

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Date of decision: 3-8-1993

Original Application No.48 of 1992

MV Somarajan - Party in person

Mr KS Madhusoodhanan - As Amicus Curiae

v.

1. Union of India represented
by its Secretary,
Ministry of Communications,
New Delhi.

2. The Director General,
Telecommunications,
New Delhi.

3. The Chief General Manager,
Telecommunications,
Kerala Circle,
Thiruvananthapuram.

4. The Senior Superintendent,
Telegraph Traffic,
Ernakulam Division,
Ernakulam.

5. The Superintendent,
Central Telegraph Office,
Ernakulam, Kochi-682 016.

- Respondents

Mr George CP Tharakan, SCGSC - Counsel for the
respondents

CORAM

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
&
HON'BLE MR R RANGARAJAN, ADMINISTRATIVE MEMBER

JUDGEMENT

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant seeks to quash Annexure-7 & 9 orders

and seeks a declaration that the service rendered by him
in the Indian Army is liable to be counted as qualifying
service for reckoning pension. Other ancillary reliefs,
are also sought.

2. Applicant joined the Indian Army on 27.12.1962,
when he was under eighteen years of age. He attained the

age of eighteen on 18.1.1963. On 3.11.1967 he was discharged from the Army on compassionate ground. On 25.6.1970, he took up civil employment as a Time Scale Clerk, in the quota reserved for Ex-servicemen in the Central Telegraph Office, Bombay. On 25.8.1990 he sought voluntary retirement, and retired from service in due course. By Annexure-A10, applicant was informed that qualifying service for pension to his credit was only twenty years and five months. It was said so, on the assumption that service rendered by him in the Army after attaining the age of eighteen (which is four years and two hundred and ninety days) is not liable to be reckoned as qualifying service.

3. The short question for consideration is whether the service rendered by the applicant in the Indian Army after he attained the age of eighteen is liable to be counted as qualifying service for determining pension. Relying on Rule 19 of the Central Civil Services(Pension) Rules, 1972 and orders of the Government of India, applicant submits that he is entitled to count this service. In answer, respondents would submit that the applicant was not appointed in the quota reserved for Ex-servicemen. This contention is too transparent to stand scrutiny, in the face of Annexure-3, wherein the appointing authority stated in no uncertain terms, that the applicant was appointed in that quota. This position, has since been accepted by the respondents themselves in paragraph-2 of their reply to the rejoinder, dated 4.3.1993.

They say:

"...However, the certificate furnished by the applicant as Annexure-A3 was subsequently verified with the Chief Superintendent C.T.O., Bombay and found to be genuine. It is therefore admitted that the applicant was originally recruited as T/S Clerk in the quota reserved for Ex-servicemen."

Notwithstanding this, in paragraph-3 of the same statement, it is said that:

"...only 'ex-combatant clerks' are given the benefit of pay fixation in the civil post."

This contention needs be noticed, only to be rejected. It refers to fixation of pay, while the applicant prays for fixation of pension. Another untenable contention raised in paragraph-4 of the same statement is that:

"Applicant ... is eligible for military pension as per the rules .. But he did not serve in the Military, for the required minimum period."

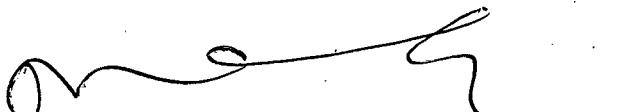
We see nothing in the pension rules supporting the statement, nor could standing counsel show anything in the pension rules that justifies, even faintly such a submission. On the contrary, Rule 19, herein before referred, appears to support the contention of applicant. Respondents should have refrained from making wild and vague statements, without any reference to any rule or order or other supporting authority. We would remind the respondents of the observation of the Supreme Court in Central Co-operative Consumers' Store Limited through its General Manager V. Labour Court, H.P. at Shimla & another, JT 1993(3) SC, 532. Public authorities will do well to remember that public funds should not be wasted in cantankerous litigation. By adamant and unreasonable

postures litigation should not be provoked. If they do so, they will be doing so, at their peril.

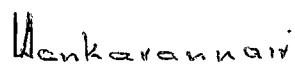
4. The case of the applicant stands firmly established by Annexure-3 and by provisions of Rule 19 of the Central Civil Services(Pension)Rules, 1972. Contentions of the respondents are lacking in merit, and could not have been advanced with any sense of responsibility. The service rendered by the applicant in the Army, namely, four years and two hundred and ninety days will be treated as qualifying service, for reckoning pension and pension will accordingly be granted.

5. We allow the application with costs, which we fix at Rs.500/-. The costs will be paid to Shri KS Madhusoodhanan, who appeared as Amicus Curiae at our request, and enlightened us on various aspects of the case.

Dated, the third of August 1993.



R RANGARAJAN
ADMINISTRATIVE MEMBER



Chettur Sankaran Nair
CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

trs/4/8

List of Annexures

1. Annexure-3 : True copy of order No.E-1/General/Staff-A dated 16th October 1991 of the Chief Superintendent, CTO, Bombay.
2. Annexure-7 : True copy of the order No.A-8/MVS/20/90-92 dated 3rd July 1991 of the 5th respondent.
3. Annexure-9 : True copy of the letter No.A-38/Corr/112 dated 17th December 1991 of the Senior Superintendent(TT), Ernakulam Division.
4. Annexure-A10 : True copy of the Pension Calculation Sheet of the applicant issued by the Superintendent, CTO, Cochin.