

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 267/2000

FRIDAY, THIS THE 19th DAY OF APRIL, 2002.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

M.N. Raghunatha Kurup S/o late Kuarakartha
Lascar, Integrated Fisheries Project,
Cochin-16
residing at reethi Bhavan
Kaichukulanlgara
Cherthala
Alleppey District.

Applicant

By Advocate Mr. V. R. Ramachandran Nair

Vs.

1. Union of India represented by the
Secretary to the Government of India
Ministry of Agriculture
Department of Animal Husbandary & Dairying
Krishi Bhavan,
New Delhi.
2. Secretary to the Government of India
Ministry of Personnel & Public Grievances
and Pensions, Department of Pension &
Pension Welfare, New Delhi.
3. The Director
Integrated Fisheries Project
Cochin-16.
4. The Accounts Officer
Integrated Fisheries Project,
Cochin-16.

Applicant

By Advocate Mr. S. K. Balachandran, ACGSC

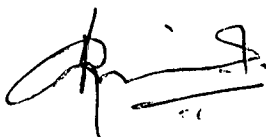
The Application having been heard on 15.3.2002, the Tribunal
delivered the following on 19.4.2002:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant was enrolled in the Indian Navy as a
'Boy' on 21.3.60 and promoted to 'Man's rank on 11.3.1961.
He continued as such in the Defence Service and was

discharged on the expiry of appointment on 10.3.1971. He was not entitled to pension in the Defence service. He joined the Integrated Fisheries Project as a Lascar as a re-employed Ex-serviceman on 24.11.73 in which post he had been continuing till the time of filing the O.A. On coming to know that he would be entitled to get his Defence service counted for civil pension even though he was not granted any defence service pension he filed A2 representation dated 26.3.97 to the third respondent enclosing therewith a copy of the certificate issued by the Indian Navy and requesting to count his Defence service for pension. He followed up the matter by further representations. He received A3 reply dated 11.12.98 in which it was stated that the matter was under consideration of the Ministry. Finally by A-4 letter dated 30.9.99 he was informed to furnish certain details. Applicant explained the position by his A-5 representation dated 15.10.99 to the 4th respondent. By A-6 letter dated 25.1.2000 his request to count the Defence service for civil pension was rejected. He filed A-7 representation dated 4.2.2000 to the third respondent requesting to give him a copy of the rejection letter issued by the Ministry. This request was turned down by A-8 letter of the 4th respondent. A-9 is the OM issued by the Department of Personnel and Pension Welfare dated 28.9.94. Claiming that on the basis of Rule 19 of the CCS Pension Rules and A-9 OM the applicant was entitled for counting his Defence service for pensionary benefits and claiming that in case his military service was not counted he would be put to extreme prejudice and hardship, the applicant filed this Original Application seeking the following reliefs:



(i) To declare that the rejection of the request of the applicant to count the Navy Service (Defence Service) to the civil pension is illegal.

(ii) To call for the records leading upto Annexure A-6 and quash the same.

(iii) To direct the respondents to count the Navy Service of the applicant towards Civil Pension.

(iv) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

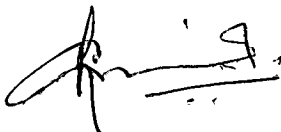
2. Respondents filed reply statement resisting the claim of the applicant. According to them the applicant has not fulfilled the conditions laid down in Rule 19 of the CCS Pension Rules. It was further submitted that the applicant has not exercised his option even when the Department of Personnel & Pension Welfare gave one time relaxation as contained in A-9 OM in 1994 within the time limit mentioned by them.

3. Applicant filed rejoinder.

4. Heard the learned counsel for the parties.

5. We have given careful consideration to the submissions made by the learned counsel for the parties and rival pleadings and have perused the documents brought on record.

6. According to us the main question to be decided in this case is whether for the reasons given in A-6 the applicant's request for counting his Indian Navy services for pensionary benefits could be rejected.



7. The impugned order reads as under:

Office of the Director
Integrated Fisheries Project
Cochin-16
No.A2/7.61/73-Vol.III/M54 Dt. 25.1.2000

M E M O

Sub Counting of Navy Service towards Civil Pension in respect of Shri M.N. Raghunatha Kurupu, Lascar

2. This Office Memo No. A2/7-61/73
vol.III/M 223 dated 30.9.1999

3. Submission dated 15.10.1999 of Shri M.N. Raghunatha Kurupu, Lascar

With reference to the above representation dated 26.3.97 Ministry has informed that the request of Shri M.N. Raghunatha Kurupu, Lascar for counting of Navy Service (Defence Service) towards civil pension has been examined in consultation with Deptt. of Pension and Pensioner Welfare and they have not agreed to the relaxation of rules in his case for counting his Navy Service towards civil pension because he did not exercise any option for counting the said service in accordance with D.O.P. and P.W.O.M No. 28/29/93-P & PW(B) dated 23.5.94 when the DOP & PW allowed all such reemployed ex-servicemen to exercise option within six months of issue of the OM. The said OM was a relaxation order and it was clearly mentioned therein that a last opportunity is being provided to the re-employed pensioners for exercising the option and the said OM was widely circulated by that Deptt. among Ministries/departments and various Associations of ex-servicemen and Pensioners etc. Further the provisions of Deptt. of Pension & Pensioners Welfare Office Memorandum dated 23.5.1994 does not provide that its contents need to be brought to the notice of the employee. since Shri M.N. Raghunatha Kurupu did not exercise option even within the above stipulated period of six months, the competent authority has not agreed to grant any further relaxation of rules in his case.

