

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 869 of 2003

wednesday this the 28th day of May, 2008

Hon'ble Mr. K.S. Menon, Member (A)

Rohit Singh S/o Late Sri Sudarshan Singh, resident of Village Khajey Garhwa, Post Pipara Ramghar, District Deoria.

Applicant

By Advocate Sri Aditya Kr. Tripathi

Versus

1. Union of India through its General Manager, N.E. Railway, Gorakhpur.
2. Secretary Officer, N.E.R Gorakhpur.
3. Divisional Rail Manager, N.E. R, Gorakhpur.
4. Commandant, Railway Police Force, Northern Eastern Railway, Varanasi.
5. Finance Advisor and Chief Accounts Officer, Northern Eastern Railway, Gorakhpur.

Respondents

By Advocate Sri K.P. Singh

ORDER

By K.S. Menon, Member (A)

This O.A. is filed against the respondents for not making payment of pension to the applicant as per pension fixed by Order dated 24.04.1999 alongwith other admissible allowances. Subsequent to filing of the O.A. the original applicant Sri Sudarshan Singh expired on 14.07.2004 and in his place name of his son-Rohit Singh was substituted as the applicant vide Court's Order dated 28.07.2006.

2. The facts of the case in brief are that the applicant served as a Sepoy in the Indian Army from 12.02.1957 to 21.09.1964 with an excellent record. He was discharged from the Army on 21.09.1964 and was thereafter appointed in the Railway Protection Force, as a Constable on 01.07.1965 and finally retired from service on 29.02.1996. The pension of applicant's father was fixed at Rs.545/- per month and after commutation it was reduced to Rs.364/- per



month vide PPO dated 08.04.1996 (annexure-2 to O.A.). Subsequently by another PPO dated 24.04.1999 the pension was refixed at Rs.1434/- per month and after commutation it was reduced to Rs.573/- per month. The applicant's grievance is that the respondents have not taken into consideration the service rendered in the Army from 12.12.1957 to 21.09.1964 while calculating his pension. Consequently his pension has incorrectly been fixed. The applicant further contends that on the basis of the original PPO dated 08.04.1996 and the revised PPO dated 24.04.1999, the respondents have yet to make payment of the differential amount of Rs.18,719/-. Besides he claims he is not being paid pension of Rs.1434/- per month as fixed vide PPO dated 24.04.1999. Being aggrieved by the actions/in action of the respondents he has prayed for the following reliefs: -

- (a) *A writ order or direction in the nature of mandamus commanding the respondents to fix pension of the applicant by counting service of the applicant rendered by him in military services between 12.2.1957 to 21.2.1964 while counting service of the applicant. Rendered in Railway Department between from 1.7.1965 to 29.2.1996.*
- (b) *A writ order or direction in the nature of mandamus commanding the respondents to make payment of balance of Rs.18,719/- and other allowances paid on the basic pension fixed by the authorities.*
- (c) *Any other writ order or direction which this Hon'ble Court may deem, fit and proper in view of the facts and circumstances of the case.*

3. The respondents have refuted all the averments made by the applicant. On the issue of the applicant claiming that the services rendered in the Army from 12.02.1957 to 21.09.1964 should be reckoned for purposes of fixing his pension, they submit that the applicant had not exercised his option for counting his past services for calculating his pension immediately after joining the Railway Protection Force or during the entire period of his service in the Railways from 01.07.1965 till his superannuation on 29.02.1996. In fact the applicant made the representation on 14.05.1996 after his retirement. The respondents point out that ex army personnel should give their option for getting pensionary benefits for services rendered in the

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Army within a period of six months from the date of issue of the Circular dated 25.01.1995. They are also required to repay the pensionary benefits, they may have received from the Army alongwith interest. Neither was such an application exercising such an option received by the respondents nor was the pensionary benefits refunded by the applicant as per the Railway Board's Circular dated 25.01.1995. Since such a representation was received more than two months after retirement of the applicant, it was not factored in as per rules while finalizing and fixing his pension. In view of this the respondents contend that the applicant is not entitled to any reliefs as prayed for and hence the O.A. is liable to be dismissed.

4. Heard, Sri A.K. Tripathi, learned counsel for the applicant and Sri K.P. Singh, learned counsel for the respondents and perused the pleadings on record.

5. The main issue before this Tribunal is the issue of counting of military service for pensionary benefits. The relevant paragraph 34 of the Railway Service (Pension) Rules, 1993, reads as under: -

"34. Counting of military service rendered before employment on the Railways - (1) A railway servant who is re-employed in a railway 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 railway 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, in which case his former military services shall not count as qualifying service; or
- (b) to cease to draw his pension and refund,-
 - (i) the pension already drawn;
 - (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,

(2) (a) The authority issuing the order of substantive appointment to a railway service or post referred to in sub-rule (1) shall along with such order require in writing the railway servant to exercise his option under that sub-rule within three months of the date of issue of such order or if he

is on leave on that date within three months of his return from leave, whichever is later and also bring to his notice the provisions of clause (b) of that sub-rule.

