

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. CA-736/88

Date: 13.8.93

Dr. (Mrs.) Ramni Khitha Applicant

Versus

Union of India & Ors. Respondents

For the Applicant Shri G.D. Gupta, Advocate

For the Respondents Shri R.M. Bagai, Advocate

CORAM: Hon'ble Mr. J.P. Sharma, Member (Judl.)
Hon'ble Mr. N.K. Verma, Member (A).

1. To be referred to the Reporters or not? Yes.

(Judgement of the Bench delivered by Hon'ble
Mr. J.P. Sharma, Member)

The applicant is a Medical Officer in the C.G.H. Scheme in the Ministry of Health & Family Welfare. She is aggrieved by the order of June, 1987 passed by the Director General, Ordnance Factories (DGFs) rejecting the representation dated 1.9.1986 with the observation that the Controller of Accounts/FIS, vide their letter dated 5.6.1987, informed that the initial two spells of services rendered by ~~xxx~~ the applicant, namely, Short Service Commission (S.S.C.) and the contract service under DGAFMS and CGHS ^{respectively} ~~would not count as qualifying as~~ per the provision of Rule 19 and Rule 2(g) respectively of the CCS (Pension) Rules, 1972. In this application filed on 21st April, 1988, the applicant prayed for the grant of the following relief:-

- A direction to the respondents to give the

benefit of the SSCO and Special Service to her in respect of fixation of pay and consequential arrears of pay; fixation of pension and determination of seniority in her present employment as a Medical Officer of CGHS, Ministry of Health and Family Welfare.

2. The case of the applicant is that she joined the Short Service Commission as Medical Officer on 5th April, 1964 for a period of three years and she was discharged on 9th June, 1967 from the said assignment. She joined as a lady doctor in the Ministry of Health in the CGH Scheme on a contract basis on 25th March, 1970 but her services were terminated on 20.12.1971 as she did not join after availing of 71 days' leave w.e.f. 21.9.1971. The applicant again was appointed as temporary Assistant Surgeon, Grade I in Ordnance Factory Organisation on purely ad hoc basis on 22.5.1972. She was subsequently appointed by the U.P. S. C. on regular basis w.e.f. 20.12.1973 in the same capacity in DGOF and confirmed in her appointment w.e.f. 31.8.1975. While she was serving as such, she joined the Ministry of Health as Medical Officer w.e.f. 23.12.1983 and since then she has been working as such. The grievance of the applicant, therefore, is that the service she has rendered in the Army as Short Commissioned Medical Officer w.e.f. 5th March, 1964 to 9th June, 1967

and as a Lady Doctor on contract basis from 20th March, 1970 till 20.12.1971 in the Ministry of Health, has not been counted by DGOF for the purpose of fixation of pay and seniority. Along with MP-80/92, she has annexed a representation made by her on 17th January, 1977 while she was posted as Assistant Surgeon, Gur Carriage Factory, Jabalpur addressed to Secretary, Ministry of Defence where she has requested that her services be reckoned for the purpose of fixation of pay and seniority, etc. She made another representation on 13.7.1979 to DGOF, Calcutta for the redress of the same grievance. The applicant still further made a representation on 11th May, 1984 addressed to the Secretary, Ministry of Health on the same score. The Ministry of Health, by the letter dated 19.5.1986, wrote to DGOF, Calcutta, for examination of the request of the applicant and the Ministry of Defence finally gave their reply in June, 1987 which has been assailed by the applicant in the present case. The representation made by the applicant on 13.7.1979, was rejected by DGOF on 24.12.1979. The representation which had been preferred in 1984, was rejected on 19.1.1984.

3. The respondents contested this application and took the preliminary objection that the present application is not only barred by delay and laches but also by limitation as laid down in Section 21 of the Administrative Tribunals Act, 1985. It is further stated on merits that

the applicant has no case as she did not exercise her option for counting her past military service in terms of Rule 19 (1) of the C.C.S.(Pension) Rules within a period of three months. Further, it is the case of the respondents that since she did not exercise any option, she is deemed to have opted for Clause (a) of Rule 1 in terms of Rule 19(2) (b) of the C.C.S.(Pension) Rules and as such, she could continue to retain the gratuity received on discharge from military service and as such, her military service cannot count for qualifying service. The respondents have also taken shelter under Rule 13 of the C.C.S.(Pension) Rules, 1972 which lays down that the qualifying service of a Government servant can be counted provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post. As per Rule 11 of the aforesaid rules, the counting of contract service, the subsequent service must be without any interruption of duty. On the basis of the above legal position, the applicant has been denied the counting of the military service as well as the contractual service she had rendered earlier before joining DGOF.

