

SUPREME COURT OF INDIA

Chief Executive Officer, N.S.S.O.

Vs.

Biswa Bhusan Nandi

C.A.No.5304 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

29.08.2008

JUDGMENT

S.B. Sinha, J.

1. Leave granted.
2. Respondent joined the Indian Air Force on 22.2.1978. He rendered more than 15 years' of service in the said organization having worked till 28.2.1993.
3. The Department of Personnel and Training issued a notification dated 12.2.1986 in terms whereof, those candidates who were matriculate and having put in not less than 15 years' of service in Armed Forces etc. were to be considered for appointment to any Group - C post to which essential qualification is graduation and where experience in technical or professional nature is not essential.
4. Appellant herein -National Survey Organization is established under the Department of Statistics of the Government of India. The service conditions of its employees are governed by the Rules framed by the President of India in exercise of his power under the proviso appended to Article 309 of the Constitution of India. In terms of the said notification, amendment had been carried out in *Ex-Servicemen (Re- employment in Central Civil Services and Posts) Rules, 1979*.

“In Rule 6 of the said Rules, after sub-rule (3), the following sub- rules were inserted :

"(4) For appointment to any reserved vacancy in Group `C' posts, a matriculate Ex-servicemen (which term includes an ex- servicemen 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 educational qualification prescribed is graduation and where,--

(a) Work experience of technical or professional nature is not essential; or (b) Though non-technical profession work experience is prescribed as essential yet the appointing authority is satisfied that the ex- serviceman is expected to perform the duties of the post by undergoing on the job training for a short duration."

After Rule 6, the following rule was inserted :

"6-A. Lower Standard for selection:--In the case of direct recruitment, if sufficient number of candidates belonging to ex-servicemen are not available on the basis of general standard to fill all the vacancies reserved for them, candidates, belonging to the category of ex- servicemen may be selected under a relaxed standard of selection to make up the deficiency in the reserved quota a subject to the condition that such relaxation will not affect the level of performance by such candidates."

5. Appellant organization issued a notification for filling up 56 vacancies for the post of Data Entry Operator, Grade B, pursuant where to the respondent also applied. He was permitted to sit in the written examination. He was also interviewed.

An office memorandum was, however, issued on 12.2.1996 whereby he was denied appointment.

6. An original application was filed by the respondent before the Central Administrative Tribunal challenging the validity of the said order.

"The Tribunal, by reason of a judgment and order dated 15.7.2003 dismissed the said application, stating :

"We have been taken through a notification passed by the Department of Personnel & Training. In the said notification it has been clearly stated that while a defence personnel has put in 15 years of service he can be considered for being employed in the post where graduation qualification is prescribed. So far as his employment is concerned, where the qualification is prescribed as graduation, the applicant can no doubt be considered, but in the instant case the respondents have prescribed the qualification of graduation with Mathematics or Statistics as one of the subjects. In the notification it was advertised that the person having graduate qualification with mathematics or Statistics shall be considered, but the applicant did not possess either qualification. Therefore, the respondents could not be found fault with for having not considered the applicant's application for the post of Data Entry Operator."

7. Aggrieved by and dissatisfied therewith the appellant filed a writ petition before the Calcutta High Court. By reason of the impugned judgment, the said writ petition was allowed by a Division Bench of the said Court, opining :

"Here in the present case, the petitioner was allowed to sit for such written test as well as viva-voce test and, admittedly, he qualified in both the tests. This significant aspect

does not appear to have been taken into consideration by the Tribunal which being guided by the technicalities in interpreting the qualification required for being eligible to recruit as Data Entry Operator. It cannot be denied that the petitioner was having the reasonable expectation in view of his passing of the written test and viva voce test. Therefore, the question remains as to how far the authority was justified in refusing to give appointment to the petitioner on the ground that the notification dated 12.2.1986 brought him at par with the people having qualification as graduate but in view of the specific qualification required for recruitment to the post of Data Entry Operator, the present petitioner could not have any claim. In the peculiar background of the present case, as indicated hereinbefore, we find it difficult to accept this contention. Here the petitioner not only passed both the written and the viva voce tests, being an Ex-Serviceman having putting more than 15 years of service in Indian Air Force, his matriculation qualification brought him at par with those having graduation. In absence of any clarifying clause in the notification dated 12.2.1986, it may be unjust in the background of the present case to deny the petitioner an appointment mainly on the ground that the essential qualification required for the post of Data Entry Operator, Gr.B, was graduation with Mathematics and Statistics. In such circumstances, we are unable to accept the contentions made by the learned counsel for the respondent authorities and in our view, the stand taken by the Tribunal is inherently inappropriate."

