

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.319/2001

Monday this the 10th day of June, 2002.

CORAM

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

J.Prabhakaran Nair
S/o Janardhanan Pillai
Telecom Office Assistant (Retd.)
Vettikattu House, Kulathummel
Kattakkada P.O.
Thiruvananthapuram.

Applicant

(By advocate Mr.Vishnu S.Chempazhanthiyil)

Versus

1. Chief General Manager Telecom
Kerala Telecom Circle
Bharat Sanchar Nigam Ltd
Thiruvananthapuram.
2. Director General, Telecom Department
Bharat Sanchar Nigam Ltd.
New Delhi.
3. Secretary, Ministry of Defence
Government of India, New Delhi.
4. Union of India, rep. by
its Secretary, Ministry of
Communications, New Delhi.
5. Bharat Sanchar Nigam Ltd rep. by
its Chairman, New Delhi.

Respondents.

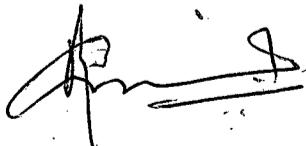
(By advocate Mr.R.Madanan Pillai,ACGSC)

The application having been heard on 10th June, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, an ex serviceman, after being in service from 1963 to 1973 in the Defence Forces was released from there and was re-employed under the 1st respondent on 7.7.73 as a Telecom Office Assistant. Due to prolonged illness and physical disability he was invalidated from civil service with effect from 1.12.97. His grievance is that his pension had been fixed after



taking into account only the service rendered by him as a civilian and that if the service rendered by him in the Defence Force was taken into account for calculation of qualifying service, he would get full pension. With this grievance, applicant had approached the Tribunal earlier by filing OA No.271/99 which was disposed of by this Tribunal by A-5 order dated 5.3.99. Pursuant to A-5 order second respondent passed A-6 order dated 24.9.99 which was communicated to him by the General Manager, Telecom District, Trivandrum, by A-7 letter dated 18.10.99. Alleging that A-6 was illegal, arbitrary and violative of Article 14 of the Constitution and was issued without application of mind and had not referred to the circumstances under which the applicant had failed to exercise the option as brought out by A-2, the applicant has filed this Original Application seeking the following reliefs:

- a) Call for the records and quash Annexure A6.
- b) Direct the respondents to count the military service rendered by the applicant before re-employment as qualifying service for purpose of pension under the provisions of A-1 and revise his pension accordingly.
- c) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
- d) Award the cost of these proceedings.

2. According to the applicant, on the basis of his earlier representation to count his past service the first respondent had taken up the issue by A-2 letter dated 4.11.92 and the contents of A-2 had not been referred to in A-6. Applicant had also exercised the option within the extended time given in A-1 O.M. dated 23.5.94.

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3. Respondents filed reply statement resisting the claim of the applicant. According to them, his military service from 19.2.1963 to 12.2.73 was not counted as qualifying service for civil pension as he did not submit his option for the purpose. As per Rule 19 of Central Civil Service (CCS in short) (Pension) Rules 1972, a re-employed ex-serviceman could opt to refund the retirement benefits received from the defence service and count his previous military service as qualifying service within three months from the date of issue of orders of substantive appointment to the civil post and if he was on leave on that day, within three months of his return from leave whichever was later. Applicant was confirmed in the cadre by order dated 12.10.81. He was not on leave on that day. Further re-employed ex-servicemen who were on service as on 30.7.81 were given another opportunity to come over to clause (b) of sub rule 19 ibid so that they could earn single pension based on the combined military and civil service. The last day of exercising such option was 31.12.82. Applicant had represented on 24.11.88 to count his past military service for the purpose of civil pension. He was informed of the rules regarding submission of option for the purpose. Applicant further represented to condone the delay in submitting his request. In view of the fact that the applicant was not granted any military pension for his defence service as also the fact that it would be beneficial to him, his case had been forwarded to Directorate of Telecom duly recommended by R-1A dated 4.11.92. It was pointed out that the applicant did not submit any option but only submitted a representation requesting to count his military service also for civil pension and another representation to condone the delay. DOT order No.36-5/94/Pen(T)

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dated 7.9.94 under which the military pensioners were allowed to exercise option as a one time relaxation for counting of military service as qualifying service for civil pension within a period of six months from the date of issue of the order provided such pensioners refunded the military benefits in accordance with the provisions of the rule 19 of CCS (Pension) Rules 1972 along with 6% simple interest was circulated to filed units for publicity and further necessary action by Chief General Manager Telecom, Trivandrum by his letter dated 23.9.94 but the applicant did not exercise any option. The applicant retired on invalidation under Rule 38 of CCS (Pension) Rules 1972 with effect from 1.12.97. He submitted a representation to the Director General Telecom on 13.10.98 requesting to count his military service also for civil pension. The representation was examined in consultation with the Department of Personnel and Pension Welfare pursuant to the order of this Tribunal in OA 271/99 and R-1B letter dated 24.9.99 was issued to the applicant. He was not informed of the option facility in the confirmation order; being an ex-serviceman he was supposed to know the service as well as pension benefits while taking re-employment in civil post. Applicant having failed to exercise option by availing the opportunity of general relaxation granted by Government of India, he was not eligible for counting of past military service for pension purpose. The OA was devoid of any merit and was liable to be dismissed.

