

SUPREME COURT OF INDIA

State of H.P.

Vs.

Anjana Devi

C.A.No.1617 of 2009

(R.V.Raveendran and Markandey Katju JJ.)

17.03.2009

ORDER

1. Leave granted. Heard learned counsel.

2. One Rakesh Chand Sood (of whom respondents 1 to 3 are the legal representatives) and Sukh Dev (fourth respondent) were in Naval service from 14.10.1966 to 31.10.1981 and 20.3.1969 to 31.9.1981 respectively.

“After their discharge/release, they joined the service of State Public Works Department (Electrical Wing) as Junior Engineers with effect from 1.1.1983 and 15.1.1983. Their selection and appointment was under general category.”

3. The State made rules providing for reservation for demobilized armed force personnel in Himachal State Non-Technical Services with effect from 28.3.1972 under *Demobilised Armed Forces Personnel (Reservation of Vacancies in the Himachal State Non-Technical Services) Rules, 1972* ('1972 Rules' for short). Rule provided for reservation of vacancies for released Armed Forces Personnel in non-technical posts, to the extent of 25% for class-I posts, 30% for class-II posts, and 20% for class-III and class-IV posts. The percentage of reservation was subsequently modified.

“Rule 5 thereof provided that service rendered in the armed forces shall count in full towards seniority and fixation of pay under the state government in the post to which he is first appointed against the vacancy under Rule 3. By a subsequent circular dated 23.5.1975, it was reiterated that various concessions extended by the 1972 Rules were admissible only in the case of released armed forces personnel who were selected against reserved vacancies. It clarified that the concessions cannot be extended to persons appointed to unreserved vacancies. It however provided that where a released army personnel had qualified against a non-reserved vacancy and had been appointed against a general un-reserved vacancy in the first instance, he should be given an option (only at the time of first appointment) to accept a reserved vacancy even if it occurs subsequent to his appointment so as to extend to them the benefit of

concessions-seniority and fixation of pay. The said 1972 Rules were amended from time to time.”

4. By circular dated 3.5.1983, the state government notified its decision to henceforth reserve 15&percent; vacancies in all posts/services for ex-servicemen, not only in non-technical services, but also in technical services (that is Medical and Engineering Services). Thus, the reservation which was available only against non-technical posts under the 1972 Rules, was available in regard to technical posts also, with effect from 3.5.1983, by an executive order. The said executive order (circular) was subsequently replaced by regular rules made under Article 309, known as the *Ex- Servicemen (Reservation of Vacancies in the Himachal Pradesh Technical Services) Rules 1985* vide notification dated 19.9.1986. The 1985 Rules were initially brought into effect from the date of the notification (19.9.1986) but subsequently, amended and given effect from 3.5.1983.

“Rule 3 thereof provided for 15&percent; of the vacancies to be filled by direct recruitment in Himachal Pradesh Services to be reserved for being filled by recruitment of ex-servicemen. Rule 5 provided that the period of approved military service shall be counted in the case of candidates appointed against reserved vacancies under the rules, for fixation of pay and seniority in that service at the time of first civil appointment against reserved vacancy.”

5. By circular dated 11.12.1987, the state government applied the instructions contained in the circular dated 23.5.1975 (referred to in para 3 above) to the ex-servicemen appointed against un-reserved posts in technical services with effect from the date the 1985 Rules came into force.

“Thus the ex-servicemen appointed to general unreserved technical service vacancies, after the 1985 Rules came into effect (3.5.1983), were given the option to accept any reservation vacancy occurring subsequent to his appointment.”

6. Rakesh Chand Sood and Sukh Dev, as noticed above, were appointed against general vacancies in a technical service on 1.1.1983 and 15.1.1983.

“At the time of their appointment, there was no reservation for ex-servicemen in technical services, which began only from 3.5.1983. Therefore, they were not given the benefit of seniority and fixation of pay in terms of the circular dated 3.5.1983 or the 1985 Rules which replaced the circular. Their representation purporting to exercise option to accept a reserved vacancy and seeking the relief of counting their approved military service for purposes of fixation of pay and seniority was rejected by the Chief Engineer on 7.10.1992. Feeling aggrieved, they approached the State Administrative Tribunal in OA No.1555/1993. The Tribunal, by its order dated 26.9.2001 (by a majority of 2:1 on reference to Chairman on difference between two members) allowed the application on the following terms:

".....applicants had exercised their option while filing the representation for being considered to the vacancies reserved for ex- servicemen pursuant to letter issued by the Government of Himachal Pradesh dated May 23, 1975. Both the applicants shall be deemed to have accepted the offer to be appointed against the vacancies reserved for ex- servicemen occurring immediately after 3.5.1983 for appointment/adjustment with all consequential benefits. In other words, both the applicants shall be considered against the first vacancies occurred immediately after 3.5.1983 falling immediately after the cut off date.

