

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2734/97

New Delhi, this 2nd day of June, 2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastri, Member(A)

Ashok Kumar
338, P.C.Ashok Vihar
Delhi-52

.. Applicant

(By Shri Yogesh Sharma, Advocate)

versus

1. N.C.T. of Delhi, through
Secretary
Old Secretariat, Delhi

2. The Commissioner of Police
Police Hqrs., ITO, New Delhi

2. Dy. Commissioner of Police
IV Bn. DAP, Delhi
Kingsway Camp, Delhi-9

.. Respondents

(By Shri Ajesh Luthra, Advocate)

ORDER

Smt. Shanta Shastri

The applicant's prayer is to quash the impugned order dated 14.7.97 whereby he has been denied counting of his past service rendered in the Army for the purpose of pensionary and other benefits.

2. The facts are that the applicant was enrolled in the Army in the year 1976. He was discharged from 13.3.83. After discharge from the military service, the applicant joined Delhi Police on 1.9.83 as Constable and was confirmed as such on 12.5.90 in that post. After his confirmation, applicant applied to the competent authority on 23.12.92 giving his option for counting his military service as per Rule 19 of CCS(Pension) Rules, 1972 (RULES, for short). However, his representation

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was rejected by the Dy. Commissioner of Police on 15.3.93 on the ground that the applicant was required to submit his option within 3 months from the date of order of his confirmation. The same is now time barred as such no action can be taken at this stage. His claim was further considered on a revision made by him on 19.5.95 to give him the benefit of the OM dated 23.5.94 which provides opportunity to persons re-employed in civil posts to exercise option to count military service as qualifying service within the period of six months. However, applicant's claim was rejected once again on 14.7.97 for the following reasons: (i) He resigned from military service at his own request. Hence the case does not cover under Rule 26(2); (ii) He did not submit his option within the stipulated period of 3 months from his appointment in the Delhi Police, as required under Rule 19(2) of the RULES.

3. It is the case of the applicant that he was not given any notice as required under Rule 19 of the RULES asking him to exercise his option. Besides the period of 3 months cannot be applied unless the authority giving substantive appointment has asked him to give option. The applicant could not exercise his option due to his ignorance of rules and regulations. He gave his option at a later stage. Applicant is also relying on the OM dated 23.5.94 which provides the opportunity to the persons who are re-employed in the civil post to

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exercise their option with the period of 6 months. This OM was published on 14.2.95 and therefore applicant could make representation only on 19.5.95.

4. Learned counsel for the respondents however insists that the applicant did not fulfil the requisite conditions for counting of his past service towards qualifying service of pension. If the applicant resigned from the post under Rule 26(2) of the RULES, he is not entitled for counting of the past service. For counting of past service, application for new employment has to be forwarded through proper channel and the previous employer has to give certificate to the effect that the applicant had resigned in public interest. Since this aspect is lacking in the present case, applicant cannot count his past service.

5. Learned counsel for the applicant contends that the applicant did not resign. He was actually discharged on compassionate grounds at his own request as can be seen from the discharge certificate. The reason for discharge is given as "Before fulfilling the condition of enrolment at his own request on compassionate grounds" (Annexure A-7 of the OA). Therefore, it can not be called as resignation. In regard to exercising of option, according to Rule 19(2) of the RULES, the employee has to be informed in writing about the option to be exercised by him within a period of three months. Applicant was unaware of the rules to give his option earlier. Learned counsel is also relying upon the decision of this Tribunal in the case of ex S.I. Mauji Ram Vs. UOI decided on 25.1.99 in OA 1073/98. In this

case, the applicant had joined Delhi Police after having worked with Rajputana Rifles Regiment for a period of 7 years and 98 days. As he had not completed 10 years of enrolment, he did not receive any pension, gratuity etc. On his making claim for consideration of his past military service for pensionary benefits respondents had rejected his request on the ground that the applicant had made such a request at the fag end of his appointment with the Delhi Police i.e. on 8.10.97 and not within 3 months from the date of his appointment in Delhi Police. In this case, the Tribunal held that under Rule 19(2)(1) of the RULES, it is made incumbent on the authority issuing order of substantive appointment to issue notice to the government servant to exercise option under rule 19(1) within 3 months of the date of issue of such order. Thus respondents should bring it to the notice of the employee in writing the provision of clause (b). Respondents in that case had not brought to the notice of the applicant the provision relating to exercise of option under rule 19(a). The Tribunal therefore allowed the OA and directed the respondents to treat the request of the applicant as also option exercised under rule 19 and to pass orders as in similar cases of other constables of counting past military service with the present police service after condoning the break after due consideration in accordance with law and to grant revised pensionary benefits thereafter. In this case the Tribunal also relied on several cases of constables whose past military service was counted for pensionary benefits as cited by the applicant in that case.

