

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 13.05.2014.

Pronounced on 22nd May 2014

Original Application No.172/2009

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

1. Ram Dhiraj, aged about 40 years, son of Shri Ram Sabad, resident of Village Gujramaw, Post Office Basawa (Inayat Nagar), District Faizabad.

2. Rajendra Prasad, aged about 41 years, son of Shri Ram Dulare, resident 904/66, Taksal, Rekabganj, Faizabad, (Both the Applicants were lastly working as Group 'D' employees in the 7th Battalion, The Maratha Light Infantry, C/o 56 APO).

-Applicant.

By Advocate: Sri P.K. Singh.

Versus.

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Adjutant General, Adjutant General's Branch, Integrated Services Headquarters of Ministry of Defence (Army), DHQ PO New Delhi-110011.
3. Director General of Infantry/Infantry-6 (Pers), General Staff Branch, Integrated Services Headquarters of Ministry of Defence (Army), DHQ PO New Delhi-110011.
4. Commanding Officer, 7th Battalion The Maratha Light infantry, C/O 56 APO.

-Respondents.

By Advocate: Sri S.P. Singh.

ORDER

By Ms. Jayati Chandra, Member (A).

The applicants have filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

J. Chandra

- (i) issuing/passing of an order of direction to the Respondents setting aside the impugned oral order of termination of the service of the applicants from 16.3.1989, after summoning the original records.
- (b). issuing/passing of an order of direction to the Respondents to reinstate the applicants with back wages and continuity of service with all the privileges blended with the post held by them.
- (c). issuing/passing of order of direction to the respondents to consider the case of the applicants and provide them any other alternative appointments within specified period.
- (c). issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (d). allowing this Original Application with cost."

2. The facts of the case as stated by the applicant are that the applicant no.1 was appointed as Mess/Waiter Mess by the Respondent No.4 on 4.7.1989 and worked upto 16.3.1989. The appointment was made in Lieu of combatant. The applicant no.2 was initially appointed as Washer man/Dhobi in lieu of combatant. They were appointed through Employment Exchange, Faizabad. And they were deployed in the operational areas C/o 56 APO, located at Military Station, Lalgarh in Sri Ganganagar and were issued passes by the Station Headquarters, Lalgarh, Military Station. These passes were valid upto 31.3.1989 (Annexure -A-3 and A-4) respectively. However, their services were suddenly orally terminated w.e.f. 16.3.1989 without any cogent reasons. It is provided in Army Headquarters Circular dated 13.12.1979 in para-5 (a) that civilian, in lieu of combatants may be employed under certain conditions. Para-5 (a) of the circular reads as follows:-

"5. with a view to obviating the necessity of employment of civilian in lieu of combatants for long periods, it has been decided that the following measures will be adopted by all concerned with immediate effect:-

- (a). The civilians in lieu of combatants will be employed only when an establishment goes below 95%

J. Chandh

of its authorized strength. Actual recruitment will be carried out after obtaining a certificate from the concerned Center or Records that combatants required cannot be posted and that no surplus of such personnel exists in any unit.....”.

3. Similarly, in para-3 of special Army Order No.8/S/76 reads as follows:-

“3. It is incumbent on all units/ establishments under the Ministry of Defence to report their surplus and deficiencies to the authorities mentioned in para 6 below. Vacancies of 3 months duration or less and not required to be reported. Vacancies of more than 3 months duration will not be filled by units/establishments locally without being notified to the proper authorities and eventually released by the Army Headquarters, AG/Org 4 (Civ) (b). Similarly the services of an eligible employee will not be terminated without providing him an opportunity of being considered for an alternative appointment under this Army order.”

4. Para-5 (b) of the Army Headquarters Circular reads as follows:-

“5 (b). The Centre/Records officers will also clearly specify in the certificate that:-

(i). All recruitment will be made through the Employment Exchange so that the civilians individuals could be eligible for the offer of alternative employment under special Army Order 8/S/76, when their services are no longer required.

(ii). Only those individuals will be taken into employment who are within the prescribed age limit, are educationally and technically qualified to perform the job for which they are appointed.”

