

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH, CHENNAI**

Original Application No. 310/01499 of 2014

Today, this ~~Monday~~ the ^{18/} day of February, 2016

CORAM: HON'BLE SHRI R. RAMANUJAM.... MEMBER (A)

R. Arulanandan,
S/o. Ramalingam,
Aged about 39 years,
Residing at No.8, Third Street,
Senthil Nagar, Old Perungalathur,
Chennai- 600 063.

.....**Applicant**

[by Advocate: M/s. Menon, Karthik, Mukundan and Neelakantan]

Vs

1. Union of India, Rep. by
The Controller General of Defence Accounts (AN-1),
Ulan Batar Road, Delhi Cantonment, Palam,
New Delhi- 110 010;
2. The Principal Controller of Defence Accounts (Pension),
Draupadi Ghat,
Allahabad- 211 014;
3. The Controller of Finance & Accounts,
Heavy Vehicles Factory,
Avadi- 600 054;
4. The Department of Pension & Pensioner's Welfare,
Ministry of Personnel, Public Grievances & Pensions,
Loknayak Bhavan, Khan Market, New Delhi

.....**Respondents**

[by Advocate: Mr. M. Kishore Kumar]

O R D E R (Oral)**Per: R. Ramanujam, M(A):-**

The facts as stated by the applicants in this O.A. are as follows:-

The applicant originally belonged to military service and after rendering nearly 10 years of service, was discharged from the same. Subsequently, the applicant came out successful in the civil service examination, 2005 and was appointed as Assistant Controller of Defence Accounts in the Indian Defence Accounts Service from 29.8.2006. He was later confirmed in service by an order issued in July 2009. In terms of the provisions of Rule 19 of the CCS (Pension) Rules 1972, the applicant made a representation dated 29.3.2010 to the 1st Respondent for counting his former military service for pension purposes. The representation was duly forwarded to his previous employer namely the Air Force who in turn agreed to process the application provided the delay in exercise of the option by the applicant was condoned by the respondent department. The representation was then forwarded to the 4th respondent for condonation of the delay in submitting the option by the applicant as envisaged under Rule 19 of the Pension Rules. The 4th respondent, however, proceeded on a totally different track and observed that the applicant was not entitled to count the military service rendered by him as the CCS Pension Rules had been replaced by the New Pension Scheme with effect from 1.1.2004 and there is no provision in the said scheme for counting of military services for the purpose of pension. Acting upon the advice of the 4th respondent, respondents 1 and 3 refused to process the case further. As a consequence, the amount deposited by the applicant to the respondent department towards refund of the terminal benefits received by him

for the military service rendered is now sought to be refunded to the applicant.

In these circumstances, the applicant prays for the following relief:-

"to set aside order No. AN-1/2873/PF/former service dated 9.3.2012 issued by the 1st respondent and order No. GO/199/RA/DCFA(Fys)/HVF dated 19.08.2013 issued by the 3rd Respondent on the instructions of 1st respondent and consequently direct the respondents to accept the option submitted by the applicant for counting of his previous military service under Rule 19 of the CCS (Pension) Rules, 1972 and pass such further or other orders as may be deemed fit and proper."

2. The reply statement of the respondents contesting the claim of the applicant proceeds on the following lines:-

The applicant joined Indian Defence Accounts Service on 29.08.2006 as Assistant Controller of Defence Accounts (ACDA), after the introduction of the New Pension Scheme from 1.1.2004. The applicant had previously rendered about 9 years of service as Airman in Indian Air Force with effect from 26.10.1993 to 20.2.2003. The applicant's request dated 29.03.2010 for counting of the former services rendered in IAF towards the present engagement in Defence Accounts Department was received well beyond the time limit prescribed for exercising such option. His request was therefore forwarded to the Department of Pensions & Pensioner's Welfare (DoP&PW) for relaxation of the time limit. However, the DoP & PW advised rejection of the option clarifying that in terms of Rule 2 of CCS (Pension) Rules 1972, counting of former military service was not possible for those appointed to civil establishment on or after 01.01.2004. Therefore the question of relaxing any time limit prescribed for this purpose did not arise. When the applicant represented against this decision, the matter was again taken up with DoP& PW which reiterated its stand. It has been clarified that the option to count the past military service under Rule 19 of CCS (Pension) Rules,

