**In The Hon'ble High Court Of Himachal Pradesh At Shimla**

CWP No.:\_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

**List Of Events**

Dates\_\_\_\_\_\_

Events\_\_\_\_\_\_

Shimla                                                                                      Petitioner

\_\_\_\_\_\_                                                                                    Through, Advocate

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

CWP No.:\_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

Civil Writ Petition Under Article 226/227  Of The Constitution Of India For  Appropriate Writ, Order Or Directions To The Respondents

Shimla                                                                                                  Petitioner

\_\_\_\_\_\_                                                                                                Through, Advocate

Respectfully Sheweth;

1.  That your Lordship's humble petitioner is a citizen of India and on the grounds hereinafter mentioned is entitled to file and maintain the present writ petition before this Hon'ble Court.

2.    \_\_\_\_\_\_

3.   That the relevant facts and the facts  leading to filing of present Civil Writ Petition are given in brief hereunder in chronological order for the convenience of my Lords :-

Date\_\_\_\_\_\_

Event\_\_\_\_\_\_

Annex\_\_\_\_\_\_

The petitioner joined Army.

The petitioner participated in the Wars during the period.

The petitioner was released from the Army.

The petitioner joined civil service in the respondent department as a Constable Driver, against reserved post for Ex-Serviceman.

Details of Medals, Decorations and Mentions in dispatches Awarded :

1.   Raksha Medal 1965

2.   9 Years S. S. Medal

3.   S. S. Medals 1965

4.   25th Independence Medal

5.   S. S. Medals with clasps

6.   Sangram Medal

7.   Assam & Bengal Medal

8.   Paschim Star

Details of War/Field Service :-

1.   Operation Cactus Lily -       17 October 1971 to 09 April 1972

2.   Operation ablaze

4.   That the petitioner joined Army with great fervour and zeal to serve the nation on \_\_.  The petitioner was initially enrolled for 7 years of colour service and 8 years of reserve liability.  However, the service of the petitioner was extended by the Army authorities in the wake of external aggressions and as such the petitioner served in the Army for full terms when he was released on completion of service.  The petitioner served through whole length and width of the country, during Wars, Operations, and Exercises conducted by the Army authorities.  Interestingly, the petitioner served in the Army during all the Wars. It would be pertinent to mention here that when the petitioner was released from the Army his character was assessed as Exemplary, which is the highest degree of character.

5.   That the state government has framed Rules  under which the released Ex-serviceman are extended benefits of approved Military service on his rejoining the civil service in accordance with the provisos of these Rules.

GROUNDS

6.   That the petitioner is invoking the extra-ordinary jurisdiction of this Hon'ble court and seeking indulgence on the following grounds amongst other each one of which is without prejudice to and independent of other :-

(a)    \_\_\_\_\_\_

(b)   That the impugned act of the respondent is against the well settled principles of law laid down by the Hon'ble Supreme Court and this Hon'ble court in catena of cases.

3.    That the petitioner has no other speedy and efficacious remedy available except to approach this Hon'ble court by way of the present writ petition.

4.   That the petitioner has not filed any other writ petition on same or similar grounds either before this Hon'ble court or before the Supreme Court of India.

5.   That the petitioner, therefore, prays that an appropriate writ, order or directions be issued for the following reliefs :-

(a)  Quash the impugned order \_\_\_\_\_\_ ;

(b)   Direct the respondents \_\_\_\_\_\_;

(c)   Direct the respondents to produce all the relevant records alongwith reply for perusal by this Hon'ble court;

(d)   Allow the cost of this writ petition to the petitioner, and;

(e)    Allow such other relief or pass such other orders as deemed fit and proper in the facts and circumstances of the case in favour of the petitioner and justice be done.

**AND FOR THIS ACT OF KINDNESS, THE HUMBLE PETITIONER AS IN DUTY BOUND, SHALL EVER PRAY.**

Shimla                                                                                      Petitioner

\_\_\_\_\_\_                                                                                    Through, Advocate

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

CWP No.:\_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

Affidavit in support of the Civil Writ Petition under Articles 226/227 of the Constitution of India.

I,\_\_\_\_\_\_\_, do hereby solemnly affirm and declare as under :

1.  That the accompanying writ petition has been prepared under my instructions.

2.   That the contents of paras 1 to \_\_ of the accompanying writ petition are correct and true to the best of my knowledge.

3.  That I further solemnly affirm and declare that this affidavit of mine is correct and no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this the \_\_\_\_\_\_.

Deponent

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

CMP No.:\_\_\_\_\_\_ of 2004 in CWP No.:\_\_\_\_\_\_ of 2004

Petitioner/Applicants

Versus

Respondents/Non-Applicants

Application Under Rule 2 of the Writ Rules for dispensing with Seven days notice of motion

Respectfully Sheweth:

1.  That the petitioner/applicant has filed the above mentioned writ petition in this Hon'ble court.

2.  That on perusal of the allegations made in the writ petition and the documents attached therewith it is evident that the matter is of urgent nature and dispensing with of seven days notice is essential in the interest of justice.

3.   It is, therefore, prayed that this application may be allowed and seven days notice of motion dispensed with and writ petition be listed immediately.

