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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.1073 of 1998 decided on 25.1.1999

Name of Applicant : Ex. S.I. Mauji Ram

By Advocate : Mrs. Meera Chhibber

Versus

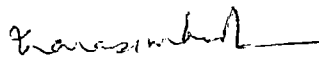
Name of respondent/s Union of India & others

By Advocate : Shri Jog Singh through proxy counsel
Shri S.K. Gupta.

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal. -No


(N. Sahu)
Member (Admnv)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1073 of 1998

New Delhi, this the 25th day of January, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

Ex. S.I. Mauji Ram, No.918-D. S/o
late Sh.Amir Singh. Flat No.P-5,
Type-II, N.P.L.

-APPLICANT

(By Advocate Mrs. Meera Chhibber)

Versus

1. H.O.I. through Chief Secretary, 5.
Sham Nath Marg, Civil Lines, Delhi.
2. Dy. Commissioner of Police
(D.C.P.), IVth Bn. DAP., Kingsway
Camp, New Police Lines, Delhi.
3. Sr. Additional Commissioner (A.P.),
P.H.O., I.P.Estate, I.T.O. M.S.O.
Building, New Delhi.
4. Office of P.A.O.I/Police/ Tis
Hazari, Delhi.

-RESPONDENTS

(By Advocate Shri Jog Singh through
proxy counsel Shri S.K.Gupta)

O R D E R

By Mr. N.Sahu, Member(Admnv)

The applicant prays in this Original Application for a direction to the respondents to consider his claim for counting his Indian Army service of more than 7 years for fixing his pension and for payment of the revised pensionary benefits with interest at 18%.

- Kanika*
2. The facts in brief are that prior to his joining the Delhi Police the applicant worked with Rajputana Rifle Regiment from 30.4.1957 to 5.8.1964 for a period of 7 years and 98 days and when he left the service he did not receive any pension or

gratuity (refer to his affidavit dated 8.10.97). He made the claim for taking into account the military service for reviving his pensionary benefits admittedly at the time of retirement and not before.

3. The respondents after notice state that the applicant never submitted any request regarding counting of his military service for aggregating with civil service during his entire tenure of 32 years. It was only at the time of claiming his pension that he filed an affidavit dated 8.10.1997. On the ground of not making the claim during service the respondents rejected his claim. They also stated that under Rule 19 (2) of Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as "the Pension Rules") no notice is required to be issued to him.

4. In the rejoinder the applicant states that the respondents themselves granted age relaxation on the ground that he was an ex-serviceman; otherwise he was over aged and would not have been eligible for appointment as a policeman. The second contention of the applicant is that under Rule 19 of the Pension Rules it is the duty of the authority issuing the order of confirmation to bring to the notice of the Government servant the provisions of Rules 18 and 19 of the Pension Rules so that he could exercise his option within the prescribed period of three months. It is further submitted that in the case of S.I. Mahipal Singh by an order dated 24.1.1997 the respondents allowed his military service from

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10.8.1957 to 23.7.1966 rendered in the Indian Army to be counted towards civil pension under Rules 19(2) and 19(5) of the Pension Rules read with OM No. F.II(3)EV(1)/76 dated 28.2.1976. The period of break in service of nearly two years was condoned. A similar order was passed in the case of Constable Raghunath Singh counting his military service from 5.10.1980 to 17.8.1986 under Rule 19 of the Pension Rules and also condoning break in service for a period of two years. A third order was shown to me in the case of Constable Ved Prakash who was allowed to count his military service from 19.4.80 to 24.10.86 under Rule 19 ibid as also condoning the break in service for a period of roughly 1 1/2 years and yet a fourth order of Constable Satya Pal was placed on record wherein by an order dated 16.6.1987 the respondents counted his military service from 20.9.75 to 26.9.78 rendered in the Indian Army towards civil pension under Rule 19 ibid as well as condoning the break in service from 27.9.78 to 9.5.79. In view of this, the respondents could not have discriminated the applicant's case and refused him consideration.

