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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1696 of 1988
Along with
O.A. No. 1719 of 1988 &
O.A. No. 1704 of 1988

This 7th day of January, 1994

Hon'ble Mr. J.P. Sharma, Member 'J)
Hon'ble Mr. B.K. Singh, Member(A)

In O.A. No. 1696 of 1988:

T. Balaswamy,
S/O Shri T. Kesava Raju,
Technical Assistant (Gr.II)
Freq. Section (WPC),
Ministry of Communications,
Sardar Patel Bhavan,
Parliament Street,
New Delhi.

Applicant

BY Advocate: Shri R.K. Kamal

VERSUS

1. Union of India, through,
The Secretary, Ministry of Communications,
Sanchar Bhavan,
New Delhi.

2. The Secretary,
Department of Pensions &
Pensioners' Welfare,
Ministry of Personnel, PG & Pensions,
North Block,
New Delhi.

Respondents

BY Advocate: Shri KC Mittal

In O.A. No. 1719 of 1988:

P.K. Nandi,
S/o Late Shri R.c. Nandi,
Technical Asstt., Gr.I
Ministry of Communications,
Sardar Patel Bhavan, Room No.222
New Delhi.

Applicant

By Advocate: ~~As above~~

Contd.....2/-

VERSUS

1. Union of India, through

The Secretary,
Ministry of Communications,
Sanchar Bhavan,
New Delhi.

2. The Secretary,

Department of Pensions &
Pensioners' Welfare,
Ministry of Personnel, PG & Pensions,
North Block,
New Delhi.

Respondents

BY Advocate: **As above**

In O.A. No.1704 of 1988:

Devto K.E. Narula,
S/o Late Shri C.R. Narula,
Technical Asstt. Gr.I
Wireless Planing & Coordination Wing
Ministry of Communications,
Sardar Patel Bhavan,
New Delhi.

Applicant

BY Advocate: **As above**

VERSUS

1. Union of India, through

The Secretary,
Ministry of Communications,
Sanchar Bhavan,
New Delhi.

2. The Secretary,

Department of Pensions &
Pensioners' Welfare,
Ministry of Personnel, PG & Pensions,
North Block, New Delhi.

Respondents

BY Advocate: **As above**

Contd....3/-



Ver. R. S. Sinha

ORDER

(By Hon'ble Mr. B.K. Singh, Member (A))

In OA No.1696/88, T. Balaswamy Vs. Union of India; in OA No.1719/88, P.K. Nandi Vs. Union of India; and in OA No.1704/88, K.L. Narula Vs. Union of India. All these applicants have ^{served} earlier in the Army and were discharged from there. Thereafter they were given civil employment by the respondents. The issue of facts and law involved in all these OAs is same and similar and the learned counsel for the applicants has taken the OA No.1696/88 as the leading case and advanced his arguments in that case stating that decision in the aforesaid OA will also cover the issues in the other two above-named OAs. So OA No.1696/88 is taken as the leading case.

2. This OA No.1696/88 has been filed against the order No. A-38020/2/87-Admn. dated 6.1.88 read with the other O.M. of even number dated 23.7.87. These are marked as annexure A-i and A-ii(a) respectively. These OMs have been issued rejecting the request of the applicant for permission to revert to the pre-option position.

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3. The applicant served in Indian Navy for 11 years and 9 months including 1½ years training from 25.4.59 to 2.9.60. He was recruited on contract for 10 years only and was discharged on 2.9.70. For the next ten years he was on the reserve list. As an ex-serviceman, however, the applicant was rehabilitated as Technical Assistant, Grade-II in the Wireless Planning and Coordination Branch (Unit) of the Ministry of Communication under the administrative control of respondent No.1 w.e.f. 10.3.71. He was confirmed as TA, Gr.II on 1.10.79.

4. Under Rule 19, CCS(Pension) Rules 1972, the applicant was required to exercise his option regarding counting of the military service for qualifying service for civil pension or to continue to draw the military pension while in civil service so that he may draw military pension as well as civil pension on retirement.

5. This option was to be exercised within 3 months from the date of confirmation. The applicant exercised his option in favour of counting military service as service qualifying for civil pension. It has been admitted in the application that he exercised the option to count his military service as service qualifying for civil pension because it was beneficial to him at the relevant point of time and he decided to refund Rs.945/- which he had drawn from army before exercising his option.

6. By the order at Annexure A-2, viz., O.M. No.38019/1/84-WPC dated 2.5.84 issued by the 1st res-

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pondent, the applicant's option for counting military service for civil pension was accepted. This, however, was subject to the condition that he would refund the amount of pension drawn by him for military service and it was further stipulated that the military service shall not be counted for qualifying service for civil pension till the amount was refunded.

