

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 284/2005

THURSDAY THIS THE 26th DAY OF OCTOBER, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.B.S. RAJAN, JUDICIAL MEMBER**

A. Abdul Rahiman S/o Ali Moulavi
Sorting Assistant (BCR) Railway Mail Service
Kollam
residing at Reshma Manzil
Panthrandumury, Thattamala PO
Kollam-20

Applicant

By Advocate Mr. Shafik M.A.

Vs

- 1 Union of India represented by
the Chief Postmaster General
Kerala Circle, Trivandrum
- 2 The Senior Superintendent of Railway Mail Service
Trivandrum Division
Trivandrum.
- 3 The Officer in Charge
Zilla Sainik Welfare Board,
Kollam.
- 4 Kerala State Housing Board
Represented by Executive Engineer
Divisional Office,
Kollam-II, Kollam.

Respondents

By Advocate Mr. P.M Saji, ACGSC for R 1-3

By Advocate Mr. K.M. Kurian for R-4

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is aggrieved by the refusal of the 3rd respondent to give him the status of 'ex-serviceman' even though similarly placed employees have been given the same.

2 The applicant is presently working as a Sorting Assistant in the RMS office at Kollam. He was deputed to work as Warrant Officer II in the Army Postal Service Corps with effect from 1971 and was discharged from there after five years with effect from 23.8.1976. On discharge he joined back in the post of Sorting Assistant. While so, The Kerala Housing Board No II, Kollam division advertised the allotment of flats being built at Kollam and 5% of the flats were reserved for ex-servicemen. The applicant having learnt that Army Postal Service is also eligible for reservation as ex-serviceman applied for the same but the Housing Board officials refused to treat him as ex-serviceman and insisted on proof of the claim of status of ex-serviceman. The applicant then approached the 3rd respondent to issue a certificate treating him as an ex-serviceman which has now been rejected by the impugned order at Annexure A1.

3 According to the applicant he fulfills all the conditions as per Annexure A-3 circular forwarding the relevant orders of the Department of Personnel and Training dated 27th October 1986. The applicant has also pointed out that another LSG Supervisor working

as Sub Record Officer having lesser Army Postal Service than him was allotted a flat by the Housing Board treating him as Ex-Serviceman and therefore the treatment meted out to him is patently unjust and discriminatory.

4 The applicant has sought the following reliefs:

- (1) To call for the records relating to Annexure A-1 to A-5 and to quash Annexure A-1 being illegal, arbitrary and against Annexure A3;
- (2) To declare that the applicant is entitled to be considered as ex-serviceman on the basis of his army service in APS for more than 5 years
- (3) To direct the 4th respondent to process his application in the 5% quota earmarked for Ex-serviceman and to allot him a flat in Kollam project at the earliest;
- (4) To issue such other appropriate orders or directions this Hon'ble court may deem fit
- (5) To grant the costs of this application.

5. Initially, a counsel statement was filed for the 3rd respondent pointing out that the applicant is not eligible to be considered as an Ex-serviceman in terms of the instructions issued by the Army Postal Service Record office dated 22nd September 1989 defining the criteria for determination of ex-serviceman status of APS personnel. Later a reply statement has been filed by the 3rd respondent denying the averments of the applicant. It was explained that the Annexure A3 letter was only an intimation to the Ministry of Defence by the Dept. of Personnel that they had no objection to the ex APS personnel being brought under the definition of Ex-servicemen. As per the

existing instructions issued by the Dept. of Personnel and Training through the Kendriya Sainik Board, the APS personnel who are part of the regular Army and retired from such service with a pension or released from such service on medical grounds, awarded medical or other disability pension, only come under the definition of ex-servicemen.

6 The respondents 1 and 2 have also filed reply corroborating the stand of the 3rd respondent and reiterating that the applicant is not an Ex-serviceman according to Annexures R-2 and R-3. They have denied the allegation of the applicant that number of Postal employees are enjoying the benefit of Ex-servicemen as totally false. However they have admitted that one Sri Philipose Panicker, SRO, RMS, TV Division Kollam managed to get accommodation from the Housing Board by posing as an Ex-serviceman though he was not entitled to and when this was brought to the notice of the CPMG through a public complaint disciplinary action was initiated against him and because of this fraud the Housing Board officials have become more vigilant and therefore the applicant could not fulfill his malafide intentions.

7 The 4th respondent viz the Kerala State Housing Board have also filed a reply. They have contended that this Tribunal has no jurisdiction to entertain this application as the KSHB (for short) is a statutory body established by the Kerala State Government through

Kerala State Housing Board Act, 1971. Shri Philipose Panickar had produced along with his application a warrant that he had served in the regular Army from 12/1972 to 10/1977 and had also produced a service certificate and on the basis of seniority the allotment of a flat was done. They have denied the receipt of any application for allotment from the applicant on the same lines. Moreover, the allotments in Kollam division have been completed in February, 2004 itself and at present no house or flat is available for allotment.

8 We heard Sri Shafik for the applicant, the ACGSC Sri Shaji for the R1-3 and Sri M. Kurian for the KSHB(R4).

9 The question raised by the applicant whether service in the Army Postal Service on deputation basis will entitle him to ex- service man status has been clearly answered in the R-2 communication dated 19th July 1998 from the Ministry of Defence who are the nodal Ministry in this regard. Annexure R-3 is only a reiteration of the same from the APS record office. Para 2 of the above OM reads as under:

"The question whether the personnel who are on deputation to the Army Postal Service and retire with pension are covered under the definition of Ex-serviceman or not, has been under consideration for some time past. The matter has since been examined and it is clarified that the Personnel of Army Postal Service, who are part of the regular Army and retire from such service (that is, directly from the Army Postal Service itself without reversion to the P&T department) with a pension or who have been released from such service on medical grounds attributable to military service or circumstances beyond their control and awarded medical or other disability pension come within the definition of Ex-servicemen."

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10 It is evident from the above that the APS personnel who were deputed and reverted back to the Department after completion of deputation period are not eligible to claim Ex-servicemen status. The applicant admittedly reverted to the Department without pension and hence is not eligible to claim the status of Ex-serviceman. The applicant's reliance on the Annexure A-3 communication which is only an intermediate communication between two Ministries is not tenable at all when the final instructions issued conveying the decision on the subject is before us. Also a mistake if any committed by a fraud or otherwise in the case of one person does not confer a right to have the mistake perpetrated on the basis of discrimination. The prayer of the applicant has no merit and it is rejected. As regard the prayer of the applicant for a direction to the Housing Board for allotment of the flat, this Tribunal has no jurisdiction over this body as it is under the aegis of the State Government and as far as eligibility under 5% quota, the finding as above would be applicable.

11 OA is dismissed as there is no merit in the contentions of the applicant.

Dated 26.10.2006.


K.B.S. RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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