

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

OA.No.2665 of 1999

New Delhi, this 1st day of January 2001

HON'BLE SHRI V.K. MAJOTRA, MEMBER(A)
HON'BLE SHRI SHANKAR RAJU, MEMBER(J)

Nandan Singh Rawat
S/o Shri Trilok Singh
R/o 1668, Sector V, R.K.Puram
New Delhi.

...Applicant

(By Advocate: Shri G.S. Chaman)

versus

1. Union of India
Through the Cabinet Secretary
Rashtrapati Bhavan
New Delhi
2. Secretary
Department of Pension &
Pensioners Welfare
Ministry of Personnel, PG and Pensions
Government of India, North Block
New Delhi
3. Officer Incharge
Pay & Accounts Office
Cabinet Affairs
C-1 Hutments, Dalhousie Road
New Delhi
4. Officer Incharge
Central Pension Accounting Office
Bhikaji Cama Place
New Delhi

... Respondents

(By Advocate: Shri K.R. Sachdeva)

ORDER(Oral)

Hon'ble Shri V.K. Majotra, M(A)

The applicant, Shri Nandan Singh Rawat, joined the Indian Army on 15.8.1959. He was medically invalidated on 10.2.1971. He joined the Cabinet Secretariat, Government of India on 18.11.1981 on re-employment as a Peon. He served that Secretariat till 28.2.1999 when he superannuated as Daftry. He did not exercise any

option under Clause (a) of sub-rule (1) of Rule 19 of CCS (Pension) Rules, 1972 (hereinafter called Pension Rules). According to the applicant, he was thus deemed to have exercised his option as per Rule 19(1)(a) i.e., he was deemed to have opted to continue to draw pension for the military service^{and} for not counting former military service towards qualifying service for pension for civil employment. However, the respondents fixed his pension under Rule 18(3) *ibid* under which his pension was worked out to Rs.97/- only per month, pension of Rs.1275/- plus Rs.800/- (Handicap Pension) drawn for previous military service having been deducted from pension admissible for total service (military plus civil service). The applicant made a representation against the fixation of his pension at Rs.97/-. He made another representation for waiving the limitation provided ~~contained~~^{under} under Rule 18(3). The respondents informed the applicant that provision of Rule 18(3) and the limitation prescribed thereunder relating to counting of pre retirement civil service in case of re-employed Government servants are applicable to the case of re-employed military pensioners as well. The applicant has challenged the application of the provision of Rule 18(3) to his case resulting in reducing his entitled pension of a minimum of Rs.1275/- per month to Rs.97/- per month.

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2. In their counter, the respondents have maintained that provision of Rule 18(3) has a uniform application to all re-employed personnel whether they were previously in civil or military employment. The respondents have referred to DP&AR's O.M. dated 5.3.1982 (Annexure R-II) for applying provision of Rule 18(3) to re-employed military pensioners.

3. The applicant has filed a rejoinder as well.

4. We have heard the learned counsel of both sides and perused the material on record.

5. The learned counsel of the applicant, Shri G.S.Chaman, contended that whereas provisions of Rule 18 for reckoning pre-retirement civil service in the case of re-employed Government servants are applicable to personnel who have retired from civil service and not rendered any military service, in the case of Government servants who are re-employed in a civil service or post before attaining the age of superannuation and had before such employment rendered military service attaining the age of 18 years are governed by the provisions contained in Rule 19. Under Rule 19 if such a Government servant on re-employment in a civil service or post opts to continue to draw the military

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pension or retain gratuity received on discharge from military service, his former military service is not counted as qualifying service. However, in case he opts not to draw his military pension and refunds the pension already drawn, and the value received for the commutation of a part of military pension, and the amount of retirement gratuity including service gratuity, if any, his previous military service shall be counted as qualifying service. If he does not exercise any option within the prescribed period as required by Rule 19(1) within the period referred to in Clause (a) he is deemed to have opted for Clause (a) of sub-rule (1). According to Shri Chaman, as the applicant has not exercised his option as stated above, he continues to draw his military pension, etc. and his former military service shall not be counted as qualifying service. The learned counsel has also contended that the instructions contained in O.M. dated 5.3.1982 (Annexure R-II) stating that provision of Rule 18(1) shall be applicable to the military pensioners as well cannot be made applicable to military pensioners on re-employment in civil service or civil post as in the case of the applicant as these instructions are contrary to provisions contained in Rule 19 ibid. He has relied on the ratio in UOI & Anr. Vs Amrik Singh & Ors. AISLJ II-1994(1) 137 in which it has been held that the

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administrative instructions relating to conditions of service cannot prevail over the Rules issued by the President under the provisions of the Constitution, in case such instructions come in conflict with any provisions made in the Rules. Shri Chaman stated that instructions contained in Annexure R-II are in conflict with the provisions made under Rule 19 ibid. According to him, as per para-4 of Annexure R-II clarifies that in case of non exercise of option within the stipulated period, the applicant is eligible to draw pension for both spells of service separately. Shri Chaman further drew support from AIR 1968 SC 519 Smt. Vidyawati Vs State of Punjab contending that the administrative instructions cannot be allowed to supplant the statutory Rules. If the Government intended to rectify any lacunae in the Rules they ought to have resorted to legislation rather than administrative instructions.

