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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 611 of 2003

New Delhi, this the 3rd day of October, 2003.

HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

V.P. Sharma,
F Wing 2nd Floor,
Nirman Bhawan,
New Delhi-114

....Applicant
(By Advocate : Mrs. Prashanthi Prasad)

Versus
Union of India

1. Ministry of Home Affairs,
Represented through its Secretary,
Ministry of Home Affairs,
New Delhi.
2. Director General,
Border Security Force,
Block No.10, 5th Floor,
CGO Complex,
Lodhi Road,
New Delhi.
3. Deputy Inspector General (Personnel),
Dte. of Border Security Force,
Block No.10, 5th Floor,
CGO Complex, Lodhi Road,
New Delhi.

....Respondents

(By Advocate : Shri R.N. Singh)

ORDER

SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER:-

This application under section 19 of the Administrative Tribunals Act, 1985 has been filed challenging the order dated 14.11.2002 (Annexure-A15) by which the applicant along with others have been shown to retire on attaining the age of 57 years as age of superannuation during the year 2003. The name of the applicant finds place at Serial No.55 and the date of superannuation has been indicated as 31.3.2003. The applicant claims that he is entitled to the benefit of civilian employees and accordingly

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he is not due for retirement on superannuation on attaining the age of 57 years.

2. It is stated that the applicant was re-employed in Border Security Force (BSF for short) on the post of Senior Air Craft Mechanic in the pay scale of Rs.2000-3200/- vide appointment letter dated 21.10.91. According to the applicant, the post of Senior Air Craft Mechanic was a Civilian post. According to the applicant, the Directorate General, Border Security Force, Air Force Wing Officers (Group A and B posts) Recruitment Rules, 1999 came into effect on 7.9.99. All the Group "A" posts were reflected as combatised posts despite the fact that there was no presidential sanction for the combatisation of the said posts. Learned counsel of the applicant invited attention to the order of this Tribunal in OA No.946/2002 dated 27.1.2003 in the case of A.V.Balchandran Vs. UOI & Ors., wherein the Tribunal held as under:-

"9. Although, it is necessary as stated above that an important decision like a large number of posts being combatised or non-combatised has to have presidential sanction, these notes do not reveal confirmation of the presumption that these posts were combatised.

10. Having regard to the above discussion, we have no doubt to hold that neither any steps had been taken by the respondents to declare the additional posts created in BSF as combatised, nor was the applicant appointed against a combatised post. In this backdrop, the objection of the respondents that this Tribunal has no jurisdiction over the matter, is rejected. Case will now be heard on merits."

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3. In another decision of this Tribunal in the case of B.N.Chaubey & 2 Ors. Vs. UOI & Ors.(OA No.837/2003 decided on 18.8.2003) similar matter as in the case of applicant arose for consideration. In that application also it was claimed that the post of Senior Air Craft Mechanic is a non-combatised post and the age of superannuation was 60 years. However, the applicants in that OA were asked to retire on attaining the age of 57 years on 30.4.2003. This Tribunal after considering the documents of the applicants as well as the respondents held as follows:

"4. Annexure A-5 colly by which applicants were appointed on re-employment in BSF on the post of Senior/Junior Air Craft Mechanic nowhere states that these posts are combatised posts. Respondents have also not shown us any orders relating to approval of the President regarding declaration of the post of Senior Aircraft Mechanic as combatised. Applicants were appointed on re-employment on 21.10.1991 when neither the Recruitment Rules,1996 nor Recruitment Rules,1997 were in existence. While the Recruitment Rules,1996 provide for same age of superannuation for re-employed ex-serviceman-non-combatised Group "C" post holder (Senior Air Craft Mechanic) as for civil post, similar provision has been kept in Recruitment Rules,1997 for combatised Group 'C' posts. This provision has remained unamended even when certain other provisions of the Recruitment Rules,1997 have been amended. When the post held by the applicants has not been notified by a Presidential order as combatised,1997 Recruitment Rules would not be applicable to them. These posts will be governed by 1996 Recruitment Rules as they relate to re-employed ex-servicemen non-combatised Group "C" posts holder (Senior/Junior Air Craft Mechanic) and these Rules prescribe the same age of superannuation for them as applicable to civil posts. Respondents seem to have acted on the basis of Annexure A-4 dated 5.7.1991 where a presumption has been drawn that posts sanctioned vide order dated

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18.6.1991 are combatised since Air Wing is a combatised unit of Central Police organisations. Government and an Organisation like BSF cannot act on presumptions. When categorisation of posts warrants Presidential notification, presumption as to categorisation of posts as combatised without Presidential notification would be absolutely ineffectual as has happened in the present case.