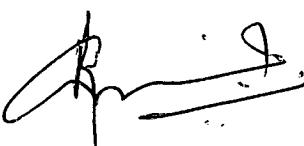
4. Applicant filed rejoinder reiterating the points made in the OA.

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5. Heard the learned counsel for the parties. Learned counsel for the applicant took us through the factual aspects contained in the OA and submitted that A-6 order was without application of mind. He submitted that the only contention raised by the respondents was that the applicant had not availed the opportunity to exercise the option pursuant to DOT order dated 7.9.94. This could not be accepted, in view of the fact that he already had sent a representation expressing his willingness to refund the service gratuity obtained on discharge from army and to count the past service for the purpose of pension and the said representation had been taken up with the highest authority by letter dated 4.11.92. According to him, in view of the fact that the applicant's representation which had been taken up with the highest authority in 1992 by the first respondent having not been disposed of, it could not be stated that the applicant had not exercised a fresh option pursuant to the general relaxation order given by the Government in 1994.

6. Learned counsel for the respondents took us through the pleas taken by the respondents in the reply statement. He submitted that the applicant having not exercised his option in time could not now claim the benefit of Rule 19 of the CCS (Pension) Rules after the lapse of such a long time. Moreover, the applicant had given a declaration for refund of the amount received by him for his military service for the first time only by A-8 letter dated 11.6.99.

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

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8. We find that the applicant had approached this Tribunal with the same grievance through OA 271/99 which was disposed of by this Tribunal by A-5 order dated 5.3.99. The said order reads as under:

"The applicant, an Ex-Serviceman after release from Army Service was re-employed under the first respondent as a time scale clerk. He retired on 1.12.97. His grievance is that his pension has been fixed after taking into account only the service rendered by him as a civilian and his past military service has been ignored because he did not submit option for counting his military service for pensionary benefits. He states that he has taken up the case before the first respondent for condonation of delay in submitting the option and the same has been taken up by the 1st respondent with the second respondent viz. Director General, Telecom Department, as per copy of letter at A-1.

After having heard the learned counsel on either side we are of the considered view that it is appropriate to dispose of this application with a direction to the second respondent to consider A-3 representation within a period of four months from the date of receipt of a copy of this order and to intimate the same to the applicant with a speaking order.

The original application is disposed of accordingly. No costs."

9. A-3 representation referred to in the above order is the representation dated 13.10.98 submitted by the applicant to the second respondent in that OA, namely the Director General, Telecom. A-1 letter referred to therein is A-2 letter referred to in this OA and the A-3 representation dated 13.10.98 referred to therein is A-3 representation referred to in this OA. The said A-3 representation reads as under:

"A kind reference is invited to Circle Office letter No.AP/3-2/83/Pt. dated 4.11.92 (copy enclosed), requesting for counting of former military service towards civil pension. A number of references were made earlier for counting of my former service rendered in the Army i.e. Madras Engineer Group for 10 years from 19.2.63 to 12.3.73. Further I have been re-employed in the Telecom Dept. from 7.7.73 to 30.11.97 (24 years). Now I have been prematurely retired from the Dept. due to ill health.



Now I am a poor pensioner getting a minimum pension of Rs.1845/- including Rs.100/- as medical allowance. In this connection I like to bring to your kind notice that, if my former military service for 10 years is considered by DOT I will be able to get more pension than what I am getting now.

In view of the above facts, I humbly pray that your good office may kindly take a lenient view and approach DOT to issue and render justice to a pensioner, an ex-serviceman and my poor family.

For which act of kindness I will ever remain grateful."

10. The impugned order A-6 issued by the Director (ST-I) reads as under:

"The Hon'ble Central Administrative Tribunal, Ernakulam Bench in its judgement dated 5.3.99 has directed the respondent No.2 i.e. Director General Telecom Department to consider the representation of the applicant and intimate the same to the applicant with a speaking order.

The applicant in his representation submitted through the office of Chief General Manager, Telecom, Kerala Circle, Trivandrum has requested that his former service rendered in the Army for 10 years from 19.2.63 to 12.3.73 may be counted with the service rendered in the Telecom Department from 7.7.73 to 30./11.97 (24 years) for pensionary benefits.

The representation of the official has been examined in consultation with Department of Personnel & Pensioners Welfare. Since Shri Nair did not exercise his option/availed opportunity to exercise option for which general relaxation was granted by the Government of India from time to time, he is not eligible for counting of past military service for pension purposes. The representation of the official is accordingly disposed of."