7. After the acceptance of the option, the pension rules were liberalised vide O.M. No.2-14/87/PIC dated 5.3.87 (annexure A-3) and this was issued by respondent No.2. The pension rules were liberalised as a result of the recommendations of the 4th Pay Commission. Annexure A-4 indicates that vide letter No. G1/C/091/Vol.V/Tech. dated 13.3.87, the Controller of Defence Accounts (Pensions) Allahabad clarified that the Government have decided to grant minimum pension of Rs.375/- per month to military pensioners also w.e.f. 1.1.86.

8. Now that the applicant found that it was beneficial for him to go in for military pension, he filed a petition (annexure A-5) dated 18.5.87 to the President of India requesting for permission to withdraw his earlier option to count his military service as service qualifying for civil pension and to revert back to the pre-option position so that he may opt again to continue to draw military pension while in service and on retirement on superannuation from civil service. Being aggrieved by the rejection of his representation and his memorial at A-i and A-i(a)

the applicant has approached the Hon'ble CAT for quashing the rejection order and permitting him to

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exercise his option for military pension. The applicant has sought the relief that the Tribunal may be pleased to direct the respondents to permit him to withdraw his option to count his past military service as service qualifying for civil pension so that he may opt to continue to draw military pension during his entire career in civil service as well as on his retirement on superannuation from civil service.

9. A notice was issued to the respondents who has since ~~not~~ contested this application and opposed the grant of following reliefs prayed for by the applicant. We have heard ~~argued~~ the learned counsels, Shri R.K. Kamal for the applicant and Shri K.G. Mittal for the respondents at great length. It is admitted by both the parties that on confirmation in TA Gr.II the applicant exercised his option under Rule 19 of CCS (Pension) Rules 1972 and that this option was accepted by the controlling officer subject to the condition that he would refund a sum of Rs.945/- drawn from army pension. The main contention of the learned counsel for the applicant was that there was sanctity attached to the exercise of option. The O.M. at annexure A-3 issued by Govt. of India, Ministry of Personnel, PG 10 to 11, 1972 contains the orders issued by the President for minimum military-civil pension and also minimum pension in case of deceased pensioners. According to this O.M. the minimum pension was fixed at Rs.375/- per month. It was further stipulated in the O.M. that this minimum pension would be applicable (S.A. expenses). *(B)* ~~to~~ ~~the~~ ~~surviving~~ ~~dependent~~ ~~and~~ ~~other~~ ~~relatives~~ ~~of~~ ~~deceased~~ ~~pensioners~~ ~~in~~ ~~case~~ ~~of~~ ~~deceased~~ ~~pensioners~~

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in all cases, including employed/re-employed pensioners. It is further stipulated that for purpose of stepping upto Rs.375/-, pension will be inclusive of commuted portion, if any. The commuted portion will be deducted from the said amount of Rs.375/- while making monthly disbursement. These orders were made effective from 1.1.86 and these were applied to all pensioners/family pensioners irrespective of the date of retirement of the government servant or the date of sanction of family pension. These orders were also broad and it made applicable to Armed Forces pensioners, civilian pensioners paid out of Defence Services Estimates, to Railway Pensioners and Pensioners of All India Central Services. The orders on his representation rejecting his request are at annexure A-1(a) and annexure A-2.

The O.M.O. No.A-38020/2/87-Admn, Government of India, Ministry of Communication is dated 23rd July 1987, as under follows as a result of filing of the memorial to the President of India. This letter clearly indicates that the matter was taken up with the Department of Pensions and Pensioners Welfare and it was categorically stated that the option once exercised is final and that it cannot be revoked. At annexure A-2 dated 2.5.84 a detailed analysis, as to how the pension of the applicant will be calculated, is available. Shri Balaswamy joined the Ministry of Communications on 10.3.71 as TA Grade-II. He had rendered war/military services from 2.9.60 to 2.9.70. His date of birth is 16.4.43 and he had attained the minimum age for recruitment to civil service (i.e. 18 years) on 16.4.61. The said order (annexure A-2) further stated that having accepted the option of Shri Balaswamy in relaxation of the provisions of Rule 19

of CCS(Pension) Rules 1972 consequent on his confirmation in the post of TA Gr.II, the President was pleased to decide that Shri T. Balaswamy should be permitted to count his military service from 16.4.61 to 2.9.70 as part of his service qualifying for civil pension subject to the condition that he would refund Rs.945/- drawn by him as pension for his military service and that his military service shall not be counted as qualifying service until the whole amount drawn by him had been refunded by him. It was further stipulated that the service from 3.9.70 to 9.3.71 will not be reckoned as qualifying service for civil pension. This order was issued in consultation with the Department of Pensions & Pensioners Welfare and Internal Finance Division of the Ministry of Communications.

