
(1978) 11 P&H CK 0039
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3037 of 1978

Maj. H.L. Manchanda and another

APPELLANT

Vs

The State of Punjab and another

RESPONDENT

Date of Decision : 16-11-1978

Acts Referred:

Army Act, 1950 — Section 3
Punjab District Soldiers Sailors and Airmens Boards State (Service Class II) Rules,
1968 — Rule 7

Citation : (1978) 11 P&H CK 0039

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : J.L. Gupta, for the Appellant; Singh Bawa, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Nath Mittal, J.—Briefly the case of the petitioners is that they were selected for the 12th Emergency Commission Course in 1964. After their selection the Government decided to introduce "Short Service Commission". The petitioners after getting requisite training were granted Short Service Commissions in 1965. In 1976 when petitioner No. 1 was acting as Major and petitioner No 2 as Captain, they were released from service. It is stated that during stay in Army their work and conduct was good and they were awarded various medals etc.

2. In July, 1976, the Punjab Public Service Commission (hereinafter referred to as the Commissioner) advertised certain posts including those of 3 Secretaries District Sanik Board, in the Daily Tribune. The petitioners applied for the posts of Secretaries District Sanik; Board. Petitioner No. 1 was placed by the Commission at No. 3 and petitioner No. 2 at No. 2 in order of merit. One Major Pakhar Singh Atwal was placed at No. 1. He received letter of appointment but the petitioners did not. They made several representations for being appointed but the Government did not appoint them. Ultimately, petitioner No. 1 met the Chief

Minister in August, 1977, who promised to help them, it is alleged that the Government instead of conveying any decision to the petitioners issued a fresh advertisement advertising the two vacancies against which they had been selected. The action of the Government in not appointing them against the two vacancies of Secretaries District Sanik Board has been challenged in this writ petition.

3. The respondents contested the petition and inter alia pleaded that the qualifications for appointment on the said posts was that the candidates should be Ex-Indian Commissioned Officers but the petitioners were Ex-short Service Commissioned officers and were not eligible to apply.

4. The first contention of the learned counsel for the petitioners is that the impression Indian Commissioned Officer, is not a term of art and includes all commissioned officers serving in the Army. According to him, an Emergency Commissioned Officer and a Short Service Commissioned Officer are included in the term Indian Commissioned Officer. To buttress his argument he has referred to sub-sections 18 and 21 of section 3 of the Army Act, 1950 which define the words officer and "regular Army." On the other hand, the learned counsel for the respondents, has vehemently argued that the petitioners have not put forward this case in the writ petition and they should not be allowed to do so now. He has also submitted that the argument is fallacious.

5. I have considered the arguments of the learned counsel and find force in that of the counsel for the respondents. I have carefully gone through the writ petition but do not find this argument of Mr. Gupta incorporated in it. The counsel for the petitioners also could not refer to any para in the writ petition wherein this argument was taken by him. It is a settled proposition of law that unless a plea is taken in the petition, a petitioner cannot be allowed to urge it at the time of the arguments. I have also gone through the representations produced by the petitioners. Even therein they did not assert that they were Indian Commissioned Officers and as such were entitled to be recruited against the aforesaid posts. They, therefore, cannot be allowed to raise this argument.

6. I have also examined the contention of the learned counsel for the petitioners but regret my inability to accept it. The Punjab Government has framed rules for regulating the recruitment and conditions of service of the persons appointed to the Punjab District Soldiers' Sailors' and Airmen's Boards (State Service Class II), known as Punjab District Soldiers' Sailors' and Airmen's Boards State (Service Class II) Rules, 1968 (hereinafter referred to as District Board Rules), under Article 309 of the Constitution of India. Rule 7 prescribes the qualifications for appointment to the posts under the said Rules. It inter alia says that no person shall be appointed to the service unless he 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. It is provided under the aforesaid rule that the Government may in exceptional circumstances relax this condition. It may be pointed out that the words "Indian Commissioned

