

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.**

O.A. No. 252 of 2006

Date of order : 24.07.2006

C O R A M

**Hon'ble Shri Justice P.K. Sinha, Vice-Chairman
Hon'ble Shri S.N.P.N. Sinha, Member (A)**

Suresh Prasad Sharma, Ex-sorting Assistant, O/o Superintendent , HRO RMS ' P' Division, S/o Shri Rajendra Prasad, Mohalla – Urja Nagar, Danapur Khagaul Road, P.O. Danapur Cantt. Patna.

....Applicant

By Advocate : Shri Sanjay Kumar

Vs.

1. The Union of India through the Secretary, Department of Posts, New Delhi.
2. The Chief Post Master General, Department of Post, Bihar Circle, Patna.
3. The Director, Postal Services, Bihar Circle, Patna.

....Respondents

By Advocate : Shri S.K. Tiwary

O R D E R (Oral)

By Justice P.K. Sinha, V.C.:-

The pleadings are complete and both sides have been heard on admission. In the circumstances of the case, this application is being disposed of at this stage.



2. It is not disputed that the applicant had joined Army Service in the rank of Signal Man with effect from 23.05.1963 and was discharged with effect from 22.05.1970, having completed seven years of service in the Army. It is also not disputed that, thereafter, he was re-employed in RMS 'P' Division, Patna as sorter against the vacancy reserved for ex army men on 8.1.1974 in which post he was confirmed on 5.7.1976.

3. This claim of the applicant that he did not receive gratuity and any amount by way of pension, after release from the Army, is also not disputed.

4. Further case is that the applicant superannuated from postal service on 31.10.2005 and also filed an application for including the period of service rendered under the Indian Army for the purpose of pensionary benefits, prior to his retirement. That was forwarded to the Chief Post Master General by letter dated 14.10.2003 for necessary action. However, no action was taken thereupon. On retirement, the applicant was granted pension and other

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retirement benefits without adding the period spent by him in the service of Army. The applicant again represented, whereafter he sent a legal notice dated 6.2.2006 vice Annexure A/5, still no action was taken.

5. The applicant has filed this application for issuance of direction to the respondents to add seven years of service rendered by him in the Army for computing pension and pensionary benefit.

6. From the written statement filed on behalf of the respondents, it will appear that the particulars of his case have been forwarded to the Director General, Posts, New Delhi vide Circle Office letter No. AP/K (ii)-12/03 dated 31.12.2004 for examination. It has also been mentioned that it appears from the discharge certificate submitted by the applicant that he had not received gratuity or any pension, after his service in the Army.

7. When specifically asked as to whether the case of the applicant so forwarded by letter dated 31.12.2004 to the Director General, Posts, New Delhi had resulted in final

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order, the learned counsel for the respondents stated that no such order has been received.

8. About the applicant's representations, it has been stated in para 7 of the written statement that those two representations were forwarded to the Circle Officer with comments that the applicant had failed to exercise requisite option under the Rules for taking the benefit of inclusion of the period spent by him in the Army service.

9. In course of argument, the learned counsel for the applicant has pointed out Rule 19 of the CCS (Pension) Rules (hereinafter referred to as 'Pension Rules') as well G.I, Department of P and PW, O.M. No. 28/50/87-P& PW dated 31.5.1988 as well O.M. No. 28/49/87-P&PW, dated 26.2.1988.

10. For better appreciation of the arguments, relevant portions of Rule 19 of the Pension Rules may be reproduced—:

" 19. Counting of military service rendered before civil employment.

(1) A Government servant who is re-employed in

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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 or 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."

.....
“(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 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.”

11. It is clear from sub-rule (1) of Rule 19 that such a government servant might opt either to continue to draw military pension or retain gratuity so received on discharge from military service, or to cease to draw his pension and refund pension and the amount of gratuity so received, whereafter to count previous military service as qualifying service for pensionary benefits.

12. This option is applicable only if the person so re-employed on discharge from military service has or has been receiving pension or has received the amount of gratuity.

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Only in such a case he can be called upon either to opt to continue to draw his pension and to retain gratuity or refund those amounts for counting previous military service as qualifying service. Here the applicant claims that he neither had received any gratuity amount nor had ever received any amount by way of pension on discharge from military service.

13. Now coming to sub-rule (2) and (3) of Rule 19 of the Pension Rules, it is clear that the authority, while issuing order of substantive appointment to the civil service, shall along with such order, require in writing the government servant to exercise option under sub-rule (1) within three months of date of issue of such order and if no option is thus, exercised within the period aforesaid, the government servant would be deemed to have opted Clause (a) of sub-rule (1).

14. This can also show that if no option was made, the re-employed employee would be deemed to have preferred to continue drawing military pension. Obvious, therefore, it is that this rule would also apply to an ex-service

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man who was receiving pension or had received gratuity.

15. Like-wise, sub-rule 3 of Rule 19 speaks about such government servant who has opted for Clause (b) of sub-rule (1), in which case he would be required to refund the pension, bonus or gratuity so received by dint of his military service:

16. In short, the question of exercising option would apply to a person who, after discharge from military service, had received any amount as pension or as gratuity. If he has not received any of these, obviously, his period rendered in the military service will have to be counted for his pensionary benefits.

17. Now coming to the two O.M.s, as described above, from the perusal thereof, which was also pointed out by the learned counsel for the respondents (para 2 of the OM), it will appear that a government servant applying for counting of service under Rule 19 (1) may be allowed to exercise option for the same within the period of one year from the date of joining civil service or post. Pointing this out,

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the learned counsel for the respondents has submitted that no option was exercised within one year by the applicant.

18. However, the learned counsel for the applicant has laid emphasis on para 3 of the aforesaid OM, which provides that " in order to facilitate compliance with the requirement of exercising option in time, it has been further decided that the administrative authority concerned should incorporate in the order of re-employment itself a clause to the effect that if re-employed ex-serviceman desires to take advantage of the retirement benefits based on the combined military and civil service, he should exercise option within the period of one year from the date of his re-employment."

19. The learned counsel for the applicant has shown us the original letter of his appointment dated 14.5.1973 which states that the appointment was provisional but no such clause was incorporated.

20. However, this point also appears to have been missed by the learned counsel for the respondents that these O.Ms ^{related} to the year 1988 , whereas the applicant ^{is} .

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was re-employed in the civil post on 8.1.1974 (date of joining) and was confirmed against that post on 5.7.1976. Therefore, though these two O.Ms in no way demolish the claim of the applicant, and those could not be applied to the case of the applicant for alleged non-compliance of any of the part of the orders, as O.Ms could not have retrospective effect.

21. Moreover, for exercise of such option, under Sub-rules(2)and (3) of Rule 19, which though did not apply to the case of the applicant , but even if it had applied, it was incumbent upon the respondents to call upon the applicant either at the time of his re-employment or at the time of his confirmation in service, to make his option. This is nowhere the case of the respondents that they have ever done that.

22. Taking any view of the matter, it will appear that the applicant would be entitled to have the period of service, rendered by him in the service of Army, added to his service in the civil post for the purpose of calculating his retirement benefits.

A handwritten signature in black ink, appearing to read "S. M. C." or a similar name.

23. In the result, this application is allowed, and the respondents are directed to add the period of service rendered by the applicant in the Army, to the period of service rendered by him in the civil post and to calculate his pensionary benefits based upon the total period of service.

24. This should be done within four months of the receipt of the order of this Tribunal.

25. This application, thus, stands disposed of. No order as to the costs.



[S.N.P.N. Sinha] M [A]



[P.K. Sinha] V.C.

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