

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00499/2017

DATED THIS THE 09TH DAY OF APRIL, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Brahm Deo mahato,
S/o Mahendra Narain Mahto,
Aged about 48 years,
Working as Senior Technical
Assistant 'B' QAG (E&L)
Gas Turbine Research Establishment,
C.V. Ramanagar, Bangalore – 560 093

..... Applicant

(By Advocates Shri H.R.S Rao and Shri K. Sreeram)

Vs.

1. The Union of India,
Represented by the Secretary
To government of India,
Ministry of Defence, South Block,

New Delhi – 110 011

2. The Director
Gas Turbine Research Establishment,
C.V. Ramanagar, Post Box No. 9302
Bangalore – 560 091

....Respondents

(By Shri Vishnu Bhat, Senior Panel Counsel)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The matter is covered by our earlier order in OA No. 172/2009 dated 15.04.2011 which we quote:

"O R D E R

HON'BLE SMT. LEENA MEHENDALE..... MEMBER (A)

The administration has a responsibility to find solutions to traps which are sometimes created inadvertently. When there is a prayer for settling a trap-like issue the same must be settled speedily, else it also shows lack of application of mind. This case is an example of such a situation.

2. *This OA was filed on 05.04.2009 under Section 19 of the Administrative Tribunals Act against the delay caused by respondent-2 for considering his appointment as the STA-A (Senior Technical Assistant grade 'A') on the Establishment of GTRE, Bangalore under DRDO.*

3. *The case of the applicant is that he is a Combatant member of Indian Air force as a Sargeant (mechanic Transport Fitter – Tradesman) whose services were kept at the disposal of ADE (Aeronautical Development Establishment), Bangalore which works under and as a field establishment of DRDO, New Delhi, whose Director is Respondent No. 2 herein. The Director of ADE is also the Chairman of the ZRC (S) (Zonal Recruitment Centre South) in which capacity he has been impleaded as Respondent No.3.*

4. *The ZRC (S), Bangalore vide its Employment News 25-31 March, 2006, vide Annexure-A1 invited applications for various posts including 101 posts of STA –A (Senior Technical Assistant – Grade 'A'). The advertisement offered age relaxation to those who had*

served the Armed Forces. The applicant submitted his application for the said post on 06.04.2006 (Annexure-A2). The last date for receiving the application was 20.04.2006 as per Annexure-A1 and thus his application was in time.

5. It is claimed that by virtue of applicant being a Combatant and having worked in the Indian Air Force and having completed 18 ½ years of service, the applicant and persons such as him are eligible to apply to various civil posts against the reservation of Ex-servicemen because at the end of 18 ½ years of service as Combatant, he is allowed to retire. Further, the Combatants are normally retired at the end of 20 years of service unless and until they are given further extension. Having already completed 18 ½ years of service, he had applied for extension beyond 20 years prior to his application for civil post but had not received any communication regarding extension of his combatant service beyond 20 years. He received such order only after the last date for application to the civil post.

6. Thus, as per his claim, his status vis-à-vis the Indian Air Force as on the date of application was that:-

(a) he had completed 18 ½ years of Combatant service which is a qualifying service for retirement as well as for seeking civilian posts as an Ex-serviceman.

(b) However, he has not actually left IAF and thus, may continue as a serviceman in natural course upto 20 years of service.

(c) As permitted by rules, he has also applied for extension with IAF beyond the period of 20 years, but, the outcome of that application is not known.

His application for the new employment as STA-'A' in the office of the ZRC (S), Bangalore was submitted through proper channel which was routed through the Administrative Officer of ADE who forwarded it to the Director, ADE (who is also the Chairman of the ZRC) on 11.04.2006, which is before the last date of application (Annexure-A3).

8. While filling up the application form Annexure-A2 the applicant had mentioned his category as OBC but had not claimed himself as Ex-serviceman. He submits that since he had already completed 18 ½ years in the combatant service he becomes eligible to be posted as Ex-serviceman in addition to being posted against an OBC reservation. This is the crux of the case.

