

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.360/2001

Wednesday this, the 13th day of November, 2002.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.Ramakrishnan Nair,
Ex-Cypher Assistant,
residing at Knaiyamuriyil,
Keerikkad P.O.
Alleppey. Applicant

(By Advocate Sri M.R.Rajendran Nair)

vs.

1. Union of India represented by the Secretary to Government of India, Ministry of Home Affairs, Directorate of Co-ordination, New Delhi.
2. The Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pensions and Pensioner's Welfare, New Delhi.
3. Administrative Officer, Department of Co-ordination(Police Wireless), Block No.9, CGO Complex, Lodhi Road, New Delhi.

.... Respondents

(By Advocate Sri R.Prasanth Kumar, ACGSC)

The Application having been heard on 11.10.2002, the Tribunal on 13.11.2002 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant a reemployed Ex-Serviceman who retired from Civil Service while working as Temporary Cypher Assistant and Permanent Cypher Operator on 30.9.1982 on superannuation has filed this application aggrieved by the impugned order dated 5th January 2001, of the second respondent rejecting the applicant's claim in the representation dated 12.6.2000 for separate pension for

military service and civil service with effect from 1.1.1992 or at least from 1.1.1996 or in the alternative to grant him pension at Rs.4,000/- p.m. being 50% of the maximum of the revised pay scale of the post of Cypher Assistant which he had held at the time of his retirement.

2. The undisputed facts of the case are as follows. The applicant who got enrolled to Military Service on 16.9.1942 was discharged while holding the rank of Naib Subedar on completion of service on 9.11.1966. He got reemployed as Cypher Operator in Inter State Police Wireless on 24.6.1970 and retired on superannuation on 30.9.82 while holding the post of Cypher Assistant temporarily. While the applicant was confirmed on the post of Cypher Operator he had submitted option by letter dated 4.2.1981(R2) for counting the Military Service for civil pension under the provisions of Rule 19 of the CCS(Pension)Rules, 1972. The applicant refunded Rs.9,991/- (the entire Military Pension and terminal benefits received by him) and the first respondent issued orders dated 16.6.1982(A4) for counting the entire Military service for the purpose of civil pension under Rule 19 of the CCS(Pension)Rules. On the retirement of the applicant he was granted full pension and other terminal benefits reckoning his service including Military Service. While the applicant retired on superannuation he was in the pay scale of Rs.425-800. After the Fourth Central Pay revision, the applicant was in receipt of consolidated pension of Rs. 2781/-. The scale of the post of Cypher Assistant which the applicant held at the time of

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superannuation after the Fifth Pay Commission revision was Rs.5000-8000 w.e.f. 1.1.96. In terms of order No.45/10/98-P& PW(A) dated 17.12. 1998(A6) issued by the first respondent full pension of all pensioners should not be less than 50% of the minimum pay in the revised scale of the post last held by the pensioner. While so, in reply to the applicant's application dated 22.1.99 for revision of his pension he was informed by A5 order dated 1.6.1999 that the revised pension due to him would be less than what he had been receiving. Had the applicant opted to retain his military pension and to draw civil pension for the civil service separately, the applicant would have been entitled to Rs.2998/- as military pension and Rs. 1275/- as civil pension. Aggrieved by Annexure A5, the applicant filed O.A.884/99 seeking to set aside that order and for direction to respondents to calculate pension admissible to the applicant under the Revised Rules. The said O.A. was disposed of permitting the applicant to make a detailed representation and with a direction to respondents to dispose of the same in accordance with law. Accordingly the applicant submitted A9 representation to the first respondent praying that he be allowed to get separate pension for military service and civil service with effect from 1.1.92 or at least from 1.1.1996 or in the alternative, he may be granted pension with effect from 1.1.96 fixing his pension as 50% of Rs.8,000/- which is the maximum in the pay scale of Rs.5000-8000 which is the revised pay scale for the post of Cypher Assistant. This representation was rejected by the impugned order Annexure A1 on the ground that the option

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exercised by the applicant for counting military pension for the purpose of civil pension on re-employment cannot be revoked or changed as per rules and that as per the extant rules, full pension would be 50% of the minimum in the scale of pay of the post held by the pensioner at the time of retirement and that the applicant is not entitled to get 50% of the maximum of the scale of Rs.5000-8000. Aggrieved by that the applicant has filed this application seeking to set aside Annexure A1 , for a declaration that the applicant is entitled to withdraw his option under Rule 19 of the CCS Pension Rules and for direction to respondents to permit the applicant to withdraw the option with effect from 1.1.1992 or at least with effect from 1.1.1996 and to draw separate military and civil pensions or in the alternative to fix his pension at Rs.4000/- being 50% in the scale of pay of Rs.5000-8000 applicable to the category of Cypher Assistant.