1972 would be available only to those military pensioners to whom the CCS (Pension) Rules are applicable on re-employment in the civil side. According to Rule 2 of CCS (Pension) Rules, 1972 as amended by notification dated 30.12.2003, the CCS (Pension) Rules 1972 are applicable only to Government Servants appointed to Civil Services on or before 31.12.2003. As the applicant was appointed to Civil Services with effect from 29.08.2006, he is not entitled to the benefit of pension under CCS (Pension) Rules 1972. It is also contended that the applicant had not submitted his option to the re-employer within stipulated time period of one year from the date of confirmation on the Civil post. He would, therefore, be deemed to continue to retain the pension/gratuity received on discharge from Air Force Service and his former Air Force service would not count towards civil pension. The option once exercised in this manner shall be final. The refund of terminal benefits of Air force service amounting to Rs.1,42,590/- by the applicant into government account does not guarantee that his request would be acceded to even if it is untenable.

3. Heard learned counsel for the applicant and the respondents and perused the material on record.

4. Learned counsel for the applicant pointed out that the applicant has already returned the terminal benefits provided to him at the end of his military service and is, therefore, eligible for counting his previous military service as qualifying service. He drew attention to Rule 19(1) of the CCS (Pension) Rules 1972 which is reproduced below:-

“19. Counting of military service rendered before civil employment

(1) A Government Servant who is re-employed in a civil service or post before attaining the age of superannuation and who, before such re-employment, had

rendered military service, ¹[] may, on his confirmation in a civil service or post, opt either -

- (a) to continue to draw the military pension or retain gratuity received on discharge from military service, in which case, his former military services shall not count as qualifying service; or
- (b) to cease to draw his pension and refund-
 - (i) the pension already drawn, and
 - (ii) the value received for the communication of a part of military pension, and
 - (iii) the amount of ¹[retirement gratuity] including service gratuity, if any,

and count previous military service as qualifying service, in which case the service so allowed to count shall be restricted to a service within or outside the employee's unit or department in India or elsewhere which is paid from the Consolidated Fund of India or for which pensionary contribution has been received by the Government:

Provided that-

- (i) the pension drawn prior to the date of re-employment shall not be required to be refunded
- (ii) the element of pension which was ignored for fixation of his pay including the element of pension which was not taken into account for fixation of pay on re-employment shall be refunded by him.
- (iii) the element of pension equivalent of gratuity including the element of commuted part of pension, if any, which was taken into account for fixation of pay shall be set off against the amount of ¹[retirement gratuity] and the commuted value of pension and the balance, if any, shall be refunded by him.

Explanation.- In this clause, the expression 'which was taken into account' means the amount of pension including the pension equivalent of gratuity by which the pay of the Government Servant was reduced on initial re-employment, and the expression 'which was not taken into account' shall be construed accordingly.

He also pointed out that a similarly placed person, one Smt. Priya Badeker who had been re-employed in a civil capacity with effect from 3.4.2007 had been allowed to count her military service from 4.3.2000 to 29.1.2007 in full towards her civil pension subject to the refund of the amount of terminal benefits received by her as indicated in Annexure-A/16 letter. Rejecting the case of the applicant would, therefore, amount to hostile discrimination which would be violative of Articles 14 and 16 of the Constitution of India. He further drew attention to Annexure-19 information provided to the applicant under R.T.I Act wherein it is stated as follows:-

"Point No.3:- Yes, a person who left the defence services on proper discharge with gratuity benefits after 01.01.2004 and joined civil services, applies for counting of former services towards present civil services is entitled to move old pension scheme

after the counting of the former services, but the prime condition is that individual has applied for counting of former services within one year after the joining of civil services as per GID(1) of rule 19 of CCS (Pension) Rule."

