

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 258 OF 2010

Thursday, this the 30th day of June, 2011

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

V.P.Aravindakshan
Senior Social Security Assistant (TBP)
Employees Provident Fund Organization
Sub-Regional Office, Calicut – 673 006
Residing at Palat Hosue
Karippapurath Thazhe
Chelannur PO, Kozhikode – 673 616 ... Applicant

(By Advocate Mr. B.Harish Kumar)

versus

1. The Regional Provident Fund Commissioner
Office of Provident Fund, Regional Office
Thiruvananthapuram, Kerala
2. The Assistant Provident Fund Commissioner
Employees Provident Fund Organization
Sub-Regional Office,, Bhavishyanidhi Bhavan
PB No.1806, Eranthipalam PO
Calicut - 673 006
3. The Central Provident Fund Commissioner
Employees Provident Fund Organization
Head Office No.14, Bhikaji cama Palace
New Delhi – 110 066 ... Respondent

(By Advocate Mr. N.N.Sugunapalan, Senior with Mr.S.Sujin)

The application having been heard on 30.06.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant is working as a Social Service Security Assistant (TBP). He had applied for time bound promotion with effect from 05.07.1996 reckoning his past services in the Military. This was rejected by the respondents. Hence he has filed this OA.

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2. According to the applicant, he is an Ex-serviceman who joined on 14.08.1971 and continued till 01.03.1979. He was discharged from military service and he was also paid the service gratuity. He had 7 years of military service. This is no sufficient qualifying service for pension from the military. The applicant states that he was employed in the Employees Provident Fund Organization as LDC on 26.10.1984 and confirmed in that post on 07.11.1989. Though he has requested to count the military service for the purpose of pension, this has not been granted. Admittedly, by Annexure A-3 order of the respondents his military service has been reckoned as qualifying service for the purpose of pension in the Employees Provident Fund Organization in accordance with the provisions of Rule 19(1) of the CCS (Pension) Rules, 1972. Thus, according to him, since the period of service rendered in the military has been reckoned for the purpose of pensionary benefits such service should also be reckoned for grade promotion. Various representations were filed and orders passed are at Annexure A-8 dated 28.12.2006 and Annexure A-10 dated 19.02.2010.

3. According to the applicant, Annexure A-10 passed by the 1st respondent is illegal as also Annexure A-11. He seeks the following reliefs:-

1. *To call for the records leading to Annexure A-8, A-10 and A-11 passed by the first and second respondent and set aside the same.*

2. *To direct the respondent to grant the applicant upgradation to the next higher scale of ₹ 5000-8000 (pre-revised) pertaining to the post of UDC selection grade with effect from 05.07.1996 after reckoning the past service in the military service, with all consequential benefits including arrears of pay flowing there from.*



3. *Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice."*

4. In the reply statement filed by the respondents, it is contended that Annexure R-1 is the scheme for time bound promotion in vogue in the Employees Provident Fund Organization. As per Annexure R-1, UDCs who complete 17 years of service will be placed on a higher grade on non-functional basis. The applicant joined the Organization as LDC on 26.10.1984 and was promoted as UDC on 05.07.1996. On completion of 17 years of clerical service, he was placed under higher grade on non-functional basis on 25.10.2001. It has been admitted that he has rendered military service from 14.08.1971 to 01.03.1979. The applicant retired from service on 31.03.2011. At the request made by the applicant to count his military service for the purpose of pensionary benefits, permission was accorded in accordance with Rule 19 (1) of CCS (Pension) Rules, 1972. For the limited purpose of qualifying service for the purpose of promotion, it is contended that there is a break of 5 years between the two employments, hence request to count the past service was rejected. It is also contended that the service rendered in the military is not in a civil post, which cannot be combined as clerical service for the purpose of granting TBPS.

5. We have heard the counsel on both sides. The short point that arises for consideration is as to whether the applicant is entitled to count the military service rendered by him for the purpose of grade promotion in the Employees Provident Fund Organization.

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6. It is the specific contention of the respondents that grade promotion is governed by a scheme as per which 17 years service in the Organization is required for granting such benefits. Admittedly, the applicant do not possess the required number of years of service in the Employees Provident Fund Organization to qualify him for such grade promotion effective from 05.07.1996. But if the service rendered in the military is also reckoned for the purpose of required number of years of service for granting him grade promotion, certainly he will be entitled for grade promotion. But the respondents contend that the applicant had retired from military service and more than five years thereafter, he got employed in the Employees Provident Fund Organization and joined as a fresh hand. The fact that he was given the benefit of reckoning the military service for pensionary benefits, by any specific order by itself is not a ground to hold that such military service is liable to be reckoned for all purposes, including grade promotion. Since the grade promotion is given based on a Scheme formulated by the Organization and in the absence of any provisions thereunder to reckon the services employed elsewhere also to be treated as per of the service rendered in Employees Provident Fund Organization, he cannot claim any such benefits under the scheme. There are no other orders produced in the case of the applicant to show that he is entitled to have his military service counted for the purpose of grade promotion under the scheme formulated by the respondent Organization. He has placed reliance on the decision of the Full Bench of the Hon'ble Kerala High Court in ***State of Kerala and Ors vs. V.J.Philomina*** in Writ Appeal No. 476 of 2007, judgment dated 12.12.2007. We have gone through the judgment, a copy of which is made available for reference. This is a case where specific order to treat all Non-

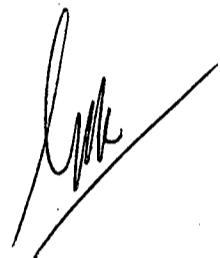


Gazetted officers who remained in the entry grade without a promotion in the normal course shall be allowed the benefit of a higher grade on completion of 13 years of service. By a separate order, Government decided to add military service for counting 13 years of service in the entry grade for granting the benefit of higher grade for Non-Gazetted Officers. As per the said Government order, Government after considering the proposal in detail were pleased to order that War / Military service which counts for civil pension will also be reckoned for computing the 13 years qualifying service for the grant of the benefit of higher grade in respect of Non-Gazetted Officers. Civilian service under military will not however, count for higher grade. This itself shows that Government first decided to give pensionary benefits counting the military service and later by a separate order they extended the benefit of counting the military service for the purpose of granting higher grade also. But here no such order is passed giving the benefit to reckon past service rendered in military as service in the Organization for grade promotion. There is no general law that whenever a person rendered service in military and after he is discharged from service, and he is re-employed elsewhere in any other Organization, that military service should be counted for all purposes. It will depend upon the specific orders in this regard. As we have seen in this case that the military service has been reckoned for pensionary benefits, but they did not extend the benefit for grade promotion. In the absence of any legal right of reckoning military service for the purpose of grade promotion, applicant cannot succeed in this OA for grant of the reliefs as sought for. It is only appropriate before concluding, we may refer to a decision of the Madras Bench of the Tribunal in OA 308/2003, produced as Annexure A-6 in the case. The said decision has no application to the



factual situation of this case, as it is a case where the applicant while working in military service was transferred to the Regional Provident Fund Commissioner. The case of transferee stands on a different footing. In the present case, it is not a transfer but after cessation of his service in the military for over five years, he got employment in the organization as a fresh recruitee. In such circumstances, he cannot be treated on par with a transferee. In the result OA is devoid of any merit and it is dismissed. No costs.

Dated, the 30th June, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

vs