3. The respondents resist the claim of the applicant . They contend that on the applicant's option, his military service was counted for civil pension and that as the applicant has availed the benefit for all these years , he cannot be allowed to reopt. They also contend that in accordance with the provisions of the extant rules and instructions,full pension of pre 1.1.1986 retirees is to be revised and refixed at 50% of the minimum of the revised scale of pay of the post last held by them.

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4. We have heard the learned counsel on either side and have perused the materials placed on record.

5. The learned counsel of the applicant referred us to the ruling of the Apex Court in Madan Singh Shekhawat v. Union of India , (1999)6 SCC 459, wherein it was held that

"it is the duty of the court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the object of the rule."

He further referred us to the observations of the Apex Court in Nirmal Chandra Bhattacharjee vs. Union of India ,1991 Suppl.(2) SCC 363, which runs as follows:-

"No rule or order which is meant to benefit employee should normally be construed in such a manner as to work hardship and injustice especially when its operation is automatic... If any injustice arises then the primary duty of the court is to resolve it in such a manner that it may avoid any loss to one without giving undue advantage to another."

He also referred us to the decision of the Hon'ble Supreme Court in Jacob M.Puthuparambil v. Kerala Water Authority, (1991) 1 SCC 28, wherein it was observed that the

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rule must be so interpreted if the language of the rule permit as would advance the philosophy of the Constitution.

6. The learned counsel argued that had the applicant opted for retaining military pension and to count civil service only for civil pension he would have been in a much more advantageous position and not allowing the applicant to reopt for such a course, is unjust. He further argued that the entire period of service of the applicant including the military service is treated as have been rendered in the scale Rs.5000-8000 he would definitely have reached the top of the scale and therefore, in any case the applicant should be entitled to 50% of the maximum of the scale of Rs.5000-8000 as pension.

7. Sri Prasanth Kumar, the Additional Central Govt. Standing Counsel on the other hand argued that the option exercised under Rule 19 of the CCS Pension Rules by the applicant while in service 20 years back cannot now be recalled because for all these years he has enjoyed the benefit of the option and after that he cannot be allowed to reopt especially long after his retirement. He further argued that the contention of the applicant that he is entitled to 50% of the maximum of the pay of the post of Cypher Assistant is against the provisions of the Revised Pay Rules and instructions thereunder.

8. It is true that if the applicant had opted to retain the military pension and not to count the military service

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for the purpose of civil pension he would now have been entitled to two separate pensions which would in any case be more than what he is now drawing as pension. But the applicant had two options, one to retain the military pension and the other to forgo the military pension and to have the military service counted for civil pension. Having opted to have the military service counted for civil pension and having received the benefits thereunder for all these years, the applicant cannot be in law permitted to revoke the option made by him 20 years back. Similarly the scale of pay of Rs.5000-8000 to the post of Cypher Assistant came into effect only with effect from 1.1.1986. Therefore to say that his entire service should be treated to have been rendered in that scale is baseless and meaningless. None of the decisions referred to by the learned counsel of the applicant has any bearing to the issue on hand. Any liberal interpretation of either Rule 19 of the CCS(Pension)Rules or the Revised Pay Rules would not entitle the applicant to the reliefs which he has sought in this application.

9. In the result in the light of the foregoing discussion finding no merit, this application is dismissed leaving the parties to bear their own costs.



(T.N.T.NAYAR)
MEMBER(A)



(A.V.HARIBASAN)
VICE CHAIRMAN

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the letter No.38/3/2001-P&PW (A) dated 5.1.2001 issued for the 2nd respondent.
2. A-2: True copy of the attested copy of the discharge certificate S1.No.1157 in R/O JC-23228 N/SUB.
3. A-3: True copy of the attested copy of the office order No.310/82 dated 30.9.1982.
4. A-4: True copy of the attested copy of office order II No.176/82 dated 16.6.1982 issued by the 1st respondent.
5. A-5: True copy of the order No.A-7011/51/99-Ad.I dated 1.6.1999 issued by the 1st respondent.
6. A-6: True copy of the order No.45/10/98-P&PW(A) dated 17.12.1998 issued for the 1st respondent.
7. A-7: True copy of the final order dated 31.5.2000 in OA 884/99 of this Hon'ble Tribunal.
8. A-8: True copy of the representation dated 12.6.2000.

Respondents' Annexures:

1. R-1: True photostat copy of letter No.38/3/2001P&PW(A) dated 5.1.2001 issued by the Ministry of Personnel, Public Grievances & Pension, Department of Pension and Pensioner's Welfare, New Delhi.
2. R-2: True copy of the option exercised by the applicant in the above case dated 4.2.1981.
3. R-3: True copy of letter No.A-14014/5/81-Admn.I dated 18.2.81 issued by the Ministry of Home Affairs.
4. R-4: True copy of letter No.A-14014/5/81-Admn.I dated 7.7.81 issued by the Ministry of Home Affairs.
5. R-5: True photostat copy of Challan dated 31.5.82 for Rs.9991.35, paid by the applicant.
6. R-6: True photostat copy of Pension calculation sheet of the applicant.

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