

FORM NO. 21

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL , KOLKATA BENCH

APPLICATION NO : O. A NO. 53 OF 2013

ON THIS 3RD APRIL , 2014

CORAM : HON'BLE JUSTICE RAGHUNATH RAY , MEMBER (JUDICIAL)

HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

Ex Hony Nb Sub Kamal Kumar Ghosh,
Army No. 14613485H
Vill. Chandrapur, PO Dattapur,
Dist. 24 Parganas (North)
West Bengal-743248

-VS-

1. Union of India service through
The Secretary, M/o Defence, DHQ,
South Block, New Delhi-110011
2. The Chief of the army Staff,
Through Adjutant General,
IHQ of MoD (Army), DHQ,
PO New Delhi-110 011
3. The Director General, EME,
IHQ of MoD (Army),
DHQ, PO, New Delhi- 110 001
3. The Officer-in-Charge
EME Records
PIN Code-900453 C/o 56 APO
5. Commandant & MD,
506 Army Base Workshop
PIN- 901124 C/O 56 APO

.... Respondents.

For the Applicant : Mr. S.K.Choudhury, Counsel

For the respondents : Mr. B.K.Das, Counsel

ORDER**Per Lt. Gen. K.P.D.Samanta, Member (Administrative)**

This application under Section 14 of the AFT Act 2007 has been filed by the applicant being aggrieved by the order dated 18-1-2013 issued by the respondent authorities by which he was not allowed to join the civilian post on deputation after retirement.

2. The facts of the case lie in a very narrow compass. The applicant was enrolled in the Army in the Corps of Electrical and Mechanical Engineering (EME) on 18TH December 1988 as a Technician (Small Arms) and on completion of the terms of engagement of 24 years, he retired as Hony. Naib Subedar on 31-12-2012. The last unit where he was posted was 33 Corps Zone Workshop, Siliguri.

3. One year prior to his retirement, he applied for empanelment for deputation in civil post in the Corps of EME on 1-11-2011. The applicant was duly considered and he was called for Trade Test for the post of Labourer in 506 Army Base Workshop, Jabalpur. In pursuance thereof the applicant appeared in the Trade Test on and from 18th to 20th December, 2012. He was shortlisted for the post of Labourer on deputation and offer was made to him on 28th December, 2012 vide Anneuxre A3. According to the rules, the deputation will be from the date of his retirement, which is 31-12-2012 till the normal term of retirement as per civil rules. Although the applicant was selected for the ibid civil post in all respects, he was finally issued with the Appointment Letter on 9-1-2013 (Annexure A4), i.e. after his retirement on 31-12-2012. In the said appointment order the applicant was asked to report to 506, Army Base Workshop at Jabbalpur forthwith. The applicant accordingly went to join his post on 21-1-2013 at 506 Army Base Work Shop, Jabbalpur, but was shocked to find that he was not allowed to join his duty; instead he was informed that his appointment order dated 9-1-2013 stood cancelled by a Signal dated 16-1-2013. The applicant returned to his home and received the impugned telegram dated 18-1-2013 on 24-1-2013 (Annexure A1-page 9). It was mentioned therein that in view of new policy issued by IHQ of MOD (Army) dated 11-12-2012, his appointment order has stood cancelled since the same was issued after his retirement, i.e. 09-01-2013. Being aggrieved

he has filed this OA praying for quashing the telegram dated 18-1-2013 and for a direction to the respondents to allow him to join duty as Labourer in 506 Army Base Workshop for which he has already been selected and issued with an posting order.

4. The respondents have contested the application by filing a reply. It is not denied that the applicant was indeed selected for the post of Labourer in the said Army Base Workshop at Jabalpur for which the result was declared on 28th December 2012, which is prior to his date of retirement; when the applicant was present for discharge drill in the Training Centre. However, the final posting order was issued on 9-1-2013 after making some correspondences with higher authorities in view of the latest policy letter dated 11-12-2012 (Annexure R4 to the Supplementary Affidavit filed by the respondents). In terms of the ibid policy it has been clearly mentioned that under no circumstances an individual will be employed after proceeding on superannuation. It is stated that correspondence was made with the appropriate authorities for relaxation of this clause, but since no such relaxation was granted, the posting order had to be cancelled and the applicant was informed accordingly vide the impugned telegram dt. 18.1.13.