11. We find from the above impugned order that the applicant's reference to Circle Office letter dated 4.11.92 which had been taken note of by this Tribunal in A-5 order and which had been specifically referred to by the applicant in his representation has not been referred to in the impugned order. When such is the case, we find substance in the applicant's ground that the second respondent had not referred to A-2 at all and his ground that the second respondent had not considered the applicant's representation properly has force in it. In fact, in the reply



statement filed by the respondents, no reason is given by the respondents as to why no reply had been given by them to the first respondent's letter dated 4.11.92 (A-2). They have also not answered this ground raised by the applicant in the OA. The only reason given in A-6 is that the applicant had not exercised his option and had not availed of the opportunity to exercise the option when general relaxation was granted by the Government. The only general relaxation granted by the Government and which had been brought to the notice of the Tribunal is the one given in 1994, copy of which has been placed before us by A-1. Admittedly, this relaxation was given after the applicant had submitted his representation in 1998 based on which first respondent had referred the matter to the Director General by A-2 letter dated 4.11.92. The admitted fact is that A-2 had not been replied to by the second respondent till 1994, either rejecting it or accepting it. When such is the case, we find force in the submissions made by the learned counsel for the applicant that it is to be taken that his option for counting military service along with civilian service was pending and it was the duty of the respondents to have considered the case of the applicant in line with the relaxation given by the Government in 1994.

12. In the light of the above, we of the considered view that A-6 is liable to set aside and quashed.

13. The next question that arises is whether the applicant is entitled for counting his military service as qualifying service with his civilian service for the purpose of pensionary benefits.

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14. 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

(q) 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 or department in India or elsewhere which is paid from the Consolidated Fund of India or elsewhere or for which pensionary contribution has been received by the Government:

Provided that-

(i) the pension drawn prior to the date of reemployment shall not be required to be refunded.

(q) 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 re-employment 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 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 instalments 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 service as 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."

15. We find from Rule 19 (2) that at the time of confirmation, the authority issuing the order of substantive appointment to a civil service or post as is referred to in sub-rule (1) should along with such order require in writing the Government servant to exercise the option. We find from A-2 that such an option was not called for from the applicant at the time of issuing the substantive appointment of the applicant. If the respondents had done what was required to be done as per the rules and if the applicant had not exercised the option within the three months therefrom, then it can be taken that it is a failure on the part of the respondents. When the respondents having not done their part of the statutory duty which they have to do, the applicant should not be made to suffer for the same.



6. In any case the applicant had put in nearly 10 years of service in the Military and for medical reasons he had to prematurely retire from his civil service and had got the pension only for the civilian service of 23 years. On a reading of Rule 19, we are of the view that it is a beneficial piece of legislation so that ex-servicemen if found more advantageous to count military service along with civilian service for the purpose pensionary benefits could exercise option subject to the condition that they refund the amount received by them as terminal benefits for the military service. The right to count the previous military service as qualifying service would revive only after the full amount is refunded. In this case, the applicant had given a declaration that he was prepared to refund the amount received by him for the military service along with 6% interest from the date of appointment on 7.7.73. In the face of this declaration, we are of the view that the applicant's military service should be counted as qualifying service along with his civilian service.

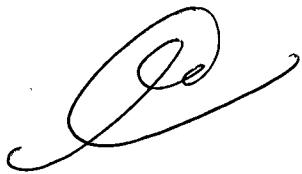
17. Accordingly we direct the respondents to re-work out the pensionary benefits due to the applicant clubbing his military service with civilian service. The respondents would be entitled to recover the amount of terminal gratuity received by the applicant for the military service with 6% interest from the date of his appointment on 7.7.1973 to the date of his retirement and adjust the same from the monetary dues payable to the applicant on account of clubbing the military service with civilian service

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of the applicant. Respondents shall carry out the above exercise and arrange payments to the applicant within a period of four months from the date of receipt of a copy of this order.

18. The OA stands disposed of as above with no order as to costs.

Dated 10th June 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

Applicant's Annexures:

1. A-1 : True copy of office Memorandum No.28/10/94-P&PW dt.23.5.94 of the Deptt. of Pension & Pensioners' Welfare.
2. A-2 : True copy of letter No.AP/3-2/83/PT. dt.4.11.92 of the 1st respondent.
3. A-3 : True copy of the representation dt.13.10.1998 to 2nd respondent.
4. A-4 : True copy of letter No.AP/90-Misc/97 dt.5.11.98 of 1st respondent to the 2nd respondent.
5. A-5 : True copy of order dt.5.3.99 in O.A No.271/99.
6. A-6 : True copy of order No.211-8/99-STN-1 dt.24.9.99 of 2nd respondent.
7. A-7 : True copy of letter No.Q 3067/II/14 dt.18.10.99 of the General Manager Telecom District, Thiruvananthapuram.
8. A-8 : True copy of the declaration dt.11.6.99 of the applicant.
9. A-9 : True copy of the representation dt.5.11.99 to 3rd respondent.
10. A-10: True copy of the certificate of service showing applicant's Military service.
11. A-11: True copy of the representation dtd. 24.11.88 to the Telecom District Manager, Telecom.
12. A-12: True copy of the representation dtd.25.7.89 to the 2nd respondent.

Respondents' Annexures:

1. R-1(A):True copy of office letter No.AP/3-2/83/PT dt.4.11.92 of Chief Accounts Officer, O/o the CGMT, Trivandrum.
2. R-1(B):True copy of DOT ND Letter No.211-8/99-STN-I dt.24.9.99.

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