Respondents are accordingly directed to appoint/post the applicants against the aforesaid vacancies reserved for ex-servicemen and to fix their pay had seniority in accordance with the provisions of 1972 Rules.”

7. The said order of the Tribunal was challenged by the state government before the High Court and the High Court has dismissed the writ petition on 2.4.2007. The High Court was of the view that the circular dated 11.12.1987 restricting the benefit to only those who were appointed on or after 3.5.1983, left out ex-servicemen who were appointed before 3.5.1983 from the benefit of option, thereby creating an impermissible classification without any rationale, between ex-servicemen appointed within the same technical service. The High Court held that the classification excluding those appointed before 3.5.1983 was arbitrary and discriminatory and violative of Article 14 as it was not founded on any intelligible differentia having a rational relation to the object sought to be achieved by the 1985 Rules.

8. The question that therefore arises for consideration is whether the benefits of 1985 Rules should be extended to those who were appointed prior to 3.5.1983 by giving them an option to accept any reserved vacancy occurring subsequent to their appointment so as to secure the benefit of counting their military service for purposes of seniority and pay fixation.

9. As noticed above, the respondents were appointed against general category technical posts. When they were appointed reservation was available only in respect of non-technical direct recruitment posts. The benefit of counting the previous service rendered in the armed forces for the purpose of seniority and fixation of pay was available only to those appointed to non-technical services under reservation category under the 1972 Rules. The benefit of reservation was extended to technical post firstly by an executive order dated 3.5.1983. Subsequently, the 1985 Rules were made under Article 309, providing for reservation even in technical posts and the said 1985 Rules were given effect from 3.5.1983, which was the date on which reservation was provided for posts in technical services by an executive order. Every ex-serviceman who was recruited against general (non-reserved) vacancies in the non-technical services, was given an option to accept a reserved vacancy occurring subsequent to his appointment by a circular dated 23.5.1975. This benefit was obviously intended for those who were appointed to non-reserved posts, after the 1972 Rules came into force.

“Similarly, every ex-serviceman who was recruited against general (non- reserved) vacancies in technical services was also given an option to accept a reserved vacancy occurring subsequent to his appointment by circular dated 11.12.1987. This option

was restricted to those who were appointed to non-reserved posts on or after the date when the 1985 Rules came into effect, that is, 3.5.1983. There is thus no discrimination much less hostile discrimination as assumed by the Tribunal and the High Court.”

10. In so far as the technical service vacancies are concerned, as noticed above, reservation was introduced for the first time with effect from 3.5.1983. Discrimination presupposes classification of similarly situated persons into different groups without any reasonable basis, for extending dissimilar benefits or treatment. The technical services and non-technical services were clearly different. Persons appointed against reserved vacancies after reservation was provided, and persons appointed before introduction of reservation, clearly belong to different classes. As reservation was introduced for posts in technical services with effect from 3.5.1983, ex-servicemen who were appointed against non- reserved technical posts on or after 3.5.1983 were given the option to accept the subsequently arising reserved vacancies. As persons appointed on or after 3.5.1983 and those appointed prior to 3.5.1983 are not of the same `class', different yardsticks could be applied to them. The respondents could have complained of discrimination only if a benefit had been introduced retrospectively by fixing a cut off date arbitrarily thereby dividing a single homogeneous class into two groups and subjecting them to different treatments. That is not the case here. Choice of the date 3.5.1983 for extension of benefit of option is not an arbitrary selection of a cut off date.

“It is logical and rational, being the date on which reservation was made applicable to technical services. Thus ex-servicemen appointed to technical services were entitled to the benefits conferred by the 1985 Rules only if they were : (a) appointed to a reserved vacancy created under the 1985 Rules; or (b) appointed to a non-reserved vacancy after reservation came 9 into effect, that is on or after 3.5.1983, but exercised the option to accept a reserved vacancy occurring subsequent to his vacancy.”

11. We are of the view that the orders of the Tribunal and the High Court are not in accordance with law. Accordingly, we allow this appeal and set aside the orders of the High Court and the Tribunal and dismiss the original applications.