

SUPREME COURT OF INDIA

Hav (OFC) Rwmwi Borgoyary

Vs.

Union of India

C.A.No.8986- 8988 of 2019

(L.Nageswara Rao and Hemant Gupta,JJ.,)

06.12.2019

JUDGMENT

L.Nageswara Rao,J.,

1. These Appeals arise from the judgment of the Armed Forces Tribunal, Principal Bench, New Delhi dated 08.08.2018 dismissing the applications filed by the Appellants for quashing the order dated 23.03.2007, by which the Appellants were declared ineligible for appointment as Technical Equipment Officers (TEO).

2. Pankaj Negi- Appellant was enrolled in the Army Air Defence as Soldier Technical and was selected for the trade of Operation Fire Control while working as Havildar. He cleared Class I grade of his Technical Trade "Operation Fire Control" (OFC) in 2009. He also secured a diploma in Radar Technology, Surveillance, Electronic Warfare and Equipment Management from the Indira Gandhi National Open University (IGNOU) in 2011.

3. Deepak Kumar Mishra-Appellant was enrolled in the Army Air Defence as Soldier Technical and cleared Class I grade of his Technical Trade "Operation Fire Control" (OFC) while working as Havildar from 04.08.2007. He cleared his Weapon Training Course (PWN) on 27.12.2010. He was awarded diploma in Radar Technology, Surveillance, Electronic Warfare and Equipment Management from IGNOU in 2011. During the course of his service, he was a recipient of "Veerta Patra" and "Commandant's Appreciation".

4. Rwmwi Borgoyary- Appellant was also enrolled in Army Air Defence as Solider Technical and was promoted as Havildar. He cleared his diploma in Network Administration and Cyber Security. He also cleared Cyberoam Certified Network and Security Professional - CNSP Course in December, 2011. He was awarded diploma in Radar Technology, Surveillance, Electronic Warfare and Equipment Management from IGNOU.

5. In January/ February, 2016, seven vacancies for Record Officers and eight vacancies for

Technical Equipment Officer (TEO) in AAD were notified. The Appellants applied for being considered to the said posts. The Appellants were permitted to undergo the selection process after which they were informed by a communication dated 23.03.2017 that they were found ineligible for being considered for TEO (AAD) category. The Appellants submitted a representation to their Commanding Officer requesting him to take up their case at the appropriate level. The OC Troops (Col A) / Commanding Officer recommended the case of the Appellants to the Director General of the Army Air Defence Regiment and requested him to direct the concerned officer to consider the Appellants for the post of TEO as they were eligible. As the pre-commissioning training was scheduled to commence, the Appellants filed Original Applications (OA) before the Armed Forces Tribunal (for short "the Tribunal") which were dismissed. Their Applications for seeking Leave to Appeal were also dismissed.

6. The Respondents contended before the Tribunal that the eligibility criteria for Special List (SL) category were given at Appendix 'A' to AG's Branch/ MP-2 letter dated 17.01.2007. Para 2 dealt with the Technical Equipment Officers (AAD). The eligibility criteria is as follows:

"2. Technical Equipment Officer (Arty) & Technical Equipment Officer (AAD):

(a) Qualification. Senior School Certificate Exam Class XI (CBSE Pattern) or equivalent.

(b) Service. Minimum 10 years of service on 01 Jul of the year in which the applications are invited.

(c) JCOs/ NCOs from AIG (FD), AIG (CB) AIG (ADO) and TFC (AD & FD) category or C/k/ SKsT Grade-I with five years experience in accounting/ holding of Army Eqpt/ Stores."

7. It was further contended on behalf of the Respondent that the qualification of TIFC (AD & FD) which is acquired only after selection for the course and a ten month long training at AD College, followed by gaining experience as an instructor is compulsory. The Respondent's response to the submission made on behalf of the Appellants that other similarly placed persons were appointed as TEOs was that an error was committed in making a few appointments and the Appellants were not entitled to be appointed as they were ineligible.

8. The Tribunal held that training for the trade of Operator Fire Control (OFC) cannot be a substitute for the qualification of Technical Instructor Fire Control (AD & FD) as the latter requires much more capability, skill and training as compared to the former. The Tribunal was of the opinion that the Appellants were not entitled to seek parity with a few appointments which were made due to a mistake.

