

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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T.A. No. 86 of 1986

(O.S. No. 57 of 1984)

A. Varghese

Plaintiff/
Defendant.

Versus

Union of India and others

Respondents.

...

Hon'ble Mr. Justice K. Nath, V.C.

Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. K. Obayya, A.M.)

The above described suit has been received in this Tribunal on transfer from the court of Additional Munsif, Varanasi under Section 29 of the Administrative Tribunals Act, 1985. The prayer of the plaintiff is for a prohibitory injunction to restrain the defendants from giving effect to the termination order of the plaintiff and for a declaration that the plaintiff is continuing in service and entitled to all service benefits.

2. The case of the plaintiff is that he was appointed as L.D.C. in 1980 in the Records of 39 Gorkha Rifles, Varanasi a defence establishment, in the grade of Rs. 260-400. The appointment was in lieu of a combatant, for a period of one year or till the availability of a combatant clerk whichever was earlier. He served the unit from 1.7.1980 to 29.6.1982. With intermittent breaks, his service was extended from time to time, and by the impugned order dated 20.12.1983 he was terminated with 1 month's notice. The termination order became

effective from 28.1.1984. The order of termination dated 28.2.1983 is under challenge in this suit.

3. It is contended by the plaintiff that his appointment was in lieu of a combatant clerk and to last till the availability of the combatant, but he was terminated even though, no combatant has been posted in his place. It is further contended that juniors of the plaintiff are still being continued and the principle of 'last come first go' has not been followed. It is also contended that in terms of Special Army Order dated 8.5.1976, employees whose services are terminated, are entitled for adjustment/alternative appointment in other units and these orders were not observed in the case of the plaintiff. It is alleged that the termination of the plaintiff, without a charge, or opportunity to explain his case, is arbitrary, discriminatory and violative of the principles of natural justice.

4. The suit is contested by the defendants, who have filed a counter. The stand taken in the counter is that Records 39 Gorkha Rifles, Varanasi is a defence establishment. Recruitment of staff is predominantly from combatants, the ratio of combatants and non combatants being 80:20; at times when there is deficiency in the combatant staff, civilians are appointed as a stop gap measure for a period of 1 year or till the availability of a combatant, whichever is earlier. In case of continued non-availability of combatants after 1 year; extension in 2 spells of 6 months each is given to non combatants, and at the end of 2 years service, the non combatants are listed as

surplus staff and adjusted in other units in the civilian vacancies. The plaintiff was appointed in the combatant vacancy along with 7 others. After completion of two years service, the plaintiff was asked to state his willingness to be appointed in any other station, but the plaintiff expressed his unwillingness, consequently, his name was not sent to the surplus list maintained at the Army Head Quarters for adjustment elsewhere, while, the applications of 7 others employees appointed along with the plaintiff were sent. The other 7 employees who opted for service at any station were adjusted and the plaintiff's name was struck off the rolls on 29.6.1982. At his request, he was appointed as a fresh candidate on 1.7.1982 but this posting was considered as irregular by Army Head Quarters and his services were terminated with one month's notice. It is contended by the defendants that no civilian can be retained at one place for more than 2 years as a policy measure. As per guide lines laid down in S.A.O.815/76, the civilian clerks who served for/in the combatant vacancies are treated as surplus staff and a list of such staff is sent to Army Head Quarters for adjustment in other establishment. The plaintiff was not willing to serve outside Varanasi and consequently, he could not be adjusted in other establishments. His appointment as a fresh candidate in the 3rd extended spell was irregular, hence he was terminated. This termination is in accordance with Army Guidelines.

5. We have heard Sri A.V. Srivastava, the learned counsel for the plaintiff and Sri K.C. Sinha, learned counsel for the defendants. The learned counsel for the

plaintiff's submissions were that the appointment of the plaintiff was too last till the appointment of the combatant but he was terminated even without appointment of any combatant, secondly, the order of termination was passed by an authority lower to the appointing authority and the order is void on this ground alone. His further submission was that civilians appointed later who were juniors to the plaintiff are still being retained and the rule 'last come first go' has not been observed. He also pointed out that the plaintiff's initial appointment was through Employment Exchange and it was not necessary for him to come through Employment Exchange again since the appointment in the second spell was only in continuation of the earlier spell. The learned counsel also submitted that the termination of the plaintiff without notice or opportunity was violative of the principles of natural justice. The learned counsel for the defendant countered these arguments by saying that the termination of the plaintiff was not as a result of any disciplinary proceeding nor any charge was issued. It was administrative act as the appointment of the plaintiff was considered irregular being violative of the policy guidelines. The termination order was passed by the Army Head Quarters and the local unit officer communicated these orders. In this circumstances, the question of violation of principles of natural justice does not arise and the order was passed at a higher level by a competent authority. The appointment of the plaintiff was adhoc and on a vacancy of a combatant. The order itself clearly indicated this position and the plaintiff had no right for regularisation or for continuation in a

