

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 718 of 1997

Present : Hon'ble Mr. S. Biswas, Administrative Member
Hon'ble Mr. A. Sathath Khan, Judicial Member

Dipak Kumar Hore, son of late Sachindra
Nath Hore, retired as UDC from the Office
of the Gun & Shell Factory, Calcutta.

.....Applicant

- Versus -

- 1) Union of India, service through the M/o Defence,
South Block, New Delhi.
- 2) Chairman, Ordnance Factory Board, 10A Auckland
Road, Calcutta.
- 3) General Manager, Gun & Shell Factory, Cossipore,
West Bengal.
- 4) The Chief Controller of Defence Accounts (Pension),
Group-IX of GI (Civil) Section, Allahabad.

.....Respondents

For the Applicant : Mr. P. Mukherjee, Counsel

For the Respondents: Mrs. K. Banerjee, Counsel

Heard On : 7-1-2003

Date of Order : 10.1.03

ORDER

MR. A. SATHATH KHAN, JM

The applicant has approached this Tribunal for directing the respondents to count his military service for his qualifying service for the purpose of retirement benefits.

2. The contention of the applicant is that he joined Indian Army on 14-1-1957 and retired on 24-5-1961 on the ground of disability, that he was paid disability pension at the rate of Rs.14.65 but the same was discontinued w.e.f. 24-4-1976, that he was re-employed in Cossipore Gun & Shell Factory on 24-12-62 and joined the factory on

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25-10-62, that his service was terminated on 30-3-63 and was re-appointed on 1-4-63, that he submitted an application to the General Manager, Cassipore Gun & Shell Factory in 1964-65 for counting his military service, that he retired from service on 30-9-62, then on the verge of retirement, he was directed to give an application for counting his military service on 25-9-62 stating that his earlier letter for counting his military service was misplaced by the office, that he gave another letter on the said date, that the respondents failed to count his military service for the purpose of his retiral benefits and pension and that the action of the respondents is arbitrary and illegal. Under these circumstances, the applicant prays for the relief stated above.

3. The respondents contested the claim of the applicant and contended that it is true that the applicant rendered military service from 14-1-57 to 24-5-61, that he was granted disability pension from 24.5.61 to 23.4.76, that the applicant joined Cassipore Gun and Shell Factory on 25-10-62, that he was terminated from service ~~from~~^{on} 30-3-63 and was reappointed on 1-4-63, then he was made permanent w.e.f. 1-4-69 by an order dated 2-11-76, that he ought to have applied for counting of his military service within three months from the date he was declared permanent i.e. on or beyond 2.2.77, that he applicant applied for counting of his military service by his application dated 24.2.82 and 28.7.82, that his application for counting his military service was not accepted as the same was not given within the prescribed time and that the applicant is not eligible for the relief of counting his military service. Under the circumstances, the respondents prayed for dismissal of the O.A.

4. We have heard the Ld. Counsel for the applicant as well as for the respondents and perused all pleadings and relevant records of the case submitted by the parties.

5. The point for consideration of the case is whether the applicant is entitled to count his military service for the purpose of

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pension and retirement benefits. The Ld. Counsel for the applicant submitted that the applicant had requested the respondents in 1964-65 to count his military service; but the respondents denied this contention as false. The Ld. Counsel for the applicant further submitted that it is the duty of the respondents to get the option for counting military service from the applicant at the time of confirmation of the applicant as per rule 19(2) of the Pension Rules, that the respondents failed to discharge their obligation and hence the applicant is ~~entitled~~ ^{entitled} to get his military service counted for pension as well as for the retirement benefits.

6. We perused Rule 19(2) of the Pension Rules and we find that a duty is cast on the employer to get the option from the employee for counting his military service at the time of his confirmation. There is no record to show that the respondents directed the applicant to exercise the option to count his military service. The Ld. Counsel for the respondents was directed to produce the relevant record to prove that the respondents discharged their obligation under rule 19 by directing the applicant to exercise the option for counting his military service. The Ld. Counsel for the respondents produced the copy of the service book of the applicant and there is nothing in the service book to show that the respondents directed the applicant to exercise his option for counting his military service at the time of his confirmation. Under these circumstances, we held that the respondents failed to give the option to the applicant for counting his military service at the time of his confirmation and that the applicant is entitled to count his military service for the purpose of pension and retirement benefits on the condition that he shall refund the disability pension received by him from 25-10-61 ^{to the date of his re-employment} to 23-4-1976. Consequently, the respondents are directed to count the military service of the applicant from 14-1-57 to 24.5.61, if the applicant refunds the disability pension received by him from 25-10-61 ^{to the date of his re-employment} to 23.4.76.

7. In the result, the OA is allowed as directed above with no order as to costs.


Member (J)


Member (A)