5. Their cases were squarely covered under the aforesaid provision. Further, Govt. of India, Ministry of Defence Circular No.18/(3)/79/1859 D (Civ-II) dated 30.1.1989 envisages that the civilian employed in lieu of combatants shall be governed by central Civil Services (Temporary Services) Rules, 1965 as such they are entitled to the terminal gratuity and family pension to the

J. Chandra

extant admissible to the temporary government employees (Annexure A-6). As per Government of India, Ministry of Defence statutory Routine Order No.73 dated 17.2.68 the Probation period for Dhobies, Cooks/Waiter Mess and Equipment and Boot Repairers is six months only (Govt. of India, Ministry of Personnel, Public Grievances & Pension No.18011/1/86-Estt.(D) of 28.3.88) (Annexure A-7 and A-8).

6. Despite such clear-cut orders neither the services of the applicants were confirmed nor any alternative appointment was given as contemplated in para-5 (c) of special Army Order 8/S/76 nor any pensionary and terminal gratuity benefits were given to them. The applicants made representation dated 10.4.1989 and 23.6.1989 to Respondent No.2 and 3 (Annexure A-9 and A-10). Finally, the cases of applicants were espoused by local M.L.A. Sri Jai Shanker Pandey, who took up their cases. But, he was informed by letter dated 10.2.1990 that they were paid salaries up to 15.12.1988 and that the balance salaries and allowances for the period 16.12.1988 to 16.3.1989 could not be paid on account of non-availability certificate. As proof of their continuous employment the applicants have produced the copy of order dated 4.2.1989 by which Applicant No.2 was granted casual leave for 10 days. Finally, the applicants have filed Writ Petition No.1685 (S/S) of 1991 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, which was dismissed by order dated 06.02.2009 on the ground of alternative remedy. Hence, this OA.

7. The respondents have contested the claim of the applicant through their Counter Reply denying the

J. Chandra

averments of the applicants and have stated that the Applicant No.1 was initially engaged as Mess Waiter from 4.7.87 to 14.12.87, 16.12.87 to 14.6.88 and 16.6.88 to 14.12.88. Thus, he was employed for a total period of 17 months and three days in three spells with one day's gap. Similarly, Applicant No.2 was initially engaged as Washerman/Dhobi on 23.8.86 to 14.6.87, 4.7.87 to 14.12.87, 16.12.87 to 14.6.88 and 16.6.88 to 14.12.88. Thus, the applicant no.2 completed 25 months and 20 days in four spells with a day's gap in between. These applicants were appointed on the basis of sanction received from the competent authority. It is submitted that civilian in lieu of combatants were initially employed for a period of one year only with a clear stipulation that their services would be terminated if combatants become available earlier and that there is no likelihood of the appointment continuing for a long period. After completion of one year's service, extension of service by another year in two spells up to six months each could be granted to them after issue of certificate of non-availability of a combatant by the Commandant Center/Record Offices concerned. Under no circumstances, civilian employed in lieu of combatants were to continue in service beyond a period of 2 years. Further, on completion of one year and 11 months of service they are served with one month's notice of termination of service and their particulars reported for adjustment under Special Army Order 8/S/76.

8. As the respondents did not received any approval for engaging civilian in lieu of combatants hence the applicants were discharged from service on 15.12.1988. Since a requisition had been sent to the competent

J. Chandra

authority for permission to engage civilians for a further period, in anticipation of approval to the proposal the applicants were allowed to stay with the unit at their own risk. They were provided with free lodging and boarding facilities under unit arrangements for the period since such facilities were not available in the near vicinity of the unit location as a goodwill gesture. It is submitted that the passes were issued to the applicants till 31.3.1989 to facilitate their stay and movement in the unit. However, as the requisite sanction was not received they were told to vacate the quarters and the security passes were not returned. The issue of security passes is no way connected to employment or proof of employment.

9. The case of the respondents is that provisions under Army H.Q. Circular dated 13.12.1979 are applicable only to those personnel who are in temporary employment for a continuous period of 2 years or more. Since the employments of these applicants were neither continuous nor exceeding 2 years as such these provisions are not applicable to them. However, they were given show cause notice one month before the expiry of sanctioned period and no fresh civilians were hired in place of the applicants.