vacancy reserved for combatant. His further submission was that the appointment and placement of civilians against combatant vacancies is controlled by the Army Head Quarters and there are policy guidelines and instructions on this subject. According to this policy guideline, civilian can be allowed to work at a station only for 2 years and after that period he is offered alternative appointment elsewhere in other units. The plaintiff was also given this offer but he declined the same and having declined the offer for alternative appointment, the plaintiff has forfeited his claim for absorption in the service nor could he be retained at the old station as that was not permissible under the policy guidelines. The learned counsel also pointed out that the plaintiff was in charge of establishment matters and he was also aware of the rules and guidelines. The learned counsel also denied any discrimination against the plaintiff. After 2 years of service, plaintiff was only entitled for absorption in any other unit but not for retention in the same unit. His case stands on a different footing while, those who were appointed later are eligible to serve for 2 years at the first station and thereafter, they will also be posted out to other units and not continued in the old station. In this back ground, the principle of 'first come and last go' is relevant only for regular absorption and in this case, the plaintiff had a claim for regular absorption in other units but he did not accept this offer, while, the others appointed alongwith him were absorbed. The learned counsel for the defendant concluded his argument by saying that the plaintiff had no right to claim retention at the old station and the termination order, in this circumstances, cannot be questioned as it is in accordance with the

guidelines and rules laid down by the Army Head Quarters.

6. We have given our anxious consideration to the rival contentions and also perused the record. Admittedly, the plaintiff's appointment was in a combatant vacancy and the appointment order clearly indicated that the appointment was for one year or till availability of combatant which ever was earlier. It is also admitted that the offer of alternative appointment was given to the plaintiff but that was declined. His appointment in the 3rd spell again as a fresh candidate was considered irregular by the competent authority namely Army Head Quarters which approves the civilian appointments against the non-combatant vacancies. We have carefully examined the instructions contained in 'Special ^{Army Order} 2f (SAO) 8/S/76. This order lays down the policy and the procedure for adjustment of civilian employees in the defence establishments. The relevant para-3 is extracted below:

3. " It is incumbent on all units/establishments under the Ministry of Defence to report their surpluses deficiencies to the authorities mentioned in para 6 below. Vacancies of 3 months duration or less are not required to be reported. Vacancies of more than 3 months duration will not be filled by units/ establishments locally without being notified to the proper authorities and eventually released by the Army HQ AG/ Org 4 (Civ) (b). Similarly the services of an eligible employee will not be terminated without providing him an opportunity of being considered for alternative appointment under this AO. The

following categories of employees will not be considered for adjustment:-

(a) Individuals whose initial recruitment is irregular e.g. being overage at the time of initial recruitment, educationally/technically unqualified for the post, and / or not recruited through 'Employment Exchange' unless irregularity has been regularised by the competent authority."

There are also Army instructions issued from time to time in the matter of employment of civilian in lieu of combatant. We would also like to notice the letter No. 84450/ SD 6B dated 13 Dec. 1979 which reads as Under:

" Employment of Civilians in Lieu of Combatants

1. Reference Army Instructions 186/66 and 151/67, para 2 (g) of this Headquarters letters No. A/00037/DP-1 dated 23 Jun. 1979 and No. A 23346/AG/Org 2 (MP) (C) dated 18 Sep. 1979.

2. In accordance with the above quoted Army Instructions civilian personnel can be employed in lieu of combatants, whenever essential, as a temporary expedient, till such time as the latter become available. This measure is reported to only when the respective Record Offices or centres certify that on account of the non-availability of combatant personnel, it is not possible for them to fill the vacancies.

3.

4.

5.

(a)

(b)

(c) Civilians in lieu of combatants will be

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initially employed for a period of one year only with a clear stipulation that their services will be terminated if a combatant becomes available earlier and that there is no likelihood of the appointment continuing for a long period after completion of one year's service, extension of service by another year in two spells of upto six months each could be granted to them after issue of certificate of non-availability of a combatant by the commandant/ centre/ Record Office concerned. Under no circumstances civilians employed in lieu of combatants will be allowed to continue in service beyond a period of 2 years. On completion of one month's notice of termination of service and their particulars reported for adjustment under SAO/S/76.

(d)

(6)

7. You are requested to bring the above decision to the notice of all concerned for guiance and strict compliance.

Sd/-

(MC Gupta)

Mej. Gen.
Staff Duty Nideshak/DSD
For Deputy Chief of the
Army Staff"

7. The above guidelines / Army Instructions clearly indicate that appointment of civilian against the combatant vacancies can be resorted to only in certain exigencies. Their appointment should be for a specified period beyond that they should be absorbed elsewhere. One can see that these guidelines are positive and that the civilian staff who are disturbed are not shown the door but are absorbed in service , though not in the same station.

