

Bharat Singh Vs. Union of India and Others

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Court : Jammu and Kashmir

Decided On : Feb-09-2015

Judge : Honble Mr. Justice Bansi Lal Bhat-Judge

Appellant : Bharat Singh

Respondent : Union of India and Others

Judgement :

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU SWP No. 1652 OF2008
Bharat Singh Petitioners Union of India and others Respondent !Mr.P.N.Bhat,
Advocate ^Mr.P.S.Chandel, CGSC Honble Mr. Justice Bansi Lal Bhat-Judge Date:

09. 02.2015 :

JUDGMENT

:

1. Petitioner is aggrieved of cancellation of his selection for the post of Chowkidar in terms of communication dated 20.10.2008 issued by respondent no.3 which is impugned on the grounds set out in the writ petition. He seeks quashment of the impugned communication.

2. The case set up by petitioner is that pursuant to an Advertisement Issued by respondents providing for recruitment of Group C and D posts at Command

Hospital Northern Command Base Hospital 150 General Hospital and 170 Military Hospital, petitioner applied for the post of Chowkidar at 150 General Hospital at Rajouri on the prescribed form as he possessed the requisite qualification and was eligible to apply for the post of Chowkidar. He was called for interview and finally selected for the post of Chowkidar. Intimation in this regard was given to 2 petitioner by office of respondent no.3 vide communication dated 05.04.2008. Petitioner was directed to report to 150 General Hospital, Rajouri on 26.04.2008 with the required documents. He reported to the Hospital on the given date and produced the documents which were subjected to verification and found genuine. Petitioner was waiting for a formal call to join the service but, to his dismay, he came to be communicated with cancellation of his selection for the post of Chowkidar on the pretext that there was no vacancy of Ex-Servicemen in the category of Chowkidar as per the Advertisement published in the newspaper. The impugned communication dated 20.10.2008 issued by respondent no.3 is assailed on the ground that the advertisement, inter alia providing for recruitment to the two posts of Chowkidars at 150 General Hospital for un-reserved category laid down the eligibility criteria in terms of age and qualification required and anyone fulfilling the requisite criteria, whether from Open Category, SC/ST, OBC or from Ex-Servicemen category was eligible to apply for the said posts. Selection of petitioner was not dependent upon any vacancy for Ex-Servicemen in the category of Chowkidar. The impugned communication is also assailed on the ground that the same has been passed in violation of principles of natural justice without providing petitioner an opportunity of being heard.

3. Respondents have filed objections admitting the issuance of Advertisement in question and undertaking of selection process culminating in selection of petitioner which is pleaded to be provisional as the final selection was subject to approval by the appointing Authority. It is pleaded that the appointing Authority had returned the proceedings with the observation of recruiting an ESM in General Category. It is pleaded that respondent no.3 had given the proposal to Headquarters 16 Corps (Medical) vide letter dated 09.10.2008 that the existing policy of two vacancies for Chowkidars under Reserved Category was being ordered due to misinterpretation of Para- 2(E) of draft Advertisement Notification received by Headquarters vide letter dated 18.12.2007. One Ramesh Chand Bairwa under Reserved Category

placed at Serial No.2 in the reserved list was to be selected for appointment and the Ex-Serviceman to be dropped. This proposal was approved by Head Quarters 16 Corps vide letter dated 14.09.2008. Thereupon the petitioner was informed about the cancellation of his candidature for selection. It is further pleaded that consequent upon acceptance of recommendations of 6th Central Pay Commission, the Ministry of Finance circulated instructions dated 14.05.2009 that in future, posts will be created only in PB-1 and there shall be no recruitment in 1-S pay band. Thus, no fresh recruitment was to be made against existing Group D posts and the process for recruitment of Group-D posts was held in abeyance till further orders pending revision of recruitment rules wherein the qualification of direct recruitment was being enhanced to Matriculation or equivalent. It is further pleaded that as per Board proceedings, petitioner was 8th pass and not a Matriculate. It is further pleaded that the eligibility of petitioner for the post of Chowkidar would be assessed afresh keeping in view the qualification possessed by him and the qualifications which are being prescribed in the revised recruitment Rules. It is further pleaded that there was no reserved vacancy of Ex-Servicemen in the category of Chowkidar as per the advertisement issued by the respondents. However, the petitioner was provisionally selected but his name was dropped by the Competent Authority on the basis of instructions issued in 6th CPC recommendations as well as the instructions issued by Competent Authority dated 10.08.2008 which provided that no fresh recruitment was made against Group-D posts. 5 4. CMA No.1095/2014 was filed by petitioner seeking permission to file supplementary affidavit. However, learned counsel for respondents sought time to file response. He also sought time to file a better affidavit which was allowed in terms of interim order dated 19th August, 2014 with direction to provide information in better affidavit in terms of the aforesaid order.

