

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 70/2004

WEDNESDAY THIS THE 26th DAY OF JULY, 2006.

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.B.S. RAJAN, JUDICIAL MEMBER**

P. Sreedharan Nair, Daftary,
Trivandrum Central Electrical Division,
CPWD, Thiruvananthapuram (Retired)
Sreevihar, SRKPRA-B-30
Nettayam, Kachani P.O
Thiruvananthapuram-695 013

Applicant

By Advocate Mr. B. Raghunathan

Vs.

- 1 Union of India represented by
Secretary to Government of India
Ministry of Urban Development
Nirman Bhavan, New Delhi-110 011
- 2 Senior Accounts Officers
Pay & Accounts Office,
CPWD, South Zone, Rajaji Bhavan
Besant Nagar, Chennai-600 090
- 3 Director General of Works
CPWD, Nirman Bhavan
New Delhi-110 011
- 4 Chief Engineer (Electrical) South Zone
CPWD, Chennai-600 090
- 5 Executive Engineer,
Trivandrum Central Electrical Division
CPWD, Thiruvananthapuram-695 522

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**

The applicant was a Daftry in the Central Public Works Department and his prayer in this Original Application is to count the service of six years and 149 days rendered in the Indian Army, for the purpose of qualifying service for calculation of his pensionary benefits.

2 It is submitted that the applicant had worked in the Army service from 5.2.1963 to 14.7.1969 and he is entitled to reckon that period along with the service rendered by him w.e.f .20/4/1972 in the CPWD on re-employment. According to the applicant, it was the duty of the 5th respondent to direct him to exercise the option for reckoning military service as provided for in Rule 19(2) of the CCS (Pension) Rules 1972 at the time of his confirmation in the post on 5.12.1983. Applicant being a class IV employee with very little education was not aware of the procedure to be followed. When he came to know, he had submitted a representation for the purpose on 5.6.1990. When the correspondence was in process the OM dated 23. 5. 1994 was issued by the Government of India giving a fresh opportunity for exercising the option within six months from that date. The said OM was not brought to the notice of the applicant at the relevant time. It had not been received in the respondent's office. There was no lapse on part of the applicant and he had been vigilantly pursuing his case and now after 13 years Annexure A-5 communication was issued to the applicant asking him to approach

the fifth respondent again to redress his grievance. The applicant had also pointed out the case of Sri Bhargavan Nair who was given similar benefit in an identical situation. Denying the right to the applicant is discriminatory and unreasonable and violative of Article 14 of the Constitution of India.

3 The respondents have admitted that the applicant was a Dafty under the 5th respondent and retired from service on superannuation on 31.3.2001, but have stated that he was neither appointed as a Peon nor confirmed by the 5th respondent. He was appointed as Peon in TCD/CPWD Trivandrum by the Executive Engineer (Civil) as evident from Annexure A1. The applicant joined the office of the 5th respondent only on 15.7.1987. It is further submitted by the respondents that the applicant's representation was turned down by the competent authority on the observation that the applicant was asked to exercise his option at the time of his confirmation in the year 1983 and the requisite option was not exercised by him. Further he did not avail of the last opportunity provided vide order No 28/29/93/P& PW9B) dated 23.5.1994 by the Govt for exercising option.. The case of Sri Bhargavan Nair is different according to them as he had exercised his option during 1979 itself. They have also stated that the Annexure A-5 reply given to the applicant was independent of the earlier replies given to the applicant and was given without linking the earlier decision.

4 A rejoinder has been filed by the applicant reiterating that the reliefs as claimed by him are sustainable and there were no latches

on his side and the exceptional reasons for not exercising the option in time as explained by him requires sympathetic consideration.

5 The Learned counsel for the applicant submitted that the applicant had a legal and vested right to reckon the service rendered by him in the Army along with the period of reemployment for computing the pension and denying the same when it was allowed in all similar cases is violative of all principles of equality envisaged under Article 14 of the constitution of India. The 5th respondent himself had in the detailed letter at Annexure A1 submitted a report requesting for condonation of the lapse committed by the competent authority for not directing the employee in writing to exercise his option and this letter was a conclusive confirmation of the averments made in the OA and no further proof is required in the matter. On behalf of the respondents the same pleas as in the reply statement were reiterated.

6 We have heard the Learned counsels and gone through the pleadings. The factual details pertaining to the applicant's service in the army and his subsequent reemployment and superannuation are admitted. It is not also in dispute that according to Rule 19 (2) of the CCS (Pension) Rules, benefit of past service in the Army can be granted for computing pension., subject to certain conditions , one of the conditions being that the employee should have exercised his option at the time of his confirmation. The applicant has been denied the benefit only on the ground that he had not exercised such an option at the right time. The the contention of the applicant is

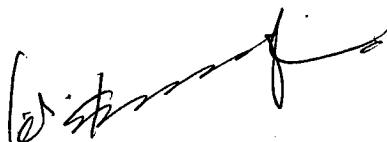
that at the time of his confirmation in the year 1983, , he was not asked to give an option and he being an illiterate class IV employee was not aware of the Rules. The respondents have not controverted this fact. It was a statutory duty cast on the authority to do so and the respondents have only countered this by pointing out that it was not the 5th respondent who was responsible for the lapse and the confirmation order was issued by the Executive Engineer (civil) under whom he was working at that time. They cannot escape from this responsibility whether it is the, EE(Civil) or the 5th respondent the EE(Electrical) CPWD who was responsible for the lapse. That it was a mistake has been admitted by the respondents in their letter at Annex A1.

7 The respondents had a chance of rectifying the omission when the Govt of India in 1994 gave six months time for exercise of option in such cases where it was not exercised. It was a duty cast upon the respondents to direct submission of options and particularly in this case when the applicant's representation to give him a chance for option was pending consideration before them from 1990. This is a serious omission on their part and without taking any action required from their side to implement the directions of the Govt, they have tried to put the blame on the applicant to deny him his legitimate right. It is evident to us from the replies given to the applicant in Annex R-2 and R-3 and the impugned A-5 document that the respondent s have not examined his request in the light of the facts and circumstances brought out in his representations and

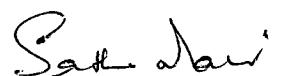
simply rejected them on the ground of the nonavailability of the option without going into the reasons behind it which would only have exposed the lapses of the officers at different levels. The applicant had been pursuing his case from 1990 and the authorities should have considered his request more sympathetically. We are convinced that the applicant is a victim of official apathy and his prayer requires to be allowed.

8 Accordingly, we direct the respondents to calculate the applicant's pensionary benefits taking into account his service rendered in the Army along with the service on re-employment till his date of superannuation on 31.3.2001 and disburse the same to him with all other attendant benefits. For this purpose they shall treat his representation submitted on 5.6.1990 as the option required to be given under the Rules. OA is allowed. No costs.

Dated 26.7.2006



K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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