

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 923/90
~~XXXX~~

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DATE OF DECISION 5-10-1990

H.C. Gupta

Applicant (s)

In person

Advocate for the Applicant (s)

Versus

Union of India

Respondent (s)

Shri N.S. Mehta, Senior Standing

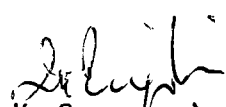
Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?


(I.K. Rasgotra)
Member (A)

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PRINCIPAL BENCH, NEW DELHI.

O.A. NO.923/90

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H.C. GUPTA

...APPLICANT

VERSUS

UNION OF INDIA

...RESPONDENTS

APPLICANT IN PERSON.

SHRI N.S. MEHTA, SR. STANDING COUNSEL FOR THE RESPONDENTS

CORAM:

HON'BLE SHRI T.S. OBEROI, JUDICIAL MEMBER.

HON'BLE SHRI I.K.RASGOTRA, ADMINISTRATIVE MEMBER

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI I.K.RASGOTRA, MEMBER (A))

The issue involved in the present case is whether the service rendered by the applicant in the General Reserve Engineer Force (GREF) under the Directorate General Boarder Roads is a military service for fixation of pay as per Ministry of Finance (Department of Expenditure) letter No.F.4(24)-E-III(A)/68 dated 7th August, 1970.

Shri H.C. Gupta, the applicant, has filed this application under Section 19 of the Administrative Tribunal Act, 1985 against the order of Ministry of Law and Justice, Department of Legal Affairs dated 26th December, 1989 advising him that his request for considering service rendered in GREF for the purpose of fixation of pay cannot be taken into account as that service was rendered on contract basis and that GREF for the purpose of fixation

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contd...

cannot be taken into account as that service was rendered on contract basis and that GREF employees are not considered as full service personnel. The case of the applicant briefly is that he worked in GREF as LDC in the pay scale of Rs.110-180 for the period from 21-11-1961 to 20-11-1965. He was discharged from the GREF as Lower Division Clerk (LDC) (NCO/Havaldar) vide discharge certificate dated 3rd November, 1965. The reason for discharge given in the discharge certificate is:

"On completion of terms of engagements. Not willing to extend his service."

The applicant has contended that he is entitled to the counting of GREF service for future benefits, as GREF is an integral part of the Armed Forces of India in terms of letter No.F.81(1)364-Estt/70463/DGBR/E-2A (T&C) dated 14-8-1985 issued by Ministry of Shipping and Transport New Delhi (p.19 of the paper book). The relevant portion of the letter clarifying the status of General Reserve Engineer Force is extracted below:-

"The question was considered by the Supreme Court in the Writ Petition case of R. Viswan and Others Vs. UOI & Others. After examination of all the aspects of this matter the Court came to the conclusion that GREF is an integral part of Armed Forces for the purpose of Article 33 of the Constitution of India."

3. In their counter reply, the respondents have broadly accepted the facts of the case but have submitted that the applicant served as a LDC in GREF on contractual basis. According to the terms of engagement the post

of LDC in GREF is equivalent to NCO/Havaladar for maintenance of discipline only as pay and allowances regulations for the Armed personnel are not applicable to GREF personnel. The representation of the applicant for counting of past service rendered in GREF for future benefits was rejected as early as on 15-6-1984 after due consultation with the Directorate General Boarder Roads. The applicant again made a representation on 25-7-1984 for reconsideration of his case in the context of Supreme Court judgement in R. Viswan Vs. UOI (AIR July, 1983 SC-658 & August-673). It has been averred that the judgement of the Supreme Court is limited only for the purpose of Article 33 of the Constitution of India and that too after 14-8-1985 i.e. the date of issue of the OM of the Ministry of Shipping and Transport (BRDB) treating the GREF as an integral part of the Armed Forces. Thus the benefit of the OM will not cover the period 21-11-1961 to 20-11-1965 relating to the applicant. A suitable advice in this regard was given to the applicant on 26-12-1989. It has been urged by the respondents that two factors militate against the relief sought by the applicant:-

- a) The service in the GREF rendered before 1969 was on contract basis and the same was extended on a year to year basis and that contract service cannot be counted for pay fixation and for other benefits.

contd..

b) the office memorandum dated 14-8-1985 is applicable prospectively and therefore is of no help to the applicant.

