

(2018) 11 J&K CK 0047

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 153 Of 2018, IA No. 01 Of 2018

State Of Jammu & Kashmir And Anr @APPELLANT@Hash Taramani And Anr

Date of Decision : 19-11-2018

Acts Referred:

Constitution Of India, 1950 — Article 309
Jammu And Kashmir Reservation Rules, 2005 — Rule 2(x)
Ex-servicemen (Re-Employment In Central Civil Service And Posts) Rules, 1979 — Rule 2

Citation : (2018) 11 J&K CK 0047

Hon'ble Judges : Gita Mittal, CJ;Rajesh Bindal, J

Bench : Division Bench

Advocate : Sunil Malhotra, P.N Raina, J.A Hamal

Final Decision : Dismissed

Judgement

Gita Mital, CJ

1. By way of the instant appeal, the appellants have assailed the judgment dated 2nd February, 2018 passed by the learned Single Judge allowing SWP No. 629/2008 and the connected writ petition bearing SWP No. 110/2007.
2. The facts giving rise to the filing of the instant appeal are within the narrow compass. The matter in issue relates to selection/appointment of ex -servicemen as Motor Vehicle Inspector (Survey) and (Technical) under the State Cadre/ Division Cadre pursuant to Advertisement Notice No. 10 of 2005 issued by the J&K Services Selection Board on 29th December, 2005.
3. So far as the material facts are concerned, there is no real dispute and to the extent necessary, same are briefly noted hereafter.
4. It is an admitted position that the respondent-Taramani came to be engaged in the Indian Air Force in the year, 1986. He came retire on 31st May, 2006 after serving the Air Force for 20 years. There is no dispute that Taramani is qualified for appointment to the post in question.

5. It appears that J&K Services Selection Board issued an Advertisement Notice No. 10 of 2005 on 29th December, 2005, whereby applications were invited for 20 posts of Motor Vehicle Inspector (Survey) and (Technical) under the State Cadre/Division Cadre. Taramani applied in response to the Advertisement Notification for appointment to the post of Motor Vehicle Inspector (Survey) and (Technical) under the category of 'ex-servicemen'.

6. It is an admitted position before us that prior to applying for the post in question, Taramani was granted a No Objection Certificate/Permission Certificate from his employer i.e. concerned authorities of Air Force.

7. For the reason that the appellants failed to call Taramani for interview, he made a representation to the Chairman of the J&K Services Selection Board on 15th January, 2007 and also filed SWP No. 110/2007 before the learned Single Judge of this Court. In this writ petition, an order was passed on 23rd January, 2007 directing the Services Selection Board to call the respondent No. 1-Taramani for interview for the said post under the category in which he has applied subject to the condition that he fulfills all the eligibility qualifications.

This order was not assailed. Taramani was actually called for and participated in the interview.

8. However, despite the above position, it appears that the appellants effected selections ignoring the claim of Taramani on the ground that at the time of submission of the application form, he was still in the service of Union of India. The appellant consequently, treated Taramani as not falling within the scope of definition of ex-servicemen, the category under which he had applied.

9. This was challenged by Taramani by way of SWP No. 629/2008 which after detailed consideration has been accepted by the learned Single Judge vide impugned judgment dated 2nd February, 2018. Taramani has made a grievance that by ignoring his claim, respondent No. 4 had appointed under the RBA Category. Directions have been issued by the learned Single Judge to the respondents to treat Taramani as having been appointed/selected against the post in question pursuant to the advertisement notice dated 29th December, 2005 under the category of ex-serviceman. He has been granted all the consequential benefits including promotion and seniority with effect from the date respondent No. 4 in the writ petition came to be appointed.

The judgment dated 2nd February, 2018 has been assailed by way of the present appeal by the respondent contending that Taramani was not covered under the definition of ex-serviceman as appears in Rule 2(x) of the J&K Reservation Rules of 2005 and, therefore, this writ petition deserves to be dismissed.

10. We have heard learned counsel for the appellant and learned Senior Counsel for the private respondent-Taramani at length and given our thoughtful consideration to the matter.

11. Taramani has retired from Air Force on 31st May, 1986, i.e, after expiry of

the period of about 05 months from the date of issuance of Advertisement dated 29th December, 2005. It is an accepted position that otherwise Taramani possessed the necessary eligibility in all respects in terms of qualification and experience.