5. Learned counsel for the applicant referred to O.M. dated 28.10.2009 of the DOP & PW wherein it is stated as follows:-

"2. The position has been further reviewed by the Government of India and it has been decided to continue mobility of Govt. servants/Autonomous body employees appointed on or before 31.12.2003 and who were governed under the old non-contributory pension scheme of their respective Governments/organizations in order to provide for the continuance of Pensionary benefits based on combined service in accordance with the CCS (Pension) Rules 1972 as under:-

- a. Between the Central Govt. departments covered under CCS(Pension) Rules 1972; and Railway Pension Rules, 1993 or other similar non-contributory pensionable establishments of Central Govt. covered by old Pension Rules other than CCS(Pension) Rules, 1972;
- b. Between the State and the Central Govt. provided the employees were appointed in the State Govt.(s) on or before 31.12.2003 and covered under old pension scheme similar to CCS (Pension) Rules 1972;
- c. The pre-existing arrangement of mobility between State/Central Autonomous Body to Central/State Govt. and between autonomous bodies that were governed by old pension scheme in force up to 31.12.2003 vide No. 28/10/84.P&PW dated 7/2/1986 and O.M. No. 28/10/84-Pension Unit dated 29/8/1984 stand restored although those under CPF etc. will not be allowed entry into the old pension scheme on appointments from 1.1.2004.

It is submitted that a similar mobility between military and civil services ought to be permitted so as not to discriminate against military pensioners.

6. The applicant had through an R.T.I. application sought certain clarifications in this regard and in response thereto, he received a copy of the letter from the Principal Controller of Defence Accounts (Pension), Allahabad dated 21.11.2014 addressed to O i/c, Legal cell. Learned counsel for the applicant relied on the following contents of the letter:-

"Para 4.3 As per GID 1(3) below Rule 19 of CCS (Pension) Rules, the administrative authorities concerned should incorporate in the order of re-employment itself a clause to the effect that if the re-employed ex-servicemen to take advantage of the retirement benefits based on combined military and civil services, he should exercise option within a period of one year from the date of his retirement. As per statement of individual, it seems that the individual was not made aware of exercising the said option, so his HOO may initiate the case to competent authority for obtaining the sanction for the condonation of such delay.

Para 4.6 As per department of P & PW OM No. 28/30/2004-P & PW(B) dated 26/07/2005, this office has stopped the counting of former service of those, who were not governed under the CCS (P) Rule 1972 and entered into civil service on or after 31.12.2003.

Therefore, the department of P & PW has reviewed the matter vide their OM No. 28/30/200 - P & PW (B) dated 28/10/2009 and as per para - 2 of this OM, the person who were governed under the old non-contributory pension scheme of their respectively Govt./ Organization in order to CCS (P) Rules 1972.

In the light of this fact this office has started the counting of former service rendered by individual under Army/Navy/Airforce and on this pattern, individual is also entitled for the counting of his former military service towards civil service subject to the fulfilment of certain conditions viz....

- (1) Exercising the option within the stipulated period of time i.e. one year and if not proper sanction from the competent authority;
- (2) Discharge from Army is in proper way;
- (3) Deposition of all the terminal benefits received by the individual along with GPF rate of interest w.e.f. the date of joining the civil service till the date of deposition.

The service of applicant is old non-contributory pension scheme and if he has also refunded the amount of terminal benefits along with GPF rate (it seems, he had deposited the said amount of Rs. 1,42,590/-). The service of the applicant may be covered under Department of P & PW OM dated 28.10.2009 subject to the fulfilment of rest two conditions.

- (1) Condonation of delay in exercising the option
- (2) Discharge from army in a proper way that may be verified from the discharge certificate

It is therefore requested to examine the said parawise comment and forward it to defending unit after complete examination."

7. The learned counsel for the respondents, however, states that the applicant having joined service after 1.1.2004 is clearly ineligible for any pension under CCS (Pension) Rules 1972. Regarding the grant of pension of Smt. Priya Badeker who appeared to be similarly placed, he pointed out that she exercised the option within the period of one year from the date of joining in the Civil Post. He also drew attention to the submission made in the reply statement as well as the additional reply to the rejoinder wherein it is contended that the case of Smt. Priya Badeker was very much different inasmuch as she was discharged from military service after 1.1.2004 whereas the applicant was discharged prior to 1.1.2004.