The respondents have further brought out that the definition of ex-serviceman as given in decision No.30 and decision No.117 below Article 26 of CSR Volume-I "means a person, who has served in any rank (whether as a combatant or as non-combatant), in the Armed Forces of the Union including the Armed Forces of the former Indian States but excluding the Assam Rifles, Defence Security Corps, General Reserve Engineering Force, Jammu and Kashmir Militia, Lok Sahayak Sena Territorial Army, for a continuous period of not less than six months after attestation, and"

It has, therefore been averred that the benefit of past service is not available to the applicant, as ex-serviceman, as the GREF is specifically excluded from the definition.

4. In his rejoinder the applicant has drawn our attention to the decision of Full Bench of Central Administrative Tribunal in the case of Kunju Krishan Pillai Vs. UOI reported in ATC-1986-CAT-453.

5. The case was finally heard on 12.9.1990 when the applicant appeared in person. Shri N.S. Mehta, Senior Standing Counsel representing the respondents, submitted that the service rendered by the applicant in the GREF was on contract basis. There is, however, no documentary evidence available at this distant date,

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as the relevant records are weeded out. He drew our attention to the reasons for discharge recorded in the discharge certificate:

"on completion of terms of engagement. Not willing to extend his service."

The applicant has also not produced any document to show that he was a temporary employee. The learned Senior Standing Counsel submitted that if the applicant was working on contract basis he will not be entitled to counting the past service for benefits in future service. Assuming that he was on contract, the second question that would arise is whether the applicant can be considered as Combatant Clerk. In the case of Kutilingal Achudan Nair Vs. UOI - AIR - SC - 1179 "where the question was whether certain employees in the Defence Establishment such as cooks, chowkidars, laskers, barbers, carpenters, mechanics, boot-makers, tailors etc., who were non-combatant civilians governed by the Civil Service Regulations for purposes of discipline, leave, pay etc., and were eligible to serve up to the age of 60 years unlike the members of the Armed Forces, could be validly called "members of the Armed Forces" covered by Article 33, because it was only if they were members of the Armed Forces within the meaning of that Article that the restrictions imposed upon their right to form association could be sustained, the Hon'ble Supreme Court speaking through Sarkaria, J. held that the employees in question were members of the Armed Forces and gave the following reasons:

"The members of the Unions represented by the appellants obviously fall within this category. It is their duty to follow or accompany the Armed personnel on active service, or in camp

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or on march. Although they are non-combatants and are in some matters governed by the Civil Service Regulations, yet they are integral to the Armed Forces. They answer the description of the "members of the Armed Forces" within the contemplation of Article 33." Here also it is indisputable on the facts and circumstances mentioned above that the functions and duties of GREF are integrally connected with the operational plans and requirements of the Armed Forces and the members of the GREF are, to use the words of Sarkaria, J., "integral to the Armed Forces."

2 The civilian personnel of the GREF whose functions and duties are integrally connected with the operational plans and requirement of the Armed Forces have been held to be the members of the Armed Forces within the meaning of Article 33 of the Constitution, yet they continue to remain non-combatants civilians as they are not required to engage in battle when the call of duty so warrants. Their role is to render support to the Army to keep it in a high state of preparedness to meet any eventuality and "successssfully withstand aggression and protect sovereignty and integrity of the country." That GREF has been held to be the "integral to Armed Forces", within the meaning of Article 33 of the Constitution does not bring about a change in its character, its functions and the role it plays in relation to the Armed Forces continues to retain the character of the non-combatant force. The applicant being a civilian non-combatant, although a member of the GREF thus continues to remain a non-combatant.

2 contd.

The non-combatant civilians do not possess the attributes of combatants.

As the benefit conferred in the Ministry of Finance (Department of Expenditure) letter No.F.4(24)-E-III(A)/68 dated 7th August, 1970 is related to ex-combatant junior clerks (NCO/Havaladar) the same cannot be extended to a non-combatant civilian as Shri H.C. Gupta undoubtedly is. Even if service in GREF were taken to be as temporary service, it will not be material in conferring the benefit claimed by the applicant.

In the circumstances of the case, we are of the view that the claim of the applicant is not tenable. The OA accordingly fails and is dismissed with no orders as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A) 5/10/90

T.S. Oberoi 5.10.90
(T.S. OBEROI)
MEMBER(J)