MILLS DOUGLAS MICHAEL AND OTHERS

v.

UNION OF INDIA AND OTHERS

APRIL 2, 1996

[S.C. AGRAWAL AND G.B. PATTANAIK, JJ.]

Service Law :

Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 : Rule 6(4), Note III and Expln.

Recruitment—Acquisition of deemed qualification—Relevant date for—Minimum educational qualification—Degree of recognised University—Acquired on or before cut-off date—Under graduate ex- servicemen—Deemed to be graduates on completion of 15 years service in Armed Forces—Held : relevant date for acquisition of deemed qualification by ex-servicemen was last date for receipt of application and not cut-off date—Deemed qualification could not be acquired within one year from closing date on completion of assignment in Armed Forces—Provision had no co-relationship with deemed qualification on completion of 15 years defence service.

The appellant had applied for the post of Inspector of Central Excise, Income-tax etc. The advertisement for the posts in question had prescribed a degree of a recognised University as the minimum educational qualification which was to be acquired before the cut-off date. However, ex-servicemen, who were not graduates, were deemed to be graduates on completion of 15 years of service in the Armed Forces as per Rule 6(4) of the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979. After scrutiny of application a written examination was held in which the appellant came out successful. The interview was held thereafter and the appellant was declared selected under ex-serviceman quota for the post of Inspector of Central Excise and the Selection List was duly published. While the appellant was waiting to receive appointment letter, he was served with a letter informing that his selection had been cancelled on the ground that he had not completed 15 years of service in Armed Forces as on the cut-off date which was crucial for educational qualification. The appellant challenged the afore-said cancellation before the

A Central Administrative Tribunal, which was dismissed. Aggrieved by the Tribunal's judgment the appellant preferred the present appeal.

On behalf of the appellant it was contended that the cut- off date had no application to acquiring the deemed qualification after completion of 15 years of service in the Armed Forces; that Rule 6(4) of the Rules read B with Note III and the Explanation thereto clearly specified that the deemed qualification would be acquired within one year from the closing date on completion of his assignment in the Armed Forces; and that the Tribunal wholly erred in law in applying the cut-off date even for the purpose of the deemed qualification on completion of 15 years of service in the Armed C Forces.

Allowing the appeal, this Court

HELD : 1.1. The advertisement clearly states that minimum qualification for the post in question is a degree of recognised University D 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 the cut-off date. The cut-off date has no application for acquiring deemed qualification of a graduate in case of ex-servicemen on completion of 15 years of service in the Armed Forces. E Therefore, 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 for being eligible to be considered for the recruitment to the post of Inspectors in Central Excise and Income-tax etc.

[1082-H, 1083-A-B-D]

F *Rekha Chaturvedi* v. *University of Rajasthan & Ors.*, [1993] Supp. 3 SCC 168, relied on.

1.2. The Tribunal erred in law in relying upon Note III and Explanation thereto of Rule 6(4) of Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 to hold that the eligibility qualification G 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 co-relationship with the deemed qualification of H graduate on completion of 15 years of Defence service. [1083-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5333 of 1996 Etc. A

From the Judgment and Order dated 9.11.94 of the Central Administrative Tribunal at Madras in O.A. No. 658 of 1994.

Raju Ramachandran, P.H. Parekh, E.R. Kumar, Shefali S. Fazl. for the Appellants. B

M.P. Shorawala, Ms. Anil Katiyar for the Respondents in C.A. Nos. 5333 and 5354/96.

Ramesh Babu, M.R. for the Respondent in CA No. 5355/96. C

The Judgment of the Court was delivered by

PATTANAIK, J. Leave granted.

These appeals raise a common question with regard to interpretation D of the advertisement issued for recruitment to the post of Inspectors of Central Excise, Income-tax etc. in relation to the cut 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 E Administrative Tribunal, Madras Bench (Original Application No. 658 of 1994) the Tribunal came to the conclusion that since the appellant has 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 F 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 cut of date fixed as 1.8.92 under the advertisement is in relation to the educational qualification and G 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 H

A 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 of Central Excise, Income-tax etc. The last date for receipt of application was 7.9.92. Paragraph 10 of the advertisement prescribed the B minimum educational qualification for being eligible to apply reads thus :

> "10. Educational Qualification :
>
> Degree of recognised University or equivalent. Candidates who C 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 D 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 E 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 F 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. G

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 H 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 recognised 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, therefore, 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 4 of 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 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 recognised 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.

A 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-servicemen (which term includes and 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 benefit 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."

H On a plain reading of the aforesaid advertisement makes it crystal clear

that minimum qualification for the post in question is a degree of recognised 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* v. *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 and the last date of receipt of application was 7.9.92 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 Doglas Michael 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 co-relationship 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 completed 15 years of service and become eligible for appointment to the post of Inspector of Central Excise, Income-Tax etc.

A 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 B 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 C 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 D 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.

V.S.S. Appeals allowed.