

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No.41/2012
with
Misc. Application No.170/2012

Date of decision: 14/9/2012

Reserved on: 03.09.2012

CORAM

***HON'BLE Mr. G. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MR. B K SINHA, ADMINISTRATIVE MEMBER***

Legal Representative of Late Smt. Sua Kanwar, Kan Singh S/o Late Shri Shaitan Singh, by caste Rajput, aged 90 years, R/o village & post Tekra, Tehsil Phalodi, District Jodhpur (Raj.).

...Applicant

(By Advocate Mr. Jog Singh)

VS.

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. The Commandant, 224 Advance Base Ordnance Depot, Pin-909224, C/o 56 APO.
3. The Commanding Officer, HQ Zonal Recruiting Office, Chomu Circle, Jhotwara Road, Jaipur (Raj.).
4. The Office in-charge, the Grenadiers Records, Jabalpur (MP), Pin: 908776, C/o 56 APO.
5. The PCDA (A), Draupadi Ghat, Allahabad (U.P.).

....Respondents

(By Advocate Mr. Vinit Mathur, & Mr. Ankur Mathur)

ORDER
Per Hon'ble Mr. B K Sinha, Administrative Member

The Misc. Application No.170/2012 has been filed by the Kan Singh, son of the applicant (Smt. Sua Kanwar) informing that the applicant has demised on 18.03.2012, and he, being natural son of

the applicant, wishes to pursue the matter on behalf of his mother.

Under consideration of peculiar circumstances in this matter and the humanitarian aspect involved in it, the Misc. Application No.170/2012 is allowed and the same is taken on record.

2. The OA No.41/2012 is directed against the order No.C/1119/1234/142/Fin-Ind., dated 30.01.2012 [A-1] and grant of family pension and service pension.

Relief(s) sought:

"In view of the above submissions it is most respectfully prayed that this Original Application may kindly be allowed with costs and the impugned order of rejection (annex.A/1) dated 30.01.2012 may kindly be quashed and set aside. It is further prayed that by issuance of an appropriate order or direction the respondent authorities may kindly be directed to grant family pension to the applicant with arrears and consequential benefits. It is also prayed that pendent lite interest may kindly be awarded @ 18% per annum on arrears.

Any other relief which this Hon'ble Tribunal deems just and proper in the case, may also please be awarded."

Case of the Applicant

3. The case of the applicant, in brief, is that her husband, the Late Shaitan Singh, referred hereafter to as the H/o applicant, was initially recruited to the Ratlam Lokendra Rifles on 01.09.1938 as Sepoy, a force constituted from amongst the Native States. He participated in the World War Second and was promoted to the post of Lance Naik on 16.06.1942 [A-2]. The husband of the applicant was relieved from the post on 17.08.1946 and had been decorated with the India Services Medal and War Medal [A-3]. Thereafter, husband of the applicant joined the Indian Army as Recruiting Assistant on 01.09.1953 and were posted at Branch Recruiting Office, Jodhpur, from where he was discharged on 18.10.1964 on being declared surplus in the establishment on re-organisation. The total service reckoned as Recruiting Office,

Indian Army, was 11 years, 1 month and 18 days, as per the service particular provided by the Units at Annexure-A/4. This appointment was a civil appointment. Thereafter, the husband of the applicant joined Ordnance Depot of the Indian Army as Casual Labour on 01.10.1971, where he was subsequently made permanent. The husband of the applicant, upon confirmation of the service, was given option to either avail the grant of retiral benefits through pensionary benefits or contributory provident fund scheme. The husband of the applicant opted for pensionary benefits under Family Pension Scheme for Central Government Employees, 1964, as per the option certificate submitted to the respondent No.2 at Annexure-A/6. This letter was duly verified by the competent authority of the respondent No.2. The husband of the applicant finally superannuated from this post on 30.06.1975, as per the service certificate at Annexure-A/6.

4. The Learned Counsel for the applicant submits that despite several attempts no pension was granted to the applicant in response to his option. The husband of the applicant expired on 08.08.1995 leaving behind applicant and six children. Following the death of her husband, the applicant filed an application for grant of family pension, which was forwarded to 4 Grenadiers Unit and requesting to approach CDA (P), Allahabad for claiming pension [A-7]. The respondent No.2 subsequently called the applicant to submit the service record and than wrote to the respondent No.3 for providing service record of the husband of applicant for grant of family pension vide dated 26.07.2010 [A-8]. The respondent No.2 then required applicant to submit the service

