

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A. NO.160/2011

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Dated this the 11th day of November, 2011

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

T.G.Mukundan, Driver, Employee No.2316008 (Retd)
O/o Principal General Manager, BSNL, Ernakulam
R/o Nandanam (Thoppil), Near Bala Vinayaka Temple
Kannankulangara, Tripunithura - 682 301

(Mr. G. D. Panicker, Advocate)

...Applica

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- 1 The Chairman & Managing Director, BSNL
Corporate Office, 102-B, Statesman House,
36, Janpath, New Delhi-1.
- 2 The Communication Accounts Officer, O/o CCA
Department of Telecom, Kerala Circle, PMG
Junction, Trivandrum
- 3 Principal General Manager, Telecom,
BSNL, Ernakulam.

...Respondents

(By Advocates Mr Pradeep Krishna, R1&3
Mr. Sunil Jacob Jose, R-2)

The application having been heard on 3.11.2011 and the Tribunal held as under:

ORDER

HON'BLE Mrs.K.NOORJEHAN, ADMINISTRATIVE MEMBER

1. Brief facts as stated by the applicant are that he entered the service of the respondents as Driver on 3.8.1983. Before joining the respondents department he was in the Indian Army as Driver from 9.5.1968. He was appointed as a driver against a substantive vacancy in 1991, in the respondent's department. He was discharged from Military service on

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24.2.1982 on compassionate grounds. It is averred by the applicant that as per the provisions contained in CCS(Pension) Rules, the military service rendered before the civil employment is to be counted for civil pension. Accordingly, the 3rd respondent sought option for counting the past service rendered in the Army for the period from 9.5.1968 to 24.2.1982. As per letter dated 2.5.1991 the option was exercised by the applicant (Annex.A2). By letter dated 8.2.2008 (Annex.A3), the Record Officer, ASC Records, Bangalore forwarded the details of service gratuity, pension benefits paid to the applicant on his discharge from the Army. Office of the 3rd respondent misplaced the record and again sought information from the Military authorities. By their letter dated 9.10.2009, they again forwarded the necessary information. The 3rd respondent by communication Annex.A6 directed the applicant to deposit Rs.2977.75 as service gratuity received by him from Military service alongwith interest thereon @ 12%, a sum of Rs.4670.05 and penal interest @ 1% on the amount. Maximum 36 installments were allowed. He refunded the entire amount with interest which was acknowledged by the Accounts Officer by letter dated 25.8.2007 (Annex.A7). The Area Manager by letter dated 25.8.2007 intimated the Accounts Officer, Establishment, PGMT, BSNL, Ernakulam that the applicant is retiring on 30.9.2007 and he sent necessary documents to prove Military service to be included for pension and other retiral benefits for the applicant. Ultimately the applicant retired on 30.9.2007 without getting his military service counted for pension. By representation dated 26.11.2007 and personal meeting with the 3rd respondent, the case of the applicant was forwarded to the 2nd respondent on 27.3.2008. Thereafter the applicant personally met the 2nd respondent for release of the revised pension. Aggrieved by the inordinate delay, in settling his entitled pension, he has filed this O.A.

2 The respondents contested the OA. Two separate replies have been filed by the 2nd respondent and 1&3rd respondents. In the reply of the



2nd respondent, it is submitted that the applicant opted to count the Military service for civil pension and refunded the service gratuity and DCRG in 36 instalments. It is further submitted that the full amount could not be recovered before his retirement. It is further submitted that there was no mention of his military service in the Pension papers (Form 7). It is submitted that as per Rule 19(1) of CCS (Pension) Rules, the option to count past Military service has to be exercised within three months from the date of issue of orders of substantive appointment to a civil service or post and he failed to do so within the stipulated period. He was paid pension and related pensionary benefits by order dated 14.9.2007. They have ascertained from the Accounts Officer, PGMT, BSNL that a balance amount of Rs.6561 has to be recovered from the applicant before his retirement. As per Rule 19(3)(b) of the CCS (Pension) Rules, to count the previous service as qualifying service shall not revive until the whole amount has been refunded.

3 The respondents No.1 & 3 in their reply submitted that on retirement the applicant was issued PPO granting pension without counting the military service @ Rs.1793/- per month and other retiral benefits such as DCRG, Commutation Value and Leave Encashment. They alleged that the applicant has submitted unsigned copy of option and on their demand the applicant submitted his fresh option on 10.2.2010. The applicant has not taken any action to get the belated refund regularised. Thus, the applicant has taken up his case only in August 2007. With the available details they have forwarded the case to the 2nd respondent on 27.3.2008 and the 2nd respondent replied that the applicant has not exercised the option within 3 months from his substantive appointment and not complied with the provisions of the rule, the case can only be decided by the Govt of India, Department of Pension and Pensioners Welfare. The documents called for by DoT was forwarded and final decision from the DoT is awaited.