Shimla                                                                          Petitioner/Applicant

\_\_\_\_\_\_                                                                        Through, Advocate

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

CMP No.:\_\_\_\_\_\_ of 2004 in CWP No.:\_\_\_\_\_\_ of 2004

Petitioner/Applicant

Versus

Respondents/Non-Applicants

Affidavit in support of the application under Rule 2 of the Writ Rules.

I,\_\_\_\_\_\_\_, do hereby solemnly affirm and declare as under :-

1.  That the accompanying application has been prepared under my instructions.

2.   That the contents of paras 1 to 3 of the accompanying application are correct and true to the best of my knowledge.

3.  That I further solemnly affirm and declare that this affidavit of mine is correct and no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this the \_\_\_\_\_\_\_.

Deponent

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

CMP No.:\_\_\_\_\_\_\_ of 2004 in CWP No.:\_\_\_\_\_\_\_ of 2004

Petitioner/Applicant

Versus

Respondents/Non-Applicants

Application Under Rule 4 of the Writ Rules for Ad interim orders

Respectfully Sheweth:

1.   That the petitioner/applicant has filed the above mentioned writ petition in this Hon'ble court.

2.   That on perusal of the allegations made in the writ petition and the documents attached therewith it is evident that the petitioner/applicants have prima facie a very good case in their favour and the writ petition is likely to succeed.  The Balance of Convenience is in favour of the petitioners/applicants.

3.    That the interest of justice demands that during the pendency of the writ petition \_\_\_\_\_\_\_

4.     It is, therefore, prayed that this application may be allowed and \_\_\_\_\_ in the interest of justice.  Such other orders may also be passed in favour of the petitioners as deemed fit and proper by this Hon'ble court in the facts and circumstances of the case.

Shimla                                                                                      Petitioner/Applicant

\_\_\_\_\_\_\_                                                                                  Through, Advocate

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

CMP No.: \_\_\_\_\_\_\_of 2004 in CWP No.:\_\_\_\_\_\_\_ of 2004

Petitioner/Applicant

Versus

Respondents/Non-Applicants

Affidavit in support of the application Under Rule 4 of the Writ Rules.

I, \_\_\_\_\_\_\_, do hereby solemnly affirm and declare as under :-

1.   That the accompanying application has been prepared under my instructions.

2.   That the contents of paras 1 to 4 of the accompanying application are correct and true to the best of my knowledge.

3.    That I further solemnly affirm and declare that this affidavit of mine is correct and no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this the \_\_\_\_\_\_\_.

Deponent

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

CWP No.: \_\_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

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 Shimla                                       Petitioner

\_\_\_\_\_\_                                     Through, Advocate

**Under Order 7 Rule 13 (1) CPC**

**List of Documents Filed By Petitioner**

**In The Court of: Hon'ble High Court of HP at Shimla**

\_\_\_\_\_\_ Versus \_\_\_\_\_\_

Date of Hearing: \_\_\_\_\_\_\_ Suit For: CWP

     Date of Production: \_\_\_\_\_\_\_

**S.No Details, date     What is        If documents    If rejected**

**documents         intended       filed what is   then the**

**to be          the Exh marked  date of**

**proved from    on it           return of**

**document                       documents**

Date:   \_\_\_\_\_\_

Counsel for Plaintiff/Defendant

**In the High Court of Himachal Pradesh at Shimla**

Mention Memo

1.  Number & Nature of case: \_\_\_\_\_\_

\_\_\_\_\_\_ Vs \_\_\_\_\_\_

2. Party seeking posting:                Petitioner/Appellant

3. Name of Advocate of    : \_\_\_\_\_\_, Advocate

    party seeking posting.

4. Name of Advocate       : \_\_\_\_\_\_ Ld. CG Sr. Standing

    appearing for the

    opposite party

5. Mention for:      Motion/Admission/Orders.

6. Reason for the mention: \_\_\_\_\_\_\_

7. Date on which posting is sought: \_\_\_\_\_\_

Shimla

\_\_\_\_\_\_

Advocate

Annexure P- \_\_

No. 36034/5/85-Estt(SCT)

Government of India,

Ministry of Personnel, Public Grievances & Pensions,

Department of Personnel & Training

New Delhi, dated 14th April, 1987.

OFFICE MEMORANDUM

Subject: Recommendation No. 15.2 of the High Level Committee on the problems of Ex-Servicemen - revision of definition of 'Ex-Servicemen' in the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules 1979.

The undersigned is directed to say that the High Level Committee on the problems of Ex-servicemen recommended the following definition of the term 'Ex-servicemen':-

'An Ex-serviceman' means a person, who has served in any rank whether as a combatant or non-combatant in the regular Army, Navy and Air Force of the Indian Union and

(i)  who retired from such service after earning his/her pension; or

(ii)  who has been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or

(iii)  who has been released, otherwise than on his own request, from such service as a result of reduction in establishment; or

(iv)  who has been released from such service after completing the specific period of engagements, otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, and has been given a gratuity, and includes personnel of the Territorial Army of the following categories, namely:-

(i)       Pension holders for continuous embodies service.