It was directed:

"In these circumstance, the order impugned dated 15.7.2003 passed by the Tribunal is set aside. The respondent authorities are directed to accommodate the petitioner in the post of Data Entry Operator, Gr.B, within a period of three months from the date of communication of this order and for any reason it cannot be made possible, the present petitioner may be accommodated in a suitable alternative post within the said period."

8. Mr. V. Shekhar, learned senior counsel appearing on behalf of the appellant, would content that as was rightly held by the learned Tribunal that it was not a case where the eligibility criterion was graduation in any stream simplicitor as the candidate was required to be a graduate having mathematics or Statistics as a compulsory subject.

9. It is not a case where work experience of technical or professional nature was essential. Even in a case where experience in non-technical professional work was experience although prescribed as essential yet in a case where the appointing authority is satisfied that the ex-serviceman is expected to perform his duties in the post by undergoing 'on job training' for a short duration in terms of sub-rule 4 of Rule 6, as amended, such appointment could have been made.

10. The High Court, keeping in view the peculiar facts and circumstances of this case, did not direct that the respondent must be appointed in the post of Data Entry Operator, Grade B. What was observed by the High Court was that he deserved to be accommodated for the post

for which he had submitted the application. The High Court furthermore opined that if for some reason, it is not possible to appoint him in the post of Data Entry Operator, the respondent may be accommodated on a suitable alternative post within the period specified therein. The said order indisputably has not been complied with.

11. An application was filed by the appellant for extension of the said period before the Division Bench of the High Court. By an order dated 31.8.2005, it was directed:

"The time as granted by the said order to the respondent authorities for accommodating the petitioners in the post of Data Entry Operator (Gr.B), or any other alternative suitable post as per the said order shall stand extended by a further period of three months from date."

12. A special leave petition was filed before this Court questioning the correctness of the aforementioned judgment of the High Court on or about 2.1.2006. Appellant did not make any effort for taking up the matter urgently. Despite pendency of the special leave petition, an application again was filed before the Calcutta High Court in February 2006 for extension of time. The High Court was given an assurance that the competent authorities of the appellant would certainly comply with the earlier directions of the Court. Only on the basis of the said representation, by an order dated 17.1.2006 the High Court directed:

"While seeking extension of time to comply with the direction of this Court, it is categorically submitted by the learned counsel for the respondent that if some time is given the authority concerned will certainly comply with the earlier direction in a way of accommodating the petitioners in the post of Data Entry Operators (Group `B') or in any other alternative suitable post. Though opposed, such time is granted till 31st March, 2006, as prayed for, and it is expected that the Court will not be embarrassed any further and in default resulting severe consequences."

13. In the aforementioned circumstances, in our opinion, it is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India. Appellant nowhere took the stand that even upon grant of some training; the respondent would not be able to perform the job of a Data Entry Operator. It is also not their case that there was no vacancy in any other post. The appellant also does not say that it committed any mistake in verifying the application for recruitment filed by the respondent. He was not only permitted to appear at the written examination but was also permitted to appear in the interview.

14. We are not oblivious of the fact that filing of an application for extension of time to comply with the order of the High Court by itself would not be a bar to the appellant for filing a special leave petition; but in this case, an assurance was given to the High Court that the respondent shall be accommodated, despite filing of the special leave petition.

15. In view of the exceptions carved out, the eligibility clause and as the post is non-technical in nature and, thus, no experience on technical side was necessary, we do not think that the

appellant should be permitted to come out of the representation made by it before the High Court.

We have noticed hereinbefore the tenor of the order passed by the High Court on 12.2.2006. For all intent and purport, an assurance had been given to the High Court that its order shall be complied with. The promise made was absolute and unequivocal in nature. We, therefore, do not think it to be a proper case for exercise of our discretionary jurisdiction under Article 136 of the Constitution.

16. For the reasons aforementioned, the impugned judgment needs no interference. The appeal is dismissed accordingly with costs. Counsel's fee assessed at Rs.50,000/- (Rupees fifty thousand only).