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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. 1126/87. DATE OF DECISION: September 19, 1990.

Shri Jagdish Chander Sharma Applicant.

Shri R.M. Arora Counsel for the
Applicant.

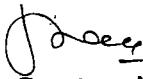
V/s.

Union of India Respondent.

Shri K.C. Mittal Counsel for the
Respondent.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

1. Whether Reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether their lordships wish to see the fair copy of the judgment? No.
4. To be circulated to all Benches of the Tribunal? No.


(J.P. SHARMA)
Member (J)


(P.C. JAIN)
Member (A)

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(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGMENT

This application under Section 19 of the Administrative Tribunals Act, 1985, is directed against order dated 28.8.1984 (at page 19 of the paper book) and seeks a declaration in favour of the applicant for getting "all the benefits, pension, death-cum-retirement gratuity etc. after taking into consideration his Military service, after his voluntary retirement as Upper Division Clerk from the office of the Development Commissioner (Small Scale Industry)" with effect from 31-3-1980 and a direction to the respondent to give the above benefits as a consequential relief.

2. Briefly stated, the facts of the case are as below:

The applicant joined the service of the Indian Army on 17.10.1944. He served there from 17.10.1944 to 19.4.1946 and again from 14.7.48 to 25.4.53. Of the above period, 30 days' service does not qualify towards civil pension; the rest does (order dated 12th June, 1981 at page 17 of the paper book). He joined the service on a civil post in the Ministry of Industry, New Delhi on 29.7.53 and retired as Upper Division Clerk on 31.3.1980. Before his voluntary retirement, he opted to have his Army
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service counted towards civil pension etc., vide his application dated 27.12.78 (page 10 of the paper book). He was asked by Memorandum dated 17.11.1979 (page 11 of the paper book) to refund an amount of Rs.171.75 Paise which he had received towards service gratuity and war gratuity at the time of his discharge from the Army. He refunded the same on 12.11.1979 (page 12 of the paper book). In his application dated 1.1.1980, he stated that he had completed 26 years of service on 29.7.79 and was thus entitled to seek voluntary retirement and accordingly by giving three months notice with effect from 1.1.80, he sought voluntary retirement with effect from 31.3.80.

3. The case of the applicant is that while sanctioning him pensionary benefits on his voluntary retirement, his Military service has not been taken into account, while it should have been added to his civil service as the amount of gratuity received by him on discharge from the Army had been refunded by him before his retirement as directed by the respondent. He represented in this regard and the Development Commissioner (Small Scale Industries), (DC (SSI), for short) vide his order dated 12.6.1981 had allowed him to count his past Military service (minus 30 days of non-qualifying service) towards civil pension / gratuity etc., but even then, in spite of his representations, he was not allowed the benefit. According to him, he is entitled to pension under Rule 48 of the Central Civil Services (Pension) Rules, 1972 and not under Rule 48-A of the Rules ibid. He continued to represent, but it was only by Memorandum dated 28.8.1984 he was informed that his case was examined in consultation with the Department of Personnel & Administrative Reforms that his request could not be acceded to "at this stage" as he had ceased to be in Government service as on the date of his application under reference, the retirement
(10)

earlier sought by him under 48 A of the aforesaid rules had already become effective." He sent a legal notice on 25.12.1985, to which no reply was received. Under legal advice, he filed a civil suit on 16.4.1986, which was entertained and summons for 1.8.1986 were issued to the respondent. The respondent sought adjournment for filing written statement and the case was fixed for 4.9.86. The case was again adjourned to 26.11.86 when the respondent, instead of filing the written statement, took the objection that the matter was not triable by the Civil Court. The Civil Court, by order dated 26.11.1986 directed for returning of the plaint and other papers to the applicant for presentation before the Central Administrative Tribunal, Delhi on 4.12.1986. When he came to file the papers received by him from the Civil Court in the Tribunal, the office of the Tribunal did not entertain the same and he was asked to file an application in the prescribed form. It took him some time to comply with the formalities. He has, therefore, asserted that he was bonafide prosecuting his remedy before the Civil Court and if there is any delay, there is sufficient cause for condoning the same under Section 21 of the Administrative Tribunals Act, 1985; even otherwise, he is covered under sub-section (3) of Section 21 of the Act ibid. He has also filed an application for condonation of delay.

4. In the counter-affidavit, filed by the respondent, the period of service put in by the applicant under the Army in two spells(minus 30 days which was not qualifying) and the ^{civil}/service put in by the applicant are not disputed. Notice for voluntary retirement and the retirement of the applicant in pursuance of that notice is also not in dispute. The plea taken is that while giving notice for voluntary retirement, the applicant knew that his request for counting the element of Military service was still

under consideration of the Government, but for reasons known to him, he did not wait for the Government decision and pressed his request for voluntary retirement, which was granted. It is further stated that it was only after his retirement that the applicant came with a revised option dated 21.4.82 to retire voluntarily under Rule 48 (instead of Rule 48-A) of the CCS (Pension) Rules. His representation was considered, but it could not be accepted as the applicant had ceased to be in Government service on that date and his retirement had already become effective. The respondent has contested the application and has pleaded that the applicant is not entitled to the relief prayed for.

