

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 266/91 X88

DATE OF DECISION 29.3.1993

Shri VN Chandran _____ Applicant (s)

Shri PV Mohanan _____ Advocate for the Applicant (x)

Versus

The Air Port Director, National Airports Authority, Trivandrum &ors. Respondent (s)

Shri George CP Tharakkan, SCGSC 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

(Hon'ble Shri SP Mukerji, VC)

We have heard the learned counsel for both the parties on this application in which the applicant has prayed that his service under the Government of India, Ministry of Civil Aviation, should be reckoned from 26th December, 1979 instead of 7.7.1980 when he actually joined as Assistant on the result of the examination held by the Union Public Service Commission (UPSC) in 1978. The applicant comes from Kerala and it appears that even though his rank was higher than respondent No.3, the completion of the formalities of verification of character and antecedents etc took

in case of
longer time than others and his appointment could materialise only on 7.7.1980. The applicant's contention is that at the time of his selection and appointment, in accordance with the then extant Government orders, candidates selected from Kerala, West Bengal and Tripura were subjected to double verification which inter alia took longer time than the verification of the character and antecedents of ~~other~~ candidates coming from other States. This resulted in the applicants from Kerala, West Bengal and Tripura, even though getting seniority in accordance with their rank in the merit list, getting later dates of commencement of service for the purpose of pension and other benefits. This practice of double verification was challenged before the Bombay High Court and later taken up in appeal before the Hon'ble Supreme Court which vide its order dated 26.8.1986 (copy at Annexure IV) upheld the finding of the Bombay High Court that "the practice evolved by the Central Government for special verification of character and antecedents of the candidates from the State of Kerala for recruitment to the Central services was violative of the Article 14 of the Constitution".
Consequent upon this judgement of the Hon'ble Supreme Court the Government withdrew the special verification procedure in respect of candidates belonging to Kerala, West Bengal and Tripura by Annexure IV-A. The applicant's contention is that had this discriminatory and unconstitutional procedure not been applied to his candidature, he would have been in Government service much earlier than 7.7.1980 and he would have completed ^{such} sufficient service under the Government as would qualify for pension prior to his absorption in the National Airports Authority in October, 1989. ^{though} ~~we see considerable force in the contention.~~ His representation relying upon the judgement of Bombay Bench of this Tribunal which relied upon the aforesaid decision of the

Hon'ble Supreme Court, having resulted in a negative reply dated 20.9.1990 at Annexure VII, he moved this application before ~~the~~ ^{the} Tribunal.

2. Though we see considerable force in the contention of the applicant, we are not prepared to treat his case at par with that of respondent No.3 in whose case no verification at all, leave alone double verification, was done as he was already in Government service before he was selected for the post of Assistant by the UPSC. None-the-less, the applicant has a case, viz-a-viz other candidates who were recruited from States other than Kerala, West Bengal and Tripura ~~and~~ were subjected to only single verification. The contention of the learned counsel for the respondents that there is nothing to show that the applicant was subjected to double verification cannot be accepted by us. The applicant has specifically referred to his being subjected to (double) ~~single~~ ^R verification in paragraph 5 of the application which has not been specifically denied by the respondents in the reply statement. On the other hand, in paragraph 6 thereof, they have conceded that in the case of the applicant, the formalities of medical examination and verification of character and antecedents etc "were carried out as per Government's instructions in vogue at that time".

3. In the conspectus of facts and circumstances we allow this application to the extent of setting aside the impugned order at Annexure VII and directing the respondents to postpone the date of appointment of the applicant as Assistant to the date of appointment of the candidate immediately junior to him in the merit list of Assistants sponsored by the UPSC who belong to a State other than Kerala, West Bengal and Tripura and was appointed as an outsider under the

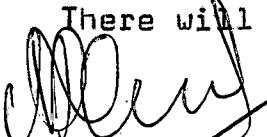
normal verification procedure. We further direct that on the basis of his notional date of appointment so determined, the applicant's service under the Government should be reckoned from that date and the retiral benefits computed accordingly keeping in view the judgement of this Bench of the Tribunal dated 8.7.91 in OA 164/91 in which the following observations were made:-

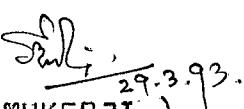
"5. Rule 49(3) is clear and unambiguous. We are of the view that the period of 10 months and 22 days in excess of 9 years has to be rounded off to one year. For, 10 months and 22 days really means - $\frac{1}{2}$ year + 4 months and 22 days. The period of 4 months and 22 days should be treated as a complete half year under Rule 49(3). Therefore, the period of 10 months and 22 days will really be $\frac{1}{2}$ year + $\frac{1}{2}$ year. Thus the applicant should be treated as having a full 10 years of qualifying service (i.e., 9 years + 1 year under Rule 49(3)).

6. In this view of the matter, we allow the application and direct respondent-2 to treat the applicant as having a qualifying service of full 10 years and grant him pension and retirement gratuity under Rule 49(2)(b) and Rule 50 respectively, within a period of 3 months from the date of receipt of this order. The service gratuity granted under Rule 49(1) by the Annexure A3 order is not admissible to the applicant in the new circumstances and it should be adjusted against any payment due to him or got refunded in accordance with such orders as may be passed by the second respondent."

Action on the above lines should be completed within a period of six months from the date of communication of a copy of this order.

4. There will be no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


29.3.93.
(SP MUKERJI)
VICE CHAIRMAN

29.3.1993

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