

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

4

O.A. No. 1588/89
T.A. No.

199.

DATE OF DECISION 2.8.1991


Kharaiti Lal Bhalla	Petitioner
Shri B.S. Mainee	Advocate for the Petitioner(s)
Versus	
Union of India & Ors.	Respondent
Shri O.N. Moolri	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? -
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? -
4. Whether it needs to be circulated to other Benches of the Tribunal ? -


 (AMITAV BANERJI)
 CHAIRMAN

5

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. OA 1588/89.

DATE OF DECISION: 2-5-91

Kharaiti Lal Bhalla ... Applicant.

Versus

Union of India & Ors. ... Respondents

CDRAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicant. ... Shri B.S. Mainee,
Counsel.

For the Respondents. ... Shri O.N. Moolri,
Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman)

A short point for consideration in this Original Application (O.A.) is whether the applicant is entitled to the benefit of his previous ^{service} /from 10.2.1949 to 21.3.1957 prior to his Railway service from 22.3.1957 for the purpose of fixing the initial salary and pensionary benefits.

Shri B.S. Mainee, learned counsel for the applicant, stated that the applicant is entitled to count his military service for the purpose mentioned above. He was not called upon for exercising option, otherwise he would have done so. Nevertheless, he would be entitled for counting of his military service rendered prior to Railway Service. He retired on 30.4.1988. He relied on the Railway Board's letter No. E(NG) 11-6 RE/1/22 dated 19.11.1970, in which it was stated that the provisions contained in the Rule 34 of the

Railway Establishment Rules & Labour Laws will have retrospective effect from 1.1.1956, instead of 30.5.60 as stipulated in the order dated 19.1.1970. He also relied on the letter of the applicant to the General Manager, Northern Railway (Annexure A-2) dated 22.2.1956, and also referred to Annexure A-10, dated 10.6.1988 regarding counting of military service for the purpose of pensionary benefits. Learned counsel also referred to the decision of the Principal Bench of the Tribunal in T-98 of 1987 SHRI BALWANT RAJ RAWAL VS. UNION OF INDIA, decided on 9.11.1987, where the Tribunal held that the Railway servant who had rendered service in the Army earlier would be entitled to the benefit of his previous service.

Shri O.N. Moolri, learned counsel for the respondents, contended that the applicant was not entitled to count his previous service rendered by him in the Army for he had not exercised the option for doing so at any time. There is neither any application by the applicant nor any order by the Railways in respect of option. He further stated that the applicant was appointed as Trains Clerk on 27.3.1957, and it was not admitted that he applied for counting of Military service immediately. That was done for the first time only on 26.2.1988. He relied on the printed circular No. 7519, issued by the Railway Board. Even the further chance to exercise the option given by the Ministry's letter dated 3.11.1978 had not been complied

5
7

with. It was further urged that in case the applicant had received any gratuity, then it was incumbent upon him to have refunded the same before asking for pension.

We have heard learned counsel for the parties and we are of the view that this is a case in which the applicant should not be denied the benefit of his Army Service. The plea taken by the respondents is somewhat technical. The applicant had served in the Army from 10.2.1949 to 21.3.1957, i.e. slightly over 8 years. The very next day i.e. 22.3.1957 he had joined the Railway service. He retired after 39 years of service. The sole question is whether the applicant is entitled to the benefit of previous service for fixation of initial pay and pension. In the normal course, he should get the benefit, but the objection is that the applicant never exercised his option for fixation within three months of the joining of the Railways and within the enlarged period given by the Railways in 1976-79. The other objection taken is that he made the application to the Railways only two months before his retirement.

The decision of the Railway Board is that a person who has rendered service in the Army before joining the Railways is entitled to pension. Certain procedures have to be complied with. If the procedure is complied with, there is ^{not} an iota of doubt that he would get it. The point, therefore, boils down to this, has the applicant been deprived of the pensionary benefits merely because he had not opted for pension thereof? One pertinent fact

24

has to be noted at this stage. How is the option to be exercised? Who is to intimate to the party and ask his views about exercise of option? Undoubtedly, it^{is} incumbent on the employer to intimate to the applicant that whether he would like to opt for pension. It is only then the employee gives answer one way or the other. He may decline in some cases where he is in receipt of a large amount of gratuity, and is unable to refund the same. But where he is able to refund the same, he would do so in order to get the benefit of pension after completion of Railway Service. In that event, his previous service would also be taken into account.

