

(2007) 01 KAR CK 0039
In the Karnataka High Court
Case No : Writ Petition No. 52243 of 2003

S. Venkatesh Murthy Rao

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-01-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 33

Citation : (2007) 114 FLR 882 : (2007) 3 KarLJ 246 : (2007) 2 KCCR 877

Hon'ble Judges : H.V.G. Ramesh, J

Bench : Single Bench

Advocate : S. Gangadhara Aithal, for the Appellant; Ramesh B. Aneppanavar, AGA for R2 and R3, R. Veerendra Sharma, CGSC for R5 and R6 and B. Papegowda, Addl. CGSC for R1 and R4, for the Respondent

Final Decision : Dismissed

Judgement

H.V.G. Ramesh, J.—In this writ petition, petitioner has sought for issuance of writ of certiorari to quash the letter/endorsement dated 19.11.03 issued by respondent No. 3 as per Annexure "B" and also for issuance of a direction to the respondents to consider him as an Ex-service man of the Indian Armed Force and to declare that he is entitled to all the benefits and facilities extended to the Ex-service man of the Indian Army.

2. The petitioner joined the service as a storekeeper in Grade-1 on 23.3.1964 in General Reserve Engineer Force (GREF) at Roorki. He served for 30 years till the end of May 1994 and after his retirement settled at Bangalore. Thereafter, he approached the sub-area, Bangalore, to provide him canteen facilities as per the army headquarters letter dated 12.4.90. Although, the said facility was denied till the end of July 1998, subsequently, by virtue of the judgment of the Kerala High Court in the year 1997 the benefit of canteen facility was extended during the month of July 1998. The petitioner has taken up the matter to the Kendriya Sainik Board through the Secretary, Home Department, Government of Karnataka grant the status of ex-service men to the GREF personnel (sic)

retirement. Since the same was not considered favourably, the petitioner has come up with this petition raising seven grounds.

3. In the counter tiled by respondents 5 and 6 it is state that GREF was raised in the year 1960 under the authority of Union Government then under the Ministry of Surface Transport Border Roads Development Board, New Delhi under the executive control of Ministry of Defence. The main object is to construct and maintain the strategic mad/bridges/air field etc., To meet the operations requirement for Armed Force various projects were undertaken in hilly, terrain and adverts climatic condition to supplement the armed forces for operational requirement. The members of the GREF were treated as members of Armed forces for the purpose of Article 33 of the Constitution of India which regulates conduct an discipline of the constructional agency. Hence, certain provisions of the Army Act and Rules have been made applicable upon the GREF personnel and they are governed by Central Civil Service Rules for other benefits like pay and allowances, pension etc., at par with other Central Civilian Government employees. The persons for GREF were drawn from different departments and there is no discrimination on the part of the respondents in not treating the petitioner as an ex-service man. The term of employment including entry age and period of service is different. The GREF personnel can work up to 60 years of age. Even the Apex Court and the Kerala High Court in the similar situation have treated the GREF personnel as the member of the armed forces only for the purpose of Article 33 of the Constitution and that petitioner does not come within the definition of ex-service men and there is no violation of fundamental rights.

4. Heard the Counsel for the petitioner and the learned Counsel representing the respondents.

5. It is the submission of the learned Counsel for the petitioner that although petitioner had discharged the duty in association with Armed forces and although the canteen facility has been extended subsequently to the petitioner there is no reason as to why the petitioner cannot be treated as ex-service man. Further submitted that petitioner has served for several years in the GREF and he has been considered as a member of Armed Force for the purpose of disciplinary actions under Article 33 of the Constitution of India and apart from the Central Civil Service Rules certain of the provisions of the Army Act were also made applicable, as such, not extending the benefits as is extended to the personnel of Armed Forces is violative of fundamental rights and without any rationale.

6. Per-contra, the learned Counsel appearing for the respondents while reiterating the statement of objections filed has submitted that the service conditions of the petitioner are different from that of members of the regular armed forces. In the decision of the Apex Court the GREF personnel were only treated as members of Armed threes for the purpose of disciplinary actions under Article 33 of the Constitution of India.

7. In the light of the arguments advanced, let me consider whether petitioner

would be treated as a Member of the Armed Force for the purpose of extending the post-retirement benefits by treating him as Ex-service man?

8. In the decision reported in AIR 1983 SC 668 in the case of R. Viswan and Ors. v. Union of India and Ors. the Apex Court has taken a view that the members of GREF personnel are the members of the Armed forces within the meaning of Article 33 of the Constitution and that GREF personnel are governed by both Central Civil Services (Classification, Control and Appeal) Rules 1965 and the provisions of the Army Act 1950 and Army Rules 1954 in matters of discipline. Whenever a member of GREF was charged with misconduct amounting to an offence under the Army Act of 1950 the disciplinary action would be initiated against the members of GREF for purposes of discipline and the same is not violative of Article 14 of the Constitution and accordingly, it was of the view that the power conferred on the authorities to take action either under the central rules or under the Army rules cannot be held to be unguided discretionary power. Further, in the decision reported in 1998(2) KLT 613 in the case of Union of India v. All Kerale Ex-GREF & Family Welfare Association, the Iterate High Court has held that Ex-GREF personnel are entitled to canteen facilities and restricted attractive items and it is always open to the aggrieved persons to plead the question of discrimination and then claim the relief granted earlier in the right order passed by the Government. Further, in the unreported decision of Gauhati High Court in Civil Rule No. 543/89 the said Court while referring to the discrimination on the basis of the records has held that the employees are civilian employees and they are also entitled to get all benefits as is being enjoyed by a civilian employees of the Central Government.

9. In the instant case, petitioner is seeking for extension of post retirement benefits as is conferred on the Armed forces. One of the prayer of course is with regard to extension of canteen facilities that was being enjoyed by the petitioner during his service and the same has been extended by the respondents subsequently by virtue of the order of the Kerala High Court. In so far as treating the petitioner as an ex-service man for the purpose of post-retirement benefits it is to be noted that although petitioner was appointed by the lieutenant Colonel and it is noted in the appointment order that his appointment was to the General Reserve Engineer Force, as noted above the aim and object of the GREF is only to maintain the strategic roads/bridges/air fields for the purpose of communication and to meet the operations requirement for Armed forces in hilly and other terrain areas to assist the Armed forces. They were only treated as members of Armed Forces for the purpose of discipline as per Article 33 of the Constitution of India and even the conditions of appointment and service conditions of the GREF personnel is different when compared to Armed Forces personnel and the retirement age of the GREF personnel is 60 years. Not considering the petitioner as an ex-service man on par with the employees of Armed Forces cannot be held to be discriminatory having regard to the nature of appointment and service conditions. The decisions relied upon by the Counsel for the petitioner do not come to the aid of the petitioner.

10. For the foregoing reasons, writ petition is dismissed being devoid of merits.