

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 4TH NOVEMBER 1986

Present: Hon'ble Shri Ch. Ramakrishna Rao, Member (J)
Hon'ble Shri P. Srinivasan, Member (A)

APPLICATION NO. 408/86.

Sri Babu Keskar, major,
S/o Shri Gangadhar,
presently working as L.D.C.
in Electronics and Radar,
Development Establishment,
BANGALORE.

Applicant

(Shri B.A. Ramakrishna, Advocate)
Vs.

1. Union of India,
by its Secretary,
Ministry of Defence,
Raksha Bhavan, New Delhi.
2. Director General Research &
Development, Bharat Sarkar
Rakshna Mantralaya,
Anusandhan Tatha Vikas Sangathan,
DHQ PO, New Delhi-110011.
3. The Director,
LRDE, High Grounds,
BANGALORE

Respondents

(Shri M.S. Padmarajaiah, Advocate)

The application has come up for hearing before
this Tribunal to-day, Member (J) made the following:

O R D E R

This is an application, which was initially
filed as a writ petition and later transferred to this
Tribunal from the High Court of Karnataka.

2. The applicant was recruited as a Lower Division
Clerk (LDC) in the Army Service Corps (ASC), (MT Records),
by an order dated 12.2.1966. His name was sponsored by
the local employment exchange at Aurangabad along with
others and after completing the formalities of interview
and medical examination (both in December, 1965), he was
ultimately appointed as LDC in ASC (MT), Aurangabad.

Ch. B. Keskar

On 6.3.1968, he was transferred to Electronics & Radar Development Establishment (LTDE), Bangalore. After the applicant joined at LRDE, Bangalore in April, 1968, it was discovered by the authorities that the applicant was overaged by 35 days on the date of his first appointment. LRDE then addressed the ASC, Aurangabad to obtain relaxation of the upper age limit in respect of the applicant. Thereupon ASC addressed the Armed Headquarters (AHQ) in the matter, not only in respect of the applicant, but also a few others who were similarly overaged when they were recruited. It took nearly a decade for the AHQ to take a decision. Ultimately in Lr.No. B/37581/PC-4/Q/ST-12/4373-S/D dated 7.12.1978 (Annexure-E to the application), the relaxation sought for in the matter of age was granted, but in the aforesaid letter, a paragraph was, however, added at the end, which reads as follows:-

"The period of service rendered prior to issue of this letter is to be treated as ad hoc service not to be counted for purpose of seniority, promotion and confirmation."

The aforesaid extract is under challenge in the present application.

Shri B.A. Ramakrishna, learned counsel for the applicant, contends that the AHQ having decided to grant the relaxation in regard to age limit was not justified in disallowing the right of the applicant to claim benefits regarding seniority, promotion, confirmation etc., from the date of his initial appointment upto 7.12.1978. In other words, the contention is that with the relaxation, the irregularity, if any,

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attaching to the appointment got cured and thereafter there was no scope to treat the period prior to 7.12.78 as ad hoc service. Counsel has relied on a decision rendered by this Tribunal in A.No. 730/86 (to which one of us was a party) in support of his contention.

Shri M.S. Padmarajaiah, learned counsel for the respondents, submits that it was purely on ex gratia considerations that the relaxation in the upper age limit was granted by the authorities and the applicant has no right to claim any benefit arising out of such relaxation.

After giving the matter careful thought, we are satisfied that the relaxation granted in the letter dated 7.12.1978 by the AHQ carried with it, in the eye of law, all benefits flowing out of such relaxation from the time the applicant was initially appointed, which was as long back as in 1966. Further, in the present case, the applicant was overaged only to the extent of 35 days, and he was well within the age limit when he was selected and medically examined. It is, therefore, reasonable to infer that it was only on account of the processing of the file dealing with the appointment that the delay of 35 days occurred, and the condonation was, in the circumstances, justified and full effect should have been given to the relaxation by granting the benefits of seniority, promotion, confirmation etc.

We have perused the decision relied upon by Shri Ramakrishna. The facts therein are on all fours with the facts in the present case, and the

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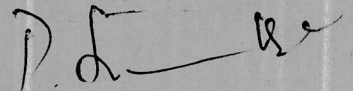
conclusion reached therein fully supports the view we have taken here.

We have, therefore, no hesitation in striking down paragraph 2 of the impugned letter (Annexure-E to the application) and direct the respondents to grant the applicant the benefits of seniority, promotion etc. with reference to the date on which he was initially appointed as LDC (12.2.1966).

In the result, the application is allowed, no order as to costs.



(Ch. Ramakrishna Rao)
Member (J)



(P. Srinivasan)
Member (A)