

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 9TH DAY OF SEPTEMBER 1986

Present : Hon'ble Justice K.S.Puttaswamy,

Vice-Chairman

Hon'ble Shri P. Srinivasan

Member

APPLICATION NO. 730 OF 1986

Smt. Marykutti Elias,
W/o Shri Elias P. Joseph,
Lower Division Clerk,
Controllarate of Inspection,
Electronics, P.B. No.606,
Bangalore - 560 006

... Applicant

(Shri Ranganath Jois .. Advocate)

Vs.

1. Union of India represented by its Secretary, Ministry of Defence, "Raksha Bhavan" New Delhi - 110 003.
2. The Director of Supplies and Transport (QMG/ST(2) Army Headquarters, Post New Delhi.
3. Controller of Inspection Electronics, CIL, Bangalore-6.
4. Shri K.M. Gopalan, Lower Division Clerk, CIL, Bangalore-6.
5. Shri S.I. Dekonda, Lower Division Clerk, IFL, Bombay.

... Respondents

(Shri N. Basavaraju .. Advocate)

The application came up for hearing before Court on 9.9.1986.

Member (A) made the following:

ORDER

The applicant filed writ petition No.5120 of 1981 before the Karnataka High Court which on transfer has been taken on file as Application No.730 of 1986 before this Tribunal.

2. The applicant, a civilian employee of the Army, is currently working as a Lower Division Clerk (LDC) in the Inspectorate of Electronics at

P.J. *[Signature]*

Bangalore. She was appointed as LDC on 3.2.1966 and was confirmed in that post by the Contoller of Inspection, Electronics, Bangalore, with effect from 1.4.1971. It appears that sometime after her recruitment the authorities concerned noticed that at the time of her appointment as LDC her age was above the upper limit prescribed for the post according to the rules then in force. Remedial action was taken by a letter dated 7.12.1978 issued by the Under Secretary to the Government of India, Ministry of Defence, by which Government sanction for relaxation of the upper age limit for appointment was given in her case along with those of others. The letter, however, went on to state that "the period of service rendered prior to issue of this letter is to be treated as ad hoc service not to be counted for the purposes of seniority, promotion and confirmation". It is this denial of credit for service rendered by her from 1966 to 1978 which the applicant complains against in this application.

3. We are unable to see how the Ministry of Defence while relaxing the upper age limit in respect of the applicant could lay down the condition that her service rendered prior to the date of the letter granting relaxation should not be counted for all the purposes stated therein. No reasons have been furnished in the impugned letter an extract of which, so far as it relates to the applicant, appears at Annexure B to the application. Learned counsel for respondents 1 to 3 Shri N. Basavaraju was also unable to furnish any valid reason for imposing the condition. As a result of the relaxation of the upper age limit for recruitment in the case of the applicant, her entry into service on 3.2.1966 stood validated ex post facto, for without the relaxation it would have been an invalid appointment. Once her entry into service was thus deemed to have become valid, there was no justification to treat all service rendered by her thereafter upto 1978

P. S. [Signature]

as virtually non est for the purpose of seniority, promotion and confirmation. Her confirmation as LDC from 1.4.1971, though it may have proceeded, at the time, from a mistaken impression that she had been validly appointed, would also stand automatically validated when the initial appointment was regularised ex post facto by the order relaxing the upper age limit. Her service before 1978 could be treated as ad hoc only if the initial recruitment was invalid but not after it had been pronounced to be valid by the order of Government dated 7.12.1978. The condition imposed in this regard in the letter dated 7.12.1978 (Annexure B) has to be struck down for this reason itse.f

4. Learned counsel for the applicant pointed out that age relaxation had been given earlier to three other persons who were recruited as LDCs before the applicant but in their cases, service rendered by them from the date they were appointed had been allowed to be counted for all purposes. The reply on behalf of respondents explains away this differential treatment in the following words:-

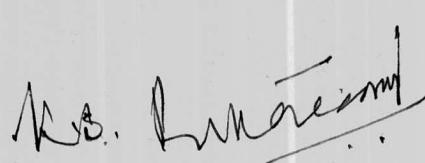
"The cases of M/s. Parvati, A.S. John and Uma Devi and others were considered separately and earlier and in the peculiar facts and circumstances of this case, orders of relaxation came to be passed in respect of them in the manner they were made."

What these "peculiar facts and circumstances" were is neither explained in the reply of the respondents nor by learned counsel for respondents before us. We are, therefore, satisfied that there was no justification for a different and hostile treatment in the case of the applicant who was similarly circumstanced as the three others. This is an additional reason for which the condition imposed in Annexure B deserved to be quashed.

P. S. Iyer

5. In the result we strike down the Condition imposed in para 2 of the letter dated 7.12.1978 (Annexure B) against the applicant and direct respondent Nos.1 to 3 to allow the applicant to count all her earlier service prior to 7.12.1978 in the same way as was done in the cases of M/s. Parvathi, A.S. John and Uma Devi and extend to her all consequential benefits flowing therefrom.

6. Application is disposed of on the above terms. No orders as to costs.



CHAIRMAN



MEMBER