Officer" do not appear in the Army Act, 1950. The definitions of officer" and "regular army" in the Army Act, 1950, are of no assistance in interpreting these words. It is an established principle of law that in the absence of the definitions of certain words, the Courts have to ascertain their meaning with reference to the context in which they occur, for this purpose it will be necessary to know how the words are understood in the Army. The State has produced annual Army Staff List relating to the year 1966 wherein the three terms, namely, I.C.O. (Indian Commissioned Officers), E.C.O. (Emergency Commissioned Officers) and S.S.C.O. (Short Service Commissioned Officers) have been used. These terms show that they represent three types of officers and not one. Words "Indian Commissioned Officers" have been used in it for those officers who hold permanent Commissions in the Indian Army ; words "Emergency Commissioned Officers" for the officers who are holding Emergency Commissions and words "Short Service Commissioned Officers" for the officers who are holding Short Service Commissions. From a reading of the aforesaid list, no doubt is left in my mind that three terms are "used differently and that the latter two are not included in the term "Indian Commissioned Officers". It may be highlighted that if the petitioners had taken up this plea in the petition specifically, the respondents would have provided more material to explain that "Short Service Commissions" and "Emergency Commissions" were not included in "Indian Commissions".

7. What meaning the Government attached to these terms is also clear from the advertisement dated July 17, 1976, Annexure P. 3. Before advertizing to its language, it may be made clear, that the advertisement relates to several posts including the posts of three Secretaries, District Sainik Board. It is mentioned therein the Emergency Commissioned Officers, Short Service Commissioned Officers and other Ex-servicemen were exempt from payment of application fee provided they were not released on their own requests. Thus three terms have been used in the advertisement, namely. Emergency Commissioned Officers, Short Service Commissioned Officers and other Ex-servicemen. That shows that the Emergency Commissioned Officers and Short Service Commissioned Officers are different from other types of Ex-servicemen. The term other Ex-servicemen has been used for those officers who had been serving in the regular Indian Army. While mentioning the qualifications for the posts of the Secretaries, District Sainik Board, it is said that the candidate should be an Ex Indian Commissioned Officer of the rank of Second Lieutenant. Lieutenant, Captain or Major or an Officer of the equivalent rank in Indian Navy or Indian Air Force. It is further provided in the advertisement that if suitable candidates out of Ex-Indian Commissioned Officers were not available, then Ex-Emergency Commissioned Officers might be considered. It further shows that an Ex-Indian Commissioned Officer does not include an Ex-Emergency Commissioned Officer. The learned counsel for the petitioners has argued that Short Service Commissioned Officers are akin to Emergency Commissioned Officers. He says that they were selected as Emergency Commissioned Officers but subsequently granted Commissions as

Short Service Commissioned Officers. Reference in this context has been made to the letter of the Director General Resettlement, Ministry of Defence, Government of India, dated February 1, 1977, Annexure P. 5, wherein it is said that there is no difference between Short Service Commissioned Officers and the Emergency Commissioned Officers. It is clear from the language of the advertisement that Indian Commissioned Officers and Emergency Commissioned Officers do not belong to the same category, but to different categories. Therefore the Short Service Commissioned Officers who are akin to the Emergency Commissioned Officers also constitute a different category than that of the Indian Commissioned Officers.

8. It is further evident from the representations dated January 5, 1977 (Annexure P. 4), March 20, 1977 (Annexure P. 5) and May 17, 1977 (Annexure P. 7) that they understood that Emergency Commissioned Officers and Short Service Commissioned Officers were not included in the term "Indian Commissioned Officers". In the representation dated January 5, 1977, Annexure P. 4, addressed to the Secretary of the Commission, petitioner No. 1 wrote that all released E.C. Os. and S.S. COs (under which category he came) had been kept at par. He further says that Demobilized Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services) Rules, 1968 (herein after referred to as Reservation Rules) issued by the Punjab Government, show that Emergency Commissioned Officers and Short Service Commissioned Officers had been kept at par. Similar representation dated March 20, 1977, Annexure P-6 was made by him to the Chief Secretary, Government of Punjab. In both the representations he did not say that he was an Indian Commissioned Officers or that Emergency Commissioned Officers and Short Service Commissioned Officers were included in the category of Indian Commissioned Officers. He made another representation dated May 17, 1977, Annexure P-7 to the Chief Secretary. In that representation he stated that two Indian Commissioned Officers, two Emergency Commissioned Officers and 24 Short Service Commissioned Officers applied for the aforesaid posts. The relevant part of the letter is as follows :--

On the understanding that the Commission had shown no discrimination between EX ICOs (Indian Commissioned Officers), ECOs (Emergency Commissioned Officers) and SSCOs (Short Service Commissioned Officers), approximately 2 ICOs, 2 ECOs and 24 SSCOs applied for the post. The Commission also took it in the same spirit and hence these officers were called at PATIALA on 17th September, 1976 for test in the compulsory subject of PUNJABI and on 21st September, 1976 for the interview. One EX-ICO Major Atwal and two Ex SSCOs Major H.L. Manchanda and Capt R.L. Sharma were selected and the names were displayed on the Notice Board the next day.

