



2024 : DHC : 929



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

% Judgment delivered on: 05.02.2024

+ **W.P.(C) 1421/2024**

RAJDEV SINGH YADAV (EX-POCOM) EW Petitioner

versus

CHAIRMAN AND MANAGING DIRECTOR, FCI AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Jai Krishna Singh, Advocate.

For the Respondents : None.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 6906/2024 (for early hearing)

1. This is an application filed under Section 151 CPC, 1908 seeking early hearing of the present petition.
2. Since no notice at all was issued in the accompanying writ petition, the application seeking early hearing is allowed.
3. The petition be taken up for consideration today.



4. The application stands disposed of.

W.P.(C) 1421/2024

5. This is a writ petition under Article 226 of the Constitution of India, 1950, *inter alia*, seeking the following prayers:-

“a. Writ of Mandamus or appropriate Writ, Order or direction to the respondents to consider the case of the petitioner positively and include his name in the list of successful/selected candidates on the basis of his marks obtained in the said written examination held on 5th March 2023 in reference to the said advertisement, and

b. further kind order granting any other or further reliefs that the present tribunal deems fit and just in the facts and circumstances of the case.”

4. The case of the petitioner as culled out from the petition is as follows :-

“The applicant is a citizen of this country and he is a disabled ex-serviceman in the category of ESM-2"aggravated to service". He has served in the Indian Navy for 15 years and was duly discharged/retired on 31st August in the year 2021 after completing 15 years of unblemished service with impeccable record.

There was an advertisement vide Adv no. 01/2022-FCI on 03 September 2022 by Noida FCI North branch for recruitment in various categories of officials including for the post of FCI AG III (depot) from all categories of eligible candidates(General, OBC,SC and ST, EWS as well as from among Ex-Servicemen). In this advertisement, total of 14.5 percent horizontal reservation was available for Ex-servicemen, out of which 4.5 percent were reserved for the categories of ESM-2 disabled ex-servicemen.

It is pertinent to mention herein that ESM-11 has two categories namely i-" Aggravated to service" and ii-"attributed to service" whereas the above said advertisement did not specify that the said vacancy was for the category of ESM-2 "aggravated to Service" also.



The petitioner is in the category of "aggravated to service".

The aforesaid advertisement does state in Note 'IV' on the page no. 8 that "an ex-servicemen or persons with benchmark disability(pwBD) category candidate who qualifies on the basis of relaxed standards viz. age ,limit, experience, or qualifications, in online examinations, etc. is to be counted against reserved vacancies and not general vacancies subject to fitness of such candidate for selection". However, there was fundamental error in this advertisement which is that the term 'benchmark disability' has nowhere been defined in this whole advertisement. It has been mentioned in genera I sense whereas the said advertisement on the page no 3-4 clearly defines the requisite degree of disability i.e. 40 percent in the case of even candidates other than ESM-11 'attributed to military service'.

This created confusion because as stated herein above, disability considered in military service is of two types i.e. i-aggravated to service and ii-attributed to service and many departments such as I BPS, banking, SSB/SSC do not consider ' ESM-11 aggravated to service' as disabled. Therefore, the question whether "ESM-11 aggravated to service" was also eligible for horizontal reservation as per this advertisement remained unanswered in this whole advertisement.

Further the term 'ex-servicemen' has been defined in the explanation after the note 'vi' on the page no.-9, wherein it has been held that the "ex- servicemen means a person in any rank from Indian Navy, Army and Indian Air force, (a) who has been retired or relieved or discharged from such service at his own request or being relieved by the employer after earning his/her pension discharged from such service , (b) and those who have been relieved from such service on medical grounds 'attributable to military service' or circumstances beyond his control and awarded medical or other disability pension.(c) who has been released from such service as a result of reduction in establishment", etc.



The above definition shows that there is specific reference to the terms u attributed to military service" in the aforesaid advertisement but the "ESM-11 aggravated to service" has nowhere been even obliquely defined or mentioned therein. It shows the above advertisement was silent with reference to the term 'Aggravated to service', and as such the term 'benchmark disability' is ordinarily to be construed as per this advertisement to exclude the "ESM-11 aggravated to service".

However for clarification, the petitioner had on 12/09/2022, met the concerned dealing authorities at NOIDA with request to clear the confusion with regard to the ESM-11 aggravated to service in the aforesaid above advertisement but the officials also gave to understand that the said advertisement was for the "attributed to service" only.

