

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.50/2017. (D.B.)

Prakash Arjun Doifode,
Aged about 40 years,
Occ-Nil,
R/o Jagdari, Post- Shendurjan, Tq.Sindkhedraja,
Distt. Buldana.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Revenue,
Mantralaya, Mumbai-32.
2. The Collector,
Buldana.
3. Gajanan Narayan Mante,
Aged about 40 years,
Occ-Nil,
R/o Savkhedtejan, Tq.Sindkhedraja,
Distt. Buldana.

Respondents

Shri P.S. Khubalkar, the Ld. Advocate for the applicant.
Shri H.K. Pande, the Ld. P.O. for the respondents 1 and 2.
None appeared for respondent No.3

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shri Shee Bhagwan, Member (A)

ORAL ORDER

(Passed on this 27th day of August 2018.)

Per: Vice-Chairman (J)

Heard Shri P.S. Khubalkar, the learned counsel for the applicant and Shri H.K. Pande, the learned P.O. for the respondents 1 and 2. None appeared for respondent No.3.

2. The applicant has claimed that the select list dated 30.12.2016 (Annexure A-11) published by respondent No.2 i.e. Collector, Buldana for the post of the Talathi, be quashed and set aside and the respondent No.2 be directed to appoint the applicant as Talathi. From the admitted facts, it seems that as per advertisement dated 9.8.2016, applications were called for filling up 13 posts of Talathis. One post was reserved for Ex-serviceman. Admittedly, the applicant and the respondent No.3 applied for the post and participated in the process of interview. The applicant got 106 marks whereas the respondent No.3 got 132 marks and therefore, the respondent No.3 was appointed to the post and the post was reserved for Ex-serviceman.

3. The learned counsel for the applicant submits that the Government has issued a G.R. dated 2.9.2013 (Annexure A-5 at page Nos. 24 & 25) which says that the Ex-servicemen who have

become disabled during service period shall be given priority by way of preference. Relevant para Nos. 1 and 2 of the G.R. reads as under:-

“(१) माजी सैनिकासाठी वर्ग ३ व वर्ग ४ मधील आरक्षित असलेल्या १५ टक्के पदावर भरती करताना युद्ध काळात किवा युद्ध नसताना सैन्यातील सेवेमुळे अपंग झालेल्या माजी सैनिकांना १५ टक्के राखीव पदापैकी उपलब्ध पदावर प्राधान्य क्रमाने नियुक्त करावे.
 (२) युद्ध काळात किवा युद्ध नसताना सैनिकी सेवेत मृत झालेल्या किवा अपंगत्व येऊन त्यामुळे नोकरीसाठी अयोग्य झालेल्या माजी सैनिकांच्या कुटुंबातील फक्त एका व्यक्तीला त्या नंतरच्या पसंती क्रमाने वर्ग ३ व वर्ग ४ मधील १५ टक्के आरक्षित पदापैकी उपलब्ध पदावर नियुक्त करावे.”

4. In view of this, the applicant should have been given preference for appointment. The learned counsel for the applicant also points out that the letter issued by the Desk Officer, General Administration Department of Government of Maharashtra dated 13.1.2017 (Document-A, page 56) wherein the Chief Executive Officer, Zilla Parishad, Buldana was directed to appoint the applicant to the post of Health Assistant, though one Shri Kharat got less marks than the applicant on the basis of said G.R. However, such a letter cannot be used as a precedent to be followed by this Tribunal. Hence, we find that said letter is not relevant.

5. From the facts on record, it is clear that the respondent No.3 got more marks than the applicant in the recruitment

process for the post of Talathi. We have also perused the G.R. referred to above dated 2.9.1083 which states that the priority shall be given to those Ex-servicemen who became disabled during service period. However, question of giving priority will only arise when two Ex-servicemen are on equal footing. In the present case, admittedly the respondent No.3 is an Ex-serviceman and got more marks than the applicant and, therefore, there is no question of giving priority to the applicant merely on the ground that he became disabled during service period. The learned counsel for the applicant submits that the G.R. dated 2.9.1983 (A-5) treats the disabled Ex-servicemen as a separate class and, therefore, the same should have been applied in the case of the applicant. The learned counsel for the applicant has also relied upon the judgment delivered by the Hon'ble Apex Court in case of **Union of India and others V/s Ajay Wahi reported in (2010) 11 SCC 213** and particularly para Nos. 14 and 18 of the said judgment. We have perused the G.R. We are satisfied that the said judgment in case of disability pension, admissible to the Ex-servicemen. Facts of the said case are not applicable to the present set of facts.

6. From the facts discussed in foregoing paras, we do not find any merits in this O.A. Hence, we proceed to pass the following order:-

ORDER

The O.A. is dismissed with no order as to costs.

(Shree Bhagwan)
Member (A)

(J.D.Kulkarni)
Vice-Chairman (J)

Dated:- 27.8.2018.