

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.09/2014

Date of Decision: 10th February, 2020

**CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)**

Shri Prakash K. Waghmare
Ex-Principal,
Kendriya Vidyalaya ONGC
Panvel-410206
Residing at--
Flat No.6 Mulavi Apartment,
Viveknagar, Akrudi, Pune – 35.

(By Advocate Shri G.B. Kamdi)

VERSUS

1. Kendriya Vidyalaya Sangathan HQ,
Through the Commissioner
Kendriya Vidyalaya Sangathan HQ
18, Institutional area, SJ.S. Marg,
New Delhi – 110 016.
2. The Deputy Commissioner (Admn)/Estt.
Kendriya Vidyalaya Sangathan HQ
18, Institutional area, SJ.S. Marg,
1. New Delhi – 110 016.
3. The Deputy Commissioner
Kendriya Vidyalaya Sangathan
Bombay Region, I.I.T. Campus
Powai, Mumbai – 400 076.
4. The Principal, Military
School, Belgaum – 590 009.
5. Sr. Accounts Officer PCDA
(Pension) Allahabad – 211 014.

... *Respondents*

*(By Advocate Shri V.S. Masurkar – R1 to R3
Shri A.A. Garge – R4 & R5)*

ORDER (ORAL)PER: R. VIJAYKUMAR, MEMBER (A)

Heard learned counsels.

2. Learned counsel for the respondents Nos.4 & 5 requested additional time to file his affidavit but in the circumstances that the papers now available with him read alongwith pleadings appear to be adequate for passing the present orders, a further affidavit was not considered necessary and orders have been passed as below.

3. This OA has been filed on 29.11.2013 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“8(a) This Hon'ble Tribunal will be pleased to call for record and after going through its properly, be pleased to quash and set aside the decision of the respondent dated 15.03.2013 with directives to release the pensionary benefits for the combined service rendered in Military School Belgaum and KVS for the period w.e.f. 07.02.1976 to 12.08.1996.

(aa) The respondent No.4 and 5 may please be directed to restore and remit, the amount for payment of pro-rata pension, for the service rendered in Military school as the said amoutn was returned by the respondent No.1.

(b) The interest on the delayed payment, applicable as per CCS Pension Rules.

(c) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

(d) The cost of this original application be provided.”

4. The applicant was initially serving with the Military School, Belgaum from 07.02.1976

to 08.01.1987 after which he was relieved with due approvals for joining the services of respondents Nos.1 to 3 - Kendriya Vidyalaya Sangathan on 12.08.1996. Thereafter, after attaining the post of Principal, he applied for appointment with the Navodaya Vidyalaya Samiti (NVS) and on being so appointed, he was relieved on 12.08.1996 by way of relieving orders of the KVS, Panvel (Annex A-7) which was based on and refers to the approval of the Assistant Commissioner KVS (BR) in file No.F.25-36/87/KVS(BR) dated 30.07.1996. He, thereafter retired from the services of NVS on 31.05.2009 and has been petitioning for pension ever since. Since the Petitioner does not get any pension from the NVS by virtue of its service conditions that he had accepted for joining NVS, he was entitled to pension and pensionary benefits from the KVS including the service with the Military School at Belgaum for the 20-21 years 6 months service that he had spent with these two establishments. However, nothing was paid to him and the circumstances under which the pension was not paid promptly subsequent to his relief by KVS on 12.08.1996 are unclear and plainly unfair.

5. After serving at the Military School from 07.02.1976 to 08.01.1987 and after joining the Kendriya Vidyalaya Sangathan on 09.01.1987, the applicant began corresponding with respondents Nos.4 & 5 from the year 1992 onwards (Annexure A-13). The respondents Nos.1-3 received an application in prescribed format by the applicant and forwarded his request for counting such service in the Military School to their headquarters in their letter No.25-9/87/KVS(BR) dated 05.03.1993 (Annexure A-9) after which the respondents Nos.1-3 wrote to the CDA (Pension) - respondent No.5 in their letter No.6-23/86-KVS(Estt.2) dated 06.11.1995 (Annexure A-10) to release the contribution for his service with the Military School, so that he could get pensionary benefits in Kendriya Vidyalaya Sangathan. The applicant has then written to the Deputy Chief Army Staff, Army Headquarters on 31.03.1997 (Annexure A-11) mentioning this letter and the fact that the Principal of Military School had in letter dated 13.07.1976 forwarded his service book to them but he had received no advice on the action proposed. It also appears that in a letter No.71632/PKW/KV/GS/MT-15(a)/1106/US/D(GS-II) dated

12.12.2005, the Ministry of Defence inquired from respondent No.4 if the applicant had exercised the option within the stipulated period with reference to para 3(1) of Rules to which Respondent No.5 wrote to the applicant in letter No.888/PRP/PKW/Accts dated 28.12.2019 asking if he had exercised such option and he replied in letter dated 06.01.2020 that in such cases, the deemed option under sub clause 3(1) (i) would apply. It would appear that the Principal of the Military School at Belgaum then forwarded his papers on 10.01.2020 on this basis.

