

(12)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.3 of 2004

New Delhi, this the 27th day of October, 2004

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

Rajender Aged 43 years,
Son of Shri Nand Kishore Yadav,
Working as Security Guard in
Office of Chief Engineer (R&D)
All India Radio ^ Television,
Prasar Bharti, Ring Road, New Delhi.

Resident of Village and Post Dundahera,
District Gurgaon (HAR) House No.1241,
Sector 21, H U D A GURGAO (HAR).

THRO'
M L SHARMA, G K INHA &
H P CHAKRAVORTI, ADVOCATES
BAR ROOM, CAT, P/BENCH, NEW DELHI.

(By Advocate: Shri M.L. Sharma)

...Applicant

versus

Union of India through :
The Director General,
All India Radio & Television,
Prasar Bharti, 14-B, Indraprashtha Estate,
Ring Road, New Delhi.

....Respondent

(By Advocate : Shri Adish C. Aggarwal)

O R D E R

Applicant has challenged Annexure A-1 (colly) dated 6.2.2002 whereby respondent has rejected applicant's request for counting of his past military service, prior to re-employment, as qualifying service for pensionary benefits on the ground that he had not exercised his option for the purpose made available as per DOP&T OM dated 23.5.1994.

2. Applicant had served the Army from 23.2.1979 to 3.9.1986. Thereafter on his discharge from the Army, he was appointed as Surksha Guard under the respondent w.e.f. 4.9.1987. Applicant's claim is that services rendered by him in the Army for a period of more than seven and a half years should have been counted as qualifying service under Rule 19 of CCS (Pension) Rules, 1972.

Learned counsel of the applicant pointed out that respondent did not indicate in the requirement the applicant's appointment order, whether he wanted to continue to draw the military pension or retain gratuity received on discharge from military service. He was not asked even later on to submit his option in this connection. However, respondent has not agreed to count his past military service as qualifying service for pensionary benefits. Even though when he came to know that respondent has not considered his past Army service for the purpose, he submitted complete particulars of his pension, bonus and gratuity received by him in lieu of Army service. Applicant has sought benefit of past military service in addition to his service as Surksha Guard on re-employment for the purpose of pensionary benefits.

3. Respondent has submitted a short counter reply. Learned counsel of respondent stated that the present application is barred by law of limitation. He further stated that D.P.& P.W. OM dated 23.5.1994 and Corrigendum dated 28.9.1994 (Annexure R-1) provided one time relaxation as a last opportunity to military pensioners, re-employed in civil services/posts, to exercise option for counting military service as qualifying service within a period of six months. Since applicant has failed to avail of the last opportunity to exercise option within six months of 28.9.1994, his claim is untenable. Respondent has also admitted that they had not incorporated the requirement of submission of option in his appointment letter.

4. I have considered the rival contentions. Rule 19(2)(a) of CCS (Pension) Rules, 1972 reads as under:-

“(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 returning from leave, whichever is later and also bring to his notice the provisions of Clause (b).”

W

5. Admittedly, the authority issuing the order of re-employment to the applicant did not mention in writing the requirement of exercising option for counting of past military service for pensionary benefits. The omission on this point has been admitted by respondent in Annexure A/8 dated 22.8.2001 also. Learned counsel of respondent also fairly admitted such omission. Learned counsel of respondent stated that applicant did not avail of one time relaxation granted in the matter of exercise of option within six months of 28.9.1994 in terms of respondent's order dated 23.5.1994 and corrigendum dated 28.9.1994.

6 The decision contained in Para 2 of Annexure R-1 states as follows:-

“Keeping in view these representations, it has been decided as a one-time relaxation, to provide a last opportunity to military pensioners who are presently re-employed in civil posts/services to exercise the option for counting of military service as qualifying service within a period of 6 months from the date of issue of these orders.”

7. Provision of Rule 19(2)(a) ibid warrants that the authorities must require the Govt. servant to exercise the option on re-employment. Admittedly, respondent has failed to do so. The one time relaxation granted vide Annexure R-1 does state that the concerned person should exercise the option within the period of six months but the question is whether the respondent has intimated the person concerned about this requirement? Respondent has nowhere stated that these instructions were brought to the notice of the applicant. Obviously, the applicant is not much educated person. Unless he is made to know about the requirement of exercise of option, he would not come forward to do so. The plea of limitation in such cases involving a continuous cause of action is also not tenable. Respondent not having included the requirement of exercise of option and the authorities not having brought to the applicant's notice the provision of Annexure R-1 will not permit the respondent to escape from ^{-n/b} bounded responsibility of informing the applicant. If the applicant had not submitted his option even on intimation of the requirement then the complexion of the case would have changed totally. Here, however, applicant's case merits ^{In positive In} consideration. In the interest of justice

and in view of the laxity on the part of respondent, there is a justification for considering the applicant's claim for counting his past military service for the purpose of pensionary benefits. It may be deemed that applicant has exercised his option for counting of his past military service for pensionary benefits. Applicant should be informed ~~as~~ how much amount he is required to refund along with interest from the date of joining the service while the applicant shall refund the requisite amount within a period of two months from relevant communication from the respondent. Respondents shall thereupon issue relevant orders for computing applicant's past military service for pensionary benefits within another two months. Impugned Annexure A/1 is quashed and set aside. OA is allowed in terms of ¹⁶ the above directions.

V.K. Majotra
(V.K. MAJOTRA)
VICE CHAIRMAN (A)

/ravi/