

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A No. 180/00164/2019**

Friday, this the 9<sup>th</sup> day of April, 2021.

**CORAM:**

**HON'BLE Mr. P. MADHAVAN, JUDICIAL MEMBER  
HON'BLE Mr. K.V. EAPEN, ADMINISTRATIVE MEMBER**

M.P. Chandrasekharan Panicker, 71 years,  
S/o. N. Parameswara Panicker (late),  
Machinist 'B' (Retd.),  
Manapuzha House, Parippu,  
Kottayam – 686 014. - Applicant

[By Advocate : Shri C.S.G. Nair]

**Versus**

1. Principal Controller of Defence Accounts (Pension),  
Draupadi Ghat, Allahabad – 211 014.
2. General Manager,  
Heavy Vehicles Factory,  
Avadi, Chennai – 600 054.
3. Union of India represented by its Secretary,  
Ministry of Defence, South Block,  
New Delhi – 110 001. - Respondents

[By Advocate : Smt P.K. Latha, ACGSC]

The application having been heard on 05.01.2021, the Tribunal on 09.04.2021 delivered the following:

**O R D E R**

**Per: Mr. K.V. Eapen, Administrative Member**

The short issue which is sought to be answered in this O.A is whether the Service Discharge Certificate produced by the applicant at Annexure A-2 can be taken as a substitute for his Service Book which is no longer available, to decide whether the applicant is eligible for the minimum pension claimed by him for his service with the Heavy Vehicles Factory (HVF), Avadi, Tamil Nadu.

2. The applicant had joined the Heavy Vehicles Factory, Avadi, Tamil Nadu as an Apprentice and undergone the Apprenticeship Training in Turner Trade from 06.01.1969 to 05.01.1972. He was then given appointment as Machinist 'C' in the Heavy Vehicles Factory and he joined there on 17.01.1972. Later he was promoted as Machinist 'B'. While working as Machinist 'B', he had applied for the post of Technician in the Hindustan Paper Corporation Ltd., (Now known as Hindustan Newsprint Ltd., Piravom in Kottayam District.) After getting an appointment order he was relieved from the Heavy Vehicles Factory on 16.06.1982 and he joined in his new post on 17.06.1982. He submits that though he was relieved from Heavy Vehicles Factory on 16.06.1982, his lien was kept there for a period of two years. He also submitted that he had a total service of 10 years and 5 months in the Heavy Vehicles Factory from 17.01.1972 to 16.06.1982 as indicated in the Service Discharge Certificate dated 30.04.1985 issued by the 2<sup>nd</sup> respondent-Heavy Vehicles Factory, which is produced at Annexure A-2. A copy of the Annexure A-2 was forwarded by a covering letter to M/s. Hindustan Paper Corporation by the 2<sup>nd</sup> respondent, which is produced as Annexure A-3. However, even after this, no terminal benefits had been given to the applicant though he submits that under Rule 49(2) of the CCS (Pension) Rules, 1972 an employee who has completed 10 years of service is entitled for proportionate pension, which, in no case, shall be less than the minimum pension. The Rule 49(2) of the Central Civil Services (Pension) Rules, 1972 is re-produced below:-

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*"(2) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than ten years, the amount of pension shall be calculated at fifty per cent of the emoluments or average emoluments, whichever is more beneficial to him subject to the minimum of ....(increased to Rs. 9000/- in 2016 per men sem and a maximum of .....".*