4. We have heard the learned counsel for the parties at length and perused the records. The contention of the learned counsel for the respondents that the present

application with the respect to the reliefs claimed for fixation of pay and seniority after counting the military service and the contractual service the applicant has rendered during the period from 5.3.1964 to 9.6.1967 and 25.3.1972 to 21.5.1972, respectively, is barred by limitation as well as delay and laches. The letter dated 24th December, 1979 issued by the Ministry of Defence, O.F.B., Calcutta, is the rejection of the claim of the applicant in reply to her representation dated 24th July, 1979. The same rejection was repeated in the subsequent letter dated 19.1.1984 rejecting the subsequent representation forwarded with the letter dated 3.11.1983. Thus, the applicant in every case for fixation of her pay and seniority on her joining DGOF w.e.f. 22.5.1972, should have been processed by assailing these orders before the competent authority. The applicant did not do that and continued to file other representations after she had joined the Ministry of Health in the CGHS w.e.f. 23.12.1983. The inter-departmental communication between the Ministry of Health and Ministry of Defence, would not give further life to the limitation and the impugned order of 1987 assailed in this case, is only issued by the Ministry of Defence reiterating their position conveyed to the applicant earlier. The law

has been clearly laid down in the case of S. S. Rathore Vs. State of M.P. reported in A.I.R., 1990 SC 10 that repeated representations do not give any extension of limitation. The applicant had been finally informed that her case is not covered under rules and she cannot be given the benefit of the past service on account of her not giving an option when she was duly confirmed in DGOF in 1975 and there was an interruption for a certain period when she had been appointed in DGOF though on ad hoc basis w.e.f. 22.5.1972. Her services as a Lady Medical Officer on contractual basis in CGHS were terminated on account of her not reporting for duty after availing of 71 days' leave. The respondents have annexed with their reply Annexure R-2 dated 25.9.1972 informing the applicant that her services stand terminated w.e.f. 20.12.1971. The benefit could have been claimed by the applicant only if she had been appointed on a regular basis in CGHS as a Lady Medical Officer, but she was appointed only on contractual basis by the order dated 18.5.1970 on a fixed remuneration of Rs.500/- consolidated per complete calendar month. When she had accepted this appointment purely on contractual basis, there was no question of giving her seniority or benefit in fixation of pay of the past military service from which she was discharged on 9.6.1967.

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5. Under Section 21/1 of the Administrative Tribunals Act, 1985, the applicant would have assailed her grievance before the Tribunal within one year from the date of cause of action had arisen to her. Even giving her the benefit of second representation, which was rejected in January, 1984, the applicant could have filed the application on the enforcement of A.T. Act, 1985 soon after November, 1985. She has not done so. In fact, her earlier representation was rejected in 1979 when she was serving in DGOF and at that time too, she could have assailed her grievance before the competent forum, which she has not done. Thus, the applicant has no case at all for getting the benefit of fixation of her pay as well as seniority of the military service she had rendered from 1964 to June, 1967, being barred by limitation. Another fact is that she wants this relief to be given to her when she had already joined another organisation of the Central Government in CGHS under the Ministry of Health and while she was working in the Ministry of Defence in DGOF, she was not given the benefit of the past military service.

6. However, the applicant is still serving in the Ministry of Health. Though the respondents have taken the plea that the applicant has not given her option within three months of her joining the DGOF, yet a careful reading of Rule 19 goes to show that the applicant is

entitled to be informed as per provisions of Rule 19(2)

(a) by the authority issuing the order of substantive appointment of a civil service or post to require in writing the Government servant to submit the option under sub-rule (1) of Rule 19 within three months from the date of issue of such order and also to bring to her notice these provisions. There is nothing on record to show that such an order in writing was ever received by the applicant from the concerned authority. Thus, the learned counsel for the applicant contended that the applicant cannot be denied the benefit of the military service rendered by her before civil employment towards qualifying service for the purpose of pension. The applicant has also averred that she has also offered to refund the amount of Rs.3,000/- received by her as terminal benefits at the time of completion of service as S.S.C.O. The learned counsel for the respondents, however, could not justify that the burden which lay on the authorities issuing the order of substantive appointment, has been discharged. Thus, the applicant is entitled to count the military service for pensionary benefits provided she refunds the gratuity received by her as terminal benefits for her service rendered as SSCO under the extant rules.

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7. Regarding the contractual service, the applicant has rendered as a Lady Medical Officer in the Special Scheme of CGHS, the applicant's services were terminated as she had proceeded on leave w.e.f. 21.9.1971 after joining on 18.2.1970. Her initial appointment was only for a period of one year on fixed emoluments of Rs.500/- per month. It is not relevant from the records that she applied for appointment as Assistant Surgeon in DGOF through proper channel where she was appointed on 22.5.1972. The order of termination filed by the respondents, goes to show that her services had been terminated because she was unauthorisedly absent. In such a situation, that contractual service for which she got no terminal benefits, ~~but~~ can be counted as qualifying service for the purpose of pensionary benefits. Moreover, under Rule 17, her services cannot be counted because there had been interruption for a certain period in getting the subsequent appointment in May in DGOF.

8. In view of the facts and circumstances, the application is partly allowed and the respondents are directed to count the qualifying service for purposes of pension of the applicant of the military service she had rendered from 5.3.1964 to 9.6.1967 provided she refunds the gratuity received by her, i.e., Rs.3,000/- as per extant rules. In the circumstances, the parties are directed to bear their own costs.

N.K.Verma
(N.K. Verma)
Member (A)

Pranavita Verma

J.P. Sharma 13/8/92
Member (J)

J.P. Sharma
13/8/92