(ii)      Persons with disability attributable to military service; and

(iii)     Gallantry award winners.

After careful consideration the Govt have accepted the above definition recommended by the High Level Committee.  However, it may be observed that in the new suggested definition certain categories of personnel which have served in the Armed Forces of Union have been excluded for consideration as Ex-servicemen, whereas certain additional categories of Territorial Army personnel have been added in the revised definition.  The Notification containing the revised was issued on 27 October 1986 and published in the official gazette on 15.11.1986.  The Notification gives effect to the new definition from the date of its publication but since some of the categories were excluded without adequate publicity the effect of the earlier notification of 27 October, 1986 has been stayed by issuing another notification dated 27.03.1987 in which the date of effect has been indicated as 01.07.1987.  The net effect is that the following two categories of personnel, who were included in the pre-revised definition of 'Ex-Servicemen' will now cease to be treated as Ex-Servicemen w.e.f 1.7.1987 as will be seen from the following proviso namely:-

"Any person who has been released:-

(a)  at his own request after completing 5 years' service in the Armed Forces of the Union; or

(b)   After serving for a continuous period of six months after attestation, otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency or has been transferred to the reserve pending such release;

"Shall also deemed to be an Ex-servicemen for the purposes of this clause."

3.   The Territorial Army personnel will however be treated as Ex-servicemen w.e.f 15.11.1986.

4.  Ministry of Finance etc are, therefore, requested to bring the contents of this Memorandum to the notice of all the appointing authorities under their administrative control and ensure that there is no laxity on the part of the authorities implementing the above instructions.

                                                              Sd/

(\_\_\_\_\_\_)

Director (JCA)

True Copy

Annexure P- \_\_\_\_\_\_\_\_

Copy of the Himachal Pradesh Govt. General Administration Department letter No. 11-80/69-GAD-I dated 8-3-1973 addressed to all Secretaries, Joint Secretaries, Heads of Departments etc.

Subject: Setting up of a special cell with the state Directorate of Employment and Training HP for ex-servicemen (including the disabled and dependents of soldiers C&S personnel killed).

I am directed to say that for the speedy and effective rehabilitation of ex-servicemen belonging to Himachal Pradesh, a Special Cell has started functioning at the State Directorate of Employment and Training, Himachal Pradesh at Shimla.

2.  A Note on the working of the Special Cell set up by the Government for re-settlement of ex-servicemen is enclosed for your information and guidance.

SPECIAL CELL IN THE DIRECTORATE OF EMPLOYMENT AND TRAINING HIMACHAL PRADESH FOR EX-SERVICEMEN (INCLUDING THE DISABLED) AND DEPENDENTS OF SOLDIERS KILLED IN ACTION

A Special Cell for the placement of Ex-servicemen (including the Disabled) and dependents of soldiers killed in action under the charge of Sub\_Regional Employment Officer, has been set up in the Directorate of Employment & Training, Himachal Pradesh, in the month of December, 1972 to which the following functions have been assigned:-

(a) Registration of Ex-servicemen (including the disabled) and dependents of the soldiers killed in action and are resident in Himachal Pradesh.

(b) Placement of the Ex-servicemen so registered.

(c) Maintenance of liaison with State/District S.S. and A's Boards as well a with bigger employers in the State to ensure that Ex-servicemen in need of Employment assistance do register with the Employment Exchanges and Employment opportunities for them and promoted.

(d) Maintenance of close watch over the Employment Exchanges to ensure that vacancies reserved for Ex-servicemen are fully taken advantage and, as far as possible, only Ex-servicemen are appointed against them.

(e) Looking into complaints relating to the employment of Ex-servicemen.

(f) Ensuring that policy and procedures of recruitment of Ex-servicemen are followed and watching the interests of Ex-servicemen in the matter of their employment.

(g) Liaison with Government Departments in regard to policy matters relating to employment of ex-servicemen.

 2. The Special Cell will start building up the Live register immediately and issue suitable instructions to the Employment Exchanges in this behalf.  Side by side, it will ascertain from all Heads of Departments, the latest position in regard to reservation of vacancies for ex-servicemen.  Instructions will also be issued to them to the effect that copies of requisitions for work people normally notified by them to the "Local Employment Exchange" under the provisions of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, be endorsed simultaneously to the Special Cell.  In the mean time, the Sub-Regional Employment Officer, Incharge of the Special Cell will be attached for some time to the Secretary, State S.S. and A's Board and some important D.S.S. & A's Boards in the State to enable him to study the problems of resettlement of ex-servicemen as also the policy and instructions of the Ministry of Defence in regard to these matters.

    All this may take about 2 months, as the staff for the Special Cell can only be put in position after the bifurcation of staff between the Industries and the Employment and Training Department is finalised.  Only then cell will start dealing with vacancies reserved for ex-servicemen.

3.  The procedure given in the succeeding paragraphs will be adopted by the Special Cell:-

3.9  The panels drawn up by the Selection Committee will be maintained by the Special Cell.  On receipt of notification of reserved vacancies, the Special Cell will nominate one candidate from the appropriate list of panels against one vacancy and the Department concerned shall accept the candidate for appointment.

True Copy