3. The applicant submitted a representation to Respondent No. 2 for sanction of minimum pension as per Annexure A-4 on 17.12.2017. He gave a reminder for the same on 05.06.2018, as produced at Annexure A-5. He submits that he submitted another representation as per Annexure A-6 to the Hon'ble Prime Minister on 04.06.2018, requesting for increase in his EPF Pension since there was no response from the 2<sup>nd</sup> respondent about pension for the service rendered in Heavy Vehicles Factory. Only this last representation was responded to by the Ordinance Factory Board, Kolkata stating that the Heavy Vehicles Factory does not deal with EPF Pension (vide Annexure A-7). However, Annexure A-7 also indicated that the applicant had taken lien for a period of two years from the Heavy Vehicles Factory to join at Hindustan News Print Ltd. He, therefore, submits that he had more than 10 years of service under the 2<sup>nd</sup> respondent on the date of his relief to join the Hindustan Paper Corporation and his lien was admittedly kept there (in the HVF) for a period of two years. However, respondent No. 2 has not paid any terminal benefits to him though he was entitled as per the aforesaid Rule 49(2).

4. The applicant submits that there are other cases of various employees who were having more years of experience and were granted pension from Heavy Vehicles Factory. It is submitted that it is not known as why he was not given any terminal benefits though being similarly situated. He had come to know about all these employees being granted pension only about 1 ½ years before filing this O.A in March, 2019. Immediately, he had submitted a representation to respondent No. 2. However, the respondent No. 2-Heavy Vehicles Factory treated him in a different manner and had not informed the reason for denial of terminal benefits. He also submits that the Department of

Pension and Pensioners' Welfare has issued an O.M dated 06.04.2016, by which it has been indicated that in cases like his, employees are entitled for minimum pension. He also submits that the Constitution Bench of the Hon'ble Supreme Court in ***Deoki Nandan Prasad v. State of Bihar and Ors. 1971 AIR 1409*** has ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. This decision has been followed in **D.S. Nakara and Others v. Union of India (1983) 1 SCC 305**. Further, the Hon'ble Supreme Court has held in **Union of India & Another v. Tarsem Singh (2008) 8 SCC 648** that "*Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury.*"

5. The applicant submits that at the time of retirement, he was told that he is not entitled for any retirement benefits since he had only 10 years and 5 months service. Since he was not aware of the Rules regarding pension he did not object to this with his higher authorities. Only when he got to know that similarly situated persons are receiving that pension, he submitted these representations. He, therefore, is claiming pension and other retirement benefits with all consequential benefits, along with arrears with effect from 17.06.1982 along with interest @12%.

6. The respondents have filed a reply statement in the O.A, in which they submit out that the applicant had never approached the 2<sup>nd</sup> respondent's office after joining Hindustan Newsprint, Kottayam. Nor he has submitted any representation to the 2<sup>nd</sup> respondent for grant of pension as per CCS (Pension)

Rules till he filed the O.A. The 2<sup>nd</sup> respondent Heavy Vehicles Factory after examining all the records has found that the Service Book of the applicant has been weeded out during 2016, as per the Record Retention Schedule. Hence, the respondents are unable to get any details or information due to weeding out of the said Service Book. The Hindustan Newsprint Ltd. has also intimated the 2<sup>nd</sup> respondent vide their letter dated 17.06.2019 that, since the matter is very old, they are unable to trace any documents/ correspondence/particulars in respect of the applicant. The applicant has also filed the O.A beyond the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985, as long as 36 years after the cause of action, as he had never made any representation for grant of pension for the last 3½ decades. Since the Service Book has been weeded out, the respondents are not in a position to ascertain any details in respect of his career, pay or any other audited documents. The application is not maintainable due to limitation and should be dismissed.

7. Respondents also submit that, unlike what has been stated in the O.A, the Annexure A-4 representation dated 17.12.2017 and Annexure A-5 reminder dated 05.06.2018 addressed to the 2<sup>nd</sup> respondent have actually not been received by them. The only representation received was the representation dated 04.06.2018 (Annexure A-6) which was addressed to the Hon'ble Prime Minister's Office seeking enhancement of the Employees Provident Fund Pension (EPFP). The same was dealt with vide reply dated 24.10.2018 which has been produced at Annexure R-2 (and also produced by the applicant at Annexure A-7 cited supra.) Some Central Government servants who had been relieved to join Public Sector Undertakings from the Heavy Vehicles Factory,