9. The interviews were conducted in October-November, 2006 and during the interview the applicant produced the NOC (No Objection Certificate) issued by his parent department namely Air Force Headquarters which showed that he was a Combatant member

of Indian Air Force and the NOC made it clear that if he was selected, the Air force Headquarters would discharge him from service and allow him to join the said civilian post. The applicant claims that the very act of the IAF Head Office giving him NOC to apply for a civil post after completion of 18 ½ years of service makes his status in the new job as equivalent to an Ex-serviceman although technically he continues to be a Serviceman and not Ex-serviceman on the day of application and till he is relieved to join the new post.

10. *The select list came to be published on 22.01.2007 and confirmed his selection against the post of STA-'A' in the OBC quota on the establishment of GTRE, Bangalore (Annexure-A7). He was then asked on 13.03.2007 (Annexure-A8) to fulfill certain formalities including filling up three sets of attestation forms etc. which he did and waited. When he did not receive any further communication for some time, he gave two representations Annexure-A9 and A10 dated 17.08.2007 and 11.09.2007 respectively. In response to them he was informed by letter dated 19.09.2007 Annexure-A11 by the Chief Administrative Officer of the ZRC (S), Bangalore, that there was an ambiguity regarding his status as Ex-serviceman and the matter was referred to D.R.D.O., Headquarters, (Respondent No. 2) and further that his case for civilian appointment would be decided on receipt of the clarification from them. He further received two more replies of that nature vide communications dated 06.11.2007 and 27.05.2008 (Annexure-A12 and A13). He sent another representation dated 11.11.2008 (Annexure-A14) once again claiming that his status as Ex-serviceman was not disputed because he was eligible to apply for a civilian post immediately after completion of 18 ½ years of service. Hence the non-mentioning by him as Ex-serviceman in his application should not be held against him.*

11. *He quoted the case of the similarly placed candidate Shri Santosh Kumar Chourasia who was also a Combatant Member who was on extended service after completion of more than 20 years of service and who had applied for the post pursuant to notification at Annexure-A1. He was selected as STA-A in the Electronics grade and is now given an appointment in ADE, Bangalore in July 2008 and the Respondents-3 & 4 can verify from his service records that the present applicant has a similar case. A perusal of Annexure-A7 shows that Shri Santosh Kumar Chaurasia has been taken in the quota of Ex-servicemen and OH though under OBC he would also be over-age. The applicant claims that because the status of Ex-serviceman is acknowledged for Shri Santosh Kumar Chaurasia, who was also on extension and had not actually retired, therefore, the applicant also must be similarly treated.*

12. *Under the circumstances, the applicant prays for a directions to the respondents to consider his case for issuing appropriate order of appointment as STA-A on the Establishment of GTRE against Ex-*

serviceman quota as per the selection process held by the ZRC (S), Bangalore and pursuant to the list published vide Annexure-A7 dated 22.01.2007.

13. It is seen from Annexure-A7 that GTRE (Gas Turbine Research Establishment) issued the forms and other papers to him as a pre-requisite to issue appointment order and the same were forwarded to him through Respondent No. 3 who then questioned his status as Ex-serviceman and forwarded the matter to the competent authority i.e., Respondent-2 from whom the clarification is still awaited.

14. Coming to the reply by the respondents, it is seen from the verification of the reply statement that the Chief Administrative Officer has filed the reply statement on behalf of all the respondents. Hence the respondents cannot claim that no proper reply was issued to the applicant because the correspondence between Respondents-2 and 3 has not come to a finality. The responsibility of stating reasons for delay in considering his representation lies on all the respondents and more particularly on respondent No. 2 who cannot discharge it simply by authorizing someone else to file verification. Responsibility also lies on the verifying officer. No attempt has been made to explain why Respondent-2 is unable to answer the reference made to him by the Respondent-3 on the question of applicant.

15. It is submitted by the respondents that while applying for the post of STA-A the applicant has mentioned himself to be OBC and claimed the post against OBC reservation for which he was over-age and hence not eligible against OBC quota. He should have similarly claimed himself as Ex-serviceman and should have mentioned this in the appropriate column and should have claimed his appointment under reservation for Ex-serviceman also. As the applicant is over age as OBC candidate, he was not considered against OBC reservation and he cannot be considered against Ex-serviceman reservation because he has not stated against Column-12 of Annexure A2 that he is an Ex-serviceman.

