

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 NEW DELHI
 NEW BOMBAY BENCH

Case No.
 T.A. No. 378

1988

DATE OF DECISION 5th February, 1988

K.Sankaranunni & two others Petitioner Applicants

Shri K.R.Pillay, Applicants
 Advocate for the Petitioners)

Versus

Union of India and 2 others Respondents

Shri R.K.Shetty, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B.Mujumdar .. Member (J)

The Hon'ble Mr. L.H.A.Rego .. Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH: NEW BOMBAY

TRANSFER APPLICATION NO.378 OF 1987
(Civil Appeal No.836 of 1985)

1. K.Sankaranunni
42 years, Service
2. T.N.Shankaran
41 years, Service
3. D.Davidson
41 years, Service
All C/oOffice of the
Chief Engineer,
Head Quarters, Southern Command,
Pune-1 .. Applicants

- vs. -

1. Union of India
through the Secretary,
Ministry of Defence
New Delhi-110 001
2. The Engineer-in-Chief,
Army Head Quarters,
Post, DHQ, New Delhi-110 001
3. The Chief Engineer,
Head Quarters (South Command)
PUNE 411 001. .. Respondents.

Coram: 1. Hon'ble Member (J) Shri M.B.Mujumdar
2. Hon'ble Member (A) Shri L.H.A.Rego

Appearance:

1. Shri K.R.Pillay, Advocate for the applicants.
2. Shri R.K.Shetty, Advocate for the Respondents.

JUDGMENT:

Date: 5th February, 1988

(Per Shri L.H.A. Rego, Hon'ble Member (A)).

This is a Civil Appeal bearing No.836 of 1985 transferred under Section 29 of the Administrative Tribunals Act, 1985 by the Court of the District Judge of Pune, and registered anew as an application in this Tribunal.

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2. The applicants had initially filed Suit No.160 of 1981 in the Court of the Civil Judge, Senior Division, Pune, against the respondents(R) seeking declaration that they were not surplus in the Madras Engineering Group and Centre, Bangalore (MEG(C) for short) and that they were transferred to various offices under R-3 in the usual course, as Government servants and were entitled to benefit of entire past service rendered by them in the MEG(C) for the purpose of determination of their seniority and for other reliefs. This suit was dismissed on 6-6-1985. Aggrieved thereon, the applicants filed Civil Appeal No.836 of 1985 on 7-10-1985 in the Court of the District Judge at Pune, which has now been transferred to this Tribunal, as aforementioned.

3. The facts of the case in so far they are relevant to determining the questions raised in this application, are concisely as follows: Applicant(A) Nos.1 and 2 were initially appointed as Lower Division Clerks (LDCs) at MEG(C), Bangalore, in lieu of combatants, on 4-5-1963 and 15-4-1963 respectively, while A-3 was so appointed at Records, MEG, Bangalore [MEG(R) for short] on 25-2-1963. They were working continuously in this capacity till 1976, (i.e. for as long as nearly 13 years) till they were posted out. They were declared as quasi-permanent on 15-4-1966. They were thus civilian LDCs employed in the Defence Ministry in place of combatants.

4. The applicants were continued in this capacity without interruption owing to administrative exigency.

In order however, to safeguard the career of such civilian employees, the authorities of the MEG moved R-2, namely, The Engineer-in-Chief, Army Head Quarters, New Delhi, to sanction a permanent civilian establishment. Some time in the year 1972, a complement of 32 civilian clerks was sanctioned for MEG(C), with which A-1 and A-2 are concerned. MEG(R), with which A-3 is concerned, had already a sanction of 20% of the permanent civilian strength as compared to the total strength. However, the authorised sanction of civilian strength in both the establishments, was far below requirement. Pending extension of the civilian establishment, the practice of shifting such civilian employees to the permanent civilian establishment was in vogue both in regard to MEG(C) and MEG(R) with due regard to work-load, seniority of the employees, vacancies available and other relevant factors.

5. Though the authorities concerned were aware of this situation, the desired permanent civilian establishment was not sanctioned for administrative or other reasons. Under these circumstances, A-1 and 2 were transferred by R-2 on 25-2-1976 to Southern Command, Pune, under R-3, consequent to the decision taken by the Government of India that civilians employed in lieu of combatants, for more than 5 years, would be absorbed in regular civilian appointments within the Arms/Services, A-1 and 2 among others, were on 25-2-1976 given a permanent posting as LDCs for adjustment against the vacancies of LDCs available in the Southern Command, Pune, under R-3, and this adjustment was to be accomplished by 30-6-1976. A-3 was similarly posted to Pune on 15-5-1976.

