

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 32/2003

Thursday, this the 27th day of March, 2003.

CORAM :

HON'BLE SHRI T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE K.V. SACHIDANANDAN, JUDICIAL MEMBER

T.S. Gopi,
S/o T.P. Sankunny,
Divisional Engineer,
Telecom, BSNL,
Narakkal, residing at
'Thachangat House',
Edavanakad, Cochin.

... Applicant

(By Advocate Mr. Shafik M.A.)

Vs

1. Union of India rep. by
Secretary to the Govt. of India,
Department of Telecommunications,
Ministry of Communications,
New Delhi.
2. The Chairman cum Managing Director,
Bharat Sanchar Nigam Ltd.,
Sanchar Bhavan,
New Delhi.
3. The Chief General Manager,
Telecommunications,
Kerala Circle,
Trivandrum.
4. The Principal General Manager,
Telecom,
Ernakulam Telephones,
Ernakulam. ... Respondents

(By Mr. C. Rajendran, SCGSC)

The application having been heard on 27.3.2003, the Tribunal on the same day delivered the following :

ORDER

HON'BLE SHRI T.N.T NAYAR, ADMINISTRATIVE MEMBER

The applicant Shri T.S. Gopi, who had been working in the GREF from 18.7.1966 to 12.8.1971 was appointed as Engineering Supervisor in the P&T Department, Government of India w.e.f. 1.8.1972 after a gap of nearly about one year. He is aggrieved by Annexure A1 order dated 21.10.2002 issued by the 4th

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respondent whereby his request for reckoning his service with GREF for the purpose of pension was rejected as per the provisions of Rules (6) (2) of CCS Pension Rules. The applicant has filed this application for the following reliefs :-

- (i) To call for the records relating to Annexure A1 to A5 and to quash Annexure A1 as illegal, incorrect and arbitrary;
- (ii) To declare that the applicant is entitled to pension for the entire service rendered in the Department of Telecom/BSNL and the service under GREF and to direct the respondents to reckon the service of 5 years rendered in GREF also as qualifying service for the purposes of pension as per decision No.5 under Rule 19 of CCS Pension Rules;
- (iii) To direct the respondents to apply Rule 19 of CCS Pension Rules instead of the Rule 14 of the CCS Pension Rules and to calculate the pension of the applicant, reckoning the service rendered in GREF also;
- (iv) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case; and
- (v) To grant the costs of this Original Application.

2. The applicant's case is that he is an Ex-serviceman re-employed in a civil post, namely Engineering Supervisor in the P&T Department and that his service under the GREF from 18.7.1966 to 12.8.1971 ought to have been considered and the interruption by way of nonemployment that occurred between his date of release from the GREF and the date of appointment in the P&T Department(i.e. from 12.8.1971 to 1.8.1972) ought to have been condoned in terms of Rule 28 of the CCS Pension Rules. The applicant has filed Annexure A2 certificate to show that at the time of release from GREF, he was certified to be an Ex-serviceman eligible for priority for recruitment as per Ministry of Home Affairs O.M. No.4/10/64-Estt(D) dated 26.10.1964. The respondents have resisted the OA by stating that the applicant was selected as Engineering Supervisor not in the Ex-service quota. According to the respondents, as per rule 19 of the CCS Pension Rules, Military service followed by Civil

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service without interruption and appointment to and eventual confirmation in a permanent post in civil service will alone count for the purpose of pension and since in the case of the applicant, there is an interruption of nearly 2 years between 12.8.1971 i.e. the date of discharge from GREF and 31.7.1973 i.e. the date of reemployment. The applicant has filed a rejoinder enclosing Annexure A6, which is a copy of the relevant recruitment rules [Engineering Supervisors(Recruitment and Training) Rules, 1966 dated 29.7.1966] whereunder the applicant had got reemployment after his discharge from GREF. It is clarified in the rejoinder by the applicant that he had availed the age concession for GREF personnel guaranteed under clause 8 (ii) (c) of the above Rules. It was because of the said concession that the applicant, who was above 29 years of age at the relevant point of time got appointment in the P&T Department, while the upper age limit generally was 27 years. The applicant also highlighted the fact that it was only because of his being an Ex-serviceman that as against the normal required qualification of Engineering Degree, his three-year Diploma was considered sufficient qualification for re-employment.