6. Shri K.R. Sachdeva, learned counsel of the respondents contended that instructions contained in Annexure R-II are only supplementary to the Rules and have stood the test of time for long number of years. According to him, there is no illegality in these instructions and provisions of Rule 18(3) have to be made applicable to the case of the applicant as well who was in military service prior to

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re-employment "in civil service. He maintained that a harmonious construction has to be accorded to provisions contained in Rule 18 and Rule 19 of the Pension Rules. He denied that the Government has given any different treatment to any other former military personnel on re-employment in civil service. He filed a copy of the PMO's O.M. dated 31.1.2000 in the matter of Shri Bhisham Jamadar who had served the Indian Army prior to his employment and retirement in the PMO. As per the said O.M. as Shri Bhisham Singh was drawing a separate military pension, his civil pension was made subject to limitation as provided in Rule 18(3) of the Pension Rules read with DP&AR's O.M. dated 5.3.1982.

7. Rule 18 relating to counting of pre-retirement civil service in the case of re-employed Government servants reads as follows:-

"(1) A Government servant who, having retired on compensation pension or invalid pension or compensation gratuity or invalid gratuity, is re-employed and appointed substantively to a service or post to which these rules apply may exercise option either-

(a) to continue to draw the pension or retain the gratuity sanctioned for his earlier service, in which case his former service shall not count as qualifying service, or

(b) to cease to draw his pension and refund-

(i) the pension already drawn,

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(ii) the value received for the commutation of a part of pension, and

(iii) the amount of '[retirement gratuity]' including service gratuity, if any, and count previous service as qualifying service:

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 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 his pay shall be set off against the amount of '[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.

(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, or 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).

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(3) In the case of a Government servant who opts for Clause (a) of sub-rule (1) the pension or gratuity admissible for his subsequent service is subject to the limitation, that service gratuity, or the capital value of the pension and [retirement gratuity], if any, shall not be greater than the difference between the value of the pension and [retirement gratuity] if any, that would be admissible at the time of the Government servant's final retirement if the two periods of service were combined and the value of retirement benefits already granted to him for the previous service."

8. Rule 19 relating to counting of military service rendered before civil employment reads as follows:-

(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 after attaining the age of eighteen years, 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 commutation of a part of military pension, and

(iii) the amount of [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

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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 [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.

(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).

(3)(a) A Government servant, who opts for Clause (b) of sub-rule (1) shall be required to refund the pension, bonus or gratuity received in respect of his earlier military service, in monthly instalments not

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exceeding thirty-six in number, the first instalment beginning from the month following the month in which he exercised the option.

(b) The right to count previous service as qualifying service shall not revive until the whole amount has been refunded.

(4) In the case of a Government servant, who, having elected to refund the pension, bonus or gratuity, dies before the entire amount is refunded, the unrefunded amount of pension or gratuity shall be adjusted against the [death gratuity] which may become payable to his family.

(5) When an order is passed under this rule allowing previous military service to count as part of the service qualifying for civil pension, the order shall be deemed to include the condonation of interruption in service, if any, in the military service and between the military and civil services."

9. The provisions of Rule 18 & Rule 19 are substantively the same excepting that provisions contained in sub-rule (3) of Rule 18 have been omitted from Rule 19. The statutory intention appears to be to apply the provisions of Rule 19 in the matter of counting the military service rendered before civil employment. The intention does not appear to be to apply the provisions contained in Rule 18 uniformly to the matters of re-employed Government servants who were previously in the civil service or military service prior to their re-employment in civil service. We are inclined to agree with the learned counsel of the applicant that the lacunae or omission in Rule 19 cannot be made good by administrative instructions contained in O.M.

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dated 5.3.1982. If the respondents wanted to apply the provisions contained in Rule 18(3) in the case of those re-employed civil servants who were previously in military service, they could have rectified the mistake or omission by amending the Rules rather than by notifying administrative instructions only. We find that vide Memoranda dated 31.5.1988 and 26.2.1988 Government decided in pursuance of Government Decisions on the recommendations of the IV Central Pay Commission that a Government servant will get pension either on superannuation or on invalidation after rendering 10 years of temporary service in the Government in place of 20 years of service. The applicant had rendered over 17 years of service on re-employment in the civil service and since he had not exercised his option under Rule 19(1), he continued to draw his military pension etc., his former military service shall not count as qualifying service. Under the provisions of Rule 19 the applicant shall be entitled to draw pension for both spells of his service as is permitted even under the provisions of O.M. dated 5.3.1982 (Annexure R-II), in our view, the provisions contained in Rule 18 cannot be made applicable to the case of the applicant. As he had rendered military service prior to his civil employment, provisions of Rule 19 are attracted in his case and since he had not exercised his option as required under

Rule 19, it shall be deemed that he had opted for Clause (a) of sub-rule(i) of Rule 19. He continued to draw his military pension etc. and his former military service shall not be counted for computing his pension for civil service rendered by him after his military service and prior to his superannuation in civil service. He shall be entitled to draw his pension and other benefits separately for his civil service in the Cabinet Secretariat from 18.11.1981 to 28.2.1999.

10. Having regard to the reasons given above, impugned communications at Annexure A-1 to Annexure A-4 and para-5 of DP&AR's O.M. dated 5.3.1982 (Annexure A-5) and are quashed and the respondents are directed to allow the applicant pension without application of Rule 18(3) read with para-5 of DP&AR's O.M. dated 5.3.1982 (Annexure A-5) and without application of any limitation or limit of capital value of pension. Accordingly re-calculation of pension for applicant's civil service and consequential benefits shall be made paid by the respondents within a period of three months from communication of these orders.

11. The OA is allowed in the above terms. No costs.

S. Raju
(Shankar Raju)
Member(J)

V. K. Majotra
(V. K. Majotra)
Member(A)