Sd/- Director

To

Shri M.N. RAGhunatha Kurupu, Lascar.



8. The Department of Personnel and Pension Welfare OM dated 23.5.94 referred to in the above OM has been produced by the applicant as Annexure A-9. The said OM reads as under:

Exercise of option by Military Pensioners & re-employed in civil services or posts under Rule 19(1) of CCS (Pension) Rules, 1972

The undersigned is directed to refer to this Department's OM No. 28/50/87-P&PW dated the 31st May, 1988, on the subject mentioned above and to say that a reemployed military personnel seeking the benefit of past service under Rule 19(1) of CCS (Pension) Rules is allowed to exercise option for counting of military service as qualifying service within a period of one year from the date of joining civil service or post. It is also laid down that the amount of pension, gratuity, etc. already received by such Government servants from the military authorities shall be refunded to the Government with interest from the date of their joining the civil service. In the said order, it was specifically laid down that the administrative authorities concerned are required to incorporate in the order of re-employment itself a clause to the effect that if the re-employed ex-servicemen desire to take advantage of the retirement benefit based on combined military and civil service, he should exercise option within a period of one year from the date of his re-employment.

It has been represented to this department by Associations of Military Pensioners and individuals that in some cases it has not been possible for Ministries/departments and field offices to disseminate the information about the facility for exercise of option in terms of the above mentioned orders to the affected officers/servicemen who were posted in the different parts of the country. As a result, many of these officers/servicemen could not avail of the opportunity to exercise their options within the stipulated period. Keeping in view these representations, it has been decided as a one-time relaxation to provide a last opportunity to military pensioners who are presently re-employed in civil posts/services to exercise the option for counting of military service as qualifying service within a period of 6 months from the date of issue of these orders.

The officers/servicemen exercising option in accordance with the provisions of this OM for counting of military service as qualifying service shall be required to refund the benefits in accordance with the provisions of the Rule 19(1) of



CCS (Pension) Rules, 1972 along with 6 percent simple interest as already notified vide this Department's OM of 31st May, 1988, referred to above.

9. In the impugned A-6 the respondents have stated that because the applicant had not exercised 'option' within the stipulated period of six months referred to in A-9, the competent authority had not agreed to grant any further relaxation in his case. At the same time, it has also been stated in A-6 that because the said A-9 OM did not provide that its contents should be brought to the notice of the employees it had not been brought to the applicant's notice. If the contents of the said OM had not been brought to the notice of the employees for whose benefit this OM had been issued it could never be acted upon by the concerned employees. The said relaxation had been given by the Ministry for the benefit of the employees like the applicant. We do not find any rationale for the third respondent's statement that the contentions of the said OM need not be brought to the notice of the concerned employees. We are of the view, indirectly the respondents are admitting that the contents of the OM were not specifically brought to the notice of the employees like the applicant. When such is the case we are unable to sustain the said A-6 order and A-6 for the above reason is liable to be set aside and quashed.

10. The applicant is claiming the benefit for getting his Defence service/^{counted for pension} on the basis of Rule 19 of the CCS (Pension) Rules, 1972. Rule 19 of the CCS (Pension) Rules, 1972 reads as under:

19. Counting of military service rendered before civil employment



(1) A government servant who is re-employed in a civil service or post before attaining the age of superannuation and who, before such re-employment, had rendered military service after attaining the age of eighteen years, may, on his confirmation in a civil service or post, opt either

(a) to continue to draw the military pension or retain gratuity received on discharge from military service, in which case his former military services shall not count as qualifying service or

(b) to cease to draw his pension and refund-

(i) the pension already drawn, and
(ii) the value received for the commutation of a part of military pension, and
(iii) the amount of retirement gratuity including service gratuity, if any,

and count previous military service as qualifying service, in which case the service so allowed to count shall be restricted to a service within or outside the employee's unit for department in India or elsewhere which is paid from the consolidated Fund of India or for which pensionary contribution has been received by the Government:

provided that-

(i) the pension drawn prior to the date of re-employment shall not be required to be refunded.,

(ii) the element of pension which was ignored for fixation of his pay including the element of pension which was not taken into account for fixation of pay on reemployment shall be refunded by him,

(iii) the element of pension equivalent of gratuity including the element of commuted part of pension, if any, which was taken into account for fixation of pay shall be set off against the amount of retirement gratuity and the commuted value of pension and the balance, if any, shall be refunded by him.