9. Mr. Sudhanshu S. Pandey, learned counsel for the Appellants submitted that Army

Instruction Nos.84 and 85 dated 12.10.1974 govern the selection of JCOs/ NCOs for granting permanent commission (Special List) in the Army, in respect of Equipment Officers. The eligibility prescribed in the Army Instructions for grant of permanent commission for JCOs and NCOs commissioned from Army ranks is that the candidates should have minimum educational qualification for appointment to the Special List. In addition, the candidates must have specialized knowledge and practical experience connected with the duties of the posts to which they applied. Mr. Pandey submitted that the standing instructions issued by the Adjutant General's Branch, integrated HQ, Ministry of Defence (Army) on 17.01.2007 prescribing additional qualifications for appointment to the post of TEO suffer from the vice of lack of jurisdiction. He also submitted that the standing instructions issued on 17.01.2007 cannot override Army Order dated 12.10.1974. He further contended that two persons who were similarly situated to the Appellants have been granted permanent commission and were also permitted to continue as commissioned officers and as such, there is no reason why the said benefit cannot be extended to the Appellants.

10. On behalf of the Respondents, it was contended that by a letter dated 01.09.2006 of the Ministry of Defence, Administrative Powers of the Service Headquarters were delegated to the Adjutant General (Army), and he was authorized to introduce new entry schemes/ disciplines including technical educational qualifications for induction of personnel into the Army with no financial implications. TEO (AAD) category was introduced by the standing Instructions dated 17.01.2007 by Adjutant General (Army) and it cannot be said that the said Instructions providing for the eligibility criteria for the post of TEO are contrary to the Army Order dated 12.10.1974. The Appellants had applied to TEO (AAD) category and PC (SL) category as well. An error was committed in processing their selection for appointment to the post of TEO (AAD), which was realised later and they were held ineligible as they did not have the qualification of TIFC (AD & FD). The Appellants were considered for appointment to the post of Record Officer, but could not be selected. In respect of the submission pertaining to discrimination, it was argued by the learned counsel for the Respondents that the mistake committed in appointing certain ineligible persons is under investigation and corrective action will be taken.

11. We have examined the submissions made by learned counsel and we are of the considered opinion that the Appellants are not entitled to the relief claimed. There is no merit in the submission made by the learned counsel for the Appellants that the Army Order Nos.84 and 85 issued on 12.10.1974 have to be followed and the Instructions issued on 17.01.2007 should be ignored. The Instructions issued on 17.01.2007 are in addition to the Instructions dated 12.10.1974. Moreover, the Appellants had applied and participated in the selection conducted for the posts of Record Officer and TEOs cannot be permitted to challenge the Instructions of 2007. There is no dispute that the Appellants were aware of the Instructions of 2007. It is also not disputed that the Appellants were considered for the post of Record Officers and were not selected due to lack of merit. No objection was raised by the Appellants during the process of selection.

12. We are in agreement with the Tribunal that selection to the post of Technical

Equipment Officer requires standards of high order and training in the trade of Operator Fire Control (OFC) is no substitute for the qualification of Technical Instructor Fire Control (AD & FD). The Appellants who do not have the qualification of Technical Instructor Fire Control (AD & FD) cannot claim appointment to the post of TEO in Air Defence Branch.

13. Learned counsel for the Appellants contended that non-consideration of the Appellants for appointment as TEO is vitiated by hostile discrimination as two other persons who were similarly situated were appointed as TEOs and are continuing. It is trite law that the right to equality cannot be claimed in a case where a benefit has been given to a person contrary to law. If a mistake has been committed by the authorities in appointing few persons who were not eligible, a claim cannot be made by other ineligible persons seeking a direction to the authorities to appoint them in violation of the instructions. After referring to several judgments, this Court in *State of Odisha & A nr. v. Anup Kumar¹ Senapati & Anr* held that there is no concept of negative equality under Article 14 of the Constitution of India. The Appellants cannot, as a matter of right, claim appointment on the basis of two ineligible persons being given the benefit and no direction can be given to the Respondents to perpetuate illegality.

14. In view of the above, the Appeals are dismissed.

Judgment Referred.

¹(2019) SCC Online SC 1207