and who later got permanent absorption in the said Public Sector Undertaking (PSU) units, had approached the Heavy Vehicles Factory for grant of pension. Since their records were available at that time, the respondents processed it through the Principal Controller of Defence Accounts (Pensions), Allahabad. It is also submitted that the aforementioned DoPT O.M dated 06.04.2016 is only applicable to pensioners, who are receiving pension as per Government of India orders and cannot be processed in the case of the applicant at this stage after 37 years, in the absence of a Service Book, which has been weeded out. Thus, his case cannot be compared with the other pensioners for grant of benefits as per the O.M dated 06.04.2016, as he never approached the 2<sup>nd</sup> respondent after joining the Hindustan Paper Corporation, Kottayam.

8. The respondents have extensively referred to the judgment of the Hon'ble Delhi High Court in **Deo Prakash v. Union of India & Ors.**, (Civil Writ Petition No. 6141 of 1999) dated 15.02.2008, wherein, it has been indicated at para 9 and 11 as follows :-

*"9. The respondents have also annexed extract from office manual Part-II, Vol I and para 61 read with Annexure -A which relates to preservation and destruction or disposal of records mentions that in so far as service books are concerned that would be retained for a period of 10 years after death or 5 years after retirement or 5 years from the date of final settlement of terminal benefits for those individuals who resign or are retrenched, removed or are dismissed. Thus, if the records were destroyed, the service book of the deceased was destroyed under the aforesaid provision, it cannot be said that there was any wrong by the respondents. No doubt in matter of pensions ordinarily the claims cannot be denied on the ground of delay. That may only restrict the actual payment of arrears by denying the payment of arrears for past period. However, the position would be different in case the claim cannot be entertained at all in the absence of necessary documents.*

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*11. In the present case, no doubt, the deceased has filed along with his petition, typed copy of his recruitment letter dated 19.06.1942. He has also filed photostat copy of intersectional transfer order dated 23.07.1954 hereby he was transferred from Stores to C (Pay). This would show that deceased was in service from 1942 to 1954. However, that by itself was not sufficient to enable the deceased to get the pro-rata pension as other conditions mentioned above are also to be satisfied. In the absence of record, one is not in a position to find out whether those conditions are satisfied namely whether the deceased was absorbed in Central PSU in*

*public interest and what quantum of terminal benefits were received from Defence Accounts Department on his permanent absorption, as in the absence of this information, his case could not have been finalized."*

9. The case of the applicant is submitted by the respondents to be exactly similar to Deo Prakash (supra). Respondents have therefore prayed for dismissal of the O.A on this ground. However, the applicant filed a rejoinder on 28.08.2019, wherein he reiterated the legal position that non-payment of pension is a continuous cause of action. In the Tarsem Singh (supra) the Hon'ble Supreme Court had clearly held that where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. The applicant also submitted that, unlike as has been stated in the reply statement, as per Government orders Service Books of employees are a permanent record, usually kept atleast for forty years after the incumbent leaves the organization. Further, the Annexure A-2 which is the copy of the Service Discharge Certificate in which applicant's, designation, pay scale, pay and reliefs and relieving date are available. In Annexure A-6, some more details of the applicant are given and from all these particulars entire service can be found out for sanction of pension. It is submitted that the case of Deo Prakash (supra), quoted by the respondents, is not applicable, because in that case no details were furnished by the petitioner therein, whereas in his case, various details of service including pay drawn are available ; as also the service he rendered subsequent to his relieving from 2<sup>nd</sup> respondent HVF.

