

PETITIONER:
MILLS DOUGLAS MICHAEL & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 02/04/1996

BENCH:
G.B. PATTANAIK (J)
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AGRAWAL, S.C. (J)

CITATION:
1996 AIR 1905 JT 1996 (4) 189
1996 SCALE (3)393

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATTANAIK. J.

Leave granted.

These appeals raise a common question with regard to interpretation of the advertisement issued for recruitment to the post of Inspectors of Central Excise, Income-tax etc. in relation to the out of date by which an ex-service man who is not a graduate can be deemed to be graduate on completion of 15 years of service in the Armed Forces.

In the first case which arose out of the judgment of the Central Administrative Tribunal, Madras Bench (Original Application No.658 of 1994) the Tribunal came to the conclusion that since the appellant had not completed the requisite 15 years of service in the Armed Forces as on 1.8.92 he was ineligible to apply for the post pursuant to the advertisement in question, and therefore, rightly the respondents were entitled to cancel the selection made.

In the second case which arose out of judgment of the Central Administrative Tribunal, Ernakulam Bench (O.S. Nos.542/94 and 622/94) the Tribunal came to the conclusion that the out of date fixed as 1.8.92 under the advertisement is in relation to the educational qualification and not to the requirement of minimum 15 years of service for an under graduate ex-defence service personnel and for them if they would acquire 15 years experience within one year from the closing date of submission of application then that would be sufficient to hold the prescribed qualification and with that conclusion the Tribunal having directed the applicants before him to be qualified, the Staff Selection Commission has approached this Court.

The appellant Douglas Michael in the first case applied for the post of Inspector in Central Excise, Income-tax etc. The last date for receipt of application was 7.9.92. Paragraph 10 of the advertisement prescribed the minimum educational qualification for being eligible to apply reads

thus:

"10. Educational Qualification:-

Degree of recognized University or equivalent. Candidates who have yet to appear at the Degree examination or whose result has been withheld or not declared on or before 1.8.1992 ARE NOT ELIGIBLE.

Ex-service men, who are not graduates, are deemed to be graduates on completion of 15 years of service in the Armed Forces as per sub-rule 4 of the Rule 6 of the Ex-servicemen (Re-employment in Central civil Services and posts) Rules 1979."

After scrutiny of the application a written examination was held and the appellant came out successful in the written examination. The interview was held thereafter in October 1993 and the appellant was declared selected under ex-servicemen quota for the post of Inspector of Central Excise and the Selection List was published in the Employment News of February 1994. While the appellant was waiting to receive appointment letter, instead he was served with a letter from the 4th respondent dated 28th March, 1994 informing that his selection has been cancelled on the ground that he had not completed 15 years of service in Armed Forces as on 1.8.92 which was the crucial date for educational qualification. The appellant challenged the same by approaching the Central Administrative Tribunal, Madras bench and by the impugned judgment dated 9th November, 1994, the Tribunal having dismissed the same the appellant has approached this Court.

The respondents in the second case similarly applied for the recruitment to the post of Inspectors of Central Excise, Income Tax etc. 1992. They became successful in the written test and were finally declared to have been provisionally selected after interview. But as their candidature for recruitment was cancelled by order dated 28th March, 1994 on the ground that they did not possess the educational qualification as on 1.8.1992 they also approached the Central Administrative Tribunal, Ernakulam Bench and the Tribunal having allowed their applications the Staff Selection Commission has come in appeal to this Court.

Mr. Raju Ramachandran, the learned counsel appearing for the appellant in the first case contended, that on a plain reading of the advertisement it would be apparent that the cut of date fixed as 1.8.92 in paragraph 10 of the advertisement is only in relation to the acquisition of the qualification of a degree of a recognized University. Said cut of date has no application to acquiring the deemed qualification after completion of 15 years of service in the Armed Forces and, the before, the Tribunal wholly erred in law in applying the cut of date as 1.8.92 even for the purpose of the deemed qualification on completion of 15 years of service in the Armed Forces. Mr. Ramachandran, learned counsel further urged that reading Sub-Rule 6 of the Ex-servicemen (Re-employment in Central Civil Services and posts) Rules 1979 (hereinafter referred to as 'Rules') together with Note III and the Explanation thereto the conclusion is inescapable that the necessary qualification could be acquired within one year from the closing date on completion of his assignment and, therefore, the Tribunal at Madras Bench wholly erred in law in upholding the cancellation of the appellant's recruitment and in fact the Tribunal at Ernakulam Bench has rightly interpreted the

provisions of the advertisement.

The learned counsel for the respondents, on the other hand contended, that the ex-servicemen under graduate on completion of 15 years of service in Armed Forces having been deemed to be a graduate and, therefore, is eligible to apply for the post and paragraph 10 of the advertisement having indicated that a candidate should be a graduate of a recognized University on or before 1.8.92 the conclusion of the Tribunal at Madras Bench is the only lawful conclusion. The learned counsel further urged that the Tribunal at Ernakulam Bench erroneously relying upon Sub Rule (4) of Rule 6 of the Rules as well as Note III and the Explanation thereto came to hold that under the advertisement in question under graduate ex-serviceman could acquire the deemed qualification of being a graduate within one year from the last date of the submission of application and the said conclusion is wholly unsustainable.

