
(1995) 11 AP CK 0083
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 812 of 1995

M. Anil Babu

APPELLANT

Vs

The Directorate General Resettlement and Others

RESPONDENT

Date of Decision : 08-11-1995

Acts Referred:

Air Force Rules, 1969 — Rule 13, 16

Citation : (1996) 1 ALT 132

Hon'ble Judges : T.N.C. Rangarajan, J; M.N. Rao, J

Bench : Division Bench

Advocate : M. Ratna Reddy, for the Appellant; A. Chaya Devi, for Respondent No. 1, Government Pleader, for Home for Respondent Nos. 2 and 3, Rama Murthy Reddy and K.G.K. Prasad, for the Respondent

Final Decision : Allowed

Judgement

M.N. Rao, J.—This writ appeal is from the order of a learned single Judge in Writ Petition No. 15395 of 1994 dismissing the writ petition filed by the appellant herein seeking a writ of Certiorari to call for the records relating to Memo No. 2559/ 94-A.4 dated 18-8-1994 issued by the third respondent herein - Zilla Sainik Welfare Officer and for a consequential direction to the Registrar, University of Health Sciences to receive the application No. 2732 of the appellant's daughter Miss. Anitha under Ex-servicemen children quota and if she is selected under that quota she may be permitted to continue her studies in M.B.B.S. Course.

2. In the rank of AC2 (Service No. 244318) the appellant was discharged from the Indian Air Force on 30-1-1964 on the ground that he was "unlikely to make an efficient Airman". For that period his general character was found to be "very good". On the basis that he was an ex-serviceman falling under a reserved category, he was selected as an Engineering Supervisor in the year 1970 in the Posts and Telegraphs Department where he is now working as an Assistant Engineer (Telephones), Gunrur. The admission Rules of the University of Health

Sciences provide for reservation for the children of servicemen and ex-servicemen for the academic year 1994-95. Rule 7-E deals with reservation in respect of this category. One percent of the total seats in M.B.B.S. Course are reserved for the children of Ex-servicemen and the serving service personnel of the three wings - Army, Navy and Air Force who are natives of Andhra Pradesh. Item (d) of Rule 7-E (i) speaks of reservation in favour of "Children of other Ex-servicemen and Servicemen". The note explains who are ex-servicemen. It is in the following terms:

"Candidates who do not come under any of the categories (a) to (d) under this Rule are not eligible for consideration under this quota.

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(a) Ex-serviceman means a person who has served in any rank (whether combatant or as non-combatant) in the Armed Forces of Indian Union, including the Armed Forces of the former Indian States, but excluding the Assam Rifles, Defence Security Corps, General Reserve engineering Force Lok Sahayak Sena and Territorial Army, for a continuous period of not less than six months after attestation, and

(b) has been released otherwise than at his own request by way of dismissal or discharge on account of misconduct or inefficiency or has been transferred to the reserve pending such release."

3. The certificate of discharge issued by the Officer Commanding No. 3, G.T.S.A.F. Jalahalli to the appellant herein mentions that he was discharged from the Indian Air Force on 30-1-1964 in the rank or grade of Aircraftsman second class. The reason for the discharge is:

"1.

2.

3. Other reasons under IAF Act (Rules) Chapter III, Para -13, Clause (IX) "as unlikely to make an efficient Airman."

Total Service:-

Regular: One year and sixteen days

Reserve: Nil

General Character during service: Very Good."

4. The appellant's daughter Miss. Anitha secured rank No. 1126 in the entrance examination conducted by the University for admission to Medical and Engineering courses (EAMCET). She claims that she was entitled to be considered in the quota reserved for the children of ex-serviceman under Clause (b) of the note to Rule 7-E (i). The appellant approached the third respondent - Zilla Sainik Welfare Officer, Office of the Zilla Sainik Welfare, Guntur for a certificate mat he

is an ex-serviceman. That request was rejected by Memo No. 2559/94-A4 dated 18-8-1994 stating that the appellant "cannot come under the definition of Ex-serviceman and he is not entitled to avail of the benefits extended to the Ex-servicemen and their dependents" Aggrieved by the aforesaid memo, the appellant filed Writ Petition No. 15395 of 1994 which was dismissed by a learned single Judge on the ground that the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi clarified the position on 14-4-1987 and according to the clarification, the appellant is not entitled to claim that he is an ex-serviceman. The clarification issued by the Government of India is as follows:

"Any person who has been released:

(a) at his own request after completing five years service in the Armed Forces of the Union; or

(b) after serving for a continuous period of six months after attestation, otherwise than at his own request or by way of dismissal or discharge on account of misconduct inefficiency or has been transferred to the reserve pending such release; shall also deemed to be an ex-serviceman for the purpose of this clause."

Hence, this appeal.

5. We have experienced considerable difficulty in ascertaining to correct position. Learned Additional Standing Counsel for Central Government could not ascertain the exact position with reference to Rules and circulars issued by the concerned departments as to who are entitled to be treated as ex-servicemen. In this writ appeal, we are only concerned with the interpretation of the Rule 7-E (i) note (b). Whether the appellant could be said to have been discharged on account of inefficiency is the question for our consideration. Rule 13 of the Air Force Rules, 1969 referred to in the certificate of Discharge says that a person subject to the Indian Air Force Act may be released from the Air Force in accordance with the Rules or in accordance with any orders or instructions issued in that behalf by or under the authority of the Central Government. The table appended to Rule-15 specifies the authority competent to authorise discharge and the cause for discharge and the category of persons liable to be discharged. In respect of persons enrolled under the Air Force Act who have been attested, one of the causes of discharge as mentioned in item (e) is "having been found inefficient in his rank or trade and being unwilling to accept reduction or remustering." In respect of persons enrolled under the Act who have not been attested, item (j) gives the cause of discharge as "unlikely to make an efficient airmen". and this mode of discharge applies to airmen undergoing training.

6. From the aforesaid Rule position, it is clear that the statutory Rules deal separately the cases of inefficiency from those of "unlikely to make an efficient airmen". The appellant falls under the latter category and, therefore, it is clear that he cannot be treated as an inefficient Officer and on that ground faced discharge from the Indian Air Force. This type of discharge is different from

dismissal or removal of officers for misconduct which is provided in Rule 16. As the appellant was released otherwise than at his own request and not on account of misconduct or inefficiency, he is entitled to be treated as an ex-serviceman within the meaning of Rule 7-E(i) Note (b). We, therefore, quash the impugned memo No. 2559/94-A.4 dated 18-8-1994 issued by the third respondent - Zilla Sainik Welfare Officer, Office of the Zilla Sainik Welfare, Guntur and declare that the appellant's daughter shall be considered under the quota reserved for the children of ex-servicemen. As the academic year 1994-95 in respect of which the writ petition under appeal was filed, was over long back, we are not inclined to pass any consequential orders regarding grant of admission for that academic year.

7. With the aforesaid direction, this writ appeal is allowed. The Judgment in Writ Petition No. 15395 of 1994 is set aside and the writ petition is allowed. No Costs.