

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 19TH DAY OF DECEMBER 1986.

Present: Hon'ble Shri Ch.Ramakrishna Rao

... Member(J)

Hon'ble Shri P.Srinivasan

... Member(A)

Application No.959/86(T)

Shri.H.Morris Williams,
Major, now working as LDC,
in the office of the Garrison Engineer,
M.E.S. (Military Engineering Service),
Jalahalli,
BANGALORE-560 013.

.. Applicant.

(Shri K.B.Swaminathan, Advocate)

VS.

1. Union of India,
by its Secretary,
Defence Department,
NEW DELHI.

2. Thal Sena Mukhyalaya,
Pramukh Engineer Division,
Army Head Quarters, by
Engineer-in-chief,
DHQ PO,
NEW DELHI.

3. Garrison Engineer,
Military Engineering Service,
MES, Jalahalli,
BANGALORE-13,

.. Respondents

(Shri Basavaraj, Advocate).

The Application has come up for hearing before Court today. The Hon'ble Member(A) Shri P.Srinivasan made the following:

ORDER

This is a transferred application received from the High Court of Karnataka. The applicant was working as a civilian

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school master in the Military Engineering Group (MEG) at Bangalore from 16-7-1966. He was appointed to the post in lieu of combatants. In 1976, the applicant was discharged from this post on the ground that there was a surplus of personnel in the cadre of civilian school masters. However, he was offered the post of Lower Division Clerk with the MEG at Goa, a post which carried a lower scale than that of civilian school master. He accepted this post and joined at Goa. It appears that some time in 1978, the Army HQ decided to create 108 permanent posts (Annexure F) of civilian school masters. Persons who were working as civilian school masters on the date of the order i.e. 12.12.1978 were duly absorbed in these posts. The applicant's grievance is that he should have been absorbed in these posts and should have been given seniority from 1966 in the grade of civilian school masters. The prayer in the application is that a direction should be given to the respondents to count the seniority of the applicant from 1966 and to the post him as civilian school master or store keeper or in any other suitable post in consonance with his qualifications and grant him all increments as if he had been appointed from 19-7-1966.

2. Shri K.B. Swaminathan, learned counsel for the applicant, urges before us that the applicant having worked as civilian school master between 1966 and 1976 and having acquired all the qualifications necessary for the post, his case should have been considered for re-absorption when 108 permanent posts were created in 1978. His juniors who had continued as civilian school masters had been absorbed but not he. Shri Swaminathan also points out that another person, Shri Kameshwar Rao, who was working as civilian school master and posted out as an LDC was given the same scale of pay while in the case of the applicant, he had to go to a lower scale of pay though the actual pay drawn by him when he was discharged from the post of civilian school master was protected in his new post as LDC.

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3. Shri N. Basavaraju, learned counsel for the respondents, submits that in 1976, the applicant was rendered surplus because of the availability of ^{combatants} ~~combatants~~ for the post. Since his appointment was against the vacancies of ¹¹ combatants, he had to be discharged when suitable combatants became available. After he was discharged, he had no further right for appointment as civilian school master. It was out of humanitarian considerations and also taking into account his long service that he was offered alternative appointment as LDC in another military establishment. After discharge from the post of civilian school master, he could not lay claim to a post carrying the same scale. However, on appointment as LDC, he was granted the same pay as he was drawing earlier. Subsequently, when the 108 posts of civilian school masters were created, these vacancies were meant for persons working at the time as civilian school master. As the applicant was no longer working in that post, he could not be absorbed in one of them. He therefore urges that the applicant's claim that he should be given seniority in the post of civilian school master from 1966 and that he should be re-appointed in that post should be rejected.

4. We have considered the matter carefully. As mentioned earlier, the applicant was discharged from the post of civilian school master in 1976 on the ground that he had been rendered surplus. He did not challenge the posting at that time. In any case, he cannot challenge it now. The fact that he ceased to be a civilian school master and was appointed as LDC 1976 has become final. That being so, he could not later on claim that he should be absorbed in the posts of civilian school masters created in 1978 when he no longer held that post. Of course the Administration could have taken a sympathetic view and taken him back because of his earlier service in that post, but they did not do it. No doubt the applicant was making representations after he went over to Goa that he should be taken back as civilian school master. In fact, Shri Swaminathan showed us the correspondence in the course of which the Chief Administrative Officer, Army Headquarters, had called for particulars of educational qualification etc. of the applicant for consideration for regularisation or restoration of the applicant to his original post. Whatever that may be, he had not in fact been taken back as civilian school

Shri T. S. R.

master. Therefore, as a Lower Division Clerk, as we have said earlier, he had no claim for absorption against the newly created posts in 1978. Therefore as a matter of legal right, we cannot hold that the applicant was entitled to be reappointed as civilian school master and to get his salary re-fixed as if he had held that post continuously from 1966. We, however, cannot fail to observe that the respondents could have considered the case of the applicant with some more sympathy especially as he seems to have worked as civilian school master before his discharge for many years and had all the qualifications necessary for the post. We, however, hope that they will do so even now, if there are vacancies. We leave the matter at that.

5. In the result, the application is dismissed with the observations made above. There is no order as to costs.

Ch. Ramakrishna Rao
19-12-86

(CH. RAMAKRISHNA RAO)
Member (J)

P. Srinivasan
19-12-86

(P. SRINIVASAN)
Member (A)

rv.