12. Both sides have placed reliance on the provisions of Ex-servicemen (Re-employment in Central Civil Service and Posts) Rules, 1979, the Notification dated 27th October, 1986 issued by the Government of India and the Circular dated 20th December, 1999 issued by the Air Force Authorities with regard to the persons serving in the Armed Forces of the Union.

13. For the reasons of expediency and to understand the issues which were raised before the learned Single Judge, it would be appropriate to extract Rule 2(x) of the J&K Reservation Rules of 2005 which reads thus:-

"2(x) "Ex-servicemen" means a permanent resident of State, who has served in Army/Navy or Air Force and has been honourably discharged and has not come to notice for any criminal or anti-national activity."

14. Mr. P N Raina, learned Senior Counsel appearing for the private respondent has also placed before us the notification dated 27th October, 1986 issued by the Ministry of Personnel, P.G and Pensions of the Government of India amending Rule 2 of the Ex-servicemen (Re- employment in Central Civil Service and Posts) Rules, 1979 to the following extent:-

"NOTIFICATION"

GSR-In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Ex-Servicemen (Re-employment in Central Civil Service and Posts) Rules, 1979 Namely:-

1. (a) These rules may be called the Ex-servicemen (Re-employment in Central Civil Service, and Posts) Amendment Rules, 1986.

(B) They shall come into force on the date of their publication in the Official Gazette.

2. In rule 2 of the Ex-servicemen (Re-employment in Central Civil Service and Posts) Rules, 1979 for clause (c) the following clause shall be substituted, namely:-

(c) 'ex-serviceman' means a person, who has served in any rank (whether as a combatant or as a non-combatant in the Regular Army, Navy and Air Force of the Indian Union but does not include a person who has served in the Defence Security Corps, the General Reserve Engineering Force, the Lok Sahayak Sena and the Para Military Forces: and

(i) who has retired from such service after earning his/her pension; or

(ii) who has been released from such service on medical grounds attributable to

military service or circumstances beyond his control and awarded medical or other disability pension;

(iii) who has been released, otherwise than on his own request from such service as a result of reduction in establishment; or

(iv) who has been released from such service after completing the specific period of engagement otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiently and has been given a gratuity; and includes personnel of the Territorial Army of the following categories; namely

(i) Pension holders for continuous (embodied) service;

(ii) Persons with disability attributable to military service; and

(iii) Gallantry award winners.

Explanation: The persons serving in the Armed Forces of the Union, who on retirement from service would come under the category of ex-servicemen, may be permitted to apply for re-employment one year before the completion of the specified terms of engagement and avail themselves of all concessions available to ex-servicemen but shall not be permitted to leave the uniform until they complete the specified term of engagement in the Armed Forces of the Union."

(Emphasis by us)

15. The amendment to the Rule, therefore, enabled the private respondent to make the application for re-employment while in service one year before the completion of the specified terms of engagement and to avail all the concessions available to the ex-servicemen. The amendment is explicit, however, that such personnel would not be permitted to leave the uniform until they have completed the specified term of engagement in the Armed Forces of the Union.

16. Learned Senior Counsel for the private respondent has also placed before us the Circular dated 20th December, 1999 issued by the Indian Air Force, HQ on the subject of civil employment for airmen during last year of service and the procedure for submitting the applications. The relevant extract of the Circular reads as follows:-

"CIVIL EMPLOYMENT FOR AIRMEN DURING LAST YEAR OF SERVICE

1. The contents of Air HQ (VB) letter No. Air HQ/40722/PA(EC) dated 22 Nov 99 are appended below for your information and

1. To enhance the rehabilitation avenues for the outgoing airmen, it has been decided to permit them to apply for civil posts in Central/State Govt Organizations year of their service, provided they would be completing

19 years in the air Force. Whilst this provision would continue to be availed of, the following procedure for applying for the civil posts will be henceforth adhered

to:-

(a) Applications from the eligible airmen will be forwarded by Stn/Unit Cdrs directly to the prospective employer under intimation to AFRO.

(b) In the event of any requirement of furnishing 'No Objection Certificate' (NOC) from Air Force to Unit as per specimen attached at Appendix and countersigned by AOC/Station Commander on specific written request from the individual.

(c) Duplicate copy of the NOC is to be forwarded to AFRO for retention in the personal records of airman.

(d) In case any airman is selected and gets an offer for employment, he will be required to apply for discharge through Command HQ to AFRO under para 1(h) of AFO 04/95. A photostat /CTC copy of the appointment letter issued by the civil employer is to be enclosed while forwarding the application for discharge to AFRO.