5. We have heard the learned counsel for both the parties at length.

6. Mr.S.K. Choudhury, the learned advocate for the applicant has submitted that the applicant had applied for the deputation while in service and well within the time limit. The selection test was held and the result was declared before the due date of retirement. If there was any delay for administrative reason in issuing the appointment letter, the applicant cannot be held responsible and he cannot be denied the deputation which is permissible under the existing rules. He has also drawn our attention to the appointment letter which is at Annexure A4 to the OA and is dated 9-1-2013. Mr. Choudhury further submits that if the policy letter dated 11-12-2012 was already issued and even if there was any such embargo of proceeding on deputation after retirement, the respondents could not have issued the appointment letter on 9-1-2013. The said order itself contains a remark at the bottom wherein it has been clearly mentioned that the applicant was eligible for employment on deputation even after retirement in terms of order dated 5-3-2009. In

view of this clear observation made in the appointment order itself, Mr. Choudhury submits that the applicant cannot be denied employment on deputation after retirement and hence the impugned cancellation order is illegal and illogical. It is liable to be set aside and the applicant should be allowed to join his deputation post. Mr. Choudhury has relied on a decision of the Hon'ble Supreme Court in the case of **Sonia –vs- Oriental Insurance Co. Ltd.** Reported in (2007) 10 SCC 627.

7. Mr. B.K. Das, the learned counsel for the respondents has contended that the respondents tried their best to get relaxation of the relevant instruction as contained in the latest policy letter dated 11-12-2012, which was applicable in his case, but unfortunately the competent authority did not grant any such relaxation and therefore the appointment order had to be cancelled. He, however, could not enlighten us as to why the posting order was issued on 9.1.13 notwithstanding such new policy. What prevented the authorities from issuing the appointment order before his retirement date (31.12.12), when the selection was complete and the EME Records were aware of his selection three days before that date i.e. on 28.12.12.

8. We have considered the submissions of both parties very carefully. The only question that falls for our consideration is whether the cancellation order dated 18-1-2013 by which the appointment/posting order that was issued to the applicant on 9-1-2013 posting him on deputation after his retirement to the post of Labourer in the Army Base Workshop, Jabalpur was valid or not.

9. Admittedly, the applicant applied for deputation long prior to his retirement and he was declared successful in the trade test conducted for the purpose in the middle of December 2012. The result of the trade test was declared and offer letter was issued to the applicant on 28/12/2012 (Annexure A3). This was also done before his retirement. It has been mentioned in the *ibid* offer letter that if the applicant was willing to accept the offer on the terms and conditions indicated therein he should intimate his acceptance within 10 days and posting order will be issued by the EME Records after receipt of his acceptance. Obviously, the applicant accepted the offer and gave his willingness on the same day i.e. 28.12.12 but it appears that there was delay in issuing the posting order which was, in fact, issued on 9-1-2013. From the averments made in the reply affidavit

it appears that the EME Record took up the matter with IHQ of MOD (Army) vide signal dated 31-12-2012 requesting confirmation to issue the deputation order after retirement (vide Annexure-M to the reply) and they received the reply on 4-1-2013 (Annexure N to the Reply) intimating that the deputation order cannot be issued to the selected candidate after he was struck off strength(SOS) from the Depot Battalion on superannuation. In spite of that the posting order was issued on 9-1-2013. However, the same was cancelled subsequently by a telegram dated 16/18-1-2013. In the meantime, as it appears from the reply, a proposal was also sent to waive the provision of para 17 of the Policy letter, but to no effect. Thus, it appears that the posting order issued after the retirement of the applicant even though he was offered the post on 28-12-2012 and he accepted the offer on the same date (vide Annexure R1 to the Supplementary Affidavit), both prior to his retirement on 31.12.12.

