

ITEM NO.42

COURT NO.11

SECTION IVB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).14877/2006

(From the judgement and order dated 11/11/2005 in CWP No. 374/2003
& CM No. 16695/2005 of The HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH)

MOHINDER SINGH

Petitioner(s)

VERSUS

STATE OF HARYANA & ORS.

Respondent(s)

(With office report)

WITH SLP(C) NO. 14878 of 2006
(With office report)

Date: 19/10/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Rajesh Sharma, Adv.

For Respondent(s) Mr. Pawan Upadhyay, Adv.
Mr. Param Kr. Mishra, Adv.

Mr. Kamal Mohan Gupta, Adv.
Mr. Harikesh Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

These petitions are directed against orders dated 12.5.2005 and 11.11.2005 passed by the Division Bench of the Punjab & Haryana High Court dismissing the writ petition filed by the petitioner for issue of a mandamus to the official respondents to appoint him on the post of D.P.E. and the civil miscellaneous application filed for re-hearing of the writ petition.

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The petitioner joined Indian Army on 10.10.1980. He retired on 1.3.2001 from the post of Havildar. The petitioner applied for the post of D.P.E. for which advertisement was issued by Director Secondary Education, Haryana in November, 1999. The last date fixed for receipt of application was 6.12.1999. The petitioner was called for written test and interview but his name was not included in the list of selected candidates, which was published on 7.10.2001.

Writ Petition No.2330 of 2002 filed by the petitioner was disposed of by the High Court on 5.2.2002 by directing that representation dated 12.12.2001 made by him be decided

by a speaking order. In compliance of the direction given by the High Court, the Haryana Staff Selection Commission (for short, 'the Commission') passed order dated 22.3.2002 by which it rejected the petitioner's representation on the ground that he was not eligible to be considered as an Ex-servicemen.

The petitioner filed Writ Petition No.374 of 2003 and prayed that the order passed by the Commission may be quashed and a direction be issued to the competent authority to appoint him as D.P.E. The Division Bench of the High Court dismissed the writ petition on the ground that as on the last date fixed for receipt of applications, the petitioner was still in service and he was not entitled to the benefit of the policy contained in Government of India's circular-letter No.E(3)26/70/D-Coromondala dated 9.8.1982. Civil Miscellaneous No.16695 of 2005 filed by the petitioner for recall of order dated 12.5.2005 was also dismissed by the High Court.

We have heard learned counsel for the parties and

perused the record. It is not in dispute that on the date of making application for recruitment as D.P.E., the petitioner was serving in the Indian Army as Havildar. Therefore as per the extant rules, he was not entitled to be considered as an Ex-servicemen. It is also not in dispute that he was released from Indian Army on 1.3.2001. In other words, as on the date of application, the petitioner was left with more than 1 year's service.

With a view to provide more avenues of employment to the retired JCO's/OR's and to reduce the time lag between the date of discharge from Indian Army and the date of re-employment on civil posts, the Government of India issued circular dated 9.8.1982, the relevant portion of which is extracted below:

"With a view to stepping up employment of JCOs/OR's and to reduce the time lag between the date of discharge and date of re-employment in civil, it has been decided to allow them to get their names registered at the Zila Sainik Board or the district in which they desire to resettle after their release/retirement. JCO's/OR's are hereby also allowed to appear for various competitive examinations conducted by Staff Selection Commissioner/Banking Service recruitment Board and other similar agencies of the Central/State governments, quashi-Govts/Local Bodies and Public Sector undertakings of both Central and State Governments twelve months before the date of their actual release.

A reading of the policy framed by the Government of India shows JCO's/OR's of the Indian Army can apply for appointment on a civil post twelve months before from the date of his actual release/retirement. The petitioner could have taken the benefit of the policy if he was left with twelve months service as on 6.12.1999 i.e. the last date fixed for receipt of the applications. However, the fact of the matter is that as on that date, the petitioner had more than one year's service. Therefore, he was not

eligible to apply for recruitment as D.P.E. by being
treated as an Ex-servicemen and the High Court did not
commit any error by declining his prayer for issue of a
mandamus to the official respondents to appoint him as
D.P.E.

The recall application filed by the petitioner was
wholly meritless and the High Court rightly dismissed the
same.

In the result, the special leave petitions are dismissed.

(Rama Chopra)
P.A.

(Phoolan Wati Arora)
Court Master