10. The applicants have filed their Rejoinder Affidavit stating more or less same things as earlier stated by them in the OA.

11. It is to be noted that much of the engagement period of the applicants is common to both the version of the applicants and the respondents. Applicant no.1 was engaged from 4.7.87 to 14.12.88 as per the respondents

J. Chandra

in three different spells and up to 16.3.1989 as per the applicant whereas, applicant no.2 was engaged from 23.8.86 up to 14.12.88 in four different spells as per the version of the respondents but up to 16.3.1989 as per the applicant. Both the applicants and the respondents have placed reliance on the Ministry of Defence order No.84450/SD 6B dated 13.12.1979 (Annexure-A-5) which provides engagement of Civilian employees in lieu of combatants in any case not beyond two years as per provision of prara-5 (C). Moreover, on completion of one year and 11 months services they will be served with one months notice. The relevant portion reads as follows:-

“Civilians in lieu of combatants will be initially employed for a period of one year only with a clear stipulation that their services will be terminated if combatant becomes available earlier and that there is no likelihood of the appointment continuing for a long period. After completion of one year service, extension of service by another year in two spells of upto six months each could be granted to them after issue of certificates of non-availability of a combatant by the commandant Centers/Record Officers concerned. Under no circumstances, civilians employed in lieu of combatants will be allowed to continue in service beyond a period of 2 yeas. On completion of one year 11 months service, they will be served with one month’s notice of termination of service and their particulars reported for adjustment under SAO 8/S/76.”

12. The relevant portion of Para-5 (b) (i) reads as follows:-

“(i). All recruitment will be made through the Employment Exchange so that the civilians individuals could be eligible for the offer of alternative employment under special Army Order 8/S/76, when their services are no longer required.”

13. Be that as it may, this being a rule position as submitted by both the parties, the reliefs as claimed by the applicants have to be read in the context of these rules. The case of the applicant no.1 shows that even if

J. Chandra

his services are counted upto 16.03.1989 (as per his version) he has completed a period of employment of one year eight months and 12 days therefore, his case does not come under the ambit of the order dated 13.12.1979, which provides for consideration after service of two years. Therefore, he is not entitled to any relief.

14. However, applicant no.2 has completed 25 months 20 days as per the statement of the respondents. This period is more than 2 years. Of course, the respondents have stated this period was not a continuous one but, a reading of circular 5 (c) is silent on the requirement of two years qualifying service being a continuous one or in separate spells adding upto two years. In any case, the respondents have admitted that applicant no.2 has worked for 25 months and 20 days although in the very next para in the counter reply they have stated that he has not put 2 years service continuous service. Therefore, in view of the contradictory statements made by the respondents from the dates which are common to both the version of the applicants and the respondents, the applicant no.2 has put in more than 2 years period as such is deserving of consideration under Clause 5 (c) of the Ministry of Defence order No.84450/SD 6B dated 13.12.1979 (Annexure-A-5). A question will arise as to the age of the applicant as 26 years have passed since the applicant stood disengaged. It is the cardinal principle of law that legal proceedings should not stand in the way of granting his right to any person. In this case, the W/.P.No.1685 (S/S) of 1991 was dismissed on the ground of alternative remedy vide order dated 06.02.2009 thereafter, the present O.A. was filed.

J. Chandra

15. Therefore, in the light of the discussions made above the OA is liable to succeed partly. The applicant no.1 is not entitled to any relief as such, no relief can be granted to him accordingly, his case is rejected. The respondents are directed to consider the case of the applicant no.2 in the light of Clause 5 (c) of the Ministry of Defence order No.84450/SD 6B dated 13.12.1979 (Annexure-A-5). He is to be evaluated as per all eligibility conditions as required except the maximum age. For this purpose the age is to be taken as age on the date of last engagement on 14.12.1988. As this matter is very old this exercise may be completed within a period of four months positively. No order as to costs.

J. Chandra.
(Ms. Jayati Chandra)
Member (A)

U. R. Goyal
(Navneet Kumar)
Member (J)

Amit/-