Having heard learned counsel for the parties and on examining paragraph 10 of the advertisement, the question that arises for consideration is whether the cut of date indicated in the first part of paragraph 10 would also apply to the case of an ex-serviceman who is not a graduate but is deemed to be graduate on completion of 15 years of service in the Armed Forces in accordance with Sub Rule(4) of Rule 6 of the Rules? For a better appreciation of the point in issue Sub Rule (4) of Rule 6 of the Rules and Note III and Explanation thereto is extracted hereinbelow in extenso:-

"4. For appointment to any reserved vacancy in group "C" posts, a matriculate Ex-serviceman (which term includes an ex-serviceman, who has obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force) who has put in not less than 15 years of service in the Armed Forces of the Union may be considered eligible for appointment to the posts for which the essential qualification prescribed is graduation"

"Note III : For any serviceman of the three Armed Forces of the Union to be treated as Ex-serviceman for the purpose of securing the benefits of reservation, he must have already acquired, at the relevant time of submitting his application, for the post/service, the status of ex-serviceman and/or is in a position to establish his acquired entitlement by documentary evidence from the competent authority that he would be released discharged from the Armed Forces within the stipulated period of one year from the closing date on completion of his assignment"

"Explanation:

The persons serving in the Armed Forces of the Union who on retirement from service, would come under the category of ex-serviceman

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-serviceman but shall not be permitted to leave the uniform until they complete the specified term of engagement in the Armed Forces of the Union."

On a plain reading of the aforesaid advertisement makes it crystal clear that minimum qualification for the post in question is a degree of recognized University or its equivalent and those candidates who either have not appeared at the degree examination or whose result has been withheld or not declared, they must pass the degree before 1.8.92. The aforesaid cut of date has no application for acquiring deemed qualification of a graduate in case of an ex-serviceman on completion of 15 years of service in the Armed Forces. In the case of Rekha Chaturvedi vs. University of Rajasthan & Others (1993 supp.(3) Supreme Court Cases 168) this Court has held that in the absence of fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for scrutiny of the qualifications will be the last date for making the applications. In view of our conclusion that the cut of date 1.8.92 has no application to the acquisition to deemed qualification of a graduate for ex-serviceman on completion of 15 years of service in the Armed Forces, and applying the ratio in Rekha Chaturvedi's case(supra) it must be held that a candidate who is not a graduate but is an ex-serviceman must complete 15 years of service by the last date of receipt of application i.e. 7.9.92 for being eligible to be considered for the recruitment to the post of Inspectors in Central Excise and Income Tax etc. 1992. Since admittedly, the appellant in the first case completed 15 years of service by 31.8.92 he was fully eligible for being considered and, therefore, the order of cancellation of his selection is wholly illegal. Accordingly the impugned order of Tribunal at Madras Bench is set aside and O.A. No. 658 of 1994 stands allowed. The appellant Douglas Michale be allowed to join the post for which he had been issued a letter of appointment.

Coming to the second case we are also of the considered opinion that the Tribunal erred in law in relying upon Note III and Explanation thereto quoted earlier, to hold that the eligibility qualification under the deemed provision could be acquired within one year from the closing date on completion of assignment. Note III as well as Explanation thereto is in relation to the eligibility of a person to apply for re-employment one year before the completion of specified term of engagement. The said provision has no correlations with the deemed qualification of graduate on completion of 15 years of Defence service. The Tribunal at Ernakulam Bench, therefore, wholly erred in law in extending the period by which an ex-serviceman could complete 15 years of service and become eligible for appointment to the post of Inspector of Central Excise, Income-Tax etc. pursuant to the advertisement in question. The Tribunal at Ernakulam Bench has recorded the finding that the applicants therein who are the respondents in the second case did not complete 15 years of service as Defence personnel by the date of the submission of application but only completed the same on the date of interview i.e. in September/October 1993. But

applying Note III and Explanation thereto held them to be duly qualified for the purpose on the relevant date. In view of our earlier conclusion that the deemed qualification of being a graduate must be acquired on the last date of submission of application i.e. 7.9.92 which, in other words, would mean that the concerned person must have 15 years of service in Defence by 7.9.92 for being eligible to be considered for the post and admittedly, the respondents having not completed 15 years of service by that date they were ineligible for being considered and the cancellation of their provisional appointment, therefore, was in accordance with law and the Tribunal erred in law in interpreting the provisions of the advertisement. The said appeals, therefore, are allowed and O.S. Nos. 542/94 and 622/94 filed before the Ernakulam Bench stand dismissed. All the appeals are accordingly allowed, but in the circumstances there will be no order as to costs.

