

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE 26TH DAY OF NOVEMBER 1986

Present:

Hon'ble Mr. Justice K.S.Puttaswamy ... Vice-Chairman
Hon'ble Mr. P. Srinivasan ... Member (A)

APPLICATION NO. 189/86(T)

Shri Martin D'Souza,
Lower Division Clerk,
Electronic and Radar Development
Establishment, Ministry of Defence,
Bangalore-560001 ... Applicant

vs (Shri S.Shivaswamy, Advocate)

(1) The Union of India represented
by the Secretary to the Government
of India, Ministry of Defence,
New Delhi.

(2) The Director,
Electronic and Radar Development
Establishment, Ministry of Defence,
Bangalore-560001 ... Respondents

(Shri M.S. Padmarajaiah, Advocate)

This case came up before this Tribunal for
hearing and Member (A) made the following:

ORDER

In this application received on transfer from
the High Court of Karnataka, we are called upon to decide
whether the applicant, an ex-serviceman now working in the
Electronic and Radar Development Establishment (LRDE) as a
Lower Division Clerk (LDC) should be allowed to count his
previous service in the army for the purpose of determining
his seniority in the cadre of LDCs in LRDE.

2. The facts are briefly as follows:-

The applicant worked as a Combatant Clerk in
the army from 21-10-1959 to 23-10-1963 when he was discharged.
As an ex-serviceman, he was appointed as an LDC in the
Defence Services Staff College, Wellington on 2-12-1963.
His pay as LDC in the Defence Services Staff College,
Wellington, was fixed taking into account his earlier war
service as Combatant Clerk. On 13-9-1977, the applicant

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joined LRDE as LDC on transfer from the Defence Services Staff College, Wellington. In LRDE, his seniority in the cadre of LDC was fixed on the basis of the date of his joining the said establishment i.e. 13-9-1977. The applicant contends that this was incorrect because according to instructions issued from time to time by the Ministry of Defence, his army service should have been taken into account when determining his seniority in the cadre of LDC in LRDE. When this application was first heard on 18-9-1986, learned counsel for the applicant, Shri K.Narasimhamurthy, relied on the decision of the High Court of Karnataka in Writ Appeal No.94 of 1977 which, according to him, supported the contention of the applicant.

3. Shri M.S.Padmarajaiah, learned counsel for the respondents, strongly resisted the claim of the applicant. As clarified by the respondents in their reply, the applicant left army service on 23-10-1963 "at his own request before fulfilling the conditions". An ex-serviceman discharged on compassionate grounds is deemed to have resigned from service and has not to be given the benefit of previous combatant service for the purpose of seniority on subsequent re-employment in a civilian post. Secondly, after the applicant became an ex-serviceman, his first appointment was as an LDC in the Defence Services Staff College at Wellington on 2-12-1963. He came to LRDE as LDC on transfer from the Defence Services Staff College on 13-9-1977. His appointment in LRDE was not his first employment after he had been discharged from the army. Moreover, the applicant came to be posted in LRDE by way of mutual transfer with another official and this was not in the public interest. According to the instructions issued by the Government of India, where a transfer is made at the

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request of the official concerned on personal grounds, such transfer is subject to the condition that the officer seeking the transfer cannot count, for the purpose of seniority in the post to which he is transferred, his service in his earlier post. In other words, he has to take the juniormost position of seniority in the cadre in the establishment to which he seeks transfer. When he sought transfer to LRDE, Bangalore, the applicant had specifically expressed his willingness to abide by the rules in force with regard to his seniority for the purpose of promotion in the new establishment and had also agreed to abide by the existing rules governing seniority etc. It was on this basis that his seniority in LRDE was reckoned only from the date on which he joined the establishment i.e. 13-9-1977 without taking into account his earlier service either with the Defence Services Staff College, Wellington, or still earlier in the Army.

4. We have perused the papers filed by the parties and have considered the matter carefully. There is no doubt that according to the instructions of the Government of India, when an ex-serviceman is appointed to a civilian post he has to be given the benefit of all previous service rendered in the same or equivalent post (including service rendered in combatant capacity) for the purpose of fixation of pay, seniority etc. Posts should be treated as equivalent if the nature of duties attached to them are similar, irrespective of the rates of pay drawn in the previous posts. But we find that those instructions have no application to the facts of the present case. The applicant was appointed as LDC in LRDE not as an ex-serviceman, but on transfer from another establishment. His first appointment after he became an ex-serviceman was, as already stated, in the Defence

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Services Staff College, Wellington. Whatever instructions existed for protecting the past service of an ex-serviceman would have had application at that time and apparently that protection was given. Therefore, whatever rights the applicant had under the instructions of the Government for the protection of his army service for the purpose of fixation of his pay and seniority were exhausted as soon as he joined the Defence Services Staff College, Wellington, as LDC on 2-12-1963. Thereafter, his transfer to another establishment, LRDE in the present case, was governed by the normal rules applicable to such transfers. One of those rules, as pointed out on behalf of the respondents, is that when a person seeks a transfer for personal reasons from one establishment to another, the transfer not being considered to be in public interest, he has to take the juniormost position in the same cadre in the establishment to which he is transferred. We would repeat here that for this purpose, the fact that the applicant was an ex-serviceman before he joined the Defence Services Staff College at Wellington is wholly irrelevant. His claim that his army service should be counted would have application only if he was appointed in LRDE for the first time as an ex-serviceman and not when he was transferred to LRDE from the Defence Services Staff College at Wellington where he had already been working for several years after being discharged from the army. Writ Appeal No. 94 of 1977 was an appeal against the judgement of a single judge in Writ Petition No. 7695 of 1976. In the said Writ Petition, the petitioner who had been discharged from the army in 1964 was re-employed in a civilian post in 1965 and the question was as to how his

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seniority should be fixed in that civilian post. The analogous situation here would be the appointment of the applicant in the Defence Services Staff College after his discharge from the army with which we are not concerned. The situation with which we are faced here is of a transfer of the applicant from one civilian department of Government to another, he having ceased to be an ex-serviceman long ago and the rules regulating his seniority on such transfer. Therefore, the decision of the Karnataka High Court has no application here at all.

