

CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM

Wednesday the ninth day of August,
One thousand, nine hundred and eighty nine.

Present

Hon^{ble} Shri NV Krishnan, Administrative Member
and

Hon^{ble} Shri AV Haridasan, Judicial Member

Registration No.OA 58/89

CP Gopalakrishnan Kartha : Applicant

Vs

- 1 Union of India rep. by
the Secretary
Ministry of Communications
New Delhi.
 - 2 Director General of Posts,
New Delhi
 - 3 Postmaster General
Kerala Circle, Trivandrum
 - 4 Director of Postal Services,
Central Region, Cochin-11
 - 5 Senior Superintendent of
Post Offices, Ernakulam division,
Cochin-11
 - 6 Defence Pension Disbursing Officer
Kadavanthara, Cochin-20 : Respondents
- Mr TV Babu Cherukara : Counsel of Applicant
Mr K Karthikeya Panicker, ACGSC : Counsel of Respondents

ORDER

Shri NV Krishnan, Administrative Member

In this case the applicant has been served with the order dated 22.12.88(Annexure-1) intimating him that (a) he had opted by his Optition Certificate dt. 11.10.77 that his previous Military service should be counted for the purpose of fixation of civil pension, (b) that the option had become final, and (c) therefore, he was not entitled to draw separately any military pension as he had been doing so far. Therefore, he was intimated that he was required to refund the military pension

plus DA from the date of his re-employment till he ceased to draw military pension and other pensionary benefits such as DCRG, service gratuity, commutation etc., if any drawn, in one lump sum, alongwith the interest.

The applicant has challenged the validity of this order.

2 During the course of arguments, Shri K. Karthikeya Panicker, ACGSC who ~~have~~ appeared for the respondents stated that even now it was open to the applicant to intimate that he was withdrawing his previous option dt. 10.10.77 in which case his pension would be regulated by rule 19(i)(a) of the Central Civil Service (Pension) Rules, 1972.

3 The issue in this case which ought to have ^{been} decided is whether the option that the ^{applicant} exercised on 10.10.77 still exists in the light of the subsequent developments to which there is no need to make any reference at present. ~~It need to~~ be stated that, but for the concession now made by the learned counsel for the Respondents, this issue, namely, whether such an option is still subsisting or not would have to be adjudicated upon.

4 In para-5 of the counter affidavit, the Respondents have stated as follows:

"As per rules the option exercised by the official is final and he is not entitled to say that he is not interested to get the military service counted for civil pension. Moreover, it may be submitted that the applicant has not stated that he is withdrawing the option. However, if he submits a letter to the effect that he is withdrawing his option dt. 10.10.77, the department will consider to release the military pension stopped."

In regard to this ^{statement} ~~it~~ it was pointed out to the learned counsel for the Respondents that in the counter, the only assurance


given is that if the applicant gave a letter to the effect that he was withdrawing his option dated 10.10.77, the Department "will consider " the release of military pension". It was pointed ^{out} to him that on this basis it would not be possible to finally dispose of this case. It was then that the learned counsel for the Respondents gave the assurance that in case such a letter was given by the applicant, the Department would permit him to have his pensionary benefits governed by Rule 19(i)(a) of the Central Civil Service (Pension) Rules, 1972. This was agreed to by the counsel of applicant.

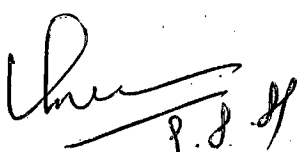
5 In this view of this matter, we are of the view that the application can be disposed of by giving the following directions.

(a) The applicant should, within a period of one week from the date of this order, ~~from today~~, submit a letter to the 5th Respondent to the effect that he was withdrawing the option dt.10.10.77 referred to above.

(b) On receipt of such ^a letter, the Respondent-5 will send a reply ~~to the applicant~~ ^{to the applicant} confirming that for the purpose of his military pension he will be governed by the provisions of Rule 19(i)(a) of the Central Civil Service (Pension) Rules, 1972, and take necessary action ^{to implement this decision.}

6 This application is disposed of with the above directions.


(AV Haridasan)
Judicial Member
9.8.89


(NV Krishnan)
Administrative Member
9.8.89