

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 914/92

Transfer Application No:

DATE OF DECISION 21-10-93

Shri M.P.Limaye

Petitioner

Miss V.B.Helde

Advocate for the Petitioners

Versus

Union of India Through C.P.M.G. Respondent
Maharashtra Bombay

Shri P.M.Pradhan

Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~Smt.~~ Smt. L.Swaminathan, Member(J)

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the ~~fair copy~~ of the judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

Lakshmi Swaminathan
(Smt. L.Swaminathan)
Member(J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH.Original Application No. 914/92.

Shri M.P.Limaye.

..... Applicant.

V/s.

Union of India & Anr.

..... Respondents.

Coram: Hon'ble Mrs.Lakshmi Swaminathan, Member(J).

Appearances:-Miss.V.B.Helde, advocate
for the applicant.Shri P.M.Pradhan for the
Respondents.ORAL JUDGEMENT

[Per Mrs.Lakshmi Swaminathan, Member(J)] Dt. 21.10.93

Heard Miss.V.B.Helde, counsel for the applicant
and Shri P.M.Pradhan, counsel for the Respondents.

2. The applicant in this case has sought directions to the respondents to revise his pension amount and interest on the amount of difference, taking into consideration his military service of 6 years 6 months and 12 days, in addition to his service in the Postal Department of 30 years and 5 months. The main contention in the reply of the respondent is that the claim is belated as it has been made after a period of 30 years and therefore cannot be considered as they do not have the records.

3. The learned counsel for the applicant Miss. V.B.Helde drew my attention to the Memo No.B.52/Approved dt. 12.9.1955, issued by the Indian Posts and Telegraphs Department which is annexed to the application. In this memo it has been stated, inter alia, that the applicant Shri M.P.Limaye has been allotted for appointment in Class IV cadre and has been brought

on the approved list to work in the Department. Against the remarks column of his appointment, it has been stated that he was ' war service candidate'. Therefore it is clear that the Postal Department was fully aware at the time of appointment of the applicant that he was ' war service candidate', entitled to claim his Military service, and the respondents contention to the contrary is rejected. Rule 19(1)(a) of CCS Pension Rules, 1972, provides for counting of Military service rendered before Civil employment under the conditions mentioned therein.

4. The learned counsel for the respondents has not disputed the fact that the applicant in this case is fully covered under Rule 19(1). Since the applicant had not completed 10 years Military service he will not be entitled to draw military pension. He has also stated that he has not received any amount of gratuity from the military and if so there is no question of refund or retention of amount of pension or gratuity in this case. The proviso to Rule 19(1)(a) provides, inter alia, that where the previous military service is counted for qualifying service, then 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 D.C.R.C. and balance, if any, refunded to him. Further, under Rule 19(2)(a) the authority while issuing the order of substantive appointment to a Civil Service or post, is required to intimate the Government servant in writing to exercise the option under sub-rule (1) within three months of issue of the order. It appears that the respondents have failed

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to act in accordance with Rule 19 of the Pension Rules in rejecting the claim of the applicant to consider his military service of over 6 years. At this stage it is also not open to the respondents to say that the applicant has not exercised any option, as nothing is placed on the records of the case to show that they have themselves complied with the requirements of Rule 19(2) to intimate to the applicant in writing to exercise the option, at the time of issuing the appointment order. So, the respondents cannot take advantage of their own default to deprive the applicant of the dues available to him under the relevant Rules.

5. In the facts and circumstances of the case, therefore, I direct the respondents to include the military service rendered by the applicant for purposes of computing his pension, as if he had exercised the option in time, and to recalculate his pension amount according to law. The difference in the pension amount so computed shall be paid to him within a period of three months from the receipt of this order. However, the claim for interest on the amount of difference is rejected.

6. This application is allowed with the above and circumstances directions. In the particular facts of the case, I feel that the applicant is entitled for costs, which I quantify at Rs.500/-.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J).