8. I have carefully considered the pleadings in the light of documents made available and the arguments presented by the rival counsel. The case of the applicant for counting military service for the purpose of civil pension is essentially based on Rule 19 of the CCS (Pension) Rules 1972. If these rules were

applicable to the case of the applicant, certainly, the applicant would be on strong grounds to claim the counting of his past services for pension notwithstanding the fact that he had failed to exercise the option within a period of one year which appears to be an extended time limit for re-employed military pensioners as against the time limit of three months provided in Rule 19(2) (a). Rule 19(2) is reproduced below:-

"2(a) The authority issuing the order of substantive appointment to a civil service or post as is referred to in sub-rule (1) shall along with such order require in writing the Government servant to exercise the option under that sub-rule within three months of date of issue of such order, if he is on leave on that day, within three months of his return from leave, whichever is later and also bring to his notice the provisions of Clause (b)

(b) If no option is exercised within the period referred to in Clause (a), the Government servant shall be deemed to have opted for clause (a) of sub-rule (1)."

10. A plain reading of Rule 19(2) (a) would indicate that it is for the authority issuing the order of substantive appointment to a civil post to require in writing, the Government servant to exercise his option. It is not the contention of the respondents that the applicant was required to exercise such an option either within a period of three months or one year from the date of re-employment and the applicant still failed to exercise such option. As the applicant was never asked by the respondents to indicate his option, his failure to exercise the option within the stipulated period cannot be held against him.

11. It is, however, seen that the respondents have primarily rejected the applicant's request for counting his past military services on the ground that the CCS(Pension) Rules 1972 as amended on 30.12.2003 are not applicable to the case of the applicant who has been appointed substantively to a civil service after 1.1.2004. The said amendment restricted the applicability of the CCS (Pension) Rules 1972 to government servants appointed on or before 31.12.2003. The

validity of the amendment not having been challenged, it must be held that in the absence of any ruling to the contrary by higher judicial fora, these rules must be held not applicable to the case of the applicant. When the CCS(Pension) Rules 1972 are not applicable to the applicant, reliance on Rule 19(1) and 19(2) and any clarifications issued there-under by any of the respondents would be out of context and is clearly misplaced.

11. The allegation that the DoP&PW OM dated 28th October 2009 regarding mobility of personnel amongst Central/State and Autonomous Bodies and the previous one dated 26.07.2005 allowing pensionary benefits under CCS (Pension) Rules 1972 to those who are appointed after 1.1.2004 on technical resignation from their current posts is discriminatory against military services is unwarranted and totally irrelevant to the instant case. As the applicant had not continued in Military service till the date of his appointment in Civil Services and there was a long gap between his exit from Military Services and subsequent appointment in the Civil Service, it is clearly not a case of technical resignation but a fresh entry into the Civil Services.

12. The only issue that remains then is whether the Annexure-A/16 letter addressed to the office of the CDA, Secretariat regarding the permissibility of counting of former military services for civil pension in the case of Smt. Priya Badeker subject to the refund of the terminal benefits indicated therein would come to the aid of the applicant in making him eligible for what he is not otherwise entitled to under the rules.

13. As CCS (Pension) Rules 1972 are not applicable to persons appointed in substantive capacity after 1.1.2004, it is for the respondents to look into how such

a letter in favour of the said Smt. Priya Badeker came to be issued in the first place. As Smt. Priya Badeker has not been impleaded in this case and in the absence of relevant facts concerning her case, it is not possible to make any comments on this letter beyond stating that the respondents must satisfy themselves that it is not an inadvertent mistake on account of an oversight. In any case, the letter appears to be only in the nature of interim correspondence and unless the final orders in this regard have already been issued, it may not confer any right on the said military pensioner to claim eligibility. In the absence of any other factor specific to her case influencing its outcome in her favour and in the event of it being noticed as a mistake, the respondents are surely at liberty to issue a notice to her and review the matter after granting her an opportunity to represent her case. However, no relief could be granted to the applicant only on the basis of this case as he has no right to negative equality under the relevant provisions of the Constitution.

15. In view of the above, the applicant's prayer for being granted the benefit of Rule 19 of the CCS (Pension) Rules 1972 is misconceived. The O.A. is devoid of merits and is dismissed. There shall be no order as to costs.