4 Heard the learned counsel for the parties and scrutinised the

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records.

5 The sole issue to be seen, in this Original Application is whether the applicant exercised his option, to count his military service towards pension in time, in 1991, when he was appointed against substantive vacancy. Annex.A6 is a letter dated 13.3.1995 from the General Manager to the applicant asking him to refund the service gratuity of Rs.2977.75, with 12% interest. A reference is made to the representations of the applicant dated 02.05.1991 produced as Annexure R-17. This shows clearly that the applicant was prompt in exercising his option. He was not drawing military pension since he did not complete 15 years of service in Army and got discharged on compassionate grounds. Therefore, the applicant would have been anxious to exercise his option in time. Hence the contention of the respondents that the applicant did not give his option in 1991 is not tenable. The second respondent submits that his option was unsigned (Annexure R-4) and was not kept in the service book. He has no explanation about the reference made in Annexure A-6 letter to his option dated 02.05.1991. Vide Annexure A-8, the applicant has produced pay slips of 23 months show that he has refunded the service gratuity to Defence department during the period from 1995-2000. Therefore, I am inclined to give credence to the version of the applicant that even though the Defence department has forwarded service particulars of the applicant and the service gratuity was refunded by him, these details were omitted to be noted in the service book by the respondents. This has led to a situation when the second respondent, his pension processing authority could not take into account the Army service of the applicant, as the details of the same and refund of service gratuity etc were not entered in the service book. It is quite possible that recovery effected from March 1995 based as the willingness letter given by the applicant was not correctly accounted for as repayment of service gratuity, since it is merely noted as excess pay refund in the payslip leading to the absence of any entry in the service book. The respondent now states

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that full amount was not recovered before retirement. If so, who is responsible for that ? The applicant has given his willingness for recovering Rs.2977.75 plus interest from his salary. The competent authority permitted recovery in 36 instalments. It was therefore, the duty of the office of the General Manager, Ernakulam to effect recovery in full and get the details entered in the service book. The applicant cannot be made to suffer for the negligence shown by all concerned in the office of the General Manager, Ernakulam in depriving him of his due benefits.

6 Annexure R-11 produced by the second respondent shows that the third respondent has sent a revised pension calculation sheet to the second respondent as early as in March 2008. He has clearly noted in para 2 therein that an amount of Rs.7658/- was recovered from March 1995 to April 1998 towards service Gratuity and the interest thereon. And after such recovery no action was taken to issue sanction for counting his military service for civil pension. An entry was made in his service book later and the third respondent gave the administrative sanction to count military service of 13 years and 292 days from 09.05.1968 to 24.02.1982, for civil pension (Annexure R-11). Still the third respondent has not acted on R-11 on the plea that there is no documentary evidence of the option exercised by the applicant and there is an outstanding interest of Rs.6561/-. He therefore, called for fresh option from the applicant in 2010, to take up the matter with Department of Pension and Pensioner's Welfare, to seek necessary approval.

7 In my opinion there was utter callousness , on the part of the respondents in dealing with this issue. He has served the Country with dedication and was the recipient of Surya Seva Medal, Sangram 25 independence Army medal and was awarded Paschima Star. He has almost 14 years of service. Now he is being driven from pillar to post in his endeavour to get his military service counted. Only with the aim of helping discharged Defence personnel, there is a reservation of 20% in the direct recruitment



quota in all central civil services. Even before initial fixation of pay, the details of military service are to be verified. The administration is expected to be proactive, and call for option from the ex-service personnel, even if there is omission on their part. In the instant case, the applicant has given his option in 1991 as borne out by Annexure A-6 and Annexure R-17. Only based on the option of the applicant Annexure A-6 would have been issued and recovery commenced from 1995. According to the applicant the excess pay refunded has continued upto 2000 even though third respondent states that recovery was completed in April 1998. So the third respondent is not at all justified, in taking a view, now that in the absence of a signed copy of option in the service book, the recovery effected has no bearing in the matter. Therefore, balance of convenience and justice are in favour of the applicant. In view of the recovery effected towards service gratuity and interest from 1995 onwards, I am of the considered opinion that the option to count military service for civil pension is to be taken as exercised in 1991.

8 I therefore, direct the respondents to act on Annexure R-11, from the third respondent and process the case for re-fixation of pay and issuance of revised pension payment order within a timeline of two months. It may be ensured that initial pay fixation in 1991 is done, taking his military service into account in case he is entitled to any notional increment and refixation of pay is done, with effect from 01.01.2006 on the basis of 6th CPC recommendations and all due arrears of pay and pension paid within three months. The respondents are further directed to pay Rs.10000 as cost to the applicant as the negligence and delay on their part have caused mental agony and monetary loss to the applicant.

Dated 11th November 2011

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(K Noorjehan)
Administrative Member