

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP(T) No. 6642 of 2008

Date of Decision : August 31, 2010

Partap Singh Shukla

Petitioner

Versus

Himachal Pradesh Public Service Commission and others

Respondents

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

*Whether approved for reporting?*¹ No.

For the petitioner : Mr. K. D. Shreedhar, Advocate, with Mr. Yudhbir Singh, Advocate, for the petitioner.

For the respondent : Mr. D. K. Khanna, Advocate, for respondent No. 1.
Mr. Ram Murti Bisht, Dy. Advocate General for respondent No. 2.
Mr. K. C. Sankhyan, Advocate, for respondent No. 3.

Sanjay Karol, J. (Oral)

The petitioner has prayed for the following reliefs:-

"(i) That the Commission may be directed to give proper share to ex-servicemen (Scheduled Caste Category) while recommending candidates against the five posts reserved for ex-servicemen (Gen).

(ii) That the Commission may be directed to follow the instructions contained in the note given in the advertisement.

(iii) That the respondents may be directed to recommend the applicant for appointment as Assistant

Whether reports of Local Papers may be allowed to see the judgment?

Engineer against one of the five posts reserved for ex-servicemen (general) if otherwise found eligible.”

2. In response to the petition the respondent-Public Service Commission has filed an affidavit stating as under:-

“That the candidate is estopped from challenging the allocation of categorywise posts at this stage when he could not find place in the list of selected candidates. The advertisement No. II/99 dated 28.06.99 published by the replying respondent clearly mentions that these 05 posts were reserved for Ex-Serviceman open (General) and note below these indicates that in the event of non availability of Ex-Servicemen candidates the Ward of Ex-serviceman open/general would be considered. In case the candidate was having any objection to this advertisement allotting 05 posts for Ex Service Man/Ward of Ex-Serviceman he could have challenged it well before the Screening test to these posts was held. But he chose to remain silent, participated in the Screening Test and interview and found fault in the advertisement only after he failed to find place in the merit list of recommended candidates. The Commission advertised 27 posts of Assistant Engineer (Electrical and Civil) in Department of MPP & Power vide advertisement No. II/99. Out of these 27 posts 21 posts (Gen. 13, S.T. 01, OBC. 02 and Gen. Ex. Man. 05) were advertised and no post was advertised for S.C.Ex. Man. For the posts(s) of Assistant Engineer (Civil) Commission received 654 applications out of which 625 candidates were admitted and were called for Screening Test held on 12.02.2000. The applicant was also among those 18 candidates who qualified for viva-voce as Ward

of Ex. Serviceman (open) and was called for interview held on 23rd and 27th March, 2000. After the result of viva-voce the applicant could not find place in the merit list hence could not be recommended. The recommendation of successful candidates was made to the Department on 30.03.2000 and all the 05 Gen. W. Exman candidates were recommended against the posts reserved for Gen. Exman. The applicant having failed to come in merit now can not be permitted to challenge the entire process of selection. The law on this point has been laid down in "Madan Lal versus State of J. & K. AIR 1995 SC 1088," by the Supreme Court.

On merits:

Paras 1&2: Need no comments.

Para 3: The contents of this para are wrong hence denied. The replying respondent has completed the conditions of the advertisement in toto. Due to non availability of Ex Service-Man general candidate the Ward of Ex Service Man were considered for these posts. The 05 posts were advertised for Ex Service-Man open category and due to non availability of Ex-servicemen, Wards of Ex-Serviceman were considered. It is well settled law that all category candidates can compete for open posts (otherwise called general). Accordingly merit was prepared on the basis of Screening Test held on 12.02.2000 of these candidates who were called for interview. The applicant was also called for interview according to his merit in Screening Test against these 05 open posts of Ex Serviceman. After interview board assessed the performance of each candidate and recommended candidates according to their merit to the department for appointment. As respective category in this case is Ex-Serviceman or in the absence Ward of Ex-

Serviceman, as such no violation of condition of advertisement has been made in this case.”

3. There is no dispute that in terms of advertisement (Annexure A-1) issued by the respondent, five posts were reserved for Ex-Servicemen of general category. The advertisement contained a note which reads as under:-

“Note: If suitable Ex-servicemen candidates are not available dependent sons/daughters of ex-servicemen of the respective categories will be considered for the posts reserved for ex-servicemen and if suitable dependent sons/daughters of ex-servicemen of respective categories are also not available, general candidates of respective categories will be considered for these reserved posts. However, the sons/daughters of ex-servicemen who are employed on ad-hoc/volunteer/daily wages/contract/tenure basis, will also be considered as dependent sons/daughters of ex-servicemen. Further if suitable OBC candidates are not available, general candidates will be considered for the posts reserved for such categories. Category once claimed in the application form will not be changed later on.”

4. There is also no dispute that petitioner belongs to Scheduled Caste category and is also ward of ex-serviceman. There is also no dispute that petitioner's candidature was considered by the respondents at the time of making selection and appointment.

5. Now as is evident from the advertisement there is no reservation for ex-serviceman in Scheduled Caste category. Hence

petitioner's contention that there ought to have been reservation for ex-servicemen in the Scheduled Caste category is misconceived.

6. Five posts which were to be filled up of general category candidates, including ex-servicemen petitioner's case was considered and he was found not fit on merits. Consequently the posts were filled up by persons other than the wards of ex- servicemen who were otherwise eligible to be appointed on the said posts.

7. Thus it cannot be said that any legally enforceable right of the petitioner stands violated. No fault can be found with the respondent's action. Petition being devoid of merit is dismissed.

(Sanjay Karol),
Judge.

August 31, 2010
(PK)