

14.08.2024
Sl.166
Ct. No.2
Suman

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

WPA 615 of 2024

**Dr. Alka Sharma
-Versus-
Union of India and Ors.**

Mr.Veerendra Mohan
Ms. Pratusha Dutta Chowdhury

..for the petitioner.

Mr. Sudipto Kumar Mazumder, Ld. DSGI
Mr. Ajoy Kumar Singhanian

..for respondent nos. 1 to 4.

Ms. Rima Sarkar
Ms. Madhumanti Nandi

..for respondent no.5.

The petitioner, a civilian, was employed as a Dental Surgeon Officer under Ex-servicemen Contributory Health Scheme (ECHS, in short) on contractual basis with effect from September 5, 2022, to August 4, 2023, for a period of 11 months. The vacancy for Dental Officer was again advertised prior to expiration of the contract period of the petitioner. The petitioner participated in the selection process and secured the second position while respondent no.5, an Ex-serviceman, secured the first position. Consequently, after conclusion of the contractual period of the petitioner, respondent no.5 was

appointed to the relevant post on August 6, 2024 for a term of one year.

By filing this writ petition, the writ petitioner contends that her initial service period should have continued for another 13 months as per ECHS policy.

It has been argued that the selection of respondent no.5 to the relevant post was not in conformity with law. The petitioner contends that the post could not have been reserved for an Ex-serviceman, nor should preference have been given to respondent no.5 in the selection process. It has further been submitted that despite being a better qualified candidate, the petitioner has been unfairly denied her right to appointment.

It has further been contended that the selection committee did not act fairly in allotting marks to the petitioner. Marks were not allotted under the separate headings as mandated by the Supreme Court thereby vitiating the selection process.

The petitioner has relied upon the judgment reported at **(2003) 5 SCC 341 (Secretary, A.P. Public Service Commission v. Y.V.V.R. Srinivasulu)**, to argue that when a selection is made on the basis of the merit “preference” would be other things being qualitatively and quantitatively equal, an Ex-serviceman would be preferred in selection.

By placing reliance upon the judgments reported at **(1971) 1 SCC 436 (A. Periakaruppan Chettiar (Minor))**

by His Guardian v. The State of Tamil Nadu) and **(1976) 4 SCC 153 (*State of Karnataka v. M. Farida*)**, the petitioner contends that where the qualities to be tested as intangible quality such as aptitude and personality, if the relevant rule requires, separate marks should be allotted for each, the selectors must follow the rules. In the present case, the selectors have not allotted marks under the separate heading in the interview.

The issue whether the petitioner could continue in the relevant post beyond 11 months is addressed first.

It appears that the petitioner was appointed as a Dental Surgeon at ECHS, Bengdubi, on contractual basis only for 11 months by signing a contract. It is an admitted position that the petitioner completed the contractual period. The petitioner unnecessarily participated in the fresh selection process following the advertisement.

The petitioner, therefore, after participating in the selection process for the fresh selection cannot contend that her initial period of appointment should have been continued for another 13 months.

It also appears that the selection process was initiated in terms of a notification dated September 22, 2003, issued by the Ministry of Defence.

Clause 4 of the said notification provides as follows:

“4. When requisite percentage of ex-servicemen are not available, specific certificate signed by GOC Area would be

placed on record and thereafter the vacancies utilized by employing a suitable civilian. The GOC Area’s sanction would be valid for a period of eleven months only. During this period efforts will be made to appoint a suitable Ex-serviceman.”

In the aforesaid facts, I cannot accept the submission that the petitioner could have continued for a period of two years from the date of her appointment.

The clause 3 of the aforesaid notification dated September 22, 2003, also provides that preference will be given to Ex-servicemen for all employment in ECHS, where 60% vacancy will be reserved for Ex-servicemen and 40% vacancy will be filled up from the civilian.

In the present case, there was only one vacancy was advertised for the post of Dental Surgeon at ECHS, Bengdubi, and respondent no.5 was appointed against the said post. The relevant part of the datasheet of the selection process is reproduced below:

Ser No	Rank /Title	Name of Candidate	Age	Res Cat of Candidate (ESM/Civ)*	Qualification	No of Attempt of Basic Qualification	Experience	Bearing & Personality (8)		Orientation of Def Sys of working (7)	Proficiency of job (20)	Gen Aptitude (10)	Desirable Attributes (15)	Dedication (10)	Weightage (30)	Total (100)	Relative/Posn/Remarks
1	Lt Col	RAJESH KUMAR SAH	41	ESM*	BDS, PG, Diploma (Hospital Mgt)	1	14 Yrs (Indian Army)	5	5	15	7	10	7	20	69	1 st	

2	Mrs	ALKA SHARMA	43	CIV	BDS, PGDHH M, MDS	1	ECHS PC Allahabad- 1 Yr 2 month, ECHS PC Bengdubi- 11 months, Civ-13 Yrs 3 months (Total-15 Yrs (Civ)	5	5	13	7	10	7	20	67	2 nd (R1)
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From the above score sheet, it clearly appears that respondent no.5 secured first position on the basis of his merit. The question of giving preference or keeping the said post reserved for the Ex-servicemen is, therefore, inconsequential in the present case.

It also appears that the selection committee duly awarded marks under the different headings to the candidates.

Therefore, the judgments relied upon by the petitioner in this regard have no application in the facts of this case.

Notably, both the petitioner and respondent no.5 were given identical marks under all the headings except “Proficiency of Job”, where respondent no. 5 was awarded two additional marks. Since respondent no. 5 received these two additional marks, he surpassed the petitioner in selection process. The petitioner has not pleaded that she could have scored higher marks than respondent no.5 under that heading. The burden was upon the petitioner to demonstrate that she could have scored higher than respondent no.5 under said heading

and the petitioner has failed to demonstrate so. I am, therefore, not inclined to accept the submission advanced by the learned advocate appearing for the petitioner that the selection committee arbitrarily awarded marks in the selection process.

In that view of the matter, I am not inclined to interfere with the selection process.

Accordingly, **WPA 615 of 2024** is dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)