

(2002) 01 SC CK 0124
In the Supreme Court Of India
Case No : Civil Appeal 4653 of 1998

Y. Chandrabhas Reddy

APPELLANT

Vs

Govt. of India and Another

RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Citation : (2002) 92 FLR 842 : (2002) 1 JT 422 : (2002) 9 SCC 541 : (2003) SCC(L&S) 26 : (2002) 1 UJ 443 : (2002) 2 UPLBEC 1458

Hon'ble Judges : R. P. Sethi, J;G. B. Pattanaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The short question that arises for consideration in his appeal is, whether the services rendered by the appellant in the army can be counted for the purposes of his seniority in the bank service. As it appears, government had framed rules in exercise of power under Article 309 and Clause (5) of Article 148 of the Constitution called "the Released Emergency Commissioned Officers and Short Service Commissioned Officer (Reservation of Vacancies) Rules, 1971", conferring certain benefits. The rules apply only to all the central civil services and posts in class-I and class- II. The rules clearly stipulate that they shall not apply to the engineering and medical services and posts, the duties of which involve conducting research or organising, guiding and directing research.

2. The appellant, however, after being discharged from army on 3.3.1973 joined Andhra Bank in a post borne in the junior management cadre scale I on 19.4.1976. Even though the rules in question did not apply to the persons recruited in the banks and other organisations, there had been a continued grievance and ultimately the government, in ministry of finance, department of economic affairs (banking division), New Delhi, issued an executive order on 6th May, 1980, stating therein that the persons employed in public sector banks would be entitled to count the defence services for the fixation of their pay. It is not disputed by the appellant, by applicability of the aforesaid rules his pay in the

junior management cadre scale-I has been revised and given effect to w.e.f. 1st April, 1980. But the said defence service was not being counted for the purposes of his seniority. The government of India, ministry of finance, department of economic affairs, however, issued yet another executive order on 10th November, 1986 and paragraph 2 thereof indicates that the services rendered in the army of those persons who were commissioner between 1.11.1962 and 10.1.1968 would also count for the purpose of their seniority in terms of and subject to the same terms and conditions as laid down in paragraph 6 of the then cabinet secretariat, department of personnel notification No. 9/20/69 Estt.(C) dated 26th August, 1971 and it was also further indicated that the benefits of this order will take effect from the date of issue. Few months after the aforesaid executive order, the government, ministry of finance issued yet another executive order dated 8.5.1987 indicating therein that the services rendered in army could be counted for the purpose of seniority if the concerned employees is appointed in any public sector undertaking against a reserved vacancy before 28th January, 1974. There has been a clarificatory order issued in June, 1987 reiterating the aforesaid stand of the union government.

3. The validity of the aforesaid government order dated 8.5.1987 was challenged by the appellant by filing a writ petition in the High Court, contending inter alia that there is no rhyme or reason not to confer the benefit even if the appointment might have been made subsequent to January, 1974. The learned single judge of the High Court by the judgment rejected the prayer and dismissed the writ application and the division bench of the High Court having affirmed the same, the present appeal has been preferred. The sole contention of Mr. D. Ramakrishna Reddy, learned counsel appearing for the appellant, is that the government itself having issued an executive order dated 10th November, 1986 conferring the benefit that services rendered in army could be counted for the purposes of seniority of the employees who joined any public sector bank, could not have been taken away that benefit by issuance of another order on 8.5.1987 and the said order must be held to be arbitrary and struck down. We are unable to accept this contention in view of the fact that the very statutory rules framed by the government under proviso to Article 309 and Clause (5) of Article 148 of the Constitution itself indicates that the rules would be in force only up to 28th of January and shall cease to be in force w.e.f. 29th January, 1974. When the executive government issued the administrative order on 10th November, 1986, possibly the aforesaid provision had not been looked into which stood clarified by the subsequent order of 8th May, 1987. That being the position, we see no justification in the contention of the learned counsel for the appellant that the executive order dated 8.5.1987 is arbitrary. We are of the considered opinion, the government of India, ministry of finance department of economic affairs, (Banking Division), New Delhi, rightly issued the order dated 8.5.1987 conferring the benefit of service rendered in army to be counted for seniority only in respect of those employees who joined any bank on or before 28th January, 1974 and not thereafter. Since the appellant joined subsequent to the aforesaid date, we

see no illegality with the impugned judgment requiring our interference. This appeal accordingly stands dismissed.