**Before The Hon'ble State Administrative Tribunal At Shimla**

O.A. No.: \_\_\_\_\_\_ /2004

Applicant

Versus

Respondents

Application under Section 19 of the State Administrative Tribunal Act, 1985.

Shimla Applicant

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

Respectfully Sheweth :-

1. Particulars of the Applicant:

As given in the Memo of Parties.

2. Particulars of the Respondents:

As given in the Memo of Parties.

3 Particulars of orders against which this application is made:

That the applicant is directing this application against the impugned orders/action \_\_\_\_\_\_ of the respondents in not sponsoring the name of the applicant for the posts reserved for Ex-servicemen and not granting the benefits of Ex-Serviceman to the applicant under the Rules known as the Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal State Non Technical Services) Rules, 1972 despite the fact that the applicant is an Ex-Serviceman in accordance with the Definition of Ex-Serviceman given in Annexure "C" to Annexure 18.10 at page No. 800 of the Hand Book on Personnel Matter Vol-I, (Second Edition).

4. Jurisdiction of Tribunal :

That the applicant declares that the subject matter of this application is within the jurisdiction of this Hon'ble Tribunal and it is competent to issue the directions to the respondents for full compliance.

5. Limitation :

That the applicant further declares that the application is within the limitation period as prescribed in Section 21 of the Administrative Tribunals Act 1985.

6. Facts of the Case :

6.1 That the applicant was initially enrolled in the Armed Forces on \_\_\_\_\_ as a \_\_\_\_\_\_ and was allotted Army No. \_\_\_\_\_\_. At the time of enrollment the applicant was medically checked and found fit to be employed as a soldier. While in service, the applicant was discharging his duties to the entire satisfaction of his superiors and therefore, the character of the applicant was assessed as EXEMPLARY when the applicant was discharged from the military service, which is the highest grading of the character by the military authority.

6.2 That after enrollment the applicant was subjected to hard and strenuous Basic as well as Technical Military Training which the applicant completed with great zeal and fervour. Thereafter, the applicant was posted with unit where the applicant was discharging his duties to the entire satisfaction of his superiors with the best of his capabilities.

6.3 That the applicant during his short span of service in the Army had served wherever he was posted by the military authorities. The applicant had desire to serve further upto maximum period of his engagement and to earn promotions to the maximum possible extent. But due to the reasons that \_\_\_\_\_, the applicant had to cut short his service.

6.4 That it is pertinent to mention here that the applicant has served in the Army for the period from \_\_\_\_\_ for \_\_\_\_. After discharge of the applicant he was in desperate need of employment to rehabilitate himself in the civil life and maintain himself and his family. Therefore, the applicant got his name registered with the Employment Exchange at \_\_\_\_ which in turn forwarded the name of the applicant to the Respondent No. \_\_\_\_\_\_ to avail of the facility for employment provided by the state government to the Ex-servicemen.

6.5 That now the applicant, who is an Ex-serviceman for all purposes and intents, has been informed \_\_\_\_\_\_ that the applicant is not entitled for the benefits as an Ex-serviceman until and as long he shows his Pension Payment Order (PPO). Such an action on the part of the respondent No. \_\_\_\_\_\_ is illegal, unconstitutional and arbitrary and against the provisions of Rules of 1972 and settled law. Grant of pension has no nexus with the status of the applicant as an Ex-serviceman.

6.6 That accordingly the applicant got a notice issued to the respondents on \_\_\_\_\_\_ in response to which the Directorate of Labour & Employment has informed on \_\_\_\_\_\_ that the \_\_\_\_\_\_\_\_.

GROUNDS

6.7 That feeling aggrieved by such an arbitrary, malafide, discriminatory and illegal actions of the respondents, the applicant seeks the indulgence of this Hon'ble Tribunal on the following grounds amongst others which may be taken at the time of arguments, each one of which is without prejudice to and independent of others :-

(a) That the impugned order/action of the respondent No. \_\_\_\_\_\_ is arbitrary, malafide, illegal, ultra vires, against the Articles 14 and 16 of the Constitution of India, dehors the rules and regulations and against the natural justice.

(b) That the impugned definition stated to be effective wef \_\_\_\_\_\_ by the respondent No. \_\_\_\_\_\_ has been laid down vide GOI, Min of Personnel, Public Grievances & Pensions, Department of Personnel & Training vide its letter No. \_\_\_\_\_\_ dated \_\_\_\_\_\_ (Annexure A-\_\_) and it in itself makes it clear that it pertains to Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979. Whereas the applicant is seeking employment under the State Government and as such the impugned definition is not applicable for the grant of employment under the state government.

