

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE.

DATED THIS THE ELEVENTH SEPTEMBER, NINETEEN EIGHTY SIX.

Present: Hon'ble Shri Ch. Ramakrishna Rao, Member (J)
and
Hon'ble Shri L.H.A. Rego, Member (A).

Application Nos. 480 & 506 of 1986.

Between:-

D.R. Sethu Rao,
Telephone Operator, & G.S. Bhadri,
P & T Dept.,
Belgaum. Dharwar Dist.

....Applicants in A.Nos. 506/86
and 480/86 respectively.

and

1. The Director, General of Postal
and Telegraphs, New Delhi.
2. The Union of India, by its
Secretary, Department of
Communication,
New Delhi.

...Respondents.

The applications having come for hearing before this
Court, the Member (J) made the following:-

O R D E R

These two applications are disposed of by this
common order, since they involve similar questions of fact
and law. For the sake of convenience, the applicant in the
former application is ~~is~~ referred to as the first applicant,
and the applicant in the latter is referred to as the second
applicant.

2. Shri R.U. Goulay, learned counsel for the applicants, submits that the applicants initially joined military service as Combatant Clerks and were later discharged; that after discharge, they were selected as Telephone Operators in the Posts and Telegraphs Department in the Civil Services; that the pay of the applicants was fixed without reference to the contents of O.M. No. F.6(8)/E/63 dated 11.4.1963 of the Ministry of Finance, New Delhi to the D.G., P & T, New Delhi (in short, OM), without counting their past service for the purpose of fixation of their pay and seniority on re-employment; that the fixation of pay of the applicants in the aforesaid manner, besides causing hardship to the applicants, is legally unsustainable.

3. Shri M.S. Padmarajaiah, Senior Central Government Standing Counsel, submits that the applicants are governed by G.I.M.E. Memo No. 8(34) EST.III/57 dated 25.11.1958 (in short, the memo); that the OM relied upon by the applicants does not apply to them, as they were not appointed as Lower Division Clerks/Junior Assistants (LDCs/JAs), but as Telephone Operators (TOs); that the OM prevails over the memo only in cases where the ex-combatant clerks (ex-CCs) are appointed as LDCs/JAs on the ground that special notification will supersede the general, and therefore the applications are misconceived.

3x4. After giving careful thought to the rival contentions, we are satisfied that the memo is of general applicability, while the OM is ~~applicable~~ applicable only to the cases

of ex-CCs appointed as LDCs/JAs in Civil posts. We are persuaded by the submission made by Shri Padmarajaiah that the experience gained by the ex-CCs enables them to discharge the duties of LDCs/JAs in civil posts more efficiently than in other posts like TOs, and this being a policy decision of the Government, is beyond the pale of consideration by Courts and Tribunals. No assurance was held out to the applicants at the time of their discharge that they would be absorbed only as LDCs/JAs and they applied for the posts of TOs out of their own volition in response to the applications invited for the said posts. The applicants, therefore, do not have any ground for grievance.

5. Shri Goulay strenuously contends that one Shri S. Ramamurthy, similarly placed as the second applicant, was given the benefits of the OM. Shri Padmarajaiah submits that the former was appointed as LDC in the Bidar P.O., while the latter was appointed in the telephone exchange at Belgaum, and as they were appointed to different posts, which were governed by different provisions in the matter of fixation of pay, the grievance of the second applicant is ~~more~~ ^{more} imaginary than real.

" All those persons released from military service constitute one class and it is not possible to single out certain persons of the same class for differential treatment. There appears to be no reasonable classification between the persons who were released on compassionate grounds and those who were released on other grounds and in this respect, the petitioners have been deprived of the equal opportunity. The amendment by which proviso was added therefore is violative of Arts. 14 and 16 of the Constitution and, therefore, bad."

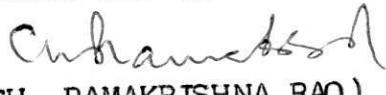
The decision relied upon by Shri Goulay is really of no assistance to him, since in the present case, the ex-CCs released from military service were treated as a class different from others for the ~~maxima~~ purpose of appointing them to the posts of LDCs/JAs. As the Government considered that the experience of these persons was such that they would ~~maxima~~ perform the duties of LDCs/JAs better than others left out of the group, we are satisfied that there is a reasonable nexus between the persons constituting the ~~is~~ class and the object sought to be achieved, with the result that the plea of discrimination fails.

7. After careful consideration of the pros and cons, we are satisfied that the fixation of pay of the applicants

made by the respondents does not suffer from any legal infirmity.

8. In the result, the applications are dismissed.


(L.H.A. REGO)
Member (A)
11.9.1986.


(CH. RAMAKRISHNA RAO)
Member (J)
11.9.1986.

dms.