6. The respondents Nos.1-3 have taken the stand that only upon receiving the pro-rata pension, they could disburse the pension due to him although they are in full knowledge of the fact that he had completed more than 20 years of service by the time he left the KVS and was, therefore, eligible for pension and any delay on the part of the Military School could not be ascribed to the applicant in view of his continuing correspondence. It also appears that the respondents Nos.4 & 5 were finally fully satisfied on the issues contained in this matter and then released his pro-rata pension

and pensionary contribution on 11.07.2011. Therefore, it would appear that the correspondence of 2019/2020 mentioned above was totally unwarranted and amounted to sheer incompetence and harassment. The applicant wrote a further letter to the DGMT on 10.06.1998 (Annexure A-12) reiterating this issue and also mentioning that a lien period of two years required from him had expired and he was duly eligible. By this time, the applicant had left the services of Kendriya Vidyalaya Sangathan and joined Navodaya Vidyalaya Samiti. On 18.12.2003 (Annexure A-13), the applicant again wrote to the DGMT, New Delhi reminding that he was now in a non pensionable service and that only after the pro rata pension and pensionary benefits had been transferred, would the Kendriya Vidyalaya take action to sanction his pension. In this letter he cites the following references which contained his several letters from 1992 to 2002 and the queries of the Army Headquarters:-

- “Ref:(i) Letter No.F.Per/PKW/99/01 dated 28.01.99
- (ii) Letter dated 24.11.99
- (iii) A HQ letter No.71631/Wagh/GS/MT15(a) dated 20.12.1999
- (iv) Letter dated 31.01.2000.
- (v) Letter No.F.Per/PKW/2000/1 dated 31.05.2000
- (vi) Letter No.F.Per/PKW/2000/2 dated 03.07.2000
- (vii) A HQ letter No.59848/GS/MT 15(a) dated 25.08.2000
- (viii) A HQ letter No.71632/GS/MT 15(a) dated 25.08.2000

- (iv) Letter No.F.Per/PKW/2000/6 dated 06.09.2000.
- (x) Letter No.F.Per/PKW/2000/09 dated 28.11.2000
- (xi) Letter No.F.Per/PKW/2000/11 dated 23.01.2001
- (xii) A HQ letter No.71632/Waghmare/GS/MT 15(a) dated 02.02.2001
- (xiii) Mil.School Belgaum letter No.Per/PKW/2001 dated 16.06.2001.
- (xiv) Letter No.PER/PKW/2001/2 dated 01.11.2001
- (xv) Letter No.F.Per/PKW/2002/1 dated 03/18.07.2002. "

7. By this time, the respondents Nos.1-3 overlooked their own approval for their technical resignation and relief granted to the applicant in 1996 and began to question the nature of his resignation. This yielded further delay.

8. After retirement from NVS, the applicant sought payment of pension and pensionary benefits by the KVS and for this purpose, he has referred to his reminder request made in 1992 and thereafter, a year previous to technical resignation from KVS, to the respondents Nos.1 to 3 to include his services with the Military School Belgaum for the purpose of computation of his terminal benefits. A letter has been sent in this regard by the Assistant Commissioner KVS on 06.11.1995 to the Director CDA Pension (Respondent No.5) under copy to Respondent No.4 in Annexure A-10 dated 06.11.1995. The respondents Nos.4 & 5 released their pro-rata pension and pensionary

contribution and gratuity contribution only on 11.07.2011.

9. At this stage, the respondents Nos.1 to 3 failed to refer to their own relieving order dated 12.08.1996 which bore the approval of the Assistant Commissioner of KVS for relieving the applicant and by which, it was clear that his relief from KVS was a technical resignation and not a simplicitor resignation that would have forfeited his pensionable service. In such an event, he would have also lost the benefit of pension from his service with the Military School at Belgaum. This resulted in a correspondence whereby the respondents Nos.1 to 3 returned the demand draft issued by respondents Nos.4 & 5 to them on 13.02.2013, first for revaluation and then again, after having taken an incorrect view that the applicant had not taken proper permission before resignation from the KVS to join NVS.

