

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 682/98

DATE OF DECISION: 17/10/2000

Shri Bhiku Dharmaji Kundale

Applicant.

Shri D.V.Gangal

Advocate for
Applicant.

Versus

Union of India & 3 Ors.

Respondents.

Shri Suresh Kumar R-1 & 2
Shri V.S.Masurkar for R-3
Shri R.K.Shetty for R-4.

Advocate for
Respondents.

CORAM:

Hon'ble Smt. Shanta Shastry, Member(A)

1. To be referred to the Reporter or not? *NO*
2. Whether it needs to be circulated to *NO* other Benches of the Tribunal?
3. Library. *yes*

Shanta S.
(SHANTA SHAstry)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:682/98
DATED THE 17th DAY OF OCT. 2000

CORAM:HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

Shri Bhiku Dharmaji Kundale
retired Dy. Station Supdt.
C.Rly., Pune and now residing
at Chaitanya Housing Society,
Tapovan Mandi Road,
Pimpri 411 017

... Applicant

By Advocate Shri D.v.Gangal

V/s.

1. The Union of India,
through the General Manager,
C.Rly, Mumbai CST,
Mumbai - 400 001.
2. The Divisional Railway,
Manager, C.Rly,
Mumbai CST,
Mumbai - 400 001.
3. The State of Maharashtra,
Through: Director of Technical Education,
Maharashtra, Mumbai - 400 001.
4. The Officer Incharge,
Signal Record,
(Government of India,
Ministry of Defence),
Jabalpore).

... Respondents

By Advocates

Shri Suresh Kumar for Respondent Nos.1 and 2.

Shri V.S.Masurkar for Respondent No.3

Shri R.K.Shetty for Respondent No.4.

...2.

Per Smt. Shanta Shastry, Member(A)

The short point for consideration in this case is whether the applicant's service in the Army should be counted for purposes of Pension in the Railways.

2. The applicant has served with the Army as a Signal Man from 2/12/1958 to 22/12/1964. He took a voluntary discharge. Thereafter he joined the State Government of Maharashtra as a Laboratory Assistant in the Government Polytechnique at Karad on 21.3.66. Again he left the State government service and joined the Railways on 8.7.77. He was initially selected against the quota for ex servicemen as a Traffic Apprentice through Railway Service Commission and after completion of the training of PFC - APP for a period of three years was working as Assistant Yard Master. He continued to work in that capacity till he retired on 27/2/97.

3. The applicant made an application to the Divisional Railway Manager(P), Central Railway on 16/1/81 requesting that six years of his service in the Army and 11 years in the State Government should be considered for purposes of settlement of Railway Pension at the time of retirement. The Respondents i.e. Railways have not considered the Army service as well as the service with State Government for pension.

4. The respondents 1-2 in their reply have submitted that the application suffers from delay and laches and is barred by law of limitation. The applicant was granted Pension for the services rendered in the Railways after he retired from the Railway service on 31/1/97. The applicant was discharged from Army service at his own request. The applicant did not join the State Government service with prior permission from the Army authorities nor did

he apply to State Government for counting of the Army service while he was with the State Government. Since he was discharged at his own request, that amounts to resignation and in such a case his service does not become pensionable. The respondents however admit that prior to his appointment in the Railways on 8/7/77, the applicant had mentioned about the past service rendered in the Army as well as the State Government in his application form. The Applicant had made representations to the Railways and finally an advocate's notice was given on 23/3/96. On this the respondents Railways had made reference to the Military authorities to furnish the requisite information in the Form-3 under rule No.35 of the Railway Service Pension Rules 1993. But no information was produced on the ground that the service documents of the ex-employees had been destroyed after having retained the same for the stipulated period of retention. According to para 28(2)(b) of the Railway Pension manual 1993, the Government servant is eligible to claim the benefits of previous service only while holding temporary posts with the Central or State Governments and when they apply through proper channel with prior permission of the administrative authorities concerned. As far as the State Government is concerned, a reference was made to the Principal of Polytechnique, Karad, the Principal had issued a certificate for the purpose of counting the service rendered at the Institute for pensionary benefits. After repeated correspondence with the Associated Accounts, the Railways learnt that the Ministry of Home Affairs vide letter dated 31/3/82 has clearly decided that the service rendered in the State Government can be counted for pensionary benefits provided pensionary