The petitioner duly applied on 04/10/2022 and while filling up the prescribed form as per the said FCI Advertisement he had bonafidely not ticked/filled up the relevant column of ESM-2 in the afore stated facts I circumstances and his bonafide belief that the said FCI advertisement was for the category of ESM- II "Attributed to military service only".

Thus the bonafide act of the petitioner is self-evident in as much as the advertisement itself nowhere shows that the "aggravated to service" shall also be counted against the disabled Ex-servicemen. Further the degree/percentage of disability required for the candidates other than Ex-servicemen has been categorically explained/mentioned in the said FCI advertisement on page 3-4 as stated herein above but the required benchmark disability for ex-servicemen has not been even obliquely mentioned anywhere in the said advertisement. As stated herein above, the petitioner was also guided by the normal trend in most of the Government departments which do not recognize the "aggravated to service" as ESM-2, such as IBPS Banking and SSC.



The examination was held on 5th March 2023 and the petitioner had duly appeared in the above exam and written the paper.

The list of selected candidates has been released on 01/06/2023 but to utter dismay the candidates from the category of the "Aggravated to Service" have also been selected as ESM-11 disabled ex-serviceman as per the above advertisement. The applicant has not been selected as per the aforesaid list though he has scored in the above examination higher than those recruited as 'Esm-11 aggravated to Service' i.e. 35.75 marks.

Since the list has been released, the petitioner had written a number of times to the concerned FCI authorities at FCI North Zone, Headquarter Noida duly apprising them of the facts and circumstances of the present case vide various mails sent to the FCI email ID recruitmentnz.fci@gov.in on the above dates 07/10/2023 and 05/11/2023.

The petitioner wrote to the concerned authority again 12/12/2023. The petitioner has also met the concerned authority i.e DGM Mr Dwivedi and the petitioner was assured to consider his case positively in his favour and he would be called as soon as possible yet there has been no response from their side until the notice with a copy of the writ petition was served to the respondent.

The petitioner filed W.P.(c) on 22/12/2023 in this Hon'ble High Court, the same was registered in January 2024 as W.P.(C) no.-589/2024.

The petitioner received reply from Respondent on 09/11/2024 to his various communications thereby rejecting his request applications to consider his case positively, wherein the point no.' 7' mentioned on the page no. 19 under GENERAL INFORMATION INSTRUCTIONS of the aforesaid advertisement, has been relied upon wherein it has been said " Option should be exercised by the candidates carefully after going through the advertisement and keeping in view fulfillment of eligibility conditions, educational qualification,



experience etc. prescribed for the posts, OPTION ONCE EXERCISED SHALL BE FINAL, AND NO CHANGE WILL BE ALLOWED UNDER ANY CIRCUMSTANCES".

The respondent's reliance on the above point no.-7 is totally absurd and deliberately misleading and this shows the intent to find unjustifiable refuge in the above point no.-7 whereas the ineptness of the respondent becomes further apparent on perusal of the GENERAL INFORMATION INSTRUCTION on the page no.-19 of the said advertisement wherein it has nowhere been clarified that the ESM-11 aggravated to service shall also be counted against the posts reserved for disabled Ex-servicemen.

It is further pertinent to mention herein that ESM-11 "aggravated to service" has been considered by North Zone Noida as ESM-11 disabled Ex- serviceman for recruitment as per the above vague advertisement but the other Zones Of FCI are not considering the ESM-11 "Aggravated to Service" as ESM-11 disabled Ex-Serviceman as learnt by the petitioner The aforesaid if juxtaposed with the facts narrated herein above and the Kind Notice issued by this Hon'ble High Court on the issue of reduction in the no. of seats from the 14.5% announced in the aforesaid advertisement, shows only the state of confusion created by this advertisement. One can only conclude that the ineptness in the advertisement is a glaring example of leaving room therein for later manipulation by the authorities.

Thus the above reply by the respondent is an example of proverbial idiomatic expression "the pot calling the cattle black". No way the respondent can defend its ineptness in the said FCI Advertisement. On the other hand it also clearly shows only apparent bonafide/forthrightness in the petitioner's approach/conduct while filling up the above said form as per the above advertisement. The applicant's bonafide is self-explanatory.

