
(2011) 06 SHI CK 0066
In the High Court Of Himachal Pradesh
Case No : CWP -T- No. 2890 of 2008

Prakam Singh Pathania

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Citation : (2011) 06 SHI CK 0066

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner joined the Indian Army on 9th March, 1966 and was discharged on 28th December, 1974. He was recruited as Constable (Wireless Operator) on 30th July, 1975. Thereafter, he was promoted to the post of Head Constable and Sub Inspector (Wireless). He made a representation to the Respondents to grant him the benefit of the "Demobilised Armed Forces Personnel (Reservation of Vacancies in the Himachal State Non-technical Services) Rules, 1972 read with letter dated 23.05.1975 towards pay fixation and seniority for the approved military service. The same was rejected on 19.11.1999.

2. Mr. D.P. Gupta, learned vice counsel for the Petitioner has strenuously argued that the Petitioner was required to be given option at the time when he was appointed as Constable (Wireless Operator) on the basis of letter dated 23.05.1975 to be considered against the post which was likely to become available in the category of Ex-servicemen.

3. Mr. R.P. Singh, learned Assistant Advocate General has vehemently argued that as far as the benefit of pay fixation is concerned, the same has been given to the Petitioner notionally under the Rules and the seniority is to be counted on the basis of qualification of the gradation courses.

4. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

5. It is not in dispute that the Petitioner is an Ex-servicemen and has served the Indian Army from 09.03.1966 to 28.12.1974. He has served the Indian Army for 8 years and 295 days. He was recruited against the post reserved for General category as Constable (Wireless Operator) on 30th July, 1975. Since the Petitioner is an Ex-serviceman and has been appointed against an unreserved General vacancy, in the first instance, he should have been given an option to be considered against the post of Ex-servicemen category, which occurred subsequent to his appointment. Petitioner has not at any stage concealed the fact that he is an Ex-serviceman. Petitioner has specifically averred in Para-(vii) (B) of the petition that large number of posts were filled after he was appointed as Constable (Wireless Operator) on 30.07.1975 from the category of Ex-servicemen, but no option was given to him to be absorbed against the post of Ex-servicemen. This averment has not been denied in the reply. The Court is of the considered view that option of the Petitioner ought to have been taken at the time when he was appointed and at least when he has made representation to be considered against the vacancy in the category of Ex-servicemen after his appointment. The representation made by the Petitioner was rejected arbitrarily on 19.11.1999. In case the Petitioner has been absorbed against the vacancy which has become available in the category of Ex-servicemen after his appointment against an unreserved vacancy, he was entitled to all the benefits, including pay fixation and seniority on the basis of approved military service. As per the contents of the reply, the Petitioner has been given only the benefit of pay fixation, that too, notionally. Petitioner was entitled to get all actual benefits and also seniority according to the Rules. According to the reply filed by the Respondents, the benefit of seniority is fixed on the basis of merit gained in passing the promotional courses viz. Lower School, Intermediate Course and Upper School Course and the personnel posted in Wireless Organization (Now Directorate of CTS) do not undergo the Lower, Inter and Upper School Courses, for their promotion the gradation Courses Viz. Grade-I, II & III have been devised and promotion is given after they qualify these gradation courses and seniority is fixed accordingly. The Demobilized Armed Forces Personnel Rules, as noticed above, are special rules and will over ride the general rules. The Respondent-State cannot truncate the applicability of the Rules by applying it in piecemeal. The rules have to be applied uniformly by giving the entire benefit to which the Petitioner was entitled. These Rules will over ride the rules, if any, framed by the Respondent-State for determining the seniority as far as the Ex-servicemen are concerned.

6. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. The letter dated 19.11.1999 is quashed and set aside. Respondents are directed to consider the case of Petitioner against the post which has become available in the category of Ex-servicemen after the appointment of Petitioner and to absorb him accordingly and fix his pay as per Rule -5 and to grant him seniority with all consequential benefits, within a period of twelve weeks from the date of production of a certified copy of this judgment

by the Petitioner. No costs.