5. In his affidavit filed by respondent no.3, it is stated that 42 vacancies including two vacancies of Chowkidar of various categories were allotted to respondent no.3 who issued the advertisement published in Newspapers on 04.02.2008. Both vacancies of Chowkidars were allotted under unreserved category. Petitioner applied for the post of Chowkidar against un-reserved category and he was provisionally selected. The Board proceedings were submitted for approval to the appointing Authority, i.e. Headquarters 16 Corps (Med.) and it is on the basis of

observations of the appointing Authority that the petitioner was informed of cancellation of his candidature for selection as Chowkidar. It is further stated that the integrated Headquarters was approached to clarify whether Ex-serviceman could be given relaxation of age, if he was to be considered for un-reserved category. The integrated headquarters clarified that the relaxation was available to every ex6 serviceman for any vacancies whether reserved or not provided he has not put in less than six months continuous service. It was further intimated that all civil recruitment be held in abeyance till further orders due to upgradation of Group-D posts to Group-C and also enhancement of qualification to 10th Pass. It is further stated that the petitioner applied for the post against General Vacancy (un-reserved) after putting in 17 years service in the Army and his eligibility was required to be assessed afresh keeping in view the qualifications prescribed in revised recruitment rules. Petitioner applied for the post of Chowkidar being an Ex-serviceman and 8th class passed and as per upgradation of Group-D to C after enforcement of 6th Pay Commission which came into force in the year 2011, a new policy is being framed for upgradation of Class D posts to Class C as well as having minimum qualification of class 10th. It is further stated that the petitioner had applied under Reserved category of Ex-Serviceman in violation of the mandate of the Advertisement and was less qualified being 8th class pass and ineligible as per the 6th Pay Commission recommendation.

6. Respondent no.3 has not specifically explained :- i). Whether the process of selection for appointment for 92 Base Hospital, 150 General Hospital, 170 Military Hospital and CH(NH) was separate; 7 ii.) Whether the applicant/petitioner would be considered for appointment only for selection against the post in a particular hospital one at a time; iii). Whether the merit positions of candidates selected for the post of Chowkidar for various hospitals were maintained separately.

7. With the consent of learned counsel for the rival sides, the petition was taken up for final consideration.

8. It is contended on behalf of petitioner that since the recruitment process was completed and the petitioner was selected in terms of the final list in accordance with the eligibility criteria laid down in the Advertisement, respondents could not

vary the terms of eligibility criteria. It is further contended that the respondents have admitted that the petitioner was entitled to relaxation in age on the strength of being an Ex-Serviceman even when his selection was being considered against an un-reserved post but the criteria in regard to qualification could not be changed in terms of Rules to be adopted prospectively under 6th Pay Commission to the disadvantage of petitioner.

9. Learned counsel for respondents, per contra, argued that the petitioner had applied for the post of Chowkidar notified in respect of 42 vacancies including two vacancies of Chowkidar allotted to respondent no.3 for 150 General Hospital and his provisional selection was made but the same was not approved by the appointing authority in view of 8 upgradation of Group D post to Group C and also enhancement of qualification to 10th pass. It is further submitted that the post was meant for General Category and petitioner being an Ex-Serviceman was not eligible, more so as he did not possess the minimum qualification of 10th Class.