(c) That the definition applicable to the applicant is as given in Annexure "C" to Annexure 18.10 at page No. 800 of the Hand Book on Personnel Matter Vol-I, (Second Edition).

(d) That the impugned definition is not applicable for the employment under the state government as the same has not specifically been adopted by the state government and it does not apply ipso facto for the employment under the state government.

(e) That otherwise also the respondent No. \_\_\_\_\_\_ is a department under the State Government and as such only those rules will be applicable to the respondent No. \_\_\_\_\_\_ as will be laid down by the state government and the rules of the Central Government are not applicable to the respondent No. \_\_\_\_\_\_.

(f) That the impugned definition of the Ex-Serviceman is unconstitutional and ultra vires and creates unreasonable classification between the Ex-Servicemen and has no nexus with the object of rehabilitation sought to be achieved under the Rules of 1972.

(g) That the respondent No. \_\_\_\_\_\_ has created distinction between he Ex-servicemen which is not based on any intelligible differentia which can distinguish Ex-Servicemen grouped together for the purpose of extending the benefits under the Rules and has no nexus with the object of rehabilitation sought to be achieved, by the Rules of 1972.

(h) That the differentia on which the classification is founded is lacking in rational relation to the object sought to be achieved by the impugned definition and the order under challenge.

(i) That the impugned definition does not subserve the purpose sought to be achieved.

(j) That besides rehabilitation, the object of the Rules of 1972 is also to compensate the former defence personnel for their lost opportunity because of their joining the Armed Forces to serve the nation.

(k) That the classification in the impugned definition is against well settled principles laid down by the Hon'ble Supreme Court and other Hon'ble High Courts and this Hon'ble Tribunal.

7. Reliefs Sought :

That the applicant, therefore, prays that your Lordship be pleased to issue an appropriate writ, orders or directions to grant the following reliefs in favour of the applicant in the interest of justice: -

(a) Direct the respondents to grant all the benefits to the applicant admissible under the Rules of 1972;

(b) Direct the respondent No. \_\_\_\_\_\_ to register and treat the applicant as Ex-Serviceman for grant of employment under the HP State Government in accordance with the definition given by the state government in Personnel Hand Book at page No. 800, Vol I and accordingly sponsor the name of the applicant for the posts reserved for Ex-servicemen for the category/trade his name is registered in accordance with his qualification;

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

(d) Allow the cost of this O.A.;

(e) Such other orders be also passed in favour of the Applicant as deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of the case.

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

8. Interim Orders, if Prayed for :

At present no interim orders are prayed for.

9. Details of Remedies Exhausted :

That the applicant submits that there is no other alternative speedy and efficacious remedy available to him except to approach this Hon'ble Tribunal matter being of urgent nature.

10. Matter Not Pending With Any Other Courts Etc:

That the applicant further declares that the matter regarding which this application has been made, is not pending before any court of law or any other Authority or any other bench of this Hon'ble Tribunal.

11. Particulars of Court Fees :

Court Fees worth Rs. 50/- is attached herewith.

12. Details of Index :

An index containing the details of the documents to be relied upon is enclosed herewith.

13. List of Enclosures :

As per index attached.

Shimla Applicant

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

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O.A. No.\_\_\_\_\_\_ /2004

Applicant

VERSUS

Respondents

Affidavit in support of Application under Section 19 of the Administrative Tribunal Act, 1985.

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

1. That the accompanying O.A. has been drafted under my instructions.

2. That the contents of paras 1 to 13 of the O.A. 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 true, no part of it is false and nothing material has been concealed therein.

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

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No:\_\_\_\_\_\_ of 2004

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Shimla Applicant

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

**Annexure A-\_\_**

No. \_\_\_\_\_\_

Government of India,

Ministry of Personnel, Public Grievances & Pensions,

Department of Personnel & Training

\_\_\_\_\_\_, \_\_\_\_\_\_.

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 \_\_\_\_\_\_ and published in the official gazette on \_\_\_\_\_\_. 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 \_\_\_\_\_\_ has been stayed by issuing another notification dated \_\_\_\_\_\_ in which the date of effect has been indicated as \_\_\_\_\_\_. 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 wef \_\_\_\_\_\_ 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 wef \_\_\_\_\_\_.

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/x x x

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

Director (JCA)

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