records which was complied and forwarded to PCDA (pension) Allahabad for grant of pension. The LAO (B), Banar, Jodhpur raised some objections regarding the documents and the same was communicated accordingly. The applicant further submitted a representation to the Integrated Headquarter of Ministry of Defence (Army), which, having looked into the matter, directed the concerned authority do the needful. However, the case of the applicant was rejected vide the communication at Annexure-A/10, which stated that though total service of the husband of the applicant is 22 years 9 months and 4 days, it is not in continuation and, therefore, she was not eligible for grant family pension. The applicant further submitted a memorial of the President of India and she was asked to furnish the dependency certificate and a certificate that he was not received of any kind of pension, which was duly provided. However, her claim was once again rejected by the respondent No.5 on the ground that husband of the applicant had not exercised option within one year of his joining Civil Services for counting of Military Services under Rule 19 (1) of CCS Pension Rules, 1972 [A-1]. The case of the applicant is that the late husband of the applicant had submitted his option for the Military Service being reckoned Civil Employment and the same is recorded in the record maintained by the respondent No.4 in red ink.

5. The Learned Counsel for the applicant further submits that the respondent No.5 has erred in the interpretation of law. Under Rule 19 (1) of CCS Pension Rules, 1972, the husband of the applicant has the option 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 shall not count as qualifying service; or (b) to cease to draw his pension and refund the amounts already drawn. The husband of the applicant was confirmed in civil service under respondent No.2 and since he has not drawn any pension the question of commutation or refund of the same does not arise. Therefore, the applicant cannot be faulted on respondents. Further it had been the duty of the authority issuing the substantive appointment to ask the applicant writing to exercise the option and since such authority defaulted in his duty, the husband of the applicant cannot be held responsible and the benefits are not to be denied to him. The Learned Counsel for the applicant further submits that she is ready to refund the benefits at this also. The applicant has further claim that Rule 54 (23) of Central Civil Service (Pension) Rules, 1972 entitled him to grant of pension and under Family Pension Scheme, 1964 as temporary/ quasi permanent Government servant completing 10 years of service.

Case of the respondents

6. Learned Counsel for the respondents have resisted the OA on the sole ground that since no option has been exercised by the husband of the applicant under Rule 19 (1) of CCS Pension Rules, 1972 within a period of one from the date of joining the civil services, there is no pension due to the applicant. He further submitted that as per CCS (Pension) Rules, 1972, 19 of 3(b), the claim of counting previous service as qualifying service shall not be entertained unless the entire amount has been refunded. He is not aware of actual amount paid for previous military service by the

Defence Department and unable to guide individual family to deposit the amount in Government Treasury with simple interest.

Facts-in-issue

7. Having heard the arguments of the Learned Counsel for the applicant, the only fact in issue that emerges is that whether the option for exercising of power under Section 19(1) lay upon his unit or upon the individual and whether it stands to debar the applicant from to the pension of her late husband. The facts of this case hinge upon this issue alone, in this regard Rule 19 (1) of the CCS Pension Rules, 1972 provides:

"19(1) 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, may, on his confirmation in a civil 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 services shall not count as qualifying service; or

(b) to cease to draw his pension and refund-

(i) the pension already drawn, and

(ii) the value received for the commutation of a part of military pension, and

(iii) the amount of [retirement gratuity] including service gratuity, if any.

and count previous military service as qualifying service, in which case the service so allowed to count shall be restricted to a service within or outside the employees' unit or department in India or elsewhere which is paid from the Consolidated Fund of India or for which pensionary contribution has been received by the Government.

Provided that-

(i) the pension drawn prior to the date of re-employment shall not be required to be refunded,

(ii) the element of pension which was ignored for fixation of his pay including the element of pension which was not taken into account for fixation of pay on re-employment shall be refunded by him.

(iii) the element of pension equivalent of gratuity including the element of commuted part of pension, if any, which was taken into account for fixation of pay shall be set off against the amount of [Retirement gratuity] and the commuted value of pension and the balance, if any, shall be refunded by him.

Explanation.- In this clause, the expression 'which was taken into account' means the amount of pension including the pension equivalent of gratuity by which the pay of the Government service was reduced on initial re-employment, and the expression 'which was not taken into account' shall be construed accordingly."

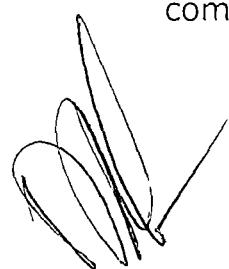
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8. Under this Rule, a Government servant who is re-employed in a civil service of post is required to give an option at the time of his confirmation in the civil post whether he would like to get past military service counted for pension in the civil post or service. The Swamy's manual page No.48 mentions that the Government had issued orders vide OM No.38/16/Pension Unit/80, dated 30th December, 1980, allowed the Government servants to get pension after completion of 20 years of service either on invalidation or superannuation. Going on the recommendation of the Fourth Central Pay Commission, the Government of India further issued instructions vide OM No.2/4/87-PIC, dated 14.04.1987 that a Government servant will get pension under the CCS (Pension) Rules, either on superannuation or on invalidation after rendering ten years of temporary service in the Government. Subsequently, this position was further extended to allow pension even for such personnel who were not confirmed in service. Para 3 of Swamy's manual provides:

"3. In order to facilitate compliance with the requirement of exercising option in time, it has been further decided that the Administrative Authorities concerned should incorporate in the order of re-employment itself a clause to the effect that if the re-employed ex-serviceman desires to take advantage of the retirement benefits based on combined military and civil services, he should exercise option within a period of one year from the date of his re-employment.