liability in respect of the temporary service rendered in the State Government to the extent such service would have qualified for pension under the rules of the respective Government will be shared by the concerned State Government Gratuity if received by Government the employee will have to be refunded by him to the Government concerned. The respondents state that there is a break of three days between the State Government Service and this will have to be condoned. The Railways are therefore unable to grant the benefit of past army service for pension though they may consider the State Government service for purposes of pension.

5. As far as Respondent No.4 is concerned, they have clearly submitted that the applicant rendered service of six years and 20 days and as per the Pension regulations of the Army, the applicant is not eligible for any service pension and nor has he been granted any pension for the same. Thereafter, however, the respondent No.4 has again filed a sur rejoinder wherein the Respondent No.4 has stated that the OA is liable to be dismissed as it is barred by limitation. Respondent No.3 has also denied any relief to the applicant. No application was submitted by the Applicant to the State Government for counting of his past Army service at the time he joined the State Government. The application suffers from delay and laches. It is not possible to trace the stale records.

6. I have heard the learned counsel for all the respondents as well as for the applicant. It is a fact that the applicant did not apply to the State Government for counting of his past

Army service when he joined the State Government. However, the State Government did issue a certificate for counting of his past service with the State Government. Therefore the Railways can consider the State Government service for purposes of pension on the basis of the ^{letter} notification issued in ^{1982 A} 1993 by the Ministry of Home Affairs subject to the State Government willing to share the pro-rata pension liability and subject to refunding of the Gratuity if any received by the Applicant. As far as Army service is concerned, no doubt the applicant was discharged at his own request. He was not entitled to any Pension from Army nor was he paid any pension. However, it has not been denied that he put in six years of service in the Army.

7. According to the Pension Rules of the Railways i.e. Rule-34, Railway servant who is re-employed in a Railway service or post before attaining the age of superannuation and who before such re-employment rendered military service after attaining the age of 18 years ^{has} has an option either to continue to draw the Pension or retain Gratuity received on discharge from Military service in which case his former ^{or} military service will not count as qualifying service ^{or} and he may cease to draw pension as already drawn by him, as well as the Gratuity and count the previous military service as qualifying service. The applicant is relying on this rule. The applicant has also further argued that he was employed in the Railways against the quota meant for ex servicemen.

8. It is seen that Rule 19(2)(a) of the Rules provides that 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 to either retain the pension being drawn and to forego the counting of the past service or to forego the past pension being drawn and to have the past service counted for pension. There is nothing to show if such an option was given to the applicant or not within three months of issuing of the order. However, the applicant on his own has represented in 1981 about counting of his past service and he has also reminded. The applicant has also submitted that since he was discharged from the Army on his own request the question of taking prior permission did not arise. All the same I find that the discharge order of the applicant (Annexure A-9) has added at the bottom that application for assistance in finding employment should be made to Sub Regional Employment Exchange, North Satara. This implies that there was no objection from the Army to the applicant's seeking another employment.

9. I find that the Railway Pension Rules do provide for counting of past service in the Army. Army service is not qualified. Hence in my considered view the service of the applicant in the Army needs to be counted for purposes of Pension. Accordingly, the Respondents are directed to count the Army service of the applicant subject to his refunding of Gratuity if any received by him at the time of discharge and also to count the service rendered by the applicant with the State Government in terms of the Ministry of Home Affairs circular letter dated 31/3/1982 addressed to all State Governments and revise his pension accordingly. This exercise shall be carried out within a period of three months from the date of receipt of copy of this order.

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10. In the result, the OA is allowed. I do not order any costs.

Shanta S

(SHANTA SHAstry)
MEMBER(A)