefit of reservation as ESM under the State Rules for the post(s) in question.

18. As a result thereof, this Court does not find any illegality with the impugned Public Notice dated 20.05.2021 while rejecting the candidature of the petitioner.

19. Consequently, there is no option except to dismiss the petition.

Ordered accordingly.

Pending application(s), if any shall also stand(s) disposed off.

May 09, 2022
sanjay

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No