

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.515/2001

Dated Monday this the 5th day of March, 2003.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

M.Balan
S/o Raru
Retired Higher Grade Postal Assistant
Calicut Head Post Offices
Residing at Triveni, Arakinnar P.O.
Calicut.

Applicant

[By advocate Mr.M.R.Rajendran Nair]

Versus

1. Union of India represented by
The Secretary to Government of India
Ministry of Communications
New Delhi.
2. The Secretary to Ministry of
Personnel, Government of India
New Delhi.
3. The Chief Post Master General
Kerala Circle,
Trivandrum.
4. The Senior Superintendent
Calicut Postal Division
Calicut.

Respondents.

[By advocate Mr.C.Rajendran, SCGSC]

The application having been heard on 5th March, 2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant who joined the Defence Service on 15.2.1963 after serving about 10 years retired on compassionate grounds on 18.6.1973. He was not drawing any military pension. He got re-employment as Postman in the Department of Post by order dated 25.4.1977. He was not informed of the requirement of exercising option under rule 19 of the CCS (Pension) Rules for counting the defence service as qualifying service for pension on superannuation from the civil post. Vide A-3 letter dated 9th

August 1985, he requested the 4th respondent to inform him as to how he could get the military service counted for pension. He was not given any reply. However, on 28.9.1994 he submitted his option for counting his military service towards civil pension, mentioning that he has not been receiving any kind of pension for his military service. Yet, he was not given any reply either accepting or rejecting the option. He thereafter went on making representations. In reply to his representation dated 19.11.1999, the applicant was informed by A-8 order that since he did not exercise the option as required under Rule 19 (1) of the CCS (Pension) Rules within time and had not refunded the gratuity etc., he was not entitled to have his defence service counted as qualifying service for pension. He made further representation dated 20.10.2000 in reply to which the applicant was served with A-10 repeating the stand that the applicant having not exercised the option within time and having not refunded the gratuity, his claim for counting his defence service for pension cannot be acceded to. Therefore, aggrieved, the applicant has filed this application seeking to set aside A8 and A10 orders, for a declaration that the service rendered by the applicant in the Army from 15.2.1963 till 18.6.1973 is liable to be reckoned as qualifying service for civil pension and for directing the respondents to count the said period and revise his pension.

2. Respondents resist the claim of the applicant on the ground that the applicant had not complied with the requirement of submitting the option within time in terms of Rule 19 (1) of the CCS (Pension) Rules and he had not refunded the gratuity etc. as per rules.

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3. We have heard the learned counsel on either side and perused the materials placed on record.

4. Rule 19 (2) (a) of the Central Civil Service (CCS) (Pension) Rules enjoins a duty on the authority issuing the order of confirmation to a re-employed ex-service man requiring him to furnish an option either to retain the military pension or to have the defence service counted for civil pension. Only if the re-employed ex-serviceman fails to furnish such an option within three months on his being called upon to do so, it would be deemed that he had opted to receive the defence pension. It is the specific case of the applicant that he has never been asked by the authority who issued the order of confirmation to submit his option. It is also evident from A-3 that in August, 1985, the applicant had sought information regarding his entitlement for counting his military service for the purpose of pension and gratuity in civil service, to which the authorities turned a deaf ear. Further, from R-2 order dated 23.5.1994 of the Department of Pension and Pensioners Welfare, it is seen that a last opportunity was given to re-employed ex-servicemen who had not been able to exercise their option, as required under Rule 19 (1) of the CCS (Pension) Rules, to exercise option for counting of military service as qualifying service, within a period of 6 months from the date of that order. It is evident from A-6 option dated 28.9.94 submitted by the applicant that within the said period of 6 months the applicant had already submitted his option. Learned counsel for the respondents argued that since the applicant has not refunded the pensionary benefits received on his retirement from the Army, he is not entitled to have the period of his defence service counted. We find little substance

in this argument. The applicant had expressed willingness to refund his service gratuity and DCRG by his A-6 option. Had the applicant been called upon to refund the gratuity or any other pensionary benefits received by him for his military service, he would have immediately done so.

5. Under these circumstances, we dispose of this application permitting the applicant to deposit the gratuity or any other terminal benefits received by him within a period of 2 months under intimation to the 3rd respondent, and directing the respondents, on receipt of such intimation and deposit, to issue order revising the pension of the applicant reckoning the service rendered by the applicant in the Army from 15.2.1963 to 18.6.1973 also as qualifying service for civil pension, within a period of 2 months thereafter. The impugned orders A8 & A10 are quashed. There is no order as to costs

Dated 5th March, 2003.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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