

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1647/2003

New Delhi this, the 12th day of May, 2004

Hon'ble Shri S.K.Naik, Member (A)

Badri Prasad Prajapati
F-119, Gali No.40,
Sadh Nagar-II, Palam Colony,
New Delhi. Applicant

(Ms. Prasanthi Prasad, Advocate)

VERSUS

Union of India, through

1. Secretary
Ministry of Home Affairs
New Delhi.
2. Director General
Border Security Force
CGO Complex, New Delhi
3. The Commandant (AIR),
Directorate General, BSF (Air Wing)
Safdarjung Airport, New Delhi .. Respondents

(Shri A.K.Bhardwaj, Advocate through proxy conseil
Shri M.K.Bhardwaj)

ORDER

The applicant Shri Badri Prasad Prajapati after his discharge from the Air Force in the year 1990 was re-employed in the Border Security Force (BSF) vide offer of appointment dated 21.10.1991 as Junior Aircraft Mechanic (JAM) and appointed as such with effect from 13.12.1991.

2. Treating him to be as non-combatant civilian employee, respondents passed an order on 13.12.2002 stating therein that the applicant will retire from service w.e.f. 31.7.2003 on attaining the age of superannuation under the provisions of Rule 35 of CCS(Pension) Rules, 1972. This order has the effect of retiring the applicant on completion of 57 years of age. The applicant is aggrieved on this count as he contends

that being a civilian employee, he is entitled to continue in service till the age of superannuation of civilian employees, i.e. upto the age of 60 years. Hence this OA.

3. Learned counsel for the applicant has contended that as per the R/Rules regulating the method of recruitment to Group C and D posts relating to non-combatised posts, a re-employed person will superannuate with reference to civilian posts. He claims that the applicant was re-employed to the post of JAM, which is a civilian post in a non-combatised category. As per the provisions of BSF (Air Wing, non-combatised Group C and D posts) Recruitment Rules, 1996, Armed Forces personnel on re-employment may be continued upto the age of superannuation with reference to civil posts. He therefore contends that the action of the respondents in proposing to prematurely retire him at the age of 57 years is discriminatory, arbitrary and violative of Articles 14 and 16 of the Constitution of India. The counsel has further stated that the post of JAM belongs to non-combatised category as is clear from the offer of appointment where there is no mention of his being appointed to a combatised post. Further, unless there is presidential sanction, respondents cannot presume or treat the post to be belonging to combatised category. The counsel has further referred to the judgement of this Tribunal in OA 946/22002 dated 27.1.2003 (A.V. Balachandran Vs. UOI) and has stated that the Tribunal has, after detailed discussions, categorically held that this Tribunal has the jurisdiction to adjudicate the

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service matters pertaining to non-combatised employees of BSF and further while deciding the application on merit vide its order dated 18.3.2003 has decided as under:

"3. The learned counsel of the applicant stated that in view of the order dated 24.2.1994 (Annexure A-1) while the applicant was re-employed as Junior AME in the Border Security Force upto the age of 58 years i.e. upto 15.7.2003, now that the Court has already held vide order dated 27.1.2003 that the applicant was appointed against non combatised post, his services have to continue as civilian employee till the age of superannuation of civilian employees as per law. This order of the Tribunal has not been challenged by the respondents. As it has already been held that the applicant is not holding a combatised post, the applicant is entitled to consequential benefits, including the retirement age of superannuation as prescribed for civilian employees. Consequently, the respondents are directed to continue the services of the applicant as a civilian employee till the age of superannuation of civilian employees."

4. The learned counsel contends that the case of the applicant is fully covered by this decision. He has further referred to subsequent judgement of the Tribunal dated 18.8.2003 in OA 837/2003 (B.N.Chubey) and 3.10.2003 in OA 611/2003 (V.P.Sharma) wherein similar views were expressed and relief granted to the applicants therein. The counsel has therefore contended that the applicant is entitled to be retained in service until the age of 60 years as is applicable civilian employees.

5. Counsel for the respondents has raised a preliminary objection. According to him, the applicant is a member of the Armed Force of the Union, i.e. BSF and the post held by him is not a civil post. He contends that the OA is therefore not maintainable, as the Tribunal has no jurisdiction to entertain the same.

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6. Counsel further contends that after taking the benefit of the combatised post, i.e. higher pay scale, promotion and other perks (such as ration money, free uniforms, washing allowance etc.) attached to the combatised post, the applicant cannot avoid the mandatory provisions of relevant R/Rules regarding their superannuation at the age of 57 years. According to him, a Government servant irrespective of his stream i.e. combatised or non-combatised cannot be given the opportunity of availing the benefits of both these streams, which is against the law. Finally, he contends that the respondents have challenged the decision of the Tribunal in the case of Balachandran (supra) before the Delhi High Court and the matter is pending a decision. He has therefore submitted that in keeping with the judicial propriety, the case in hand should also be kept pending until a final decision by the High Court.

7. I have heard the parties and perused the records of the case.

8. On the preliminary objection raised by the learned counsel for the applicant on the point of jurisdiction, I find that the order dated 23.1.2003 in OA 946/2002(supra) precisely dealt with the question of jurisdiction in case of Armed Forces personnel. The applicant therein had also been re-employed as JAM in the BSF(Air Wing). He had, as in the present case, similarly claimed that he was re-employed in the civilian category of non-combatised post and the respondents therein had raised the question of jurisdiction. After considering

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the various annexures and the provisions of the R/Rules and detailed deliberation, the Tribunal has stated as under:

"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.:

9. In view of this decision of the DB, I am afraid the contention of the learned counsel of the respondents on this issue has to be rejected.

10. In so far as the other contention that the employee cannot be permitted to take advantage of the service benefits available both for the combatised as well as non-combatised cadres is concerned, the same cannot be accepted merely on the assertion of the respondents but the same has to be considered in the background of relevant R/Rules.

11. In the case in hand, as brought to my notice, irrespective of whether the applicant is to be treated to have been appointed as a combatant or non-combatant, the R/Rules for both the categories clearly state that re-employed Armed Forces personnel in the BSF will continue on such re-employment upto the age of superannuation with reference to civilian posts. The Rules also state that such persons who are taken on deputation while in service shall be given deputation terms upto the date on which they are due for release from the Armed Forces and thereafter they will continue on re-employment upto the age of supersnnuation with reference to civil posts. This, in other words, provides that so long as a defence personnel continues on deputation, obviously he will enjoy the benefit of being a combatant but will be entitled to the benefit as per

civil post on re-employment after release/retirement. In this view of the matter, therefore, the argument advanced by the learned counsel for the respondents will not support their stand.

12. On the point of pendency of petition against the orders passed by the Tribunal before the High Court, learned counsel for the applicant has submitted that the High Court has not granted any stay against the said orders. Mere pendency of the matter before the High Court, on the basis of covered judgement of the DB before me, cannot preclude this Tribunal from adjudicating upon the present OA. Decision of the High Court, as and when passed, would in any case be applicable to this case as well. I agree with the learned counsel that just because of the pendency in the High Court which has not granted any stay, the matter can be assigned to the sine die list.

13. As has been pointed out by the learned counsel for the applicant, I find that the background of facts and circumstances of the case are fully covered by the aforesaid decisions of the Tribunal. Having regard to the same, I have no option but to hold that the applicant is entitled to be continued in service upto the age of 60 years as applicable to the civil post. I order accordingly. No order as to costs.

Naik

(S. K. Naik)
Member(A)

/gtv/