

(1970) 05 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : C.W. No. 637 of 1970

Gurdev Singh

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-05-1970

Acts Referred:

Army Act, 1950 — Section 3

Citation : (1972) 2 ILR (P&H) 67

Hon'ble Judges : S.S. Sandhawalia, J

Bench : Single Bench

Advocate : J.L. Gupta and Rajinder Kesar, for the Appellant; G.S. Chawla, for A.G., for the Respondent

Judgement

S.S. Sandhawalia, J.—The sole question that arises for consideration in this civil writ petition is whether the term "Indian Commissioned Officer" includes and covers the term "Emergency Commissioned Officer.

2. The facts giving rise to the petition are that Gurdev Singh, Petitioner was selected as an Emergency Commissioned Officer in the Indian Army in March, 1963. After the requisite training, he served at different places and rose to the rank of Captain by the year 1966 but was released from the Army on the 1st November, 1967. Vide annexure "A" dated the 17th/19th July, 1968, he was offered a temporary appointment on an ad hoc basis for a period up to six months as the Secretary of the District Soldiers' Sailors' and Airmen's Board at Ropar. This letter of appointment expressly stated that the same was purely temporary and for a period of six months from the date of joining till a candidate is recommended by Punjab Public Service Commission and that the services of the Petitioner may be terminated without notice if his work or conduct was found unsatisfactory. In pursuance of this letter the Petitioner joined the above-said post on the 25th. of July, 1968, and continued in the same even after the expiry of the above period of six months. Subsequently the post of the Secretary was advertised in September, 1968, and it has been averred that the Petitioner

appeared for an interview before the Commission on the 31st of December, 1968, but the result of the said interview has not been declared. It is then averred that the Punjab District Soldiers' Sailors' and Airmen's Board (State Service Class II) Rules, 1968, (hereinafter referred to as the Rules) were promulgated, and Rule 7 thereof provided for the qualifications of persons to be admitted into the service specifying them to be as Ex-Indian Commissioned Officers. Thereafter on the 10th of April, 1969, another advertisement was put in for the post of the Secretary, but this specifically mentioned that the Emergency Commissioned Officers were not eligible to apply for the same. No. eligible candidate having been found, a third advertisement was again issued on the 10th of September, 1969, again reiterating that the Emergency Commissioned Officers were not eligible for the post. The Petitioner was consequently debarred from applying and seeking selection for the post above-said and after consideration Respondent No. 4 had been selected to the same,--vide annexure "B" dated the 24th of February, 1970. The Petitioner then moved the present writ petition.

3. Returns have been filed on behalf of Respondent No. 2, the State of Punjab and Respondent No. 3 the Secretary to the Punjab Public Service Commission. It has to be observed that both the returns, which are in almost identical terms, are not very illuminating. However, in substance the position taken up on behalf of the Respondents is that under the Rules, an Emergency Commissioned Officer is not included within the ambit of Rule 7(a) and consequently the advertisement expressly excluded them for the purpose of eligibility.

4. The controversy turns primarily on the language of Rule 7 which may be set down for facility of reference:

No person shall be appointed to the Service unless he-

(a) is ex-Indian Commissioned Officer of the rank of Second Lieutenant, Lieutenant, Captain or Major or an Officer of equivalent rank in Indian Navy or Indian Air Force;

Provided that the Government may in exceptional circumstances relax this condition;

(b) ***

(c) ***

(d) ***

5. Mr. J.L. Gupta relying on the above-said provision had attempted to contend that as the Petitioner had served in the Indian Army and as the duties of an Emergency Commissioned Officer are equally onerous as those of one holding a regular Commission, therefore, the words "Indian Commissioned Officer" must be deemed to include within its ambit the Emergency Commissioned Officer of the Indian Army as well. It was vehemently contended that No. plausible reason

can be mentioned for excluding the Emergency Commissioned Officers from the benefits of re-employment after discharge under the above-said Rules.

6. Though the contention has been very forcefully pressed I am of the view it cannot be sustained. Mr. Gupta had to concede that the designation of the Petitioner was in terms that of an Emergency Commissioned Officer. This term being patently at variance it is for the Petitioner to show that it was equivalent or included in the term "Indian Commissioned Officer". Mr. Gupta is unable to point out anything to that effect except the general argument that having served in the Indian Army, the Emergency Commissioned Officer must necessarily be deemed to be an Indian Commissioned Officer. That is a contention too wide to be sustained. Nothing in the Rules or in the relevant Army Act has been pointed out on behalf of the Petitioner to sustain any such contention.

7. It is not denied on behalf of the Petitioner that there are different and distinct classes of Commissions held by service personnel within the Indian Army. Prior to the Independence, the "Kings Commission" held the pride of place in the officers Class in the Indian Army and after Independence also the officers holding the "Kings Commission" continued to serve therein. In distinction thereto were the Indian Commissioned Officers. Other such classifications are those of "Junior Commissioned Officer", "Non-Commissioned Officer" and "Warrant Officer". of these the last three stand defined in Section 3(xii), (xv) and (xxiv) of the Army Act, 1950. A reference to these definitions would clearly show that all of them in express terms mentioned them to be persons either in the Regular Army or the Indian Reserve Forces, Indian Supplementary Reserve Forces or the Territorial Army. Particular reference may be made to the definition of word "officer" in clause (xviii) of Section 3 which is in the following terms:

3(xviii) "officer" means a person commissioned, gazetted or in pay as an officer in the regular Army, and includes

(a) ***

(b) ***

(c) ***

(d) ***

(e) ***

(f) ***

In the light of the above definition it is rightly argued on behalf of the Respondents that the words "Indian Commissioned Officer" are more or less a term of art relating to a specific type of commission granted to the officers in the regular Indian Army. This is in sharp distinction to the Emergency Commissioned Officers, who are recruited only on a temporary basis. It is conceded that the Emergency Commissioned Officers have No. permanent right to hold the commissions and may be discharged or released at the sweet will of the

Government, and it is normally so done after the period of the expiry of the emergency unless they are absorbed in the regular Army by the grant of permanent commissions. Whilst the Indian Commissioned Officers form the permanent core of the Indian Army, the Emergency Commissioned Officers are recruited only for a temporary period. Another distinction which has been pointed out is that an Indian Commissioned Officer when discharged or released from the Army is entitled to retain the rank he last held in the Forces whilst the Emergency Commissioned Officer as soon as he is released or discharged is entitled to No. such rank or designation. There thus appears a clear distinction and a reasonable classification in the two classes of Commissions, one of which is styled as the "Indian Commissioned Officer" whilst the other is an "Emergency Commissioned Officer". In such a situation it cannot be held that these are identical or interchangeable terms. That being so the construction placed by the Respondents on Rule 7(a) to the effect that Indian Commissioned Officer does not include an Emergency Commissioned Officer seems to be apparently correct and reasonable.

8. No. other contention has been raised.

9. This petition, therefore, must fail and is dismissed but there will be No. order as to costs.