

A CHIEF EXECUTIVE OFFICER, N.S.S.O. & ORS.

v.

BISWA BHUSAN NANDI
(Civil Appeal No. 5304 of 2008)

AUGUST 29, 2008

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[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

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Service Law – Appointment – Qualification of graduation for Central Government Group C post not requiring technical or professional experience – Relaxed for matriculate ex-servicemen with 15 years of defence service – Candidate-ex-servicemen applied and qualified for the post, but denied appointment – Central Administrative Tribunal upholding denial – High Court holding him eligible for appointment –

D *Direction to the employer to accommodate him to the post applied for or alternative suitable post within specified time – Employer seeking extension of time with assurance to Court to accommodate the candidate – On appeal, held: In view of the exceptions carved out, the eligibility clause and since the*

E *post is non-technical, employer cannot be permitted to come out of the assurance made to the court – Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 – r.6.*

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By a Notification, ex-servicemen having Matriculate qualification with 15 years of defence service were made eligible for being considered for appointment to Central Government Group-C post for which essential qualification was graduation and where technical or professional experience was not essential. Vacancy was notified by the appellant for the post of Data Entry Operator, Grade B. Respondent who was a Matriculate and having 15 years of defence service, applied for the same. He qualified in the written and viva-voce test, but was denied appointment. His application challenging the

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order denying appointment was dismissed by Central Administrative Tribunal holding that since the requirement for the post notified was not graduation simplicitor but with Mathematics or Statistics, the respondent could not have been considered for appointment. High Court allowed the writ petition filed by the respondent and directed the appellant to accommodate the respondent for the post for which he had applied or on a suitable alternative post within specified period. Appellant sought extension of time for compliance of its order giving assurance to the Court that the respondent shall be accommodated. Such extension of time was sought from High Court, even after they had approached this Court challenging its order.

Dismissing the appeal, the Court

HELD: 1.1 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. It is not a proper case for exercise of discretionary jurisdiction under Article 136 of the Constitution. 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 the instant case, an assurance was given to the High Court that the respondent shall be accommodated, despite filing of the special leave petition. [Paras 14, 15] [1068,B-C; 1067,G-H; 1068,A]

1.2 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, the appellant should not be permitted to come out of the representation made by it before the High Court. 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

A 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
B the interview. [Paras 13,15] [1068,A-B; 1067,E-G]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5304
of 2008

C From the final Judgment and Order dated 20.06.2005
and 31.8.2005 of the High Court at Calcutta in W.P.C.T. No.
215 of 2005

V. Shekhar, Shalini Kumar, D.S. Mahra and B. Krishna
Prasad for the Appellants.

D Rajnaj Mukherjee and S.C. Goyal for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

E 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.

F 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:

G 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
H 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. A

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,— C

- (a) Work experience of technical or professional nature is not essential; or D
- (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.” E

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.” F G

5. Appellant organization issued a notification for filling up 56 vacancies for the post of Data Entry Operator, Grade B, H

A pursuant whereto 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.

B 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 :

C “We have been taken through a notification passed by the
D Department of Personnel & Training. In the said notification
E it has been clearly stated that while a defence personnel
F 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.”

G 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 :

H “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."

A 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
B criterion was graduation in any stream simplicitor as the
candidate was required to be a graduate having mathematics
or Statistics as a compulsory subject.

C 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
D 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
E 6, as amended, such appointment could have been made.

D 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
E 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.

F 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 :

G "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."

H 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. A

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 : B

“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.” C D

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. E F G

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 H

A 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.

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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.

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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).

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K.K.T.

Appeal dismissed.