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This was further taken up in the same spirit by the Punjab Public Service Commission Patiala and hence they called all types of officers i.e. Ex-ICOs, ECOs

and SSCOs for test and interview and made the selection accordingly.

The language of the letter shows that petitioner No 1 knew that there were three categories of officers in the army and the Indian Commissioned Officers constituted a different category than that of other types of officers; otherwise the stand of petitioner No. 1 in the letters would have been that they were the Indian Commissioned Officers and as such were entitled to apply for the posts. Petitioner No. 2 has taken the same stand as has been taken by the petitioner No. 1 in the writ petition and he also relies on the said letters. From the above circumstances, it is evident that the petitioners understood that the Indian Commissioned Officers were not the same as Emergency Commissioned Officers or Short Service Commissioned Officers. I am therefore, of the view that an Indian Commissioned Officer means a permanent officer in the regular Indian army and does not include an Emergency Commissioned Officer or a Short Service Commissioned Officer.

9. The second contention of the learned counsel for the petitioners is that the District Board Rules are to be read subject to Reservation Rules, wherein 20% of the Non-technical posts are to be reserved for being filled up by the released Indian Armed Forces Personnel. He contends that the petitioners are entitled to be recruited against the vacancies which were to be reserved under the Reservation Rules.

10. I have given a thoughtful consideration to the argument of the learned counsel. Reservation Rules were framed under Article 309 of the Constitution of India for reserving certain percentage of non technical posts for the Emergency Commissioned Officers, Short Service Commissioned Officers and other Army Personnel who served the country at the time of emergency but were demobilised later. Non-technical posts has been defined in the Rules as follows :

Non technical posts" mean all posts under the State Government other than the posts in the Medical and Engineering Service.

Rule 3 provides for reservation of vacancies. Sub-rule (1) is relevant for the purpose of deciding the matter and it reads as under :

Twenty per cent of the non-technical posts to be filled up through direct recruitment shall be reserved for being filled up by the Released Indian Armed Forces Personnel who joined service or were commissioned on or after the first day of November, 1962, and are released at any time thereafter.

From a reading of the rule, it is evident that at the time of filling up all non-technical posts 20% posts are required to be reserved for all Released Indian Armed Forces Personnel. The term "Released Indian Armed Forces Personnel" according to the opening part of the notification includes Emergency Commissioned Officers and Short Service Commissioned Officers. These posts, it cannot be disputed, are non-technical posts. The Government, therefore, while making the recruitment for these posts should have reserved seats under the

Reservation Rules for the Released Indian Armed Forces Personnel. In the present case number of total vacancies is three and 20% of the vacancies would come to more than one-half if such is the case, it would be proper to give one vacancy to the Released Indian Armed Forces Personnel, otherwise the Reservation Rules become meaningless.

11. The Commission recommended the names of one Ex-Indian Commissioned Officer and two Short Service Commissioned Officers for three posts. Petitioner No. 2 was placed at No. 2 and petitioner No. 1 at No. 3. It is not disputed that Major Pakhar Singh Atwal was placed at No. 1 and he has been taken into service, petitioner No. 2 who obtained the 2nd position is entitled to be taken against the reserved post.

12. The third contention of the learned counsel for the petitioners is that if Emergency Commissioned Officers and Short Service Commissioned Officers are excluded from the category of Indian Commissioned Officers, then the classification would be hit by Articles 14 and 16 of the Constitution of India. He urges that the classification should be reasonable and have nexus with the object in view to be achieved.

13. This plea is also not duly taken in the writ petition. A reference has been made by Mr. Gupta to clause (i) of para 7 of the writ petition, but the plea is that para is different, than the one raised by him in the Court. If the clause is read as a whole, it is evident that the plea of the petitioners is that there is no differentiation between short service Commissioned Officers and Emergency Commissioned officers. The petitioners have also given reasons therefore. It is well settled that the pleadings should be read as a whole. Mr. Gupta, has however, not challenged the said differentiation now. He cannot therefore, be allowed to raise the above contention.

14. For the reasons recorded above, I partly accept the writ petition and direct the respondents to reserve one post under the Reservation Rules and appoint petitioner No. 2 on that post. In view of partial success of this writ petition I leave the parties to bear their own costs.