10. The respondents have mainly relied on para 17 of the new policy letter dated 11-12-2012.

Para 17 of the said policy is quoted below :

“17. The indis selected on deputation/re-employment and so posted by EME Records will be absorbed on deputation, against the civ posts, till the indi finishes his terms of service engagement. On attaining superannuation the indi will be absorbed on re-employment in the unit, if nothing adverse is noticed. The appt letter will mention the date of employment to civilian post i.e. the next day after retirement with provn that the appointee will be on probation for a period as specified in Recruitment Rules. ***Under no circumstances will an indi be emp after proceeding on superannuation and all formalities will be completed prior to indi proceeding on retirement from depot Bn.***”

11. Learned Counsel for the respondents has also referred to para 22 of the policy letter which says that all previous policy letters relating to the issue mentioned in this SOP stand superseded by the ibid SOP. It appears that in the earlier policy letter dated 18-10-2010 (Annexure R3) in para 18 it has been provided that in such cases, the posting order should be issued in a manner so that the individuals can join the new unit not before 3 months of their superannuation.

12. Thus, it appears that there is a variation in these two policy letters. Whereas in the previous policy letter dt. 18.10.10, three months time was granted for joining deputation post on civil side after retirement, but in the new policy letter it has been mentioned that under no circumstances,

the individual will be employed after proceeding on superannuation. However, a closer scrutiny of para 17 of the new policy makes it clear that all formalities for such appointment on deputation will have to be completed prior to the retirement which has been done in the instant case. On a consideration of the chain of events, It is quite apparent that for administrative reason the posting order could not be issued to him before 31.12.12 i.e. date of his retirement, for which the applicant cannot be blamed. Moreover, we find that in the appointment order itself there is a mention of another letter of IHQ of MoD(Army) No. B/15198/Dep/Re-Emp/Rel/EME Civ-2 dated 5-3-2009 on the strength of which the appointment order was issued after retirement with specific instruction to report to 506 Army Base Workshop forthwith.

13. On our specific instruction, the learned counsel for the respondents has produced a copy of this order dated 5-3-2009, which is quoted below :

“2) It is clarified that the PBOR who have been selected for deputation in civil post and retired from service can be considered for employment on deputation in civil post subject to the condition that pre-recruitment formalities like trade test interview etc have been completed before his recruitment”.

It is significant to note that the ibid letter/order dt. 5.3.2009 has not been superseded and hence remains operative. The words that ‘all previous policy letters should be superseded’ as mentioned in the new policy letter dated 11.12.12 cannot be applied across the board. It should have specified as to which all previous letters, does the new policy letter superseded. Moreover, the fact that the ibid circular of 05.03.2009, has been quoted in the appointment letter of 09.01.2013, which is well after issuance of new policy letter, implies that the said letter has not been superseded.

14. It is, therefore, quite clear that the respondent authorities knowing fully well about the existence of the latest policy circular, issued the appointment/posting order on 9-1-2013 on the basis of the aforesaid circular dated 5-3-2009 as the applicant fulfilled all other formalities prior to his retirement.

15. On a consideration of the facts and circumstances of the case, we are of the considered view that when the applicant was selected on deputation for the civil post and all pre-recruitment formalities like trade test, interview etc. were completed before his retirement, it will be too harsh to deny him appointment in terms of the new policy. It is well settled principle of law that any vested right cannot be divested by issuing new policy or rules mid-way to the prejudice of the individual. In the instant case the applicant acquired a right for appointment in terms of old policy when all the process of appointment was completed prior to his retirement and even offer of appointment was also made and the applicant accepted the same prior to his superannuation, it will be wholly unjust and unfair to deny him appointment only because the posting order could not be issued prior to his retirement for which the applicant in any way cannot be blamed. For our this view we lend support from the decision of the Hon'ble Supreme Court in the case of **Nirmal Chandra Bhattacharyya –vs- UOI & India**, JT 1991(5) SC 35 wherein it has been held that one of the principles of service is that any rule does not work to prejudice of an employee who was in service prior to that date. It has been further held that the mistake or delay on the part of the department, therefore, should not be permitted to recoil on the employee/appellant.

16. In view of our above findings we allow this OA and the impugned order dated 18th January, 2013 of the OA stands quashed. The respondents are directed to implement the order dated 9-1-2013 and allow the applicant to join the deputation post as a labourer at 506 Army Base Workshop within 30 days from the date of receipt of this order.

17. No orders as to costs.

18. Let the original records be returned to the respondents on proper receipt.

19. Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both sides on observance of due formalities.

(LT. GEN. K.P.D.SAMANTA)
MEMBER(ADMINISTRATIVE)

(JUSTICE RAGHUNATH RAY)
MEMBER (JUDICIAL)