Explanation- In this clause, the expression 'which was taken into account' means the amount of pension including the pension equivalent of gratuity by which the pay of the Government servant was reduced on initial re-employment, and the expression which was not taken into account' shall be construed accordingly.



2(a) The authority issuing the order of substantive appointment to a civil service or post as is referred to in sub-rule (1) shall along with such order require in writing the Government servant to exercise the option under that sub-rule within three months of date of issue of such order, if he is on leave on that day, within three months of his return from leave, whichever is later and also bring to his notice the provisions of Clause (b).

(b) If no option is exercised within the period referred to in Clause (a), the Government servant shall be deemed to have opted for Clause (a) of sub-rule (1).

3(a) A government servant, who opts for Clause (b) of sub-rule (1) shall be required to refund the pension, bonus or gratuity received in respect of his earlier military service, in monthly installments not exceeding thirty six in number, the first instalment beginning from the month following the month in which he exercised the option.

(b) The right to count previous services qualifying service shall not revive until the whole amount has been refunded.

4. In the case of a Government servant, who, having elected to refund the pension, bonus or gratuity, dies before the entire amount is refunded, the unrefunded amount of pension or gratuity shall be adjusted against the death gratuity which may become payable to his family.

5. When an order is passed under this rule allowing previous military service to count as part of the service qualifying for civil pension, the order shall be deemed to include the condonation of interruption in service, if any, in the military service and between the military and civil services.

From Rule 19(2) above we find that the said rule require all authorities on issue of substantive appointment orders of the employees like the applicant, along with such orders, to require them in writing to exercise the option under the said rule within three months from the date of issue of such orders. Admittedly in this case the applicant had been made substantive ⁱⁿ appointment by R-1 order dated 28.2.88. In the said order there is absolutely no whisper requiring the applicant to exercise his option as to whether he would like his Defence service to be counted for pensionary benefit.




The respondents explained this inaction on their part as an inadvertent mistake. They submitted that the applicant had not exercised the option within the period of three months. When the rules specifically require the authority issuing substantive appointment to advise in writing the Government servant to exercise the option and when such authority had not complied with the said statutory requirement, the applicant could not be faulted for not exercising the option.

11. In the light of the above detailed analysis we are of the view that this Original Application succeeds and is liable to be allowed. Accordingly, we declare that the rejection of the representation of the applicant to count the Navy Service to the civil pension is illegal. We set aside and quash A-6 letter dated 25.1.2000 issued by the third respondent. We direct the respondents to consider the representation of the applicant dated 15.10.99 (Annexure A5) afresh in accordance with the rules, keeping in view our above observations and pass appropriate orders in the matter within a period of three months from the date of receipt of a copy of this order.

12. The Original Application stands allowed as above with no order as to costs.

Dated the 19th April, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

kmn



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the certificate dated 29th November, 1984 issued by the Civilian Gazetted Officer, Staff Officer (Records), Bureau of Sailors, Cheetah Camp, Mankhurd, Bombay showing the defence service of the applicant.
2. A-2: True copy of representation dated 26.3.97 submitted by the applicant to the 3rd respondent requesting to count military service for pension.
3. A-3: True copy of Memo No.A2/7-61/73/4968 dated 11.12.98 issued by the 4th respondent to the applicant.
4. A-4: True copy of Memo No.A2/7-61/73 Vol.III/M 223 dated 30.9.99 issued by the 4th respondent to the applicant requiring to explain the reason for not submitting the option in time.
5. A-5: True copy of explanation submitted by the applicant to the 4th respondent regarding the non-submission of the option earlier.
6. A-6: True copy of Memo No.A2/7-61/73 Vol.III/M54 dated 25.01.2000 issued by the 3rd respondent to the applicant rejecting the request of the applicant for counting defence service for civil pension.
7. A-7: True copy of representation dated 4.2.2000 submitted by the applicant to the 3rd respondent requesting to issue him a copy of the rejection order from the Ministry.
8. A-8: True copy of Memo No.A2/7-61/73-Vol.III/M82 dated 18.2.2000 issued by the 4th respondent to the applicant stating that the orders of the Ministry cannot be issued to the applicant.
9. A-9: True copy of order No.D.P&PW, O.M.No.28/29/93-P & PW(B) dated 23.5.94 and corrigendum dated 28.9.94 issued from the Department of Pension & Pension Welfare regarding submission of option.

Respondents' Annexures:

1. R-1: True copy of the O.O.No.164/88 dated 28.12.88 issued by the 3rd respondent.
2. R-2: True copy of the certificate of verification of Military service with regard to the applicant along with covering letter dated 10.9.97 issued by the Accounts officer Controller of defence Accounts (Navy) Mumbai.