10. However, in reply to the rejoinder, the respondents have filed an additional reply statement where they have sought to cast doubt about the

genuineness of whether the applicant had ever given a representation dated 07.12.2017, produced now in the O.A at Annexure A-4. They state that, in the representation dated 04.06.2018 addressed to Hon'ble Prime Minister produced at Annexure A-6 and confirmed by them, the applicant had never referred to an enclosed representation dated 17.12.2017. Thus, from the documents, it is submitted that, it is clear that the applicant did not send any representation dated 17.12.2017 to the 2<sup>nd</sup> respondent. Further, the applicant has stated that he had sent a reminder on 05.06.2018 i.e., on the next date of his representation dated 04.06.2018 addressed to the Hon'ble Prime Minister's Office. It is submitted by the respondents that the two letters produced in the O.A at Annexure A-4 and A-5 dated 17.12.2017 and 04.06.2018 respectively, in which the applicant represents for sanction of pension with the 2<sup>nd</sup> respondent Heavy Vehicles Factory are only afterthoughts made by him, to create, a record for filing the O.A. It is submitted that the only representation that he made addressed to the Prime Minister's office dated 04.06.2018 was for seeking enhancement of Employees Provident Fund Pension and for not sanction of pension. This representation was replied to promptly on 24.10.2018 vide Annexure A-7 (also produced with the reply statement at R-2). Thus, the claim of the applicant has various infirmities right from the beginning. Further, by the Ministry of Defence's instructions dated 21.08.1970 Service Books of employees have to be retained for 25 years only. As per the latest instruction dated 03.12.2012, Service Books of employees should be retained only for three years.

11. It is submitted that as per the documents produced by the applicant in the O.A, he was relieved from his duty with effect from 16.06.1982. His Service

Book has been weeded out and the 2<sup>nd</sup> respondent is not in a position to verify the pension claim in the absence of Service Book, which is a mandatory requirement for ascertaining service details. In essence, the 2<sup>nd</sup> respondent submits that request for grant of pension based only on copy of discharge certificate cannot be granted due to following reasons:-

*“(i) The 2<sup>nd</sup> respondent is unable to ascertain the minimum qualifying service of 10 years required for grant of pension. The total service mentioned in the discharge certificate of the applicant may also include non-qualifying service.*

*(ii) The 2<sup>nd</sup> respondent is unable to ascertain average emoluments for 3 years preceding the date of absorption based on which the pro-rata pension has to be calculated.*

*(iii) The question of grant of pension will apply where permanent transfer/absorption from Government service to a public undertaking is in public interest. The 2<sup>nd</sup> respondent is unable to ascertain this fact.*

*(iv) Written confirmation from the applicant / employer for having permanently absorbed in PSU is required to obtain approval of Ministry of Defence for grant of pro-rata pension thereof. The 2<sup>nd</sup> respondent is unable to ascertain this fact.*

*(v) In similar cases of absorption to Public Undertakings, employees have remitted their leave salary and pension contribution to Government before processing grant of pension. The respondents are unable to ascertain this fact.*

*(vi) The respondents are governed by the CCS Pension Rules, 1972. The Audit authorities are coming under the Controller General of Defence Accounts which is an independent Department. These Audit Authorities as per CCS Pension Rule without the service book duly audited and the service verified for the qualifying service will not admit any pension claims. Hence, the relief sought by the Applicant cannot be made on assumptions and premonitions.”*

12. Further, it is submitted that the case of Deo Prakash cited supra is exactly similar as that of the applicant as in both cases records were not available. Thus, respondents are not in position to entertain pension claim nor will audit authorities entertain him in the absence of service book.