10. The learned counsel for the respondents argued that the option should have been exercised within 3 months as statutory requirement but this was not done and the option was exercised by the applicant after a year or so and as such the sanctity of the statutory option rule was violated. It was further said that there was no discrimination because other group of ex-servicemen who did not from Army got a chance to exercise their option when another opportunity was given to them but this opportunity was denied to the applicant. The learned counsel for applicant further said that if the applicant had not exercised the option, he would have been deemed to have exercised the option in favour of military pension under Rule 19 of CCS(Pension) Rules 1972. This was argued at length on the previous occasions but today he did not argue on the deeming clause of the pension rules.

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11. It is admitted by both the parties that the applicant opted to earn single pension based on combined military and civil service under provisions of CCS (Pension) Rules, 1972 because it was more advantageous to him at that time. It is also admitted that his representation dated 18.5.85 requesting for permission to withdraw the option earlier exercised by him to count military service as qualifying service for civil pension and to revert back to the pre-option position was rejected in consultation with the Deptt. of Pensions and Pensioners Welfare and this is annexure A-i of the O.A. As back as January 1988 the applicant vide letter (annexure A-1) the applicant had been finally informed that his representation had been forwarded to the Deptt. of Pensions and Pensioners Welfare and that the Ministry did not accept his request and reiterated the position as communicated to him earlier.

12. A careful reading of Rules 19, CCS(Pension) Rules 1972 makes it clear that it is only in those cases where the ex-servicemen could not exercise their option would be deemed to have opted for military pension and would continue to draw the same and that this would not entitle them to count the military service for qualifying service for civil pension. The applicant has himself admitted in the application that he exercised his option consciously and intentionally because he knew that the pension which would be available to him after retirement from civil service would be much higher than the earlier pension which he

was drawing. It is in this context that the Ministry of Personnel, PG & Pensions did not accept his contention and did not allow him to change the option.

The Government of India's Decision No.4 under Rule 19 of CCS(Pension) Rules stipulates that the option once exercised in regard to counting of military service rendered before civil employment shall be final and irrevocable. The Government of India in all their correspondence with the applicant have reiterated this stand.

13. The learned counsel for the respondents also rebutted the charge of discrimination because he said that the applicant's counsel had nowhere mentioned the name of a single person similarly situated as the applicant who has been allowed to withdraw the option and switch over from the original option. The applicant had hardly put in $1\frac{1}{2}$ years service including the training period. That means only 1/3rd of his service career was spent in the army and that too on contract basis. When the contract came to an end he was kept on reserve list and paid a notional pension for keeping him on the reserve list and subsequently he took to civilian employment under the Ministry of Communications. Rule 19, CCS(Pension) Rules stipulates as follows:-

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 service 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 death-cum-retirement gratuity including service gratuity, if any; also holding the rank of Major or Sub-Officer equivalent to and count previous military service as his 'qualifying service'.

14. It is categorically laid down in Govt. of India's Decision No.4 under Rule 19 of CCS (Pension) Rules that the option once exercised shall be final. The applicant opted for counting his military service towards the civil pension and he was allowed to do so vide Order dated 25.8.87 (annexure A-3).

15. Thus it would be seen that the statutory rules have been followed in regard to sanctity of Rule 19 of CCS(Pension) Rules and Decision No.4 of Government of India has confirmed this position. The opportunity given to those who had not exercised their option before 1987 when the pension rules were liberalised cannot be termed as discrimination against the applicant. The applicant is only trying to switch over from one position to other taking into consideration whatever is advantageous to him. At one point of time he opted for counting military service as qualifying service for civil pension knowing that it was more beneficial to him and now he wants to withdraw his option and switch over to military pension because now that is more advantageous to him. This cannot be permitted in the light of Decision No.4 under Rule 19 of CCS(Pension) Rules as stated above.

16. Taking a synoptic view of the facts and circumstances of the case, we find that the present application is devoid of any merit and substance and is

therefore dismissed leaving the parties to bear their own costs.

16. This order will be applicable to the other connected OAs referred to above in the first para of the judgment and those OAs are also dismissed as devoid of any merit and substance.

(B.K.SINGH)
MEMBER (A)

vpc

(J.P.SHARMA)
MEMBER (J)

Attested
Kishan
7/1/94
C.O/C-IV