

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 446 of 2012

wednesday, this the 17th day of July, 2013

CORAM :

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Babykutty. A, S/o. Mathunni Abraham,
Aged 60 years, Working as Sr. TOA (P), Anchal,
Office of the SDE (Cml.), BSNL, Anchal, and
Residing at Kanchanathu House,
Ambalakara P.O., Kottarakkara : 691 532.

... Applicant.

(By Advocate Mr. Sreekanth S. Nair)

v e r s u s

1. The General Manager,
Office of the General Manager,
Kollam Telecom District, BSNL Bhavan,
Vellayittambalam, Kollam : 691 012

2. The Chief Accounts Officer (FC),
Office of the GMTD, BSNL, Kollam : 691 012

... Respondents.

(By Advocate Mr. George Joseph, ACGSC)

This application having been heard on 11.07.2013, the Tribunal on
17-07-13 delivered the following:

ORDER

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant is an Ex-serviceman with 06 years and 260 days of military service , who joined the Telecom Department as RTP Telephone Operator on 18.01.1985 and regularised on 29.07.1987. He retired on 31.05.2012. His military service has not been counted towards civil pension. His representations were replied with Annexures A-1 and A-6 letters.



Aggrieved, the applicant has filed this O.A for the following reliefs:

- (i) This Hon'ble Court be pleased to call for the records and proceedings of the matter that lead in passing the impugned orders (Annexures A-1 and A-6);
- (ii) This Hon'ble Tribunal be pleased to quash and set aside the impugned orders Annexures A-1 and A-6;
- (iii) This Hon'ble Tribunal be pleased to pass appropriate orders directing the respondents to count the military service of the applicant towards civil pension;
- (iv) Any other order be passed in the interest of justice as per the facts and circumstances of the case; and
- (v) The cost of this original application be granted in favour of the applicant.

2. He contended as under :

- (a) The impugned orders are bad in law for the same are arbitrary and unreasonable;
- (b) The impugned order acted without jurisdiction and hence the same is liable to be quashed and set aside as null and void;
- (c) The impugned order erred in not appreciating the mandatory condition and the principles of natural justice i.e, without sending the letter with necessary application form to the applicant for exercising option under Rule 19 of the CCS (Pension) Rules, 1972 within 03 months from the date of confirmation;
- (d) The neglect and or inaction of the respondents in not rectifying the illegality even after receipt of Annexure A-4 is bad in law being abdication of the duty cast upon the respondents;
- (e) The impugned order of the respondent cannot and shall not put the onus on the applicant for option by himself and the artificial date of non-submission is not sustainable;



(f) The impugned illegality has resulted in substantial failure of justice;

(g) The impugned action erroneously ignores the vital facts, so blatant or palpable failure of justice ~~has~~ resulted;

(h) The Annexure A-1 and A-6 are bad in law that a finding of fact has been erroneously reached.

3. The respondents in their reply statement submitted that he had an option to have his military service counted towards civil pension subject to the provision of Rule 19 of the CCS (Pension) Rules, 1972. The applicant did not exercise his option under Rule 19 of the above mentioned Rules as required. As such it was deemed that he had opted for retaining the retirement benefits received from the military service and not interested in having his eligible military service, if any, counted towards civil pension. The applicant had opted to be an employee of Bharat Sanchar Nigam Limited (BSNL), which came into existence on 01.10.2000. The applicant was confirmed in the cadre of Telephone Operator with effect from 20.07.1989 on successful completion of 02 years probationary period. He was informed in writing through the order of his confirmation that his option, if any, relating to counting of past military service should be exercised within three months from the said order dated 23.09.1991. For reasons best known to the applicant, he failed to exercise the option for nearly 21 years after issuing the confirmation order. The contention of the applicant that he had not received the order of confirmation issued over two decades ago is neither acceptable nor believable. The applicant stated that he had, during the regularisation, represented to the higher authorities, but had not produced any evidence to