13. The applicant filed an additional rejoinder in response where he submitted that the Service Discharge Certificate at Annexure A-2 clearly

reveals that his date of appointment is 17.01.1972 and date of relief from duty is 16.06.1982. His total service is 10 years and five months. If there was any period of service which was to be excluded from qualifying service it would have found a place in Annexure A-2. Normally, the Service Discharge Certificate will reflect details taken from the Service Book at the time of discharge. Further, it is clear from the Annexure A-2 Service Discharge Certificate that he was drawing his pay in the pay scale of Rs. 260-6-290-EB-6-326-8-366-EB-8-390-10-400. It is noted in Annexure A-2 that he was drawing Rs. 302/- in the above pay scale at the time of discharge. He is eligible for the minimum pension of Rs. 9000/- only and as such the question of average pay does not arise. The applicant submits that nowhere in the Rule 49(2) of the CCS (Pension) Rules, 1972, it is stated that permanent transfer / absorption from Government servants to public undertaking should be in public interest. He submitted that it is obligatory on part of Heavy Vehicles Factory to sanction his due pension in light of Rule 49(2) of the CCS (Pension) Rules, 1972 as he had more than 10 years of service. He further submits that his prayer is only to sanction minimum pension to him for which no further details then what is submitted at Annexure A-2 are required. He submits that Annexure A-2 has all the details in order to sanction the minimum pension like date of joining, date of discharge, scale of pay, last pay drawn and total qualifying service. He submits that the Service Discharge Certificate is a mini replica of Service Book which was in custody of 2<sup>nd</sup> respondent and the applicant cannot be held responsible now for non-availability of the same. Further, in view of the judgment in Tarsem Singh (supra), he is entitled for pro-rata pension.

14. The respondents have again stoutly defended their position by filing a second additional reply statement in March, 2020, wherein they submit that even though the details in the Service Discharge Certificate have been taken from the Service Book, the service particulars mentioned in the Service Discharge Certificate are only the total service from date of appointment to the date of relieving, i.e, it may include both qualifying service plus non-qualifying service. Qualifying service can only be ascertained by examination of the Service Book and is an essential factor for eligibility of pension. In the absence of the Service Book, the 2<sup>nd</sup> respondent is unable to verify qualifying service for eligibility of pension. Further, average pay and net qualifying service are key elements to arrive at the quantum of pension which again can be ascertained only from the Service Book. The claim of the applicant for pension cannot therefore be considered at this stage. The rate of minimum pension of Rs. 9000/- is only applicable from 01.01.2016 as per the VII<sup>th</sup> Central Pay Commission. Without the Service Book the rate of pension at the relevant point of time cannot be ascertained and the audit authorities will not admit such claim. Further, the respondents are not in a position from the details/documents submitted by the applicant to ascertain whether applicant resigned on his own or otherwise. Whether the applicant has a minimum qualifying service of 10 years is required for eligibility for grant of pension which cannot be done without any service records as in the Service Book. It is submitted that vital information for eligibility of pension is no longer available as the Service Book is also duly audited by the audit authorities and does no longer exist. The Service Discharge Certificate is not a mini replica of the Service Book as submitted by the applicant as no net qualifying service is available in the Service Discharge Certificate. It is submitted that details of

average pay and net qualifying service are mandatory in order to get pension and these are only available from the Service Book of the individual. The Service Discharge Certificate cannot be equated to the Service Book as only the Service Book contains the complete required information. The Tarsem Singh judgment cited (supra) by the applicant for claiming pro-rata pension is not applicable in his case as details of information of the applicant is not at all available with the Heavy Vehicles Factory in order to ascertain the eligibility of pension.

15. We have closely heard Shri C.S.G. Nair, learned counsel appearing for the applicant and Smt P.K. Latha, learned ACGSC for the respondents. Both the counsel have reiterated in their arguments and statements the above position and we have gone through the records produced by them. We are aware that the Service Book is considered as a primary and most necessary document for revealing the history and service details of any Government employee as it contains details such as qualifying service, basic pay, leave, advance, increment, etc., which are crucial in fixing the amount of pension that he is eligible for. Therefore, we agree with the respondents position that the Service Discharge Certificate at Annexure A-2, in the absence of that crucial details, cannot be taken as a pure substitute to the Service Book. We are also broadly in agreement with the respondent Heavy Vehicles Factory, Avadi's position that they are not in a position to calculate pension, etc. due in the absence of such details. We could have excused the delay in the claim of pension in light of Tarsem Singh, supra, provided that the applicant was able to produce sufficiently required records as grant of pension and drawal of pension is a matter of continuing claim. However, this is not available and thus, on merit, we are not in a position to agree with the claim made by the applicant.