10. After hearing learned counsel for the parties and perusing the record, it emerges that the petitioner had applied for the post of Chowkidar at 150 General Hospital where the post was lying vacant. As per advertisement, the two vacancies of Chowkidars were allotted under un-reserved category and the petitioner applied for the post of Chowkidar against un-reserved category. It is also not disputed that the petitioner was selected and he was informed of his selection as Chowkidar. According to respondents, the selection was provisional and the Selection Board was required to obtain approval from the appointing Authority, i.e. 16 Corps (Med.). The approval is stated to have been declined. Admittedly the case of petitioner could be considered for appointment after granting relaxation of age against an un-reserved category as there were no vacancies reserved for Exservicemen. Such relaxation in age was available to every Ex-Serviceman for any vacancies whether reserved or not provided he had put in not less 9 than 6 months continuous service. The approval was declined on the ground that all civil recruitment was held in abeyance till further order due to upgradation of Group-D post to Group C and also enhancement of qualification to 10th Pass. This upgradation of Group-D post to Group C and enhancement of qualification to 10th Pass was stated to be the requirement under the revised recruitment rules under

the 6th Pay Commission. Admittedly petitioner was an 8th class pass and an ex-serviceman having served for 17 years. He was not disqualified to apply under unreserved category as admittedly no reservation was made in favour of Ex-serviceman category. It is not the respondents case that the petitioner did not satisfy the required eligibility criteria in terms of the advertisement. Petitioner had gone through the process of selection in terms of the eligibility criteria laid down in terms of the Advertisement. He was subjected to interview conducted for filling up of Group-C and D posts in AMC units of 150 General Hospital on 8th February, 2008 and provisionally selected for the post of Chowkidar. He was required to report to 150 General Hospital latest by 28th April, 2008 with the documents required in terms of intimation letter dated 5th 10 April, 2008. The application form filled up by the petitioner clearly demonstrates that he had applied under the unreserved category. Therefore, it was not open to the respondents to deny appointment to petitioner merely on the ground that he belonged to the category of Ex-serviceman. It is not in controversy that as Ex-serviceman, petitioner was entitled to relaxation in age bar as he had put in 17 years service in Army. Merely because the petitioner had a military background and belonged to category of Ex-serviceman did not disentitle him to claim benefit under Open/General/Unreserved Category. In so far as the plea of respondents regarding clubbing of Group-C and Group D service and enhancement of qualification from 8th Class pass to 10th Class pass under the revised rules prospectively to be adopted under 6th Pay Commission Recommendations is concerned, that is the subsequent development and changes occurring on account of subsequent development after completion of process of selection to vary the terms and conditions laid down in the Advertisement regarding eligibility criteria cannot be pressed into service to the disadvantage of the selected candidate. In case titled Arjun Singh 11 Rathore and ors. vs. B.S.Chaturvedi and ors. reported in (2007) 11 SCC605 the Honble Apex Court held that the vacancies which had occurred prior to enforcement of rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein. In Y.V.Rangaiah and ors. Vs. J.Sreenivasa Rao and ors. reported in AIR 1983 SC852 it was held that vacancies that occurred prior to amended rule would be governed by old rules and not by new rules. The same principle was reiterated by this Court in Makhan Lal Mattoo vs. Union of India and ors. reported

in 1988 JKL14 In K. Manjusree Vs. State of AP and anr. reported in (2008) 3 SCC512 the Honble Apex Court held that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.

11. In the instant case, respondents have issued the impugned cancellation letter on the basis of refusal of approval by the appointing Authority on misconceived notion that the revised recruitment rules to be adopted in future under the 6th Pay Commission Recommendations would change the eligibility criteria rendering the petitioner ineligible on the basis of prospective enhancement 12 of qualification from 8th Class pass to 10th Class pass. This is unacceptable. The eligibility criteria applicable is the one laid down in the advertisement notice and not that which is going to be subsequently adopted in future on the basis of Pay Commission Recommendations. It is well settled that the eligibility criteria cannot be altered to the disadvantage of the selected candidate. The rules of procedure and eligibility criteria would be applicable in terms of the Advertisement notice and as per procedure in vogue at the time, the vacancies occurred. That being the position of law, the stand taken by respondents cannot be countenanced.

12. The result of the foregoing discussion is that the contentions raised on behalf of respondents are repelled. The writ petition is allowed and a Writ of Certiorari issued to quash impugned communication dated 20th October, 2008 issued by respondent no.3 and respondents are directed to consider appointment of petitioner on the basis of his provisional selection as Chowkidar in terms of communication dated 5th April, 2008. (Bansi Lal Bhat) Judge Jammu Varun Bedi*
February 9th, 2015

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