

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1529/1996
with
O.A. NO.747/1997

(36)

This the 24th day of June, 2003

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

1) O.A. NO.1529/1996

K.D.Mitha,
Asstt. Technical Officer (Retd.)
in Aviation Research Centre,
Directorate General of Security,
Cabinet Secretariat, New Delhi.
R/O Flat No.164, Sector-III, Type-IV,
R.K.Puram, New Delhi.

... Applicant

(By Shri S.K.Sinha, Advocate)

-versus-

1. Union of India through
Principal Director,
Directorate General of Security,
Cabinet Secretariat,
Government of India,
Block-V (East), R.K.Puram,
New Delhi.

2. Director of Accounts,
Office of the Directorate of Accounts,
Cabinet Secretariat, East Block-IX,
Level-VII, R.K.Puram,
New Delhi.

3. Deputy Director (Tech.),
Aviation Research Centre,
Director General of Security,
Cabinet Secretariat, Govt. of India,
Block-V (East), R.K.Puram,
New Delhi-110066.

4. Ministry of Defence,
Government of India through
Chief of Naval Staff,
Naval Headquarters,
New Delhi-11.

5. Secretary, Department of
Personnel & Training,
North Block, New Delhi.

... Respondents

(By Shri N.S.Mehta, Advocate)

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O.A. NO. 747/1997

1. M.S.Narula,
Asstt. Technical Officer (Retired),
Aviation Research Centre,
Directorate General of Security,
Cabinet Secretariat,
R/O 1384, Sector-29, H.B.Colony,
Faridabad, Haryana.
2. M.S.Solanki,
Asstt. Technical Officer (Retired),
Aviation Research Centre,
Directorate General of Security,
Cabinet Secretariat,
R/O D-10, Shyam Vihar,
Main Gola Dairy Road,
Najafgarh, New Delhi-43.
3. J.N.Mishra,
Asstt. Technical Officer (Retired),
Aviation Research Centre,
Directorate General of Security,
Cabinet Secretariat,
R/O F-2645 Netaji Nagar,
New Delhi-23.

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... Applicants

(By Shri H. K. Chaturvedi, Advocate)

-versus-

1. Principal Director,
Directorate General of Security,
Cabinet Secretariat, Govt. of India,
East Block-V, R.K.Puram,
New Delhi-110066.
2. Director, Aviation Research Centre,
Directorate General of Security,
Cabinet Secretariat, Govt. of India,
East Block-V, R.K.Puram,
New Delhi-110066..
3. Director of Accounts,
Office of the Director of Accounts,
Cabinet Secretariat,
East Block-9, Level-VII, R.K.Puram,
New Delhi..
4. Deputy Director (L),
Aviation Research Centre,
Directorate General of Security,
Cabinet Sectt., Govt. of India,
East Block-V, R.K.Puram,
New Delhi-110066.
5. Deputy Director of Accounts,
Office of the Director of Accounts,
Cabinet Secretariat, East Block-9,
Level-VII, R.K.Puram, New Delhi.

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6. Ministry of Defence,
Govt. of India through
Chief of Naval Staff,
Naval Headquarters,
New Delhi.

7. Deptt. of Personnel,
Ministry of Home Affairs through
Secretary, North Block,
New Delhi.

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... Respondents

(By Shri N.S.Mehta, Advocate)

ORDER (ORAL)

The facts and issues involved in these two OAs being similar, they are being disposed of by this common order.

2. Applicants herein were in regular Naval service from 1954 to 1962. They were kept in Fleet Reserve from 1962 to 1975. However, in the meanwhile they joined civil service in 1963 and retired on superannuation in 1996. They were paid pensionary benefits for the period they were in regular Naval service upon taking into consideration the period they were kept in Fleet Reserve. According to applicants they had not been given an option in writing as was mandatorily required under Rule 19(2)(a) of the CCS (Pension) Rules. They claim that they are entitled to civil pension for their service rendered from 1963 to 1996. However, respondents have taken into consideration only their services from 1975 to 1996 disallowing the period the applicants had been kept in Fleet Reserve.