16. While making this submission the respondents have not clarified as to how a combatant person, who is under promise to be relieved (by way of NOC) but not yet actually relieved can claim to be Ex-serviceman. That would be a false statement, while if he does not mention himself as Ex-serviceman, he is denied opportunity. This is the typical trap-like situation, for which respondents No.2 and 3 had a responsibility to find a solution.

17. It is further stated that the IAF merely permits their officials to seek re-employment in Civil establishments of Army on completion of 18 ½ years service. The NOC issued by IAF alone does not confer the Ex-Serviceman status on a candidates applying for re-employment under ZRC (S), Bangalore, ADE. The ZRC(S) is guided

by instructions issued by DOP&T with regard to eligibility of Armed Service Personnel applying for Civil Posts. A candidate working in the Armed Forces would become eligible for applying for Civil Posts only when he completes the prescribed period of Army Services within a year from the last date for receiving applications. The respondents admit that on the last date for receipt of application the applicant had completed 18 ½ years of service in the IAF and was eligible as Ex-serviceman. However, in view of the fact that he applied against only OBC quota and not Ex-Serviceman Quota, these provisions relating to eligibility of service personnel applying for civil posts referred to in the OA are only academic and not relevant to the instant case.

18. The learned counsel for applicant argued that the anomaly in respondents claim is obvious. If the applicant could not be posted against OBC quota (being over-age) and also not against ex-serviceman quota not being so mentioned in his application, then why was he called for interview and why selected.

19. The learned counsel for the applicant points out that the reply statement mentions at para 12 that the letter dated 18.01.2007 intimating selection for the post of STA 'A' (Automobile) was erroneously issued. It is also mentioned at para 12 and 13 of the reply statement that the publication of select list was also erroneous by treating him as Ex-serviceman. We however, note that Annexure A6 issued by the ZRC dated 18.1.2007 was issued against the OBC post and not against the Ex-serviceman as stated in para 12 and 13 of the reply statement.

20. The learned counsel for applicant has relied on the judgment of Hon'ble Supreme Court in the case of East Coast Railway and Another Vs. Mahadev Appa Rao and Others (2010) 2 Supreme Court Cases (L&S) 483 the headnote of which states as under:

"A. Recruitment process – Examination/Selection test – Cancellation of – Judicial review on the ground of arbitrariness – Held, though a candidate who has passed an examination or whose name appears in select list does not have an indefeasible right to be appointed, yet appointment cannot be denied arbitrarily, nor can selection test be cancelled without giving proper justification."

The learned counsel argues that the action of the respondents is arbitrary because it shows partiality towards appoint of Shri. Santosh, who also was in the service beyond the required 18 ½ years, but mentioned in the application that he is an Ex-serviceman. The withholding of appointment to the applicant is not only unfair and discriminatory when compared to the case of Shri Santosh, but, it is also without application of mind because if at all any weightage could be given to the non-mentioning of Ex-serviceman status in the application form, then it was only a minor weightage. That minor

weightage too goes away when the applicant appears in the interview and produces the NOC from his office promising that if selected, the parent department would relieve him to join the civilian post. He further claims that after taking so many months and still not deciding the issue referred to him by Respondent No.3, the Respondent No.2 has now come out by stating that the inclusion of the applicant's name in the select list as well as the issuance of appointment letter to him were done erroneously. This is arbitrary and respondent No.2 cannot be permitted to take this stand. It is a situation similar to that in the citation and hence applies to the instant case.

21. *The learned counsel for Respondents argued that the ZRC (S) had proceeded to fill up 101 vacancies of STA-A, out of which 21 posts were reserved for OBC and 7 were reserved for Ex-servicemen and the applicant cannot be posted against either. He has cited the judgment of Hon'ble Supreme Court in the case of Union of India Vs. Dalbir Singh & Anr. – 2009 AIR SCW 4552. In the headnote the Hon'ble Apex Court has held as under:*

“Constitution of India, Art. 16 – Appointment – Post of Mazdoor in Govt. department – Separate advertisement issued for general and OBC category – Number of posts in said categories mentioned – Caste certificate produced by candidate claiming appointment in OBC category found to be defective – He never claimed to be considered in general category – His case cannot be directed to be considered in general merit only because he has scored more marks than last selected candidate in general merit.”

Applying the same principle, when the applicant did not apply for Ex-serviceman's quota, he cannot be considered for that vacancy.