9. The admitted position of the case is that the applicant served from 01.09.1938 to 17.08.1946 and 01st September 1953 to 18.10.1964 as Recruiting Assistant and further from 01.10.1971 to 30th June, 1975 wherein he was also confirmed as per the communication under Annexure-A/7:

"2. No.36630 Ex. NK Saitan Singh was enrolled in AJMER Regiment on 01 Sep 1938 which later merged with GRENADIERS Regt. After serving for four years in AJMER Regt (Lokender Rifles) the indl joined Malwa Garrison Coy. Later he also served with BRO Jodhpur and 6 FOD.



3. NK Saitan singh had completed a total service of 22 years and either months with army. The service details of the indl (as obtained from his family are as mentioned below:-

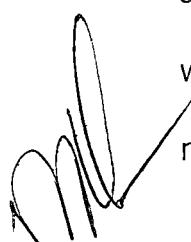
- (a) 01 Sep 1938 to 16 Jun 1942- Ratlam Lokender Rifles.
- (b) 16 Jun 1942 to 17 Aug 1946- Malwa Garrison Coy.
- (c) 18 Aug 1946 to 31 Aug 1953 - Remained unemployed.
- (d) 01 Sep 1953 to 18 Oct 1964 - Served as recruiting Assistant at BRO, Jodhpur.
- (e) 19 Oct, 1964 to 30 Sep 1971 - Remained unemployed.
- (f) 01 Oct 1971 to 30 Jun 1975 - Served in 6 FOD."

10. It is further admitted that as per Annexure-A/6 the husband of the applicant had opted for pensionary benefits under Family Pension Scheme for Central Govt. Employees 1964. In para (xiv) of the OA, the entire past service of the husband of the applicant is recorded in his service roll maintained by the respondent No.4, that too in red ink. There is also a reference to Section 28 of the CCS (Pension) Rules, 1972 which entitles condonation of such interruptions:-

"28. Condonation of interruption in service.

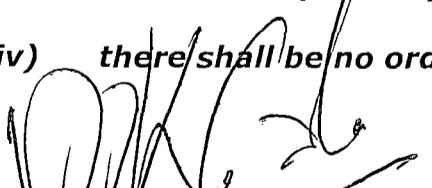
- (a) *In the absence of a specific indication to the contrary in the Service Book, an interruption between two spells of civil service rendered by a Government servant under Government including civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualified service.*
- (b) *Nothing in Clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.*
- (c) *The period of interruption referred to in Clause (a) shall not count as qualifying service.*

11. The applicability of Section 28 of the Pension Rules, 1972 has to be examined along the basic issue as to whether the non-submission of application for regularization under Section 19 (1) of the CCS (Pension) Rules, 1972 was the responsibility by the applicant or the unit. It has to be considered that the applicant was Sepoy and was not well versed with Rules and regulations with no formal educational qualifications whatsoever. It would be a



mistake to assume that he would be able to understand the Rules and make his option under Rule 19 of the CCS Pension Rules, 1972 and then follow it up. The total service, rendered by the husband of the applicant was of 22 years 9 months and 4 days. He had been confirmed during this period as also while employed as Casual Labour in Depot of Indian Army. A duty is cast upon the unit to look after the welfare of the employee and to explain these provisions and complete the formalities. This has not been done. Taking of holistic view of the matter and the fact of the option under CCS Pension Rules, 1972, the same would be applicable also to the option under Rule 19 (1) in absence of anything else. It is, therefore, in the interest of justice that the option of the applicant for the Family Pension Scheme be construed as the option under Section 19 as well. In consideration of these facts, the OA is allowed with the following directions:-

- (i) ***The communication at Annexure dated 30.01.2012 is hereby quashed and set aside.***
- (ii) ***the respondent No.2 is directed to consider granting family pension with arrears and pensionary benefits to the applicant as permissible.***
- (iii) ***refunds are to be made by the applicant under the provisions of Section 19 (1) of the CCS Pensions Rules, as required by the competent authority.***
- (iv) ***there shall be no order as to costs.***


(B K SINHAI)
ADMINISTRATIVE MEMBER


(G. GEORGE PARACKEN)
JUDICIAL MEMBER