5. The learned counsel for the applicant has placed before me a decision of the Bombay Bench of the Tribunal in the case of **Shri Babu Tukaram Bhosle Vs. Union of India and others**, 1994(1)ATJ 464. In that case the Bench held that the applicant was entitled to get his admissible pension in the new service combined with the old service and to count the whole service as one for the purpose of

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pensionary benefits. A second decision was cited in the case of **Shri M.P.Limaye Vs. Union of India & another**, 1994 (2) ATC 213. That was a case where the applicant had completed over six years of military service before joining the postal department from which he retired after completing 30 years of service. His claim for counting his past military service was denied on the ground that he had not completed 10 years of military service. In that case the respondents neither acted in accordance with Rule 19(1)(a) nor had asked the applicant to exercise his option under Rule 19(2) of the Pension Rules at the time of appointment. The Court issued the direction in favour of the applicant. In a third order cited before me, **B. Thirupathi Rao Vs. Divisional Personnel Officer, S.C.Railway, Vijayawada & others** 1994 (2) ATJ 213 it was held citing OM No.F-3(58)EV(A) 61 dated 3.2.1962 in which it is provided that benefits of military service shall be counted for the purpose of calculating pensionary benefits if such service is "followed without any interruption by appointment to and eventual confirmation in a pensionable post in civil service". The Court interpreted "without any interruption" to mean shall be read to mean without any undue and unreasonable interruption.

6. I have carefully considered the rival submissions. Under Rule 19(1) of the Pension Rules a Government servant, who is re-employed in a civil service, is required to give an option at the time of his confirmation in the civil post whether he would

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like to get past military service counted for pension. In para 3 of the Govt. of India. Department of P&PW OM No.28/50/87 dated 31.5.1988 the following instructions are issued -

3. In order to facilitate compliance with the requirement of exercising option in time, it has been further decided that the administrative authorities concerned should incorporate in the order of re-employment itself a clause to the effect that if the re-employed ex-serviceman desires 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 re-employment.

7. The respondents were well aware that the applicant had rendered military service as a result of which he secured the relaxation and obtained eligibility. Under Rule 19(2)(a) it is made incumbent on the authorities issuing the order of substantive appointment to notice the Government servant to exercise the option under Rule 19(1) within three months of the date of issue of such order. It is also made clear that the respondents should bring to the notice of the employee in writing the provisions of clause (b) to the effect that 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).

8. This is a case where the respondents have admittedly not complied with the instructions of the Government and issued any letter in terms of para 3 cited above of that instruction intimating to the applicant the provisions of Rule 19 ibid. Nothing has come on record in this regard from the

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respondents. Secondly, the applicant was appointed as a temporary Constable on 15.7.1965 and promoted as a Head Constable on 14.4.1972 and thereafter as ASI on 26.9.1986. They did not bring to the notice of the applicant the provisions relating to exercise of the option under Rule 19(2) *ibid*. Even otherwise the respondents cannot deprive a substantive right conferred by statute on a mere technical ground. The Government being a model employer should have guided the applicant in the course of his service about the benefits that would accrue to him being a re-employed pensioner, the benefit, namely, of aggregating the past service with present service for the purpose of counting pension. In the circumstances of the case; I do not find any merit in any of the contentions raised by the respondents in rejecting the applicant's claim dated 20.10.1997 at the time of his retirement from civilian service for aggregating and counting the army service of 7 years and 98 days.

9. In my view when the statute enjoins on the respondents to perform a particular statutory function in a particular manner, the Court can only direct that the said function shall be performed in the same manner and the Court cannot substitute itself to the designated authority for the purpose. The learned counsel for the applicant had brought to my notice several orders of Constables whose past military services were counted with the present civil service for reckoning pension and in each case the break in service was condoned. I have not been shown any reasons as to why the case of the applicant can

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be distinguished and, therefore, failure to confer on the applicant the said benefit would amount to discrimination. I, therefore, direct the respondents, in particular, respondent no.3 to treat the request dated 20.10.1997 filed along with the rejoinder and the affidavit dated 8.10.1997 about army service as the option exercised by the applicant under Rule 19. They shall consider and pass an order as they have done in similar cases of other Constables of counting past military service with present civil service after condoning the break after due consideration in accordance with law. This order shall be passed within four weeks from the date of receipt of a copy of this order and, thereafter, the revised pensionary benefits shall be worked out and paid to the applicant within six weeks thereafter. In the circumstances of the case, the claim for payment of interest at 18% is hereby rejected. The O.A. is disposed of as above. No costs.

N. Sahu
(N. Sahu)
Member (Admnv) 2-5-1-99.

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