5. We have carefully perused the material on record and also heard the learned counsel for the applicant. None was present for the respondent. We, therefore, decided to pass orders in this case on the basis of the pleadings of the parties and the oral submission made by the learned counsel for the applicant.

6. It is not in dispute that the applicant was governed by the CCS (Pension) Rules, 1972. Rule 48 of the Rules ibid relates to retirement on completion of 30 years' qualifying service while Rule 48-A deals with retirement on completion of 20 years' qualifying service. The short point, therefore, which falls for determination in this case is whether the voluntary retirement of the applicant is to be taken under Rule 48 or Rule 48-A of the Rules ibid and consequences flowing therefrom. The applicant's letter dated 27.12.78 addressed to the DC (SSI), Nirman Bhavan, New Delhi (at page 10 of the paper book) states as below: -

"I hereby opt to have my Army Service counted towards my Civil Service for the benefit of length of service & Pension etc. etc."

The receipt of this letter has not been disputed by the respondent. It is also not disputed that he was asked to refund the service gratuity and war gratuity received by him at the time of his discharge and he refunded the same not only before retirement, but before giving notice of three months to Government to retire. The notice for voluntary retirement does not at all mention the Rule (48 or 48-A) under which he sought voluntary retirement. The respondent had issued an order dated 12.6.1981 that the applicant is allowed to count his Military service/^{rendered} in two spells (minus 30 days of non-qualifying service) towards civil pension and gratuity etc. It is significant to note that this order was issued after the applicant had been allowed to retire from service.

7. Rule 19 of the Pension Rules ibid provides for an option to 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, on his confirmation in a civil service or post, to opt either to continue to draw the military pension or retain gratuity received on discharge from military service or to cease to draw his pension and refund the pension/^{and gratuity} already drawn. If he opts for the latter, he is entitled to count his previous military service as qualifying service. It is not the case of the respondent that the applicant was asked, on his confirmation in the civil post, to exercise his option under Rule 19 of the Rules ibid, but the applicant either did not exercise any option or he opted to retain the gratuity received by him on discharge from the military service. In any case, if it had been so, he would not have been asked to refund the Army service gratuity and the war gratuity, which the applicant

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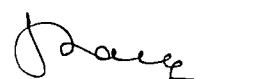
refunded. Sub-rule (5) of Rule 19 of the Pension Rules ibid provides that when previous military service is allowed to count as part of the service qualifying for civil pension, the order shall be deemed to include the condonation of interruption in service, if any, in the military service and between the military service and civil services. Thus, the question of condonation of interruption is also taken care of.

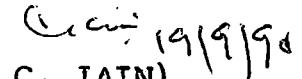
8. The respondent, in his reply, has not raised any objection in regard to limitation. What he seems to plead is the doctrine of estoppel, though it is not specifically stated as such. Estoppel cannot operate against law. If the applicant had completed 30 years or more of service qualifying for pension, he is entitled to pensionary benefits on the basis of the service he actually put in and which qualifies for pension and his voluntary retirement will have to be taken as allowed under Rule 48 of the Pension Rules ibid. The applicant has been denied the benefit of his military service even though he was entitled to the same and allowed to count it towards qualifying service for pension under order dated 12.6.1981 and which, as already stated above, was passed after the applicant had proceeded on retirement.

9. The impugned order in this case was passed on 28.8.1984. The provisions of sub-section (2) of Section 21 of the Administrative Tribunals Act, 1985 are, therefore, applicable, and the applicant should have approached the Tribunal by 30.4.1986. The applicant has stated that under legal advice, he filed a civil suit on 16.4.86, which was returned to him vide order dated 26.11.1986. This application had been filed on 9.12.1986. We are satisfied that there are sufficient genuine grounds for delay in filing the application and, therefore, we are not inclined to reject this application on the ground of limitation. However, we have kept these facts in view
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while granting the relief to the applicant in the subsequent paragraph.

10. In view of the foregoing discussion, the application is allowed in terms of the directions to the respondent to refix the retirement benefits admissible to the applicant after taking into account the two spells of service put in by the applicant under Army after deducting 30 days out of that service as non-qualifying service. However, the applicant will be entitled to arrears on that account only with effect from 1.1.1987. The revised monthly pension with the admissible dearness relief on that account will be payable with effect from 1.1.1987 i.e., for the month of January, 1987 payable in February, 1987. Arrears on this account as well as the arrears on account of difference in death-cum-retirement gratuity/^{if any,} shall be paid to the applicant within three months from the date of receipt of a copy of this order by the respondent. We leave the parties to bear their own costs.


(J.P. SHARMA)
Member (J)


(P.C. JAIN)
Member (A)