8. The learned counsel for the plaintiff cited the

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following cases in support of his various contentions:

1. A.I.R. (1987) S.C. 1227, Union of India Vs. N. Har-gopal.
2. A.I.R. (1979) (1) CR Vol. 20, Manager Government Press Vs. D.B. Belliappa.
3. (1988)(6) A.T.C. page 186, Anita Kumar Sood and others Vs. Secretary Ministry of Communication.

The above decisions are on the point that the employer is not obliged to give employment only to a candidates sponsored by 'Employment Exchange' and that termination of senior while retaining juniors is discriminatory and that the termination order should be passed only by a competent authority and not by an authority lower to it. We accept these decisions so far as the general propositions are concerned but they do not have any direct bearing on the case before us, as the facts are not similar. As we have observed elsewhere the order of termination was passed by the Army Head Quarters and not by local officer. Similarly, on the questions of seniors Vs. Juniors, the policy of the Army is that after completion of 2 years, the seniors are sent out to other units and juniors are taken in. These juniors also after completion of 2 years are sent out. This goes on in cyclic process. In this situation, the question of retention of juniors and termination of seniors does not arise. The seniors are given preferential treatment in that they are absorbed on regular basis in other units. The point regarding 'Employment Exchange' is that the appointing authority has wider ~~and~~ choice to select candidates from among those sponsored from the Employment Exchange and others but the discretion as to whom to select with the appointing authority, and nowhere it is laid down that he should prefer outsiders to those

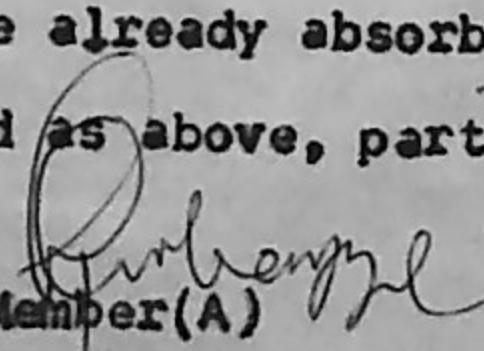
sponsored from the 'Employment Exchange'; once an Employment Exchange candidate is selected and appointed for his re-appointment in the same organisation, he need not come through the Employment Exchange once again; on the basis of his previous service he can be re-appointed. The case of the plaintiff is not one of re-appointment but of a fresh appointment.

9. We have considered the facts and circumstances of the case. Appointment of civilians in a combatant vacancy stands on a different footing, and it can not be compared to civilian appointments in civilian establishments/departments. There is some leeway and flexibility in Government Departments and those appointed on adhoc basis can be regularised, provided the appointment is regular and the conditions laid down are satisfied. A non combatant gets no right whatsoever for absorption in a 'combatant' vacancy. This is understandable, since the Army would not like to have non combatants in excess of their quota, as they would be a liability to the Army in its mobility and field operations. In this back ground, Army guidelines have been laid down. The guidelines are rational, consistent with the over all objective of Army Administration, and provide room for absorption of excess non combatants in other units, where their quota is deficient.

10. After completion of 2 years term the plaintiff on his own choosing requested that he be treated as a 'fresh candidate' since he was not eligible to continue in the same unit any further. The Army regulation stipulates that freshers could be inducted only upon sponsorship from Employment Exchange and not otherwise.

We are of the view that the plaintiff's claim to be 'a fresher' with 2 years of service in the organisation, is not tenable. Such an appointment is not in conformity with Army instructions. Otherwise, after every 2 years term, a candidate may seek ^{appointment} as a 'fresher' and continued in the same unit, indefinitely, this is circumventing the policy and instructions. In these circumstances, we are of the opinion, that the order of termination dated 28.12.1983 of the plaintiff does not suffer from any arbitrariness or irregularities, being an order conforming to the Army instructions.

11. The plaintiff can of course, claim absorption in other units, as was done in respect of his other colleagues on the basis of his past service. We consider that a direction to the Respondents to consider the case of the plaintiff on par with those who have completed 2 years term, and absorb him in other units would meet the ends of justice. We accordingly direct the respondents to consider the request of the plaintiff ^{if} received within 1 month of the date of receipt of a copy of this order, and include his name in the list of surplus staff and absorb him in the next available civilian vacancy on the basis of his past service. The plaintiff will not however have any right to claim seniority over those who are already absorbed in such units. The suit is allowed as above, parties to bear their costs.


Member (A)

Vice-Chairman

Allahabad:

Dated: 10/5/91.

(n.m.)