5. Having regard to the discussion made and reasons stated above, this OA succeeds; Annexure A-14 dated 14.11.2002 proposing to retire applicants on 30.4.2003 is quashed and set aside. Respondents are directed to continue services of applicants till the age of superannuation as for holders of civil posts. No costs."

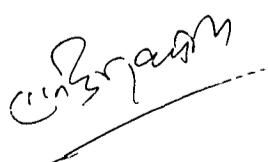
4. Learned counsel stated that the case being squarely covered by the earlier decisions of this Tribunal, this OA be allowed on the same lines.

5. Learned counsel of the applicant also raised an alternative plea stating that the applicant was re-employed and even the Recruitment Rules of Senior Air Craft Mechanic (Annexure-A9) state that "such person shall be given deputation terms upto the date on which they are due for release from Armed Forces, thereafter, they may be continued on re-employment upto the age of superannuation with reference to the Civil posts." According to the learned counsel, the applicant being re-employed was eligible to continue upto the age of attaining the age of superannuation applicable to the Civil posts.

6. Learned counsel of the respondents invited attention to the reply filed and stated that the

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Recruitment Rules for the posts sanctioned for BSF Air Wing were notified under Sub-Section (2) of Section 141 of BSF Act, 1968 as Recruitment Rules for combatised posts only are notified under BSF Act. The Recruitment Rules for civil posts (non-combatised) are notified under Article 309 of the Constitution of India. The reply further stated that the appointment letter dated 21.10.91 states that the applicant was re-employed in BSF Air Wing in the combatised rank of Subedar (Senior Air Craft Mechanic) in the pay scale of Rs.2000-3200. Learned counsel of the respondents tried to make an effort to state that the orders of this Tribunal in two OAs, i.e., OA No.946/2002 and OA No.837/2003, referred to above by the learned counsel of the applicant, were passed on the basis that the Presidential sanction was not made available. He stated that the letter dated 19.9.89 addressed to the Director General, Border Security Force by Under Secretary to the Govt. of India, Ministry of Home Affairs clearly states that the sanction of the President to the combatisation of ministerial and other civilian posts in the headquarters of the Dte. General, Border Security Force including Pay and Accounts Division, EDP Centre, Air Wing and other Wings/Cells and BSF Hospitals under BSF Act, 1968 and BSF Rules, 1969 was being conveyed. This letter had annexed list of existing posts in BSF stated to have been combatised. In this list, posts of Senior/Junior Air Crafts Mechanic were also mentioned. He also invited attention to another communication issued by



the Deputy Secretary to the Govt. of India addressed to the Director General, Border Security Force stating that the sanction of President for combatisation of the posts of Air Craft Maintenance Engineer (Rs.1100-1600), Deputy Commandant and Air Craft Radio Maintenance-Ass'tt.Commandant Engineer (Rs.700-1300) was communicated. The learned counsel stated that in view of these communications, it is stated that the applicant was re-employed against the combatised post and, therefore, he was retired on superannuation at the age of 57 years.

7. We have heard learned counsel of the parties and have perused the materials available on record.

8. There is no dispute that the applicant was re-employed as Senior Air Craft Mechanic in the year 1991. There is no specific mention in the appointment letter that he was being given appointed on the combatised post of BSF. However, it is stated in the appointment letter dated 4.12.91(Annexure-R2) that he was offered a post of Senior Air Craft Mechanic Rank Subedar in BSF. The letter dated 21.10.91 (Annexure-A5) states that he has been approved for appointment to the post of Senior Air Craft Mechanic on his being re-employed in BSF. Learned counsel for the respondents placed before us communications dated 4.5.80 and 19.9.89 to claim that the President had approved the combatisation of the BSF posts. We do not find ourselves in the agreement with the



contention of the learned counsel of the respondents as we do not find the post of Senior Air Craft Mechanic in the posts for which the Presidential sanction was granted. Therefore, we have no alternative but to hold the same view as has been held by this Tribunal in the order dated 27.1.2003 in the case of A.V.Balchandran (supra) and order dated 18.8.2003 in the case of B.N.Chaubay (supra). There is no evidence to support the contention of the respondents that the post held by the applicant is a combatised post. In these facts and circumstances of the case we find that the applicant was re-employed on a civilian post which was non-combatised. In this view of the fact that the applicant was not due for retirement on attaining the age of superannuation on 31.3.2003, the impugned order dated 14.11.2002 (Annexure-A15) is quashed and set aside. We direct the respondents to take the applicant in service as if he has not attained the age of superannuation being a re-employed Civilian employee. The applicant will be entitled to consequential benefits in accordance with law.

9. Accordingly, the OA is allowed without any order as to costs.


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER


(SHANKER RAJU)
JUDICIAL MEMBER

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