10. The applicant has filed a further affidavit on 25.06.2018 in which he encloses a letter of the respondents Nos.1 to 3 (Annexure A-18) dated 13.09.2017 which accepts the fact that the applicant had taken due approvals at the time of resignation and again addresses the

respondent No.5 asking them to obtain and return the payment by way of a DD which was due for the applicant, to the KVS, so that they could grant pension and disburse the necessary benefits to the applicant. In the circumstances that respondents have conceded the demand, the main contentions of the applicant have become *infruituous*. However, no pension or any benefits have yet been granted to the applicant and this aspect alone awaits the directions of this Bench including the compensation due to the applicant for the delay.

11. Pension and Terminal benefits were clearly due to the applicant on 12.08.1996 when he resigned from the KVS since service under NVS is non-pensionable and he completed the qualifying period of service at that time. However, respondents 4 and 5 had a duty to transfer pro-rata pension and benefits to KVS to enable payment by KVS (Respondents 1-3) promptly following confirmation of his joining at KVS on 08.01.1987 or at the very least, on or before 12.08.1996, and they did so only on 11.07.2011 although this was returned to them by respondents Nos.1-3 on 13.02.2013. It is also not rebutted by respondents Nos.4 & 5 that

pension could be sanctioned by respondents Nos.1-3 only after receipt of payments from respondents Nos.4 & 5.

12. Learned counsel for the respondents Nos.4 & 5 submits a letter enclosing a proposal for sanction by the Principal of the Rashtriya Military School, Belgaum dated 10.01.2020 addressed to the IHQ (Army) - respondent No.4 asking them to sanction the amounts required and then to advise the PCDA i.e. respondent No.5 accordingly. This letter has been taken on record following production by learned counsel.

13. In these circumstances, the following directions are given to all respondents, keeping in view the fact that respondents Nos.4 & 5 demonstrated sheer incompetence, neglected, and seriously mismanaged the case of the applicant from the date of his relief from Military School on 08.11.1987 upto 11.07.2011 when they first issued the demand draft required from them. As we noted above, this amounted to unacceptable levels of harassment. The Military School is clearly responsible for delay in disbursement of monthly pension and pensionary benefits (other than commutation amount) for the period from 13.08.1996 onwards

upto 11.07.2011 and they shall be liable to pay interest compensation for delay. For the period subsequent to 11.07.2011, for not disbursing the entire amounts due and periodical pension (other than commutation amount), the respondents Nos.1-3 are alone responsible for seriously mishandling the case of the applicant which they now describe as "his case was not put up properly with justification" in their letter dated 09.02.2018. In consequence,

13(i) Respondents Nos.1-3 shall grant pension and pensionary benefits as per Applicant's eligibility in accordance with Rules from the date of his leaving their service on 13.08.1996. They are also further directed not to wait for receipt of the pro-rata amounts from respondents Nos.4 & 5 to make these payments since they have agreed to count and adopt his past service years from 07.02.1976.

(ii) Respondents Nos.1-3 shall also pay simple interest of 12% the GPF rate prevailing in 1986-1987 to 1999-2000, from the date on which the DD for pro-rata amount was received from respondents Nos.4 & 5 on 11.07.2011, up to the date of actual release of his pension and pensionary benefits. In respect of Leave

Encashment, which is governed by different rules, they shall pay simple interest of 6% on the sums payable. They shall also process and pay his Commutation amount in accordance with rules in case he makes a request and as per eligibility.

(iii) For both the above purposes, twelve weeks time is granted to respondents Nos.1-3 from the date of receipt of a certified copy of these orders.

(iv) the respondents Nos.4 & 5 shall ensure that all the contributions for pension and pensionary benefits are transmitted by way of a Demand Draft or by online payments, to the respondents Nos.1 to 3 within a period of four weeks. Since this contribution should have been paid by respondents Nos.4 & 5 even as early as 09.01.1987 and would have stood to the credit of applicant's account and then have enabled him to receive full pension from Respondents Nos.1-3 on 13.08.1996 but delayed such action to 11.07.2011, they shall pay 12% simple interest then GPF rates (in 1986-87 to 1999-2000) on the pension and pensionary benefits due on 13.08.1996 as released by respondents No.1-3, up to date of issue of DD on

11.07.2011 and transfer these amounts to the Applicant within twelve weeks of receipt of these orders.

(v) The respondents shall pay legal costs of the applicant estimated at Rs.25,000/- divided equally between the two parties comprising respondents Nos.1-3 and respondents Nos.4&5, within four weeks.

14. This OA is disposed of in the aforesaid terms with the additional direction to the parties to strictly abide by the timelines set above, failing which additional interest costs of 18% shall apply on all shortfalls of dues payable to the applicant.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

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25/07/2020

