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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

R.A. NO.28/2004

in

O.A. NO.946/2002

This the 1st day of November, 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Union of India & Ors.

... Applicants

(By Shri B.K.Barera, Advocate)

versus

A.V.Balachandran

... Respondents

(By Mrs. Prashanti Prasad, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A) :

Applicant had preferred an OA No.946/2002 seeking direction to the respondents to continue with the service of the applicant till the age of superannuation of the civilian employees. The OA was allowed vide orders dated 27.1.2003 read with order dated 18.3.2003.

2. Applicant in the OA had retired from the Indian Air Force in the rank of J.W.O. in the year 1988. He was re-employed as Junior Air Craft Maintenance Engineer (Jr. AME) in the Border Security Force (BSF) up to the age of 58 years, i.e., up to 15.7.2003 from the date of his joining duty. Vide Annexure A-5, respondents had decided to retire the applicant from BSF w.e.f. 15.7.2002 on attaining the age of 57 years instead of 58 years. Applicant had claimed that as he was re-employed in the civilian cadre on a non-combatised post of Jr. AME and had not been granted any benefits accruing to the combatised post, he should be retired at the age of 58 years and not 57 years.

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3. Respondents had filed CW No.7348/2003 and CM No.12726/2003 against the Tribunal's orders, which was dismissed as withdrawn with liberty as prayed, on 14.11.2003. The Hon'ble High Court passed the following orders :

"After some hearing Mr. Sanjeev Sachdeva, learned counsel for the petitioners, seeks leave to withdraw the writ petition with liberty to move an appropriate application before the Tribunal as, according to the learned counsel, the Tribunal has failed to take into consideration certain vital documents, which formed part of the record produced before it. We may note that the stand of the petitioners is that the sanction of the President had in fact been obtained for declaring the subject post as a combatised post.

The writ petition is accordingly dismissed as withdrawn with liberty as prayed."

4. By virtue of the present application dated 2.1.2004, respondents in the OA have sought review of Tribunal's orders. They have also filed an application for condonation of delay in filing the present petition.

5. The only ground stated for condonation of delay is that the Hon'ble High Court has granted respondents liberty vide order dated 14.11.2003 to file the review application. While no other ground has been stated by the respondents for condonation of delay, the ground explored by the respondents in the OA for this purpose is basically insufficient, as the liberty granted by the Hon'ble High Court has to be examined as per law. The terms of law for granting condonation of delay in such circumstances have not been stated on behalf of the respondents in the OA. Basically, there is no case for granting condonation of delay, however, we even h have no hesitation in considering the review application on merit.

6. On merit, the learned counsel of the review applicants stated that the only ground taken by the Tribunal in deciding the related OA is that respondents in the OA had not produced the sanction of the President to the combatisation of the applicant's post. The learned counsel further stated that while the post of Air Craft Maintenance Engineer (AME) had been declared combatised vide h

Presidential sanction dated 4.8.1980, vide Annexure R-II in the OA dated 18.6.1991, applicant's post (Jr. AME) was also included among creation of additional temporary posts in scale Rs.3000-45000. It was as such a combatised post against which the applicant was appointed later on.

7. The learned counsel of the applicant in the OA contended that order dated 4.8.1980 relates to sanction of the President for combatisation of the post of AME and does not cover applicant's post, namely, Jr. AME. Even this order had not been produced by the respondents despite opportunity granted by the Court, which fact has been mentioned by the Court in its orders. The learned counsel further stated that respondents have also not produced any documentary evidence regarding bifurcation of the post of AME into Sr. AME and Jr. AME, which posts were mentioned in their orders dated 18.6.1991. Applicant had been appointed as Jr. AME after respondents' letter dated 4.8.1980 and no sanction of the President relating to combatisation of the post of Jr. AME has been produced prior to decision in the OA and even now.

8. We have considered the rival contentions.

9. Letter dated 4.8.1980 stated on behalf of the review applicants as Presidential sanction for combatisation of the post held by the applicant in the OA was in their possession all along but they had not exercised due diligence to produce the same in the Court before decision in the OA. No indulgence can be shown to the review applicants for non-production of this document prior to adjudication of the OA as they could have produced the same before the Court without any difficulty. Be that as it may, letter dated 4.8.1980 does not deal with the combatisation of the post of Jr. AME which was held by the applicant in the OA. Letter dated 18.6.1991 in which different scales have been mentioned for three posts of Sr. AME and eight posts of Jr. AME does not lend any support to the contentions of the respondents in view of the fact that respondents have not

produced any documentary proof regarding bifurcation of the post of AME into Sr. AME and Jr. AME and their equation. Applicant indeed had been re-employed as Jr. AME much after letter dated 4.8.1980 relating to combatisation of the post of AME.

10. In our considered view, in the light of the above discussion, not only that respondents had not produced the Presidential sanction for combatisation of the post of Jr. AME prior to adjudication of the OA, even letter dated 4.8.1980 relied upon by them now, has nothing to do with combatisation of the post of Jr. AME. Respondents have certainly failed to bring out any error apparent – factual or legal. As such, there is no case for reviewing the Tribunal's orders.

11. This review application is dismissed being totally devoid of merit.

S. Raju
(Shanker Raju)

Member (J)

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)

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/as/