

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 63/89
~~KAXXKX~~

199

DATE OF DECISION 8-10-1990

Cap.(Retd.)CP Ramachandran Applicant (s)

M/s R Harikrishnan, V Satheesh &
MP Vinod Advocate for the Applicant (s)

Versus

Union of India & 4 others Respondent (s)

M/s PV Madhavan Nambiar &
CS Ramanathan Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

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?

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

This application is an offshoot of original suit No.8 of 1979 on the file of the Sub Court of Mavelikara. The applicant who was working as a Senior Research Assistant under the CPCRI Regional Station at Kayamkulam on the date of the application originally commenced his service as Laboratory Assistant in the Coconut Research Station of the Coconut Committee. He was promoted as Research Assistant in the year 1959. But on 18.2.1964 he was released from the Coconut Committee to serve ^{the} Defence Force as an Emergency Commissioned Officer. Later, being placed in the low medical category, he was released from the Army Service in 1971. From August 1971, the service of the applicant was regularised

as a Research Assistant in the CPCRI. The Coconut Committee was taken over by the ICAR in the year 1966 and thus the services of the applicant came under the ICAR. The applicant filed O.S.No.8/79 before the Sub Court, Mavelikara for a declaration that he continued in service without break under the Coconut Committee from 1958 and after its amalgamation with ICAR under the ICAR from 1964 onwards without break to be entitled to increments, seniority and promotion on that basis, that he is senior to respondents 5 to 9, that he is entitled to all benefits conferred on E.C.Os by the War/Emergency Rules enacted by the 10th respondent in respect of services under respondents 1&2, that he was selected and appointed as Assistant Entomologist/
Toxicologist in the selection held in 1974 and ^{for} directing the respondents 1,2 and 11 to produce statements of the increments and to pay him ~ and additional salary and allowances due to him/the amounts so determined with all other incidental benefits. Though the suit was resisted by the respondents, a preliminary decree was passed by the Sub Court, Mavelikara. The operative portion of the judgement of the Subordinate Judge contained in page 20 of the judgement Annexure-A4 reads as follows:

"It follows from my findings on the above issues that the plaintiff is entitled to a decree declaring him as having continued in service without break under the Coconut Committee 1958 and after its amalgamation with the ICAR under the ICAR from 1964 without break, to be entitled to increment, seniority, promotion on that basis and that he is senior to defendants 4 to 7. The plaintiff is also entitled to a decree declaring that he is entitled to all the benefits conferred to E.C.Os., by the War/Emergency Rules enacted by the 10th defendant in respect of his service under defendants 1 and 2 and to all benefits of rehabilitation due to demobilised E.C.Os. The plaintiff is also entitled to a decree calling upon defendants, 1, 2

and 11 to produce a statement of the increments and additional salary and allowances due to the plaintiff on the basis that the plaintiff continued in service after 18.2.1964 and for recovery of the said amounts from defendants 1, 2 and 11 and assets. The plaintiff is also entitled to recover his costs from defendants 1, 2 and 11.

In the result, a preliminary decree is passed as shown in paragraph 20 above. The plaintiff will apply for passing final decree within three months from this date."

Pursuant to this preliminary decree, the applicant filed an application before the Sub Court, Mavelikara for passing a final decree. As this Tribunal was established at a time when the above final decree application was pending, the same was transferred to this Tribunal for adjudication. The case was re-numbered as TAK-4/88 and the same was disposed of by this Tribunal by its order dated 9.6.1988 with the following order:

"Though the scope for passing a preliminary decree in a suit of this nature is doubtful, now that the suit has not been finally disposed of when the Administrative Tribunals Act came into force, the Subordinate Judge cannot be faulted for having transferred this matter to the Tribunal. But, we do not think that the proceedings which started in the year 1979 should be protracted further by calling upon the respondents 1,2 & 11 to produce the statement before this Tribunal and to adjudicate upon the correctness of the same. We are of the view that the interests of justice will be met by directing the respondents 1,2 & 11 to pay the applicant the additional salary and allowances that will be payable to him treating him as in continuous service after 18.2.1964. As has been found in the preliminary decree, the increments that would have accrued during the period have also to be taken into account and the payments made on that account as well. We direct that these amounts be paid by the respondents 1, 2 & 11 within a period of three months from the date of receipt of a copy of this order.

5. The application is ordered accordingly."

The direction contained in this order of the Tribunal(Annexure-5) has been complied with and the applicant was given all the monetary benefits due to him. But the applicant is not satisfied with that. He has filed this application stating that prayer(b)

in the plaint which was granted by the Sub Court declaring that the applicant was entitled to all the benefits conferred on E.C.Os by the War/Emergency Rules enacted by the 10th defendant in respect of his service under the ICAR and to all benefits of rehabilitation due to the demobilised E.C.Os has not so far been given to him. Hence in this application the applicant has prayed that an order may be passed declaring that the applicant is entitled to all the benefits conferred to E.C.Os by the War/Emergency Rules enacted by the Union of India in respect of service rendered and to all benefits of rehabilitation due to demobilised E.C.Os and directing the respondents 2, 3 and 5 to produce a statement of increments and additional salary and allowances ^{due to him} on the basis ~~that~~ the applicant continued in service after 18.2.1964 and to direct the respondents 2, 3 and 5 to rehabilitate the applicant in ^{a post} equivalent to ^{of} that/Captain in the Army Service under the ICAR namely to a Class-I Senior Post or in the alternative as a Section Officer/Administrative Officer against the reserved quota for E.C.Os and also to pay the arrears and cost.