The Writ petition (C) No.589/2024 was filed on 22/12/2023 and it was withdrawn with the permission of



this Hon'ble Court to file it afresh with more material facts.”

5. Learned counsel appearing for the petitioner brings attention of this Court to page No. 40 of the present petition which is part of the Advertisement No. 01/2022-FCI Category III and particularly to note IV to Clause 13 thereof. Learned counsel submits that though the note refers to an ex-serviceman or Persons with Benchmark Disabilities category candidates and the required eligibility conditions is to be counted against the reserved vacancies and not against general vacancies, subject to fitness of such candidate for selection.

6. He submits that there is no clear indication, as to what type of benchmark disability would qualify for such reservation.

7. He further draws attention of this Court to page No.41 of the same advertisement, particularly, to Explanation (I) to Note VI of Clause 13, to submit that the only definition of an ex-serviceman is either a person, who retired or relieved or discharged from such service or who has been relieved from such service on medical ground “attributable to military service”, apart from the other conditions, stated therein.

8. Learned counsel submits that in the case of the petitioner, he was discharged on the grounds of “aggravated to military service” and “not-attributable to military service”.

9. Learned counsel explains the distinction between the two categories, that “attributable to military service” would be injuries having been received by the military personnel, which are of much more serious in nature, and those which are “aggravated to service” would be of a lesser degree. He submits that since there is no clear definition even



between both the aforesaid terms, the petitioner was unable to understand as to what is the requirement in the form to be filled.

10. On that account, he further refers this Court to page No. 79, which is the form filled by the petitioner, to submit that due to such confusion, which was created by the respondent in not having clear definitions or distinction between “aggravated to military service and “attributable to military service”, the petitioner got confused and did not fill the column as to whether he was a disabled ex-serviceman.

11. On that account, learned counsel challenges the non-consideration of the petitioner in the ESM-2 category, that is the disabled ex-serviceman category.

12. This Court has heard the learned counsel for the petitioner as also perused the documents.

13. It is clear from the explanation appended to Note VI of Clause 13, that the requirement was limited only to ex-servicemen, who are discharged ordinarily or on medical grounds, which were “attributable to military service”.

14. This Court has also considered the application form at page No. 79 filled by the petitioner and it is clear that so far as the question in regard to whether he was an ex-serviceman, the petitioner has answered in positive and whereas the question that whether the petitioner is a disabled ex-serviceman, he has categorically written as ‘no’.

15. In that view of the matter, it is apparent that the respondent must have considered the petitioner as not falling within of the ESM-2 category, that is the disabled ex-servicemen category. The issue of whether the definition clause in regard to medical grounds “attributable



to military service” or medical grounds “aggravated to military service” does not arise.

16. The petitioner has not even challenged the notification or the advertisement and the explanations given therein, and after having participated in the selection process and having failed therein, is now raising all these issues, which are *post facto*.

17. This Court is fortified by the ratio of the judgment of the Supreme Court in ***Manish Kumar Shahi vs. State of Bihar & Ors.*** reported as (2010) 12 SCC 576, wherein the aforesaid proposition was clearly laid down. Para 16 of the said judgment is extracted hereunder :-

*“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. **The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603] , Marripati Nagaraja v. Govt. of A.P. [(2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68] , Dhananjay Malik v. State of Uttaranchal [(2008) 4 SCC 171 : (2008) 1 SCC (L&S) 1005] , Amlan Jyoti Borooah v. State of Assam [(2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] and K.A. Nagamani v. Indian Airlines [(2009) 5 SCC 515 : (2009) 2 SCC (L&S) 57]”***

(emphasis supplied)

This view has also been reiterated by the Supreme Court in ***Ramesh Chandra Shah & Ors. vs. Anil Joshi & Ors.*** reported as (2013) 11 SCC 309.



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18. In view of the fact that the petitioner by himself has not disclosed that he was a disabled ex-serviceman, the question of further consideration as to whether the petitioner was discharged on the medical grounds “aggravated to military services”, obviously could not have been even considered by the respondents itself.

19. In view of the above, this Court is of the considered opinion that there are no merits in the present matter and the same is dismissed, as such.

20. The petition along with pending application is dismissed.

21. The next date already fixed i.e., 30.04.2024 stands cancelled.

TUSHAR RAO GEDELA, J.

FEBRUARY 5, 2024/nd