establish the truth of his making such representations. What is mandatory under Rule 19 of the CCS (Pension) Rules, 1972 is that the authority issuing the order of substantive appointment to a civil service or post shall along with such order require in writing the Government servant to exercise the option in respect of counting of military service for civil pension within three months of the date of issue of such order. This mandatory obligation on the part of the respondents has been fully discharged as is evident from Annexure R-1. The orders issued by the respondents were strictly in conformity with the relevant rules and orders. There was no inaction on the part of the respondents. The respondents cannot be held responsible for the lapses on the part of the applicant. No evidence has been produced by the applicant in support of the allegation of lack of jurisdiction. It is the choice of the applicant to act or not to act within the prescribed time limit under Rule 19 of the CCS (Pension) Rules, 1972. Whatever has been done by the respondents in the matter is perfectly legal. They have acted with full responsibility and after due consideration of the pertinent facts. There is no factual or legal errors whatsoever in issuing Annexures A-1 and A-6 orders.

4. The applicant in the rejoinder statement submitted that the order of confirmation in respect of the applicant was issued after 26 months from the date of confirmation. As per the rules, along with such order, the respondents are required to inform the applicant in writing to exercise the option within 03 months from the date of issue of such order. The order does not reveal its mode of communication. The applicant relied on the decision of the Jabalpur Bench of this Tribunal in T.A. No. 95/1986, Pritam Lal vs. Union of India and Others, 1987(3) SLR 532, in support of his claim.



5. In the additional reply statement, the respondents submitted that the confirmation orders are normally released for batch of officials joining during a certain length of time. What is important is that irrespective of the date on which the actual order was issued, substantive appointment was given to the applicant effective from the date of completion of the probation period. The order was in writing. It was made clear that the option with regard to counting of service must be exercised within the specified period by those to whom such option is applicable. That the order had names of other officials does not make the order invalid or inadequate. That the order was served 26 months after completion of his probationary period has no significance. The applicant cannot pass the blame of his own obvious failures to act at the appropriate point of time to the respondents. The respondents are not empowered to reopen the matter and entertain the option of the applicant for counting the past military service for civil pension at this stage.

6. I have heard Mr. Sreekanth S. Nair, learned counsel for the applicant and Mr. George Joseph, learned ACGSC appearing for the respondents and perused the records.

7. The applicant was confirmed in the cadre of Telephone Operator with effect from 20.07.1989, vide Annexure R-1 order dated 23.09.1991. In the said order, it is stated as under:

" The re-employed ex-servicemen if any among the above officials are required to exercise an option under Rule 19 of CCS (Pension) rules, 1972, within 3 months, of the date of issue of this memo. If no option is exercised by them within the stipulated period, it will be deemed that they have opted to continue to draw military pension."



It shows that the respondents had informed the applicant in writing to exercise the option under Rule 19 of CCS (Pension) rules, 1972, within the prescribed time limit of 03 months. The applicant does not deny the fact that he had received the above letter. The contention that he received the said order after 26 months from the date of his confirmation is without substance. The delay of 26 months does not invalidate the order and as stated by the respondents, the confirmation order is issued for a batch of officials and hence, some delay is quite reasonable. It is made clear in the order that option regarding counting of service must be exercised within three months by the ex-servicemen. The fact that the said order had the names of other officials does not make the order invalid as far as the applicant is concerned, in the matter of exercising his option, if he so desired. As the option is to be exercised within three months from the date of receipt of the order of substantive appointment, representations long after the date of expiry of the prescribed limit are of no consequence. It is obvious that the applicant failed to exercise his option within the stipulated period of three months. The respondents had discharged the mandatory obligation on their part of informing the applicant in writing under Rule 19 of the CCS (Pension) Rules, 1972, to exercise the option available to the applicant. The responsibility for the failure of the applicant cannot be shifted to the respondents, who have acted strictly in conformity with the relevant rules and orders. The respondents are not empowered to reopen the matter and entertain the option from the applicant for counting past military service for pension after more than two decades. The applicant had relied on the decision of the Jabalpur Bench of this Tribunal in T.A. No. 95/1986. In the said T.A, there



was a failure on the part of the Controller of Defence Accounts (Central Command), Meerut, to mention the option available to the applicant therein. As the instant case is factually distinguishable from the said T.A, the order of the Jabalpur Bench is not applicable to the case on hand. I do not find any reason for this Tribunal to interfere with the impugned orders.

8. Lacking merit, the O.A is dismissed with no order as to costs.

(Dated, the 17th July, 2013)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

cvr.