



2026:DHC:5512-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5400/2024 & CM APPL. 22309/2024**

EMPLOYEES STATE INSURANCE

CORPORATION & ANR.

.....Petitioners

Through: Mr. Sitikanth Nayak, SPC

versus

G P CAPT. JAGADISH CHANDRA

SHARMA (RETD.) & ORS.

.....Respondents

Through: Mr. Prabhat Kumar, Adv. for
R-1

Mr. Himanshu Pathak, SPC with Mr. Mohit
Gupta, Adv. for R-2 & 3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT (ORAL)

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07.07.2026

C. HARI SHANKAR, J.

1. This writ petition, preferred by the Employees State Insurance Corporation¹, challenges judgment dated 13 February 2024 passed by the Central Administrative Tribunal² in OA 472/2021.

2. The respondent was a medical officer who had worked with the Indian Air Force³. He superannuated on 30 June 2019. Prior to superannuation, he applied for being regularly recruited as Teaching

¹ "ESIC" hereinafter

² "Tribunal" hereinafter

³ "IAF" hereinafter



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Faculty Professor in the ESIC Medical College, Faridabad, pursuant to an advertisement issued in that regard on 29 June 2017. Interviews for the said posts took place between 1 October 2018 and 24 October 2018. Following this, a notification was issued by the ESIC on 14 February 2019, listing the candidates who had been provisionally selected pursuant to the interview.

3. The name of the respondent figured at S. No. 3 as having been provisionally selected to the post of Professor of Obstetrics and Gynaecology as a general category candidate.

4. Subsequently, however, by a communication dated 8 July 2020, the respondent's candidature was cancelled. The communication reads thus:

“F.No:-A-12/16/3/2017-Exam (Col. IV)

Date: 08.07.2020

To

GP CAPT. Jagdish Chandra Sharma (Rtd.)
House No. 904, Sector-15A
Faridabad, Haryana.
jcsharma47@rediffmail.com

Subject: - Candidature for the post of Professor (OBG) in ESIC Medical College Faridabad, Haryana.

Sir,

Kindly refer to result notice dated 14.02.2019 on subject cited above.

In this connection, it is informed that your candidature for above post has been examined and it is found that you are not fulfilling eligibility criteria for grant of age relaxation as an ex-serviceman candidate. As such your candidature cannot be considered for above post and stands cancelled.



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Yours faithfully,

Sd/-
Assistant Director”

5. Thus, clearly, the cancellation of the candidature of the respondent was on the ground that he did not satisfy the criteria for grant of age relaxation.

6. Rule 5 of the Ex-servicemen Re-employment Rules, 1979 contains the stipulation regarding age relaxation and reads as under:

“5. Relaxation regarding age limit

For appointment to vacancies in Group B (Non-Gazetted), Group C or Group D posts in Central Government, an ex-servicemen shall be allowed to deduct the period of actual military service from his actual age and if the resultant age does not exceed the maximum age limit -prescribed for the post for which he is seeking appointment by more than three years, he shall be deemed to satisfy the condition regarding age limit.

For appointment to any vacancy in Group A and Group B services or posts filled by direct recruitment otherwise than on the results of an Open All India Competitive Examination, the upper age limit shall be relaxed by the length of military service increased by three years in the case of ex-servicemen and commissioned officers including Emergency Commissioned Officers of Short Service Commissioned Officers.”

7. It was neither disputed before the Tribunal, nor has it been disputed before us, that, if Rule 5 applies, the respondent would be entitled to age relaxation thereunder.

8. Before the Tribunal, however, the stand that was adopted by the



ESIC was that Rule 5 applies only to ex-servicemen⁴ and that the respondent did not qualify as an ESM in terms of Office Memorandum⁵ dated 3 April 1991 read with OM dated 4 March 2019 issued by the Department of Personnel and Training⁶. Though the OM dated 4 March 2019 is not readily forthcoming, we may reproduce para 13 of the impugned judgment, and the opening paragraph of the DOPT OM dated 3 April 1991, thus:

Para 13 of impugned judgment

“13. Learned counsel for the respondents drawing support from the specific averments made in the counter reply, vehemently contests the pleadings in the OA as also the arguments put forth by the learned counsel for the applicant. She draws attention to the DoP&T instructions governing the said, specifically the clarifications issued on 04.03.2019 with respect to the eligibility of the Ex-Serviceman to apply for re-employment stating that the said Office Memorandum unambiguously states that only those Armed Forces personnel could be considered Ex-Serviceman after their retirement who apply for re-employment within a period of one year before completing the prescribed period of service.”

DOPT OM dated 3 April 1991

“No. 36034/2/91-Estt.(SCT) -
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi
Dated 3rd April, 1991

OFFICE MEMORANDUM

Subject: Form of Undertaking to furnished by Armed Forces
personnel applying for Civil Posts under Ex-Servicemen category

⁴ “ESMs” hereinafter

⁵ “OM” hereinafter

⁶ “DOPT” hereinafter



The undersigned is directed to refer to the explanation below Rule 2 (c) of the Ex-Servicemen(Re-employment in Central Civil Services and Posts Rules, 1979 and the Notification of Personnel and Training Department No. 36034/5/85-Estt.(SC), dated 27.10.1986, according to which officials, who are working in Armed Forces and would come under Ex-Servicemen category after their retirement are permitted to apply for the re-employment, a year before their completing the prescribed period. The matter of applying uniform procedure for accepting the status of Ex-Servicemen for such employees as are working in Armed Forces Service and applying for civil posts on Re-employment basis, has been under consideration in this Department for some time. It has now been decided that in accordance with the above "clarification", a candidate working in Armed Forces would become eligible for applying civil posts only when he completes the prescribed period of Army Service within a year from the last date for receiving application in connection with Special Recruitment/Examination, etc., prescribed by the Competent Authority.