A similar view is taken in the Single Member Bench decision in the case of BALWANT RAJ RAWAL VS. UNION OF INDIA (T-98 of 1987), decided on 9.11.1987. The Single Member held:

"In any case, it appears clear that the applicant is entitled to fixation of pay taking into account the service rendered by him in the Army. This is clear from the various circulars issued by the Railway Board and is also confirmed from the benefit given to S/Shri Tek Chand Kalra, K. Adisasnan and Harminder Singh. In the circumstances, the application is allowed. The respondents are directed to refix the salary of the applicant at a higher stage taking into account the service rendered by him in the Army. He must get full benefit of Railway Board's letter No. E(NG)11-6 RE/1/22 dated 19.11.1970 fixing his pay retrospectively without raising the question of an option being exercised or not by the applicant. He should also be eligible to all consequential benefits of such refixation of salary. The respondents

may refix the salary and make all the payments to the applicant within a period of three months from the receipt of these orders by the respondents. There will be no orders towards payment of any penal interest or costs".

It will be relevant to cite Rule 34 of the Railway Establishment Rules & Labour Laws:

"Ex-Combatant Clerk - The service rendered by combatant clerks (Sepoy and above and equivalent rank in Navy and Armed Forces) may be treated as equivalent to service as clerks/junior clerks/storemen in Railways irrespective of the pay drawn in Armed forces and when such persons are absorbed in such posts on the Railways, their initial pay may be fixed at a higher stage in the scale above the minimum, equal to the number of completed years of service as combatant clerks. (R.B's No. E(NG)63 RE 1/22 of 25.7.63) (N.R. S.No. 2191). These orders are applicable to ex-combatant storemen also. (R.B's No. E(NG)-II 63 RE/1/22 of 7-11-63 (N.R., S.No. 4546)."

"The period of service rendered by ex-combatant clerks on their appointment as clerks/junior clerks/storemen on the Railways prior to 30.5.60 is to be excluded for purpose of fixation of pay only. It will not however affect their position regarding seniority, pension, gratuity etc. (R.B's No. E(NG) 11-63 RE 1/22 of 19.1.70). The Railway Board have vide their letter No. E(NG) 11-6 RE/1/22 of 19.11.70, decided that the provisions contained in the aforesaid paras will have retrospective effect from 1.1.1956, instead of 30.5.60 as stipulated earlier."

"Ex-Combatant clerks re-employed as L.D.Cs/Junior clerks may be given an option to get their pay refixed with effect from 1.1.56 or from date of their appointment, as the case may be. The option should be exercised within six months from the date of issue of the aforesaid letter and option once exercised, will be final. No arrears as a result of the application of these orders relating to the period prior to the date of issue of this letter will be admissible.

At the time of re-employment of ex-combatants clerks/storemen on the railways, a reference to the orders concerning pay fixation should be made in the letter of offer itself. A specific mention that the person

so appointed has to exercise the said option within three months of his re-employment and such an option once exercised will be treated as final. (R.B's No. E(G)84-EM-1/1 dated 1.4.85)(N.R., S.No. 8790)!

The above orders show that the benefit of the Army service would be available to the applicant for he joined the service in 1957. Reference may be made to the Railway Board's letter No. E(NG) 11-6 /RE 1/22 dated 19.11.1970. The Railway Board's letter No. E(NG)63 RE 1/22 dated 25.7.1963 makes it clear that the service rendered by combatant clerks may be treated as equivalent to service as clerks in Railways irrespective of the pay drawn in Armed Forces and when such persons are absorbed in such posts on the Railways, their initial pay may be fixed at a higher stage in the scale above the minimum, equal to the number of completed years of service as combatant clerks. It is subsequently clear by their letter dated 7.11.1963 that these orders are also applicable to ex-combatant store-men.

The above Rules make it obligatory on the Railways to re-fix the salary of the ex-combatant clerk at a higher starting pay taking into consideration his previous service in the Armed Forces of the Union. Consequently, the question of exercise of option will also depend when it is sought by the Railways. A benefit which is available to an employee on the exercise of an option will depend on the employer bringing to his notice the above provision or opportunity to the employee. It is only then he can exercise his option. It is not a case where he was made aware of the provision of exercise of option and he did not avail of it.

211

We are, therefore, of the view that the benefit of his previous service cannot be denied to the applicant on a technical ground. He is entitled to the grant of benefit of his previous service in the Armed Forces of the Union including pensionary benefits and we hold accordingly.

We, therefore, direct the respondents to refix the salary of the applicant at a higher stage taking into account the service rendered by him in the Army. He is also entitled to get full benefit of Railway Board's letter No. E(NG)11-6 RE/1/22 dated 19.11.1970^{for} fixing his pay retrospectively without raising the question of an option being exercised or not by the applicant. He is also entitled to all consequential benefits of such refixation of salary, and pensionary benefits. He is also liable to refund the gratuity paid to him, if any. The respondents are further directed to refix his salary and make all the payments to the applicant within a period of three months from the date of receipt of a copy of this order by the respondents. We order accordingly. We are, however, of the view that the applicant will not be entitled to any penal interest. Costs on parties.

I.K. Rasgotra
2/8/91
(I.K. RASGOTRA)
MEMBER (A)

Amitav Banerji
2.8.91
(AMITAV BANERJI)
CHAIRMAN

'SRD'