

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE.

DATED THIS THE 6TH DAY OF FEBRUARY, 1987.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,
And

Vice-Chairman.

Hon'ble Mr. L.H.A. Rego,

.. Member(A).

APPLICATION NUMBER 1543 OF 1986.

Vishnu Dadu Kamble,
Aged 44 years, Occ: Nil.,
R/o Kasai Galli, Camp: Belgaum.

.. Applicant.

(By Sri Shantharam Sawant, Advocate).

v.

Union of India by its Secretary,
Ministry of Communication (P&T)
Coaxial, New Delhi.

.. Respondents.

(By Sri M. Vasudeva Rao, Standing Counsel)

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This application coming on for hearing this day, Vice-Chairman,
made the following:

O R D E R

This is a transferred application and is received from the Court
of Civil Judge, Belgaum.

2. On 21-5-1965, the applicant joined service as a driver in
the Coaxial Project of the Telecommunication Department of the
Government of India, in which capacity he continued to serve from
that day.

3. Some time in 1974, the Competent Authority ('CA') of that
project found that the physical and mental conditions of the applicant
were such that he could not be continued as a driver and, therefore,
gave him an alternative employment in a Class IV post. But, in that



capacity also the physical and mental conditions of the applicant prevented his continuance in service and the CA terminated his services with effect from 31-10-1975.

4. On the aforesaid termination, the applicant moved the CA to grant him pension under the Central Civil Services (Pension) Rules, 1972 ('1972 Rules'). But, on 29-7-1976 the CA rejected his claim, holding that he was only a temporary Government servant and that on his termination under the Central Civil Services (Temporary Service) Rules, 1965 ('1965 Rules'), he was not entitled for pension under the 1972 Rules. In O.S.No.339 of 1981 the applicant challenged the same. The respondent resisted the said suit.

5. On a consideration of the evidence placed before him, the learned Munsiff concurred with the CA and on 30-1-1985 dismissed the suit filed by the applicant. Aggrieved by the judgment and decree of the learned Munsiff in the said suit, the applicant filed an appeal in R.A.No.45 of 1985 in the Court of the Civil Judge, Belgaum which on transfer under Section 29 of the Act, has been registered as Application No.1543 of 1986.

6. Sri Shantharam Sawant, learned counsel for the applicant contends, that the alternative claim of his client, to treat him as appointed substantively or as a permanent Government servant so as to entitle him for pension had not been examined and decided by the learned Munsiff and that we should examine the same and issue appropriate directions to the respondent.


7. Sri M.Vasudeva Rao, learned Additional Central Government Standing Counsel, appearing for the respondent in opposing the alternative claim of the applicant support the judgment and decree of the learned Munsiff.

8. We have carefully read the pleadings, the issues framed the judgment and decree of the learned Munsiff. We are of the view that the contention of Sri Sawant that the learned Munsiff had not examined and decided the alternative claim of the applicant is well founded. On this view, we now proceed to examine the same first.

9. Among others, the applicant had asserted that he had rendered more than 10 years of loyal service and many of his juniors or those appointed later, had been confirmed by the CA which had not been denied by the respondent in his written statement. In the absence of a denial of the said assertion by the respondent, this Tribunal must necessarily accept the same as correct and examine the claim on that basis.

10. That a confirmed civil servant has the status of being appointed substantively or permanently and consequently, becomes entitled to pension under the Pension Rules, is not in dispute. Whenever confirmations are made, they are generally made on the basis of seniority and merit. Confirmations are not and cannot be made whimsically or arbitrarily. When juniors of the applicant had been confirmed, he cannot be denied that status and that too, for purposes of pension under the Pension Rules. On this short ground itself, this claim of the applicant has to be upheld.

11. Even otherwise, the hard and pitiable circumstances in which the services of the applicant were compelled to be dispensed with viz., his physical and mental disability to perform his duties, also justified the CA to treat the applicant as confirmed and then extend the pensionary benefits to which he was entitled, under the 1972 Rules. We are dismayed at the extremely technical and unsympathetic view taken by the CA in the matter particularly when the applicant was required to be terminated from service on account of mental



ailment. On this ground also we propose to uphold the claim of the applicant and issue appropriate directions.

12. On the view, we have taken, it is not necessary to examine the correctness of the grounds and reasons which commended to the learned Munsiff, to non-suit the applicant.

13. Sri Sawant, in our opinion, very fairly and rightly confined the relief for actual payment of monetary benefits only from the date the suit was instituted in the court of the Munsiff viz., from 20-8-1981. We record this concession of Sri Sawant.

14. In the light of our above discussion, we direct the General Manager, Telecommunication Project (P&T) No.3, Commander-in-Chief Road, Madras-5, who is the competent officer, to confirm the applicant against one of the vacancies of the department before his services were dispensed with and then extend to him all such benefits, to which he is entitled, under the 1972 Rules, however, denying him only the arrears of pension upto 20-8-1981, with all such expedition as is possible in the circumstances of the case and in any event within a period of four months from the date of receipt of this order.

15. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

[Signature]
VICE-CHAIRMAN 6/2/1987

[Signature]
MEMBER(AK) 6-2-87

np/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH, BANGALORE

ORDER SHEET

Application No. 1543 of 1986 (T)

Applicant

Vishnu Dada Kamble

Advocate for Applicant

M.D. Shaikh

Respondent

Secretary, M/o. Communication
(P&T) N. Delhi

Advocate for Respondent

T.H. Pattan.

Date	Office Notes	Orders of Tribunal
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15.6.1987.

Orders on I.A. No.1:

In this application, the respondents have sought for two months' extension of time, for complying with the directions issued by us on 6.2.1987. Shri Shantaram Sawar, learned counsel for the applicant does not rightly oppose this I.A. Even otherwise, we are satisfied that the circumstances stated by the respondents justify the prayer for extension of time. We, therefore, allow this I.A. and extend

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another two months' time
from this day, for complying
with the directions issued
in A. No. 1543/86 on
6.2.1987.

VICE CHAIRMAN

dms.

MEMBER (AM)

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124/1987

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL CLERK
BANGALORE