22. *We have heard both the learned counsel for the applicant and the learned Additional Central Govt. Standing Counsel for Respondents. We have also carefully perused the records and the annexures attached thereto.*

23. *It is seen that a peculiar trap-like situation has arisen here for which the department is dragging its feet in not taking a decision to resolve the issue. We agree with the learned counsel for the applicant the applicant who is a Combatant Army personnel would normally come to the end of his combatant service at the end of 18 ½ years of service. Hence, on that day, he notionally acquires the status of an Ex-serviceman. At the same time, if he has not been discharged and is on extension for another 1 ½ years, i.e., upto 20 years of service, then he is technically a serviceman, and mentioning himself as an Ex-serviceman in application form would be a falsehood. We can appreciate that under such a situation, where such an incumbent has*

to apply for civilian post against the Ex-serviceman's quota. It may not be very clear to him whether he can truthfully and legally claim to be an Ex-serviceman, although notionally he has acquired eligibility on completion of 18 ½ years of service.

24. The solution lies at the time and place of interview, where his NOC from IAF headquarters gets examined. When the department agrees to relieve him if selected, then a further weightage gets added to his notional status of Ex-serviceman. Any prudent person who is under extension for 1 ½. Years, but not yet guaranteed of his selection to civilian post is bound to retain his status of Serviceman and not resign simply to be able to claim status of Ex-serviceman. Still he certainly has a right to aspire for a civilian post which would keep him employed for a longer time. Considering that the whole concept of reservation for Ex-servicemen in civilian posts is born from the philosophy that Combatant army officials must be granted good re-employment facilities in view of their spirit of sacrifice during the Combatant years, it is logical to expect that the DRDO should have issued some clarification long back to take care of a situation such as the present one in which a truth-speaking applicant is not able to decide whether in the application he should mention himself as a serviceman or an Ex-serviceman. Even though the Department may not have come across such a situation earlier. but, when a reference of this kind was made to them, they ought to have decided the matter speedily. The Respondents have not only failed to resolve the issue but are also seen as retracting from their own action of selecting him without due consideration to his eligibility as Ex-serviceman and without giving a due reply to him.

25. We therefore, see merit in the prayer made by the learned counsel for applicant and also feel the need to resolve this trap. It is therefore, fair and just, in our opinion, that the applicant who has completed his 18 ½ years of combatant service and can be relieved any moment to join a civilian post, should be considered as an Ex-serviceman and accommodated against the post reserved for Ex-servicemen. The dilemma before the present applicant on the date of submitting his application was whether he was allowed to mention himself as an Ex-serviceman and it is because of this dilemma that he has not mentioned himself as an Ex-serviceman in the application, instead, he has carried the NOC from his parent department and submitted it while appearing for interview. We therefore, consider it fit that respondent No.2 should clarify for future notifications that any person who has completed 18 ½ years of Combatant service, but may be continuing for extended period is eligible for being posted against Ex-serviceman quota, subject to NOC. In the present OA too, we think it just and fair that the applicant is appointed as STA-A against the post reserved for Ex-servicemen in the office of the 4th respondent.

26. The OA is allowed. The Respondents No.2, 3 and 4 are

directed to issue order of appointment to the applicant appointing him as a Senior Technical Assistant Grade-A on the establishment of GTRE as per the select list published vide communication dated 22-01-2007 (Annexure A7). This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No order as to costs."

2. It went upto the Hon'ble High Court in Writ Petition No.25174/2011 dated 03.04.2014 which we quote:

"ORDER

The respondent was a Combatant Member of the Indian Air force as a Sergeant of Mechanical Transport Fitter at MTTI. The ZRC (S), Bangalore vide employment news dated 25.03.2006 invited applications for the various posts including 101 posts of STA-A (Senior Technical Grade 'A'). The advertisement offered age relaxation to those who have served the Armed Forces. The respondent submitted his application. It was claimed that the respondent being a Combatant and having completed 18 ½ years of service, is eligible to apply to the various civil posts under the reservation of Ex-servicemen because at the end of 18 ½ years, as a Combatant, he is allowed to retire. Further the combatants are normally retired at the end of 20 years of service unless and until they are given further extension. Having completed 18 ½ years of service, he had applied for extension prior to his application for civil post but had not received any communication regarding extension of his combatant to 20 years. His application seeking the new employment was submitted through proper channel but was routed through the administrative officer of ADE who forwarded it to the Director, ADE. The applicant was also categorized as OBC but claimed himself as Ex-serviceman. Since he has completed 18 ½ years in the combatant service he becomes eligible to be considered as an Ex-serviceman in addition to being considered against an OBC reservation. The select list came to be published on 22.01.2007 and he was selected for the same. He was then asked to fill up certain formalities which he did and waited for a reply. When he did not receive any reply, he made representations. He was informed that there is an ambiguity regarding his status as Exserviceman and the matter was referred to the DRDO Headquarters. He received two more replies with the same subject matter. He therefore, once again sent another representation claiming his status as Exserviceman. Since no reply was forthcoming, he filed the instant application before the CAT.

