

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. 837/2003

New Delhi this the 18<sup>th</sup> day of August, 2003

Hon'ble Shri V.K. Majotra, Member (A).  
Hon'ble Shri Kuldip Singh, Member (J).

1. B.N. Chaubey,  
H.No. RZG 756/4/1,  
Raj Nagar II Extn.,  
Palam Colony,  
New Delhi-110045.
2. Sarwan Singh,  
H.No. 981,  
Prem Gali No. 9,  
Gandhi Nagar,  
New Delhi.
3. Samar Singh Verma,  
H.No. 340/A, Opposite Jagdisi,  
Hanuman Mandir,  
Raj Nagar, Pt. II,  
Palam Colony,  
New Delhi-110045. .... Applicants.

(By Advocate Mrs. Prashanti Prasad)

Versus

1. Union of India,  
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 Ms. Promila Safaya)

O R D E R

Hon'ble Shri V.K. Majotra, Member (A).

The applicants formerly Air-force personnel, were  
re-employed in the post of Senior Aircraft Mechanic in

the Border Security Force (BSF), on 21.10.1991. According to the applicants, this post is non-combatised and as such their age of superannuation should have been enhanced to 60 years but on 14.11.2002 respondents issued orders that applicants would be retired on attaining the age of 57 years i.e. on 30.4.2003.

2. Learned counsel of the applicants referring to Annexure A-9 which are Border Security Force (Air Wing, non-combatised Group 'C' and 'D' Posts) Recruitment Rules, 1996 (for short 'Recruitment Rules, 1996) published on 9.1.1997, contended that in respect of Senior Aircraft Mechanic it is stated therein that on re-employment Armed Forces personnel may be continued upto the age of superannuation with reference to the civil posts. Learned counsel stated that while the post of Senior Aircraft Mechanic in BSF is a Group 'C' post under the aforesaid Rules, it has been termed as a non-combatised post and the age of superannuation for the applicants who are ex-servicemen has to be the same as for holders of civil post. The Central Government made another set of Rules, namely, the Border Security Force (Air Wing Non-Gazetted (Combatised) Group 'C' Posts) <sup>(A-10)</sup> Recruitment Rules, 1997 promulgated on 15.12.1997 but under these Rules as well ex-servicemen could be continued on re-employment upto the age of superannuation with reference to the civil posts. Learned counsel stated that while applicants had been re-employed prior to Recruitment Rules, 1996 whereunder their post was

declared as non-combatised Group 'C' post, their age of superannuation remains the same as applicable to civil posts even vide Recruitment Rules, 1997 when applicants' post was termed as combatised. Even when vide Annexure A-13 dated 17.9.1999 certain provisions of 1997 Rules were amended vide Border Security Force (Air Wing Non-gazetted) (Combatised) Group 'B' and 'C' Postal Recruitment (Amendment) Rules, 1999, provision relating to age of superannuation remained unaltered. Learned counsel contended that respondents have proceeded on the basis of the presumption that the post held by the applicants has been declared as combatised but actually no notification to that effect has been issued by the President of India. Thus, the post held by the applicants remains to be a non-combatised one and age of superannuation for this post has to be the same as for civil posts i.e. 60 years of age.

3. On the other hand, learned counsel of the respondents referring to Annexure A-5 dated 21.10.1991 whereby one of the applicants Shri S.S. Verma was appointed stated that it had been made clear that on joining the force, applicant would be governed by the BSF Act and Rules or such other Act/Rules for the BSF as may be prescribed by the Government and the manual as amended from time to time. Learned counsel relied on Ministry of Home Affairs order dated 19.9.1989 whereby President had sanctioned combatisation of ministerial and other civilian posts in the Headquarters of the Directorate

General, BSF. He further stated that applicants were appointed on combatised posts and they have earned higher pay scale and other consequential benefits attached to the combatised posts but now nearing retirement they want benefit of enhanced age of superannuation as available for civil posts.

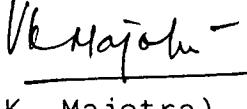
4. Annexure A-5 colly by which applicants were appointed on re-employment in BSF on the post of senior/junior Air Craft Mechanic nowhere states that these posts are combatised posts. Respondents have also not shown us any orders relating to approval of the President regarding declaration of the post 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 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 O.A. 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.

  
(Kuldip Singh)  
Member (J)

'SRD'

  
(V.K. Majotra)  
Member (A)