(b) If no option is exercised within the period referred to in clause (a), the railway servant shall be deemed to have opted for clause (a) of sub-rule (1).

(3)(a) A railway servant who opts for clause (b) of sub-rule (1) shall be required to refund the pension, bonus or gratuity received in respect of his earlier military service, in monthly instalments not exceeding thirty six in number, the first instalment beginning from the month following the month in which he exercised such option.

(b) The right to count previous service as qualifying service shall not revive until the whole amount has been refunded."

The respondents have not been able to show whether they have communicated in writing to the original applicant (Shri Sudarshan Singh) that he is required to exercise his option in writing under sub rule (1) above. It is essential for the respondents to comply with the above requirement as thereafter the onus is on the applicant whether he wants to exercise his option or not and in case he opts for his military service to be counted he is required to refund pension, bonus or gratuity which he may have received on being discharged from the army. The above rule also provides that in case he has not opted within the stipulated period and has not refunded the aforesaid amounts then he is deemed to have opted for counting to receive his pension and retain his gratuity received on discharge from the Army.

6. In the instant case the applicant did not opt to have his Army service counted for purposes of pensionary benefits within the period stipulated in the Railway Board circular i.e. within one year from the date of his appointment in Railway services or within six months from the date of the Railway Board circular dated 25.01.1999 i.e. by July 1999. He not only did not opt within the stipulated time he did not opt within his service period and did so about two and a half months after he retired i.e. on 14.05.1996. He has also not refunded the pension and gratuity so received on discharge from the Army. Since there was no option/application till his retirement, the respondents have rightly not given the applicant the benefit of his Army Service as per rules.

7. The applicant has also sought payment of pension as per the PPO dated 24.04.1999. As per this PPO the basic pension has been fixed at Rs.1434/-. The applicant appears to have confused the issue. After deduction of the amount of pension commuted (i.e. 40%) by the applicant the reduced monthly pension works out to Rs.861/- plus admissible allowances. The balance amount of the commuted value of pension was paid to the applicant therefore he is entitled only to the reduced monthly pension. The applicant is in receipt of Rs.992/- basic pension as per his own submission at paragraph No. 4 (ix) of the O.A. This has also been confirmed by the respondents in paragraph No. 15 of the counter affidavit that the applicant is in receipt of pension as per rules for the period rendered in the Railway department. It, therefore, transpires that pension being paid to the applicant is in order.

8. The next grievance that the applicant has put forth is that based on the revised PPO dated 24.04.1999 the respondents are yet to pay him a differential amount of Rs.18719/-. The respondents have clearly brought out in paragraph No. 13 of the counter affidavit that out of the arrears of Rs.1,27,798/- due to the applicant based on the revised PPO dated 24.04.1999 (Rs.71923 commuted value of pension and Rs.55895/- as DCRG), the following payments were made to the applicant: -

(i)	Commuted value of pension paid in the first instance	:	Rs.22720.00
(ii)	DCRG paid in the first instance.	:	Rs.23460.00
(iii)	Revised amount of DCRG paid.	:	Rs. 4509.00
(iv)	Amount deducted on account Of overpayment made by the Bank.	:	Rs.14210.00
(v)	Amount deducted on account Of over payment made for 109 Days leave without pay.	:	<u>Rs. 7491.00</u> <u>Rs.72390.00</u>

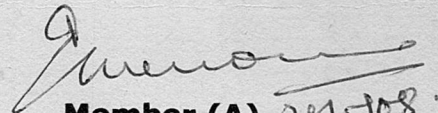
$$Rs.1,27,798.00 - Rs.72,390.00 = Rs.55408.00$$

Rs.55408.00 was paid to the applicant vide cheque No. 516416 dated 14.07.1998, which was duly received by him and he has not objected to the payments deducted at srl. (iv) and (v) above. In view of the above and as per the two PPOs issued on 08.04.1996 and

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24.04.1999 no dues are payable to the applicant. Consequently the respondents have rightly held that no payments are due to the applicant.

9. In view of the above, the military service rendered by the applicant cannot be counted towards pensionary service and all amounts as due to the original applicant have been paid. The applicant has therefore not been able to make out a case for allowing this O.A. The O.A. being without merit is accordingly dismissed. No costs.


Member (A) 28/5/08.

/M.M/