2. The airman will take up the employment, only after approval has been accorded for discharge from service by the competent authority at this HQ.

3. This supersedes all previous correspondence on the subject issued by this HQ."

(Emphasis by us)

17. This Circular clearly binds the consideration of the issues pressed before us and supports the stand taken by the private respondent and the view taken by the learned Single Judge.

18. The concerned Air Force Authorities with regard to the re-engagement for airmen during the last 18 months of the service and after retirement is further manifested from yet another Circular issued by the Air Force Authorities being Circular No. AIR HQ/40722/PA(RC) dated 27th June, 2002 which reads as follows:-

"CIVIL EMPLOYMENT FOR AIRMEN DURING LAST 18 MONTHS OF SERVICE

1. Further to this HQ letter of even number dated 22 Nov 99.

2. To improve resettlement prospects of PBOR, it has been decided to permit airmen to apply for civil posts in Central/State Govt. Organizations and PSUs on giving unwillingness for further extension of service. However, they should have completed eighteen and a half years of service. The procedure for applying for civil posts remains the same.

3. Modified "No Objection Certificate" will be issued as per the specimen attached at appendix and countersigned by AOC/Stn Cdr, on a specific written request from the individual."

(Emphasis supplied)

19. It is evident that was in implementation of the requirements of the above

Circular that the Air Force Authorities issued the requisite NOC and the permission to the private respondent to submit the application pursuant to advertisement dated 29th December, 2005.

20. So far as the definition of 'ex-servicemen' as it appears in Rule 2(x) of the J&K Reservation Rules of 2005 is concerned, there can be no cavil that it makes a provision for those persons whose terms of engagement with the armed forces have come to an end. The explanation to the Rules however enables serving personnel of the Armed Forces, who on retirement from service would be covered under the category of ex-servicemen, only to apply for re-employment one year before the completion of the specified terms of engagement.

21. A bare reading of the above amendment to the Rules and the Circular shows that in terms of the above notification and the Circular, the serving personnel in the Armed Forces of the Union have been permitted only to apply for re-employment about one year before the completion of the specified terms of engagement and avail themselves of all concessions available to the ex-servicemen. Such serving personnel can join only after completion of their engagement.

22. So far as the present consideration is concerned, the question which was pressed before the learned Single Judge was not a claim by the person who was a serving personnel of the Armed Forces but a person who admittedly came to be retired from the Forces on 31st May, 2006, which was much before the process of selection, which commenced upon issuance of the notification dated 29th December, 2005, stood concluded.

23. We may note that neither the explanation to the Rule nor notification dated 27th October, 1986 declare a person who is an employee of the forces as an ex-serviceman. These are only enabling provisions which permit and enable employees who are at the verge of retirement or completion of their engagement with the armed forces to make applications in anticipation of their retirement/release for appointment to positions intended for the ex-servicemen of the force. Judicial notice can be taken of the several schemes which have been propounded by the Government and the authorities for rehabilitation of the ex-servicemen with the Forces who come to be discharged or where engagement comes to an end on completing specific period of engagement at young ages. These provisions and schemes have been implemented by the authorities for the purposes of providing measures of re-settlement to these personnel who are still young and still in a position to discharge effective service in order to ensure them livelihood options to settle their own families and also provide them engagement.

24. The record placed before us nowhere states that an employee who was at threshold of the retirement or discharge was precluded from submitting an application pursuant to the advertisement dated 29th December, 2005. In view of the above, the contention on behalf of the appellant that the respondent No. 1

was not eligible to submit the application is completely misdirected.

25. The view that we have taken is supported by the stand of the Indian Air Force itself which facilitated the application of the private respondent when it issued him the necessary permission and the no objection certificate for making the application to the appellant.

26. It is also essential to note that the impugned order has noted the admission by the appellant-Board that no other candidate under the category of ex-servicemen was selected for the post in question.

27. The learned Single Judge in paragraph No. 26 of the impugned judgment has also noted that it was not the stand of the appellant-Board that the selection of the private respondent was subject to the final outcome of the SWP No. 110/2007.

28. In view of the above, the order impugned dated 2nd February, 2018 passed by the learned Single Judge cannot be assailed on any legally tenable grounds.

We find no merit in this appeal and the same is, therefore, dismissed.

29. The appellants shall ensure compliance with the impugned order within a period of six weeks from today.

30. The private respondent shall also be entitled to costs of present litigation which are quantified at Rs.25,000/-. These costs shall also be paid to the private respondent No.1 within a period of six weeks from today.