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6. The applicants seemed to be under the impression that as this posting to Pune was within the same service and under the same head of the organisation, namely, R-2, their continuous long length of service as LDCs in MEG(C) and MEG(R) at Bangalore, would not be overlooked to their detriment. However they later noticed that while the LDCs recruited in 1963 were brought within the Zone of promotion, the long length of uninterrupted service rendered by the applicants in MEG(C) and MEG(R) was ignored. As repeated representation to the concerned authorities was of no avail, they were constrained to seek remedy from the Court of Law and ultimately from this Tribunal.

7. Shri K.R.Pillay, learned Counsel for the applicants, brought to our notice, that the order dated 25-2-1976 passed by R-2, whereby the applicants were posted under R-3 at Pune, did not indicate that they were regarded as surplus either in MEG(C) or MEG(R) and that their past service rendered in these two organisations since 1963, would not be taken into account. He further pointed out, that according to the letter dated 20-2-1978, addressed by MEG(C) to R-3, it was clearly stated in para-4 thereof, ^{that} such of the LDCs posted out of Bangalore, among whom the names of A-1 and A-2 appear, were not declared surplus. He therefore asserted that the service rendered by all the three applicants as LDCs since 1963 in MEG(C) and MEG(R), Bangalore, before their posting to the Southern Command, Pune, under R-3 in 1976 as LDCs cannot be ignored.

8. Shri Pillay pointed out, that some of the LDCs who were junior to the applicants and were serving in MEG(C) and were served with similar orders of transfer to Pune, had expressed their unwillingness to move out, but were absorbed in MEG(C) itself at Bangalore, and their past service was reckoned for the purpose of seniority and promotion. This he said was grossly invidious and discriminatory as compared to the applicants and was violative of the principle of equality enshrined in the Constitution.

9. Calling in aid the judgment dated 27-10-1986 of the Central Administrative Tribunal(CAT), Madras Bench, in Transferred Application No.762 of 1986(V.NATARAJAN v. THE ENGINEER-IN-CHIEF, ARMY HEAD QUARTERS, NEW DELHI & ORS), Shri Pillay submitted that this judgment squarely applies to the application before us, as the facts and circumstances were almost identical and the name of Shri V.Natarajan, the applicant therein, appeared along with the names of A-1 and A-2 in the letter dated 20-2-1976 by MEG(C) to R-3, ~~as~~ to which we have referred ~~to~~ earlier.

10. Shri R.R.Shetty, learned Counsel for respondents, contended, that prior ^{to} transfer of the applicants to Southern Command, Pune, under R-3, the applicants were employed in MEG(C) and MEG(R), Bangalore, in lieu of combatants, which implied, that they were appointed in civilian appointments as was evident from their very letter of appointment. According to him, they became surplus consequent upon the posting of combatant personnel and in their own interest they were adjusted in alternative regular civilian appointment in the Southern Command, Pune. Consequently, the seniority of the applicants ^{as on} reckoned from the date they were absorbed in regular civilian appointment in the Southern Command at Pune. He further clarified that their pay was not reduced

after they joined in the Southern Command under R-3 and were not put to any pecuniary loss on this account.

11. We have carefully perused the abovesaid judgment of the Madras Bench of the C.A.T. in Shri V.NATARAJAN's case. We noticed that the case of Natarajan, is on all fours alike, to ~~that of~~ the present application before us. When the applicants were posted out of MEG(C) and MEG(R) to Southern Command, Pune, under R-3, for absorption in regular civilian appointment available, it was not indicated that they ~~were~~ ^{would} forfeit the benefit of the long and uninterrupted length of service rendered by them earlier in MEG(C) and MEG(R) and that they were declared surplus.

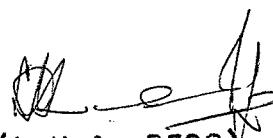
12. Shri Shetty has not shown to us any statutory rule or order under which the benefit of this long and continuous service rendered by the applicants as LDCs would not count for seniority and for other purposes. Shri Shetty could not clarify, as to how some other LDCs similarly placed like the applicants, were retained in MEG(C) at Bangalore and given the benefit of their past service as LDCs, even though they had declined to move out, in compliance with the orders issued. It would be extremely unfair if the applicants are denied their ^{the} benefits of past services as LDCs in MEG(C) and MEG(R), in the light of the above facts and circumstances.

13. We are of the view that the judgment of the Madras Bench of the C.A.T. governs the case of the applicants before us, who are similarly circumstanced.

14. In the result, we direct the respondents to reckon the past continuous services rendered by the applicants, as LDCs in MEG(C) and MEG(R), for the purpose of seniority and promotion to the next higher grades.

15. Application is disposed of in the above terms. No order as to costs.


M.B. MUJUMDAR
S-2-1988
MEMBER (J)


L.H.A. REGO
S-2-1988
MEMBER (A)