

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.1022 /98

HON'BLE SHRI R.K. AHOOJA, MEMBER(A)

New Delhi, this the 26th day of October, 1999

Shri Jagmohan Singh
S/o Shri Bikram Singh
Driver, Directorate of Education
Delhi Administration
Shamnath Marg, Old Secretariat, Delhi
R/o 709, Multi Storey Quarters
Timarpur, Delhi-54

...Applicant

(By Advocate: Shri S.C. Saxena)

Versus

1. Lt. Governor
through Chief Secretary, N.C.T.
Delhi Admn., Old Sectt.
Delhi

2. Director of Education
Education Directorate
Old Sectt. Shamnath Marg
Delhi

3. PAO-IX, Govt. of Delhi
Old Sectt., Govt. of NCT Delhi
Delhi

...Respondents

(By Advocate: Shri Ajesh Luthra, proxy of Ms. J.Kaushik)

O R D E R

The applicant joined Army service on 29.9.1956 and was released on 3.11.1966. He was reemployed as a Driver in the Delhi Education Department on 17.6.1968 and retired on reaching the age of superannuation on 31.3.1997. Initially, his retirement pension was calculated at Rs.539/- p.m. It was later revised and reduced to Rs.435/- p.m. on the ground that he was already in receipt of Military Pension.

2. I have heard the counsel. The dispute lies within a narrow compass. According to the applicant he is not receiving military pension and his case, therefore, does not fall within the purview of Rule 19 of the CCS (Pension) Rules, 1972. Rule 19(1)(a) provides that an ex-serviceman may:-

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"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;"

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3. It is an admitted position that the applicant had drawn initially Rs.15/- p.m. from the military authorities and this was increased to Rs.375/- p.m. with effect from 1.1.86. However, according to the applicant this amount was not being paid to him by way of pension but by way of retention fee as he had been transferred from the active to the reservist service. According to him he had neither been granted military pension nor had been given any gratuity by the military authorities and, therefore, the retention fee as a reservist received by him cannot deprive him of the qualifying service in the Army under Rule 19(1)(a) reproduced above. The learned counsel for the applicant has also submitted that under Rule 19(2) the authority issuing the order of substantive appointment to a civil post was required to inform the applicant to exercise his option within three months and only thereafter if no option was exercised then the applicant could be deemed to have opted for clause (a) of sub-rule (1) of Rule 19.

4. When the matter came up for hearing, the learned counsel for the ^{respondent's} ~~applicant~~ produced a copy of the certificate of service issued by the Army authorities to the applicant. The same has been taken on record. The entries in that book show that the applicant has been receiving reservist pension upto 6.2.97. This payment could not be by way of retention fee as a reservist since the applicant could not have continued as a reservist upto the age of 58 years. The revision of pension from 1.1.86 is also recorded as stepped up minimum pension with effect

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from 1.1.86. If it had been a matter of retention fee then it would not have been affected by the minimum pension fixed by the Fourth Pay Commission.

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5. Clearly, therefore, the applicant has been drawing Military pension on the basis of the Military service rendered by him. His case, therefore, falls under Rule 19(1)(a) of the CCS (Pension) Rules. The applicant cannot at this late stage take a plea that he be allowed to exercise an option otherwise available at the time of civil employ in 1968. Therefore, the action of the respondents cannot be faulted.

6. In the result, finding no merit, the O.A. is dismissed. There is no order as to costs.

R. K. Ahooja
(R.K. AHOOJA)
MEMBER (A)

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