3. We have gone through the pleadings and material placed on record and have heard Shri Shafik M.A., the learned counsel for the applicant and Shri C. Rajendran, SCGSC, the learned counsel for the respondents.

4. It is stated by Shri Shafik in support of the pleadings on record that the applicant's case is squarely covered by Rule 28 of the CCS Pension Rules since he held a civil post in the GREF and his pay and allowances were paid out of Defence Service Estimates. He would contend that neither Rule (6) 2 nor Rule 19 of CCS Pension Rules have any application to the applicant's case. He would invite our attention to Annexure A2 certificate.

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The learned counsel for the applicant would underscore the eligibility position of the applicant with regard to the reemployment of Ex-servicemen. He has also pointed out that whatever available to the Ex-servicemen including Canteen facility is available to him after his discharge from GREF.

5. Shri C. Rajendran, SCGSC on the other hand emphasised that a gap of one year from the date of discharge of the applicant from GREF and appointment as Engineering Supervisor would go to show that there was an interruption and therefore his past service could not be counted in the light of Note 5 under Rule 19 of the CCS Pension Rules.

6. In our considered opinion, the Service Book of the applicant is not shown to contain anything to suggest that his case is not covered under Rule 28 of the CCS pension Rules. Annexure A2 clearly shows that the applicant was discharged as a Charge Mechanic from the Field Workshop GREF and is certified to be eligible for priority for recruitment as Ex-service personnel as permitted by Minute-37 issued by the Director of Employment, Directorate General, Employment and Training on 6.6.1963 vide Ministry of Home Affairs O.M. No.4/10/64-Estt(D) dated 26.10.1964. We have no hesitation to accept that the applicant therefore was an Ex-serviceman at the relevant time of reemployment. There is an interruption of nearly one year between the date of his discharge from GREF and his reemployment, but this is covered under Rule 28 of the CCS Pension Rules, which states as follows :-

"In the absence of a specific indication to the contrary in the service book, an interruption between two spells of civil service rendered by a Government servant under Government including civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service."

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7: The applicant's case is that even if the period of interruption of one year is not to be taken as qualifying service, prior service under the GREF has to be considered under Rule 28. This, according to us is, very reasonable. The Ex-servicemen(Re-employment in Central Civil Services and Posts) Rules, 1979(R-1) produced along with the additional reply statement have no relevance to the case. These are not recruitment rules governing the post. Further, these rules came into effect only in July, 1979. Therefore, the provisions contained therein cannot be relied upon for deciding whether the applicant was an Ex-serviceman or not. In this connection, we rely on the Recruitment Rules of Engineering Supervisors(Recruitment and Training) Rules, 1966(Annexure A6). The applicant was selected for appointment as Engineering Supervisor under these Rules only against the Ex-servicemen quota. It is reasonable to consider that it was only in terms of the said Recruitment Rules(A6) that the applicant being an Ex-serviceman of 29 years of age could have got appointment as Engineering Supervisor although the prescribed upper age limit was 27 years at the relevant time. Regarding the stipulation of educational qualifications contained in Annexure A6 recruitment rules, the applicant got the benefit of sub rule (h) of Rule 10 of the said rules which prescribes Matriculation and 3 year Diploma in specified Engineering subjects as one of the prescribed qualifications.

8: In view of the above facts and circumstances, we are of the considered view that the applicant was an Ex-serviceman appointed against Ex-servicemen quota as Engineering Supervisor and that being so, the applicant's past service upto the date of discharge under the GREF(from 18.7.1966 to 12.8.1971) ought to be counted for the purpose of pension.

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9. The OA is allowed with the following orders/directions :-

- (i) Annexure A1 impugned order is set aside.
- (ii) The applicant is entitled to pension for the service rendered in the Department of Telecom/BSNL and the service under GREF. Respondents are directed to reckon the service under GREF from 18.7.1966 to 12.8.1971 as qualifying service for the purpose of pension.
- (iii) Respondents are further directed to issue consequential orders in the light of the above orders/directions within a period of two months from the date of receipt of a copy of this order. No costs.

Dated the 27th March, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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