

Supreme Court of India

Major M.R. Penghal vs Union Of India (Uoi) And Ors. on 30 April, 1998

Equivalent citations: AIR 1999 SC 543, (1999) ILLJ 1211 SC, (1998) 5 SCC 454

Bench: V Khare, M Srinivasan

JUDGMENT

1. Out of these two civil appeals before us, Civil Appeal No. 556 of 1998 arises out of the judgment and order dated 18-12-1995 passed by the High Court of Judicature at Bombay in Writ Petition No. 2923 of 1995 filed by the appellant, whereby the High Court dismissed the writ petition on the ground that it has no jurisdiction to entertain the writ petition. Whereas, Civil Appeal No. 557 of 1998 arises out of the judgment and order dated 31-1-1997 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in Original Application No. 1647 of 1996 rejecting the application of the appellant on the ground that the appellant being still in army service, it has no jurisdiction to decide such an application.

2. It appears that the Posts and Telegraphs Service Selection Board issued an advertisement inviting applications to fill in 1200 vacancies of clerks in the Posts & Telegraphs Department. The appellant herein, in response to the said advertisement, submitted an application to appear in the competitive examination. The appellant came out successfully in the said examination, but due to want of vacancies he could not be offered appointment in the unit of his choice. However, by a memorandum dated 31-10-1962 he was informed that the Postal Department required a number of clerks for enrolment on deputation in the Indian Army Postal Service and if he was willing to accept the offer he should communicate his willingness by a telegram to be followed by a confirmation in writing. The condition mentioned in the aforesaid memorandum for the said offer of appointment is reproduced below: "From the date of a candidate's enrolment in the Army Postal Service, he will be treated as a clerk of the Posts and Telegraphs Department on deputation to the Indian Army Postal Service...."

3. Clause 4 of this memorandum is as under: "He will be required to serve in the Indian Army Postal Service for a minimum period of three years or for such time as his services may be required in the Army. He will revert to civil appointment in this Department, on release from the Indian Army Postal Service. He will be given a choice to elect the unit in which he would like to serve on reversion to the civil appointment. His rights and interests in the Department during the period of his deputation to the Army Postal Service will be protected."

4. The appellant accepted the offer of appointment and consequently he was posted as a civilian in the army service on deputation. While working on deputation in the Army, the appellant was promoted to various higher ranks, including the rank of a Major. However, the appellant was given a temporary commission in the Army. Subsequently, the appellant alleged that he was entitled to further promotion to the rank of Lieutenant Colonel, which he was denied. Aggrieved, he gave a representation to the Military Secretary. The appellant was informed by the Military Secretary that since he was a civilian in the army service, he should represent to the Director General of Posts. In the meantime, the appellant was served with an order dated 6-7-1995 relinquishing his temporary commission and repatriating him to the Department of Posts. The appellant was directed to report

to the Chief Postmaster, GPO, New Delhi. On receipt of the said letter, the appellant wrote a letter dated 7-7-1995 to the Chief Postmaster, GPO, New Delhi whereby he sought voluntary retirement from the Department with effect from 6-10-1995 and further, he be permitted to retire voluntarily direct from the Army Postal Service without reversion to civil duties. The request of the appellant to retire voluntarily was accepted by the Assistant Postmaster General (Staff).

5. The appellant, after submitting the application for voluntary retirement took a somersault and sought permission to withdraw his application seeking voluntary retirement. Since his representation was not accepted, he filed a writ petition challenging the order dated 6-7-1995 against relinquishment of his commission and repatriation to the Department of Posts and also acceptance of his request to retire voluntarily without rejoining the Department of Posts on relinquishment of commission on 7-10-1995. The appellant in the said writ petition contended that his commission should not be relinquished and he should not be repatriated to the Postal Department and he should rather be allowed to continue in the Army Postal Service. The High Court found that the appellant was not a member of the Armed Forces and his status was that of a civilian in the army service on deputation and, therefore, the High Court had no jurisdiction to entertain the said writ petition. Consequently, the writ petition was dismissed.

6. The appellant thereafter preferred an original application before the Central Administrative Tribunal, Bench at Nagpur. The Tribunal vide its order dated 1-1-1996 quashed the order dated 7-9-1995 as well as the letter dated 25-7-1995 and the appellant was directed to prefer an appeal within 15 days on receipt of the said order to the competent authority, i.e., the Chief Postmaster General. However, the remaining part of the order repatriating the appellant to the Postal Department remained intact and was not quashed.

7. Subsequently, the appellant alleged that on 2-1-1996 he was forcibly removed from army service and retired from civil service with retrospective effect. Aggrieved, the appellant filed a second original application before the Tribunal wherein he insisted or at least claimed to be an army personnel. The Tribunal accepted the claim of the appellant that he is an army personnel and as such returned the application since it has no jurisdiction to entertain it, with liberty to file the same in an appropriate forum. That is how the two civil appeals are before us.

8. The question that arises for consideration is, whether the High Court or the Central Administrative Tribunal has jurisdiction to entertain the applications of the appellant. This question depends upon the status of the appellant, viz., whether he is an army personnel or a civilian posted on deputation in the army service.

9. As stated above, although the appellant was selected by the Postal Department for appointment to the post of clerk, but he could not be given any appointment due to want of vacancy in the unit of his choice. Under such circumstances, the appellant was offered an appointment to work as a clerk in the Army Postal Service on the condition that he would remain a civilian employee on deputation in the Army. The appellant accepted the aforesaid offer and agreed to the conditions that he would revert to the civil appointment in Posts and Telegraphs Department on his release from the Indian Army Postal Service. With these conditions, the appellant continued to serve in the Army as a

permanent employee of the Posts and Telegraphs Department on deputation and was promoted up to the rank of a Major in the Indian Army. However, the appellant was only given a temporary commission and he worked as such till the date when his relinquishment was ordered. The aforesaid facts clearly demonstrate that the appellant has a lien with the Posts and Telegraphs Department working on deputation in the Indian Army Postal Service and at no point of time the appellant became a full-fledged army personnel. Since the appellant was not a member of the Armed Forces and continued to work as a civilian on deputation to the Army Postal Service, his case was covered under Section 14(1)(a) of the Administrative Tribunals Act. In that view of the matter, the High Court was right in rejecting the writ petition filed by the appellant, whereas the Central Administrative Tribunal erroneously accepted the claim of the appellant that he is an army personnel. We, therefore, uphold the judgment and order of the High Court dismissing the writ petition filed by the appellant. Since the appellant while holding civil post was working in the Army Postal Service on deputation, the Central Administrative Tribunal had jurisdiction to entertain and decide the original application filed by the appellant. We accordingly set aside the order dated 31-1-1997 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, and remand the case to it to decide expeditiously Original Application No. 1647 of 1996 of the appellant, on merits.

10. Consequently, Civil Appeal No. 556 of 1998 is dismissed and Civil Appeal No. 557 of 1998 is allowed. There shall be no order as to costs.