3. Earlier these OAs were dismissed by this Tribunal vide order dated 27.11.1997. The Tribunal's order was carried to the High Court of Delhi through Writ

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Petition Nos.5152 and 5461 of 1998, The High Court disposed of these writ petitions by order dated 9.4.2002 observing that the Tribunal had neither taken note of the factual aspect whether the petitioners had been granted an option in writing in terms of Rule 19(2)(a) of the Pension Rules nor was the effect of non-compliance of the said Rule taken into consideration. The High Court directed a fresh consideration of the matter by the Tribunal. It also directed that if the parties so desired they could file an application for amendment questioning the order passed by the Central Government which could be considered on its own merits.

4. Shri M.S.Narula and others, applicants in OA-747/1997 have accordingly moved MA-1507/2002 for amendment of the OA pursuant to observations/directions made in High Court's orders. Shri N.S.Mehta, the learned counsel of respondents has no objection to the amendment of the OA. As such MA-1507/2002 is allowed and the amended OA is taken on record. Shri Mehta contended that respondents' reply dated 24.1.2003 be taken into consideration.

5. So far as OA-1529/1996 is concerned, applicant Shri K.D.Mitha has not filed any amendment application. His MA-1574/2002 is allowed and OA-1529/1996 is revived, as per the directions of the High Court.

6. I have heard the learned counsel of both sides. To facilitate adjudication in the present matters, provisions of Rule 19 of the Pension Rules are reproduced below :

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"19. Counting of military service rendered before civil employment

(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 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

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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 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."

7. The learned counsel of applicants stated that respondents have not asked applicants in writing about

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their option for getting military pension or to count the qualifying service towards civil pension as mandated by provisions of Rule 19(2)(a) of the Pension Rules. As such, action of the respondents for not counting the qualifying service towards civil pension is vitiated. It has been asserted that respondents never asked for option in writing of applicants. In this connection, my attention was drawn by the learned counsel to additional affidavit filed by respondents on 3.4.2000 in the writ petition No.5152/1998 in which respondents have stated, "From the records available with the respondents it cannot be said as to whether an option in writing was given to the petitioners requiring them to choose whether to get military pension or to count the qualifying service towards civil pension." As the assertion of applicants that they had not been asked to exercise option mandated in the provisions of Rule 19(2)(a) has not been specifically denied by respondents, the inevitable conclusion is that no such option was asked for by respondents from applicants. It has been stated on behalf of applicants that they are prepared to refund the Naval pension even at this stage provided that the facility of easy instalments is given to them so that the relief claimed by them for counting the period of service during which applicants were Fleet Reservists is taken into account for refixing their pension in terms of the aforesated rules. The learned counsel of respondents, in view of the fact that respondents have not been able to establish the fact that options were called from applicants, fairly consented to refund of the Naval

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pension by applicants in an appropriate manner so that they can be accorded necessary relief.

8. Having regard to the fact that respondents had not called option from applicants in terms of Rule 19(2)(a) of the Pension Rules, the impugned OM dated 27.12.1996 and 28.1.1997 in OA-747/1997 and dated 23.4.1996 in OA-1529/1996 are quashed and set aside deeming that applicants have exercised option under Rule 19(2)(a) of the Pension Rules in favour of counting the qualifying service towards civil pension. Respondents shall re-fix the basic pension of applicants counting the period of service during which applicants were Naval Fleet Reservists and to pay them the arrears due. Respondents shall adjust the Naval pension paid to applicants upto now from the re-fixed pension and/or against the arrears, if any, on the re-fixation of the pension as above and securing refund of the Naval pension paid to applicants in easy monthly instalments not exceeding one-third of the amount of the re-fixed pension.~

9. Respondents shall pass appropriate orders in terms of the above directions within a period of three months from the date of receipt of these orders.

10. The OAs are disposed of in the above terms.
No costs.

Attested.

Om Pandey
07/7/97

/as/

V. Majotra

(V. K. Majotra)
Member (A)