2. The pro forma of the certificate to be submitted along with the application form is given below. [Vide Appendix- 2]

3. Since the appointment of such a candidate is subject to his submitting documentary evidence that he has been duly released/retired/discharged from the Armed Forces and qualified as an Ex-Serviceman in terms of the rules *ibid*, such a candidate shall be required to submit along with his application an undertaking duly signed by him in the following format: [vide Appendix- 3]

4. Director-General, (Resettlement) is being requested separately to advise the various Rajya/Zilla Sainik Boards regarding furnishing of documentary evidence to eligible ex-servicemen."

9. Clearly, therefore, the prevailing criterion in order to decide whether a candidate would qualify as an ESM was whether his application for recruitment as an ESM was tendered within one year of completing the prescribed period. Learned Counsel are *ad idem* that the "prescribed period" was 20 years from the date when the officer joined service in the Armed Forces.

10. Mr. Prabhat Kumar, learned Counsel for the respondent, points



out that the prescribed period of 20 years expired much before the respondent had applied as an ESM for joining the ESIC and that, therefore, he could not be treated as a person who had applied more than one year prior to expiry of the prescribed period.

11. We are sanguine that the persons who would apply after the expiry of the prescribed period would be as entitled to be treated as ESMs as persons who would apply within one year of the expiry of the prescribed period and that the proscription against being treated as an ESM would apply only where the application was made *more than one year prior to the expiry of the prescribed period*. The intention of requiring that the applicant should have had less than a year to retire was obviously to deter persons who were in service and were not retiring in the near future to seek ESM benefits. Persons who had already retired from the Armed Forces were obviously ESMs.

12. Inasmuch as the respondent had applied for regular recruitment as Professor in the ESIC Hospital after he had completed his prescribed period in the IAF, it would not be correct to hold that he was not an ESM.

13. This was the sole ground on which the candidature of the respondent was cancelled.

14. Any decision, whether quasi-judicial or executive, has to stand or fall on the basis of the reasons for the decision as are forthcoming from the decision itself. Following the judgment of the Supreme Court



in *Commissioner of Police, Bombay v. Gordhandas Bhanji*⁷,
*Mohinder Singh Gill v. The Chief Election Commissioner, New
Delhi*⁸ expositis this proposition thus:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

Thus, an executive decision has to stand or fall on the basis of the reasons contained therein.

15. The only ground on which the respondent's candidature was cancelled was that he did not qualify for age relaxation. The only ground on which his entitlement to age relaxation was disputed was that he was not an ESM. The only ground on which it was contended that he was not an ESM was that he did not satisfy the DOPT OM dated 3 April 1991. We have found that he was not hit by the time

⁷ AIR 1952 SC 16

⁸ (1978) 1 SCC 405



period stipulation in the DOPT OM dated 3 April 1991. Ergo, he qualified as an ex-serviceman. As he qualified as an ex-serviceman, he was also entitled to the benefit of Rule 5 and age relaxation thereunder. As he was entitled to the benefit of age relaxation, the only ground on which his candidature was cancelled does not survive.

16. A final fact. Prior to the cancellation of his candidature, the respondent had also been interviewed for being appointed as Professor on contractual basis on 26 June 2019, whereafter he was appointed on contract on 27 June 2019.

17. Mr. Sitikanth Nayak, learned SPC, has emphasized this fact to contend that the Tribunal has effectively directed conversion of a contractual appointment into a regular appointment, in the teeth of the law laid down by Supreme Court in *State of Karnataka v. Uma Devi*⁹ and other decisions which followed it, as well as OMs issued by the DOPT in that regard. He has particularly drawn attention to DOPT OM dated 7 October 2020.

18. We are unable to agree with Mr. Nayak. To our mind, this is not a case of regularization of a contract employment. Even though the respondent was appointed on contract basis, his independent right to have been appointed on regular basis pursuant to the interview which had taken place between 1 October 2018 and 24 October 2018 survived. The appointment of the respondent on contractual basis did not wipe out that right.

⁹ (2006) 4 SCC 1



19. In directing that the respondent should be regularly appointed as Professor of Obstetrics and Gynaecology following the said interviews, therefore, the Tribunal has not directed conversion of a contract employment into a regular employment. The Tribunal has only held that the respondent was entitled to regular employment as the cancellation of his candidature was not sustainable in law and has, therefore, directed that the respondent be regularly appointed.

20. As such, the arguments of Mr. Naik, predicated on the judgment of the Supreme Court in *Uma Devi* and the right of a contractual appointee to be regularised, as well the DOPT OM dated 7 October 2020, are actually tangential to the issue in controversy.

21. In that view of the matter, we are in agreement with the Tribunal that the candidature of the respondent ought to have proceeded further following his shortlisting after the interviews held between 1 October 2018 and 24 October 2018, and that the cancellation of his candidature was not sustainable in law.

22. We, therefore, uphold the decision of the Tribunal directing that the respondent should be given regular appointment as Professor of Obstetrics and Gynaecology.

23. Needless to say, the regular appointment would be at par with other candidates who had participated in the said selection and the aforesaid interviews which took place between 1 October 2018 and 24 October 2018 and were selected thereafter. As the respondent has



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crossed the age of superannuation for a regular employee, it would not be possible to allow him to function as a regular Professor of Obstetrics and Gynaecology in the hospital. However, the respondent would be entitled to all other consequential benefits including fixation of pay treating him as a regular employee at par with those who had participated in the aforementioned selection as well as re-computation of his retiral benefits on that basis.

24. Let the needful be done within a period of four weeks from today and arrears, if any, be disbursed to the respondent within the said period.

25. The present writ petition stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

VINOD KUMAR, J.

JULY 7, 2026

AR/cd