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6. Learned counsel for the applicant has also produced two orders in respect of constables whose military service rendered in the Indian Army was counted for pensionary benefits. He therefore argued that Rule 26(2) does not come in his way because these rules are meant for the Central Government pensioners and not for retired military personnel. He admits that in the case of applicant he has not produced any certificate to the effect that his resignation was in public interest and he is allowed to join a new post.

7. Learned counsel for the respondents is harping on non-application of the condition under rule 26(2) of the RULES.

8. We have heard both the learned counsel for the applicant and the respondents and have perused the relevant CCS((Pension) Rules and the judgements cited by the applicant. According to Rule 19(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 ~~either~~ ^{Eighteen} years, may, on his confirmation in a civil service or post, opt either 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 cease to draw his pension and refund the pension already drawn, and the value received for the commutation of a part of military pension received and the amount of retirement gratuity including service gratuity, if any, and count previous military

service as qualifying service. Rule 19(2) further states that the authority issuing the order of substantive appointment shall along with such order require in writing the government servant to exercise his option under that sub-rule within three months of the date of issue of such order.

9. In the instant case, the applicant was not given any notice to exercise his option within 3 months. The applicant has drawn our attention to the order of the Jodhpur bench of the Tribunal in the case of S.S.Rajpurohit Vs. UOI 1994(2) ATJ 520 wherein it was held that in such circumstances if the respondents or the appointing authority fails to require the applicant to give option and acts in violation of Rule 19, the applicant can not be punished and the benefits of Rule 54 including the family pension can not be denied. Similar view was held by the Bombay bench of this Tribunal in the case of B.T.Bhosle Vs. UOI 1994(1) ATJ 464.

10. In view of this position, we are inclined to ignore the objection regarding non furnishing of option within 3 months by the applicant especially in view of the fact that the applicant did not receive any pension or gratuity for the service rendered by him in the military.

11. As regards Rule 26(2) of the RULES, it refers to forfeiture of service on resignation. Rule 26(1) says that resignation from service or a post, unless it is

allowed to be withdrawn in public interest by the appointing authority, entails forfeiture of past service. However, resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

12. It is true in the instant case the applicant has not submitted any resignation to take up with proper permission, appointment in the Delhi police. In fact he did not resign, he was discharged though at his request. Hence Rule 26(2) of the RULES cannot be made applicable in this case. Besides, in several judgements cited by the learned counsel for the applicant, question of rule 26(2) has not been raised. ^{Some of the} Applicants in these cases who were similarly placed to the applicant in the present OA had also been discharged on compassionate ground and they were all allowed to count their past military service towards pensionary benefits along with civil service. Hence according to us the applicant is entitled for counting of his past service in the army for the relevant period.

13. It is a common practice that the employees under military service are retired much earlier than those in the civil service and it is customary for these retired military employees to seek employment in any civil service like Delhi Police. This being the position, it is not expected of those military personnel to obtain any formal permission from the military authority to take up fresh employment after they are discharged.

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Therefore also the point regarding not having taken proper permission to seek fresh employment after discharge is not sustainable.

14. In the result, the impugned order dated 14.7.97 is quashed and the respondents are directed to count the service rendered by the applicant in the army from 30.9.76 to 30.3.83 as qualifying service towards civil pension under rule 19 of the RULES read with Government of India's instructions issued from time to time in this regard with all consequential benefits. This should be complied with within three months from the date of receipt of a copy of this order.

15. The OA is thus allowed. We do not order any costs.

hane J

(Smt. Shanta Shastry)
Member (A)

V. Rajagopala Reddy

(V. Rajagopala Reddy)
Vice-Chairman (J)

/gtv/