

Central Administrative Tribunal
Principal Bench: New Delhi

OA 253/97

New Delhi this the th20 day of March 1997

Hon'ble Mr N. Sahu, Member (A)

Shri K.P.Singh
Lower Division Clerk
Directorate General
Border Road Organisation
Kashmir House
New Delhi

...Applicant

(By advocate: Shri P.S. Mahendru)

Versus

Union of India through

1. Secretary
Ministry of Defence
New Delhi.
2. Directorate General
Border Road Organisation
Kashmir House
New Delhi.
3. Deputy Director (Coord)
Directorate General
Border Road Organisation
Kashmir House
New Delhi.
4. Commander
GREF Centre
Dighi Camp
Pune.

...Respondents.

(By advocate: Shri B. Lall)

ORDER

Hon'ble Mr N. Sahu, Member (A)

This application is for a direction to the respondents to reconsider his posting from Tinsukia to any of the units mentioned in the OA and to quash the impugned order of posting dated 22.8.96 and 20.1.97. It is not necessary to go into merits of this case because a primary objection has been taken by Shri B. Lall, learned counsel for the respondents that this

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application is not maintainable. The applicant, according to Shri B. Lall, is an employee of the General Reserve Engineering Force of the Border Road Organisation to be referred to in this order as GREC. He is serving in HQs Dte General of Border Roads Organisation, Kashmir House, New Delhi. GREF is an integral part of the Armed Forces for the purpose of Article 33 of the Constitution of India. CAT Act 1985 would not apply to the members of the GREF. The Ministry of Personnel in arriving at this conclusion relied on a decision of the Supreme Court in R. Vishwam Vs. UOI AIR 1983 SC page 658. At page 73, the Supreme Court held that "it is abundantly clear from these facts and circumstances that GREF is an integral part of the Armed Forces and the members of the GREF can legitimately be said to be members of the Armed Forces within the meaning of Article 33. Learned counsel for the respondents also cited the decision in OA 2661/93 in the case of Om Prakash Vs. UOI wherein the applicant who was a member of the GREF could not pursue his claim on the ground of maintainability.

2. Learned counsel for the applicant has drawn my attention to an advertisement No.1/97 on the basis of which he was selected. This advertisement is by the Ministry of Surface Transport. The applicant was to be recruited for the post of LDC. He has taken me through the qualifications for LDC. According to him, this is purely a civilian post and the qualifications pertain to only a civilian. There is no mention of the duties of a soldier in the Army either as a combatant or engaged in activities of a soldier. The learned counsel has

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(b)

taken me through the provisions and applicability of basic rules to the GREF. He tried to show that these rules have been part of the rules reproduced from civilian service regulations. The learned counsel next pointed out that the applicant had been given CGHS Card No.334526 in which all the members of his family were mentioned. He urged that for Armed Forces, army hospitals are utilised for treatment but as far as the applicant is concerned he had made a choice to be treated in a CGHS dispensary depending on the place of his stay. Learned counsel cited the decision of the Full Bench of the CAT reported in ATJ 1994 (1) page. 420 wherein the CAT Full Bench had held at page 662 to the same effect. His next contention is that the members of GREF are not entitled to free ration and the provisions of the CCS (CCA) Rules are applicable. Only in respect of certain service matters and other aspects, the provisions of the Army Act are applicable. The learned counsel states that the Supreme Court's decision in R.Vishwam's case deals with the application of the Army Act and the Army Rules and Vishwam's case, according to the learned counsel, is not followed for the proposition that GREF is also part of the Armed Forces.

3. Refuting the arguments, the learned counsel for the respondents has cited the decision of Full Bench of this Tribunal in the case Kunju Krishna Pillai Vs. UOI in T.75/85 and T.724/85. In these cases the Tribunal held that GREF personnel are members of the Armed Forces and in view of this, Section 2 (a) of the AT Act does not apply to them.. The jurisdiction of the High Court consequently is not excluded. In this case also, the civilian connected with the Defence



(7)

Services has been distinguished. The criterion is that if a person is to answer the description of a civilian, he must not be a member of the Defence Services. Once a person is found to be a member of the Armed Forces, such a person cannot at the same time be a civilian filling the post connected with defence services. Thus, what the applicants' counsel cited in ATJ 1994 (1) 420 is a case of a civilian filling the post connected with the Defence but who is not a member of that service. The Supreme Court in Achuthan Nair and Others had occasion to consider whether cooks, chowkidars, carpenters etc. attached to the Defence Staff as Civilians could be called members of the Armed Forces. Here also the argument was that they were referred to as civilians and, therefore, could not be termed as members of the Armed Forces and were denied their fundamental rights to freedom of speech under the Constitution. The court held that although they are not combatants and in some matters are governed by civilian service regulations, yet they are an integral part of the Armed Forces to answer the description of "Members of the Armed Forces within the meaning of Article 33". Therefore, by virtue of section 21 of the Army Act, the Central Government was competent to restrict or curtail their fundamental rights. In R. Vishwan's case AIR 1983 SC p.658 the Supreme Court had occasion to consider specifically whether the members of the GREF were members of the Armed Force. Their Lordships held that GREF was undoubtedly a departmental construction agency. They took note of all the salient features and held that members of the GREF are members of the Armed Forces or the Unit. After going through the history, composition and the rules governing the GREF, the Supreme Court came to the conclusion.



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4. I have carefully considered the contentions of the rival parties. I am of the opinion that this case is squarely covered by the decision of the PB in Krishna Pillai's case referred to above. The applicant is recruited to a post in GREF. He is described as a member of the Force. GREF is declared as an Armed Force. The applicant is a member of the Armed Forces. The advertisement filed before me describes both under the head "special condition" and "service conditions" a selected official as only a member of the Forces. It is true that 3 (a) of the special condition states that these members are governed by the provisions of CCS (CCA) Rules 1965 and they are subjected to certain provisions of the Army Act 1950 and rules made thereunder. This very dichotomy has been discussed by the Full Bench. In my view, the advertisement of the BRO clearly deals with only the members of the Force and has made this point clear beyond doubt. Merely because the applicant is governed by CCA regulations or disciplinary rules or temporary service rules, it will not bring him within the jurisdiction of the Tribunal. In view of the above discussion, this application is not maintainable. The applicant's grievance cannot be adjudicated by CAT. If advised, he may move the High Court of appropriate jurisdiction in this regard. Registry is directed to return the application alongwith annexures to the applicant.

N. Sahu
(N. Sahu) 20/3/97.
Member (A)