Further, the Hon'ble High Court of Delhi judgment in Deo Prakash supra, covers such situations and appears applicable in this regard. According to the respondents, the judgment is mainly applicable in this case as basically there is an absence of verifiable records for processing pension.

16. We are aware that sometime in such cases the Tribunals often take a larger point of view and try to sort such matter in the interest of both the parties. Even in this matter, this as early as 17.03.2020, the Tribunal passed an interim order where it had been noted by the Tribunal that since the respondents were unable to verify the qualifying service as the records had been destroyed at their office they were directed to make earnest efforts to reconstruct the service record, for which they were asked to request the applicant to provide whatever information and records available with him to them within a period of four weeks. However, it is stated by the learned counsel for the respondents that the applicant vide his letter dated 21.05.2020 had intimated that, as per law, no correspondence should be made between the applicant and respondents during pendency of the Original Application and that all documents and facts should be submitted ones before the Hon'ble Tribunal. As the applicant did not produce any document, the respondents could not take any action on this interim direction.

17. In view of the above contentions and arguments as well as in light of fact that there appears to be no way that the respondents will be able to verify the actual qualifying service or calculate the average pay due to the applicant, we cannot allow the O.A. We can only advise the applicant to submit whatever documents he has to the respondents in order for them to make one more

attempt for them possibly to reconstruct the Service Book from whatever admittedly minimum records that are available, by taking a larger view including the fact that there appears to be a period of lien granted to him when he joined the Hindustan Paper Corporation and that he had also completed apprentice training at the HVF before joining there as a regular employee in 1972. However, we hasten to add that this advice is purely in terms of a suggestion from us and the respondents are not bound to take it as any direction for grant of pension in this case. They may consider the documents provided but take a decision untrammelled by these observations. With this, the O.A is dismissed. No order as to costs.

(Dated, 9<sup>th</sup> April, 2021.)

**(K.V. EAPEN)**  
**ADMINISTRATIVE MEMBER**

**(P. MADHAVAN)**  
**JUDICIAL MEMBER**

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Applicant's Annexures

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|--------------|---|---|
| Annexure A-1 | - | True copy of the National Apprenticeship Certificate  |
| Annexure A-2 | - | True copy of the Service Discharge Certificate issued by the 2 <sup>nd</sup> respondent on 30.04.1985.      |
| Annexure A-3 | - | True copy of the covering letter No. 01163/LB/85 dated 03.05.1985 issued by the 2 <sup>nd</sup> respondent. |
| Annexure A-4 | - | True copy of the representation on 17.12.2017 to the 2 <sup>nd</sup> respondent.                            |
| Annexure A-5 | - | True copy of the reminder dated 05.06.2018.   |
| Annexure A-6 | - | True copy of the representation dated 04.06.2018.   |
| Annexure A-7 | - | True copy of the Letter No. 0926/ PENCELL/ GENL/ 2018 dated 24.10.2018.                                     |
| Annexure A-8 | - | True copy of the O.M No. 38/37/08-P&PW(A) dated 06.04.2016.   |

Annexures of Respondents

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| Annexure R-1 | - | True copy of Board, Kolkata letter No. 048/MOD/ JUL/2018/HVF/PER/GRV with inclusives. |
| Annexure R-2 | - | True copy of 2 <sup>nd</sup> respondent letter No. 0926/ PENCELL/GENL/2018.           |
| Annexure R-3 | - | True copy of 2 <sup>nd</sup> respondent letter No. 0933/ PENCELL/06/82/MPCP.          |
| Annexure R-4 | - | True copy of Hindustan Newsprint Limited letter No. HNL/HR&ES/ESTATE/I                |

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