5. Though the application was fully heard on 18-9-1986 and was reserved for judgement, the applicant made a request that the matter be heard further because his counsel Shri Shivaswamy could not appear on 18-9-1986. Accordingly it was again fixed for hearing and heard on 13-11-1986 when Shri Shivaswamy, learned counsel for the applicant, and Shri M.S.Padmarajaiah, learned counsel for the respondents, were again heard in extenso.

6. Shri Shivaswamy made the following points in the course of his arguments: The applicant had not sought a transfer from Wellington to Bangalore on compassionate grounds. It was a mutual transfer between him and a certain Shri Akhtar who was working in LRDE, Bangalore. The initiative came from Shri Akhtar and the applicant had agreed to the mutual transfer. It was transfer in the public interest and therefore the applicant cannot be made to lose the benefit of his earlier service which had actually been recognised for the purpose of pension, gratuity, leave and all other terminal benefits but not for the purpose of seniority. The applicant had not given any undertaking at the time of transfer to LRDE, Bangalore, to forgo his earlier service for the purpose of seniority. He asserted that certain other persons similarly situated like the applicant had been allowed to count their

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earlier service for the purpose of seniority. The names of these persons are given in para 5 of an interlocutory application filed by the counsel for the applicant on 5-11-1986. The duties carried out by the applicant as LDC in Wellington Staff College were identical to those which he had to perform as LDC at LRDE and therefore there was no justification for ignoring his earlier service. The general principles for determination of seniority of civilians in Defence Services with reference to fixation of seniority of persons appointed on transfer in para 7(iii) which provide that such persons shall be ranked below all direct recruits or promotees selected at the same time was not applicable to the case of the applicant.

7. Shri M.S.Padmarajaiah, learned counsel for the respondents, on the other hand, asserted that the principle of assigning bottom seniority to a person appointed in an organisation on transfer from another unit on compassionate grounds was equally applicable to cases of mutual transfer like that of the applicant. Even though he may not have given a specific undertaking that he would forgo his earlier services for the purposes of seniority, the applicant had agreed to abide by the existing rules governing leave, seniority etc. in a declaration signed by him on 18-4-1977. This meant that he had agreed to take the bottom seniority in LRDE on mutual transfer in accordance with the existing rules and instructions. He cannot go back on that now. His transfer to LRDE was not in public interest and that was why he had also indicated that he was willing to travel to Bangalore from Wellington at his own expense. Shri Padmarajaiah categorically denied that the persons named in the interlocutory application dated 5-11-1986 filed by the applicant were given credit for their earlier service in the matter of seniority. That the applicant's earlier service was taken into account for the purpose of pension and other terminal benefits was not relevant for counting

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the service for the purpose of seniority in the grade. Shri Padmarajaiah also drew our attention to a letter dated 18-4-1977 written by the applicant to the Colonel Administration, Defence Services Staff College, Wellington by which he made an application for a transfer to Bangalore on the ground that his mother was suffering from blood pressure and could not stay on the hills and for that reason he had to send her to his native place, Bangalore. She was dependent on him and he could not maintain two establishments. Since Shri M.Akhtar had sought a transfer to Wellington from Bangalore, he had requested that he be transferred to Bangalore on mutual transfer. This clearly indicated that his request for transfer, though by way of mutual transfer, was also on compassionate grounds.

8. *M* We have considered the submissions made by counsels on both sides and we have also perused the personal file of the applicant and the papers connected with his mutual transfer to Bangalore from Wellington. We find that it was a case of mutual transfer. We are satisfied that according to rules governing the subject, where a person is transferred in such circumstances by way of mutual transfer, he has to take the bottom seniority in the place to which he is transferred. We have seen the undertaking given by the applicant on 18-4-1977 wherein he has stated that he would "abide by the existing rules governing leave and seniority etc." and that he was willing to travel to the new unit at his own expense. All this points unmistakably to the conclusion that the applicant was bound to take the position of bottom seniority in the grade of LDC on his appointment in LRDE in Bangalore and cannot claim his earlier service at Wellington or as an ex-serviceman in the army for the purpose of seniority and promotion in LRDE.

R. S. Iyer

80 (5) *Recd. S.R.A.*
✓ 21/3

D.No. 2028/87 sec. iv-A
SUPREME COURT OF INDIA
NEW DELHI.

dated 6-4-88

From: The Additional Registrar,
Supreme Court of India,

To ✓ The Registrar,
High Court of Central Administrative Tribunal
Bangalore Bench, Bangalore,

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 5027/87

(Petition under Article 136 of the Constitution of India for
Special Leave to Appeal to the Supreme Court from the Judgment
& Order dated 26.11.87 & 15.1.87 of the High Court of
Central Administrative Tribunal Bangalore Bench, Bangalore
in Appln. No. 189/86 & Review Appln. No. 5/87)

26.11.86
Martin D'Souza ... Petitioner

-vs-

Union of India & Anr. ... Respondent

Sir,

I am to inform you that the petition above-mentioned
for Special Leave to Appeal to this Court was filed on behalf
of the petitioner above-named from the Judgment and Order
Central Administrative Tribunal Bangalore Bench, Bangalore
of the High Court noted above and that the same was/were
dismissed by this Court on the 14th day of March
1988

Yours faithfully,

for ADDL. REGISTRAR
for ADDL. REGISTRAR