

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

(Dated Friday the thirtieth September, One thousand nine hundred and eighty eight)

ORIGINAL APPLICATION NO.585/1986

PRESENT

Hon'ble Shri S.P. Mukerji - Vice Chairman  
&

Hon'ble Shri Ch. Ramakrishna Rao - Judicial Member

K.V. Samuel .. Applicant

Versus

1. Union of India represented by Secretary to Government, Ministry of Finance, New Delhi.
2. The Collector of Central Excise, Cochin.31.
3. The Director of Preventive Operations, Directorate of Preventive Operations, 4th floor, Lok Nayak Bhavan, Khan Market, New Delhi-110003. .. Respondents

Counsel for applicant .. M/s MR Rajendran Nair/ Mary Isabella, PV Asha/ K.S. Ajaya Ghosh.

Counsel for respondents .. Mr. K.Karthikeya Panicker, ACGSC

ORDER

S.P. MUKERJI VICE CHAIRMAN

The applicant who is a retired Cipher Assistant of the Customs and Central Excise has moved this application under Section 19 of the Administrative Tribunals Act, 1985 praying that

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the impugned order dated 13.2.86 (Annexure-VIII) denying him confirmation because of his superannuation on 31.3.83 should be set aside and he should be given pensionary and other benefits reckoning his service in the C.R.P.F and Customs and Central Excise. The brief facts of the case are as follows:

2. Originally the applicant was in the Indian Army and he retired on 15.3.71 after 28 years of continuous qualifying service. He was absorbed in the Central Reserve Police Force (CRPF) on 15.6.71 and the three months' break between his leaving the Army service and joining <sup>the</sup> CRPF was condoned by the D.G. CRPF. While in the CRPF he applied through proper channel for the post of Cipher Assistant (CA) in the Customs and Central Excise Department in response to an advertisement. He joined on selection the post in the Customs and Central Excise Department on 20.6.75 without any break in service. He retired from the Customs and Central Excise Department on 31.3.83. His grievance is that on 26.3.79 two permanent posts of Cipher

Assistant were available, against which he should have been confirmed. He submitted his representation for such confirmation on 10.9.82 indicating that if he was not confirmed in the Customs and Central Excise it will not be possible for him to exercise his option to count his past military service for retirement benefits. He was informed that the question of his confirmation will be taken up after the fixation of seniority in respect of Telecommunication personnel is decided by the Ministry of Finance. It was also stated that counting of his service in the CRPF would be taken up after his confirmation as Cipher Assistant. In the CRPF, he had been informed (Annexure-V) that the benefit of counting CRPF service for pension will be admissible to him as he had joined the Customs and Central Excise through proper channel. If he had been confirmed as Cipher Assistant in Customs and Central Excise, he would have been entitled to count his total service in the CRPF and Customs and Central Excise for pension. Even otherwise, if his military service was taken into account he would have been entitled to full pension. The respondents informed

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him on 13.2.86 that since the post of Telecommunication staff were made permanent only with effect from 1.8.84 and he had already superannuated on 31.3.83 he was not eligible for confirmation.

3. The respondents have accepted the factual position as indicated above and conceded that there were two permanent posts of Cipher Assistant with effect from 1.8.78 but the confirmation of personnel was considered by the instructions of Ministry dated 22.8.84 and 25.9.84 indicating that confirmation of Telecommunication staff should be made with effect from 1.12.84. The applicant having retired already on 31.3.83 could not be considered for confirmation.

4. We have heard the arguments of both the parties and gone through the documents carefully. The learned counsel for the applicant has brought to our notice more or less a similar case decided by the Punjab and Haryana High Court in Pritam Singh Vs. Union Territory of Chandigarh and Others (1986 (1) SLR 621). In that case Pritam Singh had been recruited in the Indian Army in 1941 and retired in 1967 with a monthly pension

of Rs. 46/-. He was appointed as a Peon in the Court of Senior Sub-Judge, Chandigarh and super-annuated after more than 12 years of service on 30.6.1980. He ~~was~~ applied for grant of pension, which was declined on the ground that he was not a confirmed Peon till the date of his retirement. He represented that the post which he was holding till his retirement was a regular post which was however, made permanent after his retirement and all the persons manning these posts were made permanent. The Court held that even though the petitioner retired from service before his post was made permanent there was no impediment in making his appointment substantive ~~or~~ on or before his retirement on 30.6.1980. The Court therefore, directed that he should be treated to be holding substantive appointment against a permanent post on 30.6.1980 and given the benefit of pension under the Rules.

5. In the instant case the applicant is still in a stronger position for confirmation.

This is because whereas in Pritam Singh's case the post was made permanent after his retirement in the instant case before us it is admitted by the respondents that two posts of Cipher Assistant had been made permanent in 1978 when the applicant was very much in service. No valid reason has been indicated <sup>why</sup> ~~that~~ the applicant could not be confirmed against one of these posts. The only reason advanced is that in accordance with the Ministry of Finance's Order dated 25th September, 1984 (Exbt.R.1) confirmation of the officers were directed to be made effective from 1.12.1984. Since the respondents in their Counter Affidavit have not given any other reason except the applicant's superannuation preceding this date ie., 1.12.84 and we find no logic or sanctity <sup>in</sup> ~~for~~ fixing this date, the applicant has a case in getting himself confirmed as Cipher Assistant. The learned counsel for the respondents cited before us the ruling of the Supreme Court in Malliah Vs Bal Reddy, 1988 (s) K.L.T 38 (short notes) in which it was observed by the Supreme Court that the High

Court would not have issued a Writ of Mandamus to enforce administrative instructions not having any statutory force. We do not see any relevance of this ruling to this case, as we do not intend to consider issuing any direction for enforcing administrative instructions by a Writ of Mandamus.

6. We, therefore, allow this application with the direction that the applicant should be confirmed as Cipher Assistant against one of the permanent posts of Cipher Assistant available from 1978/79. Thereafter he should be considered for being given all pensionary and other benefits as also the benefit of counting his previous service in the Army and the C.R.P.F. as qualifying service for pension in accordance with the relevant Rules and Orders.

7. The application is allowed on the above lines. There will be no order as to costs.



(Ch. Ramakrishna Rao)  
Judicial Member

  
30.9.88

(S.P. Mukerji)  
Vice Chairman

30-9-1988

Sn.