2. The application is resisted by the respondents. In the reply statement it has been contended that as the direction contained in the order of the Tribunal in TAK-4/88 has been complied with in full, the applicant is not entitled to any relief claimed by him. It has been averred that the Annexure-A1 to A3 Rules framed by the Government of India to safeguard the interest of demobilised Emergency Commissioned Officers

are applicable only to those who were not in service at the time of their enrolment to Army Service and that therefore inapplicable to applicant who was already in service. It is further contended that as the applicant has got a declaration that he continued in service and since pursuant to this declaration, the applicant has been given the highest promotion possible according to the Recruitment Rules, the applicant has no claim for any further rehabilitation. It has also been stated that if the applicant applies for the direct recruitment quota of Administrative Officer, he might be eligible for consideration provided he satisfies all the eligibility conditions. Therefore the respondents contend that the application being devoid of any merits has to be dismissed.

3. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents produced. Annexure-5 is a copy of the final order passed by this Tribunal in TAK-4/88. The final decree application filed by the applicant before the Sub Court, Mavelikara in terms of the direction contained in the judgement in OS No.8/79(Annexure-A4) praying for passing a final decree was transferred to this Tribunal after the establishment of this Tribunal. TAK-4/88 is that application. On a consideration of the claims made in that application, this Tribunal considered that the interest of justice would be met if the respondents 1,2 and 11 were directed to pay the applicant the additional salary and allowances that would be payable to him treating him as in continuous service

after 18.2.1964. Accordingly this Tribunal directed the respondents 1,2 and 11 to pay to the applicant the amounts due to him taking into account the increments that would have accrued during the period from 18.2.1964 within a period of three months. It is admitted by the applicant that the payment as directed in the Annexure-5 order has already been made to him. Further, due promotions have been given to the applicant treating him to be on continuous duty from 1964 as declared in the preliminary decree. Exbt.R(1) and R(2) are orders granting the applicant promotions with retrospective effect. What other benefit is due to the applicant is not made clear in the application. The applicant has prayed that the respondents may be directed to rehabilitate him in an equivalent post in the Army Service under the ICAR namely to a Class-I Senior Post or in the alternative against the reserved quota for E.C.Os for the post of Section Officer/ Administrative Officer under the ICAR. The learned counsel for the applicant argued that since it has been declared in the preliminary decree that the applicant is entitled to all the benefits conferred to E.C.Os by the War/Emergency Rules enacted by the 10th defendant in respect of his service under the respondents 2 and 3 and to all benefits of rehabilitation due to demobilised E.C.Os, the applicant is entitled to be rehabilitated to a post equivalent to that of a Captain in the Army. We have carefully gone through the Annexures-A1, A2 and A3 referred to by the learned counsel. These Government orders require reservation of certain vacancies in the Class I

Class
and/II cadre in the Central Services and posts of similar nature in the Central Government Undertakings to be filled by released Emergency Commissioned Officers on direct recruitment. The applicant was in service of the Coconut Committee while he was enrolled to serve the Defence Force on ~~xx~~ Emergency Commission. Annexure-A1, A2 and A3 do not say that on release from Defence Service a person who had been in service should be accommodated in a post equal to the rank of a Captain in the Army in his parent service. If the applicant had on his release from the Defence Service applied for a post in Class-I or II in the Central Service or in any of the Public Sector Undertaking on direct recruitment, he would probably have been entitled for consideration for appointment to the reserved post. But there is no averment that the applicant applied for post in the any/direct recruitment quota. As per the preliminary decree in DA No.8/79 it was declared that the applicant should be deemed to have ~~xxxx~~ continued in service though he was serving in the Defence Force. The consequence of such a deeming is that he should be given all the promotions which he would have earned had he continued in service under the Coconut Committee or the ICAR as the case may be. This benefit has already been given to the applicant as is evident from Exbt.R1 to R3. It must be under these circumstances that in TAK-4/88 this Tribunal held that the interest of justice would be met if the respondents are directed to pay the applicant all monetary benefits treating that the applicant continued in service of the ICAR from 1964 onwards. Therefore on merits, we are not convinced that the

applicant has got any further grievance to be redressed in this application. Further, as TAK-4/88 has been finally disposed of if any part of the relief claimed in the application was not granted, the remedy open to the applicant was to file a review or an appeal against the final order. It is not open to the applicant to file a fresh application for the very same relief which was claimed in the earlier application ^{and} which was not granted.

4. In view of what is discussed above, we find no merit in the application and ~~xxxxxxx~~ dismiss the same without any order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


8.7.90
(SP MUKERJI)
VICE CHAIRMAN

8-10-1990

trs