- 2. The Tribunal by the impugned order allowed the application and directed the respondents to issue the order of appointment to the respondent appointing him as a senior Technical Assistant Grade-A*

on the establishment of the GTRE in terms of the select list published on 22.01.2007 within a period of two months. Aggrieved by the same the respondents have filed the present writ petition.

3. Learned counsel for the petitioner contends that after the expiry of 18 ½ years as a combatant, since he was asked to continue in service he cannot be considered/termed as an Ex-serviceman. That service is an extended service which comes to end only after 20 years, i.e., the respondent as an ex-serviceman cannot be accepted.

4. The Tribunal while considering the contentions, was of the view that no decision was taken by the respondents to resolve such an issue. As such if the combatant has completed 18 ½ years, whether he has to be considered as an Ex-serviceman or if he is continued in service without issuing formal orders whether he has to be treated as Ex-serviceman after the lapse of 20 years after service. Therefore a direction was issued to the Central Government to consider this issue and to clarify as to whether the period of 18 ½ years is sufficient to hold the post of Combatant as an Ex-serviceman.

5. The Tribunal was of the view that having completed 18 ½ years, he (combatant) has to be regarded/recognized as an Ex-serviceman. There is no clarification issued by the petitioners themselves as to how the personnel who have completed 18 ½ years are to be considered, whether they have to be treated as Exservicemen after 18 ½ years or after 20 years.

6. Under these circumstances, we are of the view that there is no error that calls for any interference. The directions issued by the CAT are just and proper. The respondent is to be treated as Exserviceman and has to be granted the relief as per the order of the Central Administrative Tribunal. Consequently the petition is dismissed.

7. Since the tribunal has directed that its order be complied within two months from the date of receipt of the order, it is only just and necessary to direct that the order of the Tribunal has to be complied within a period of eight weeks from the date of receipt of a copy of this order.

Ordered accordingly."

3. Shri Vishnu Bhat, learned counsel for the respondents, contends that he would like to point out one small issue in it that in between the applicant worked in State Bank of India for a short period in the interregnum. But then it is admitted case of everybody that after discharge from combatant service in the services he had applied through proper channel and obtained this

also. Therefore, as correctly stated by the DoPT in the circulars, this position cannot be taken as a cloud on the prospects of the applicant as this has been finally settled by the various Hon'ble Supreme Court judgments now. Therefore, applicant is eligible for counting his past service and to have the notional benefits of the same and particularly so as the respondents have already granted the seniority to him. Therefore, there is no question of any junior being heard in the matter as there is no question of seniority or juniority to be decided in the matter anymore as it has been settled by the respondents themselves.

4. The OA is, therefore, allowed. Benefits, even though notional, to be fixed and granted to the applicant within the next three months. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00499/2017

Annexure A1: Copy of the representation dated 23.03.2017

Annexure A2: Copy of the communication dated 31.05.2017

Annexure A3: Copy of the seniors list dated 15.05.2017

Annexures with reply statement

Annexure R1: Copy of the extract of FR 22 (1)

Annexure R2: Copy of the M.F. OM extract dated 04.02.1966

Annexure R3: Copy of the OM dated 04.11.1993

Annexure R4: Copy of the letter dated 05.01.2001

Annexure R5: Copy of the DRDO Gazette Notification dated 20.01.2014

Annexure R6: Copy of the letter dated 08.06.2009

Annexure R6 (2): Copy of the DRDO Technical Cadre – Categories, Grades, Pay Scales and Group Classification

Annexures with rejoinder

Annexure A4: Copy of the seniority list dated 27.02.2018

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