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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

DA 345/93.

Dt. of Order:22-3-94.

B.Thirupathi Rao

....Applicant

Vs.

1. Sr.Divisional Personnel Officer,
SC Rlys, Vijayawada.
2. General Manager, SC Rlys,
Rail Nilayam, Sec'bad.

....Respondents

Counsel for the Applicant : Shri G.V.Subba Rao

Counsel for the Respondents : Shri J.R.Gopal Rao, SC for Rlys

CORAM:

THE HON'BLE SHRI A.B.GORTHY : MEMBER (A)

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J U D G E M E N T

[AS PER SHRI A.B. GORTHI, MEMBER (ADMN.)]

The applicant, who had rendered 6 years of service in the Army prior to his employment in the Railways, claims by means of this application, for a direction to the respondents to count his military service for the purpose of his retirement benefits.

2. The applicant was entolled in the Army Medical Corps on 1.5.63 as a Sepoy/Clerk. Having served the Army ^{for over 6 years.} in an exemplary manner, he sought discharge on compassionate grounds. It was sanctioned with effect from 18.9.69 as can be seen from the certificate of discharge issued by the Commandant, AMC Centre. On being discharged from Military service, he was selected by the Railway Service Commission and he was appointed as Asst. Station Master on 7.12.70. He is continuing in that appointment as on today. At the time of his initial employment in the Railways he did not make any request for counting his military service for the purpose of pensionary benefits in his present service because he was not aware of the requirement of exercising such option. In any case, the question of exercising option would not arise because ^{the} applicant was discharged from service without any pension or gratuity. This aspect is clear from the entry in the discharge certificate which shows that the

applicant was not paid pension/special gratuity at the time of his discharge from military service.

3. The respondents in their reply affidavit have clarified that the applicant was initially appointed as Signaller and not as an Assistant Station Master. It was only after undergoing necessary training, he was absorbed as Assistant Station Master. The applicant was neither appointed against ex-service men quota nor did he furnish any proof of such service at the time of his appointment. It was only in 1991 that the applicant made a request for adding his military service to that in the Railways for the purpose of his retirement benefits.

4. We heard the learned counsel for both the parties.

5. Rule 19(1) of Central Civil Services (Pension) Rules, 1972 provides for the counting of military service rendered before civil employment. For proper appreciation of the merits of the case, it will be useful if the same is re-produced:

Rule 19 (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

- (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:

Provided that-

- (i) the pension drawn prior to the date of re-employment shall not be required to be refunded,
- (ii) 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.

6. A careful examination of Rule 19(1) would show that where ^{an} ~~ex~~-serviceman is in receipt of military pension or gratuity, he is required to exercise option whether to continue to draw the military pension ~~and~~ retain gratuity or cease to draw his military pension and refund it together with the amount of gratuity and then claim for counting his previous military service as qualifying service.

In the instant case, there can be no dispute that the applicant was discharged from military service without ~~any~~ pension or gratuity because he had rendered only about 6 years of service in the Army.

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7. My attention has been drawn to Government of India, Ministry of Finance OM No. F.3(58)-E. V(A)/61 dated 3.2.1962. The relevant extract therefrom is reproduced as below:

Para 5 : Counting of non-regular/purely temporary military service for civil pension.

Continuous military(non-regular)/purely temporary) service not rendered in conjunction with war service in the Army, the Navy and the Air Force will count in full towards civil pension if such service is followed without interruptions by appointment to and eventual confirmation in a pensionable post in civil service. The grant of this concession is subject to the following conditions:-

- (1) The officer concerned should not have earned a pension under the military rules in respect of the service in question.
- (2) In the case of services or posts in respect of which a minimum age is fixed for recruitment, no military service rendered below that age shall be allowed to count for pension
- (3) If the Officer has been granted any retirement gratuity in respect of such service; such gratuity shall be refundable.

8. The aforesaid O.M. dated 3.2.1962 would be applicable to the instant case, as the applicant was discharged from military service without having earned any pension or without receiving service gratuity. In these circumstances, the respondents should have ^{accepted the} request of the applicant for counting his former military service for the purpose of pensionary benefits arising after his service in the Railways.

9. The learned counsel for the respondents urged that the benefit under the O.M. dated 3.2.1962 would accrue only if the military service is "followed without any interruptions by appointment to and eventual confirmation in a pensionable post in civil service". In the instant case, admittedly, the applicant was discharged from mili-

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tary service on 18.9.69 and he was appointed in the Railways after due selection by the Railway service Commission on 7.12.70. The term "without any interruption" should be read as "without undue and unreasonable interruption", because when a person leaves military service and joins any civil department or post, there is bound to be some interval of time. So long the said interval is reasonable, it cannot be treated as an undue interruption. The applicant herein after his discharge from the military had to apply to the Railway Service Commission, appear for the selection and qualify there-at before he was finally appointed on 7.12.70. In these circumstances, I am unable to accept the respondents' contention that there was any interruption, as such, between his military service and his Railway service.

10. The respondents contended that the applicant was not employed in the Railways against the Ex-servicemen's quota. The learned counsel for the applicant refuted this contention by drawing my attention to the fact that the applicant would have been over-aged for direct recruitment in 1969/70 as the maximum age specified was 25 years and hence his appointment in the Railways ^{could} ~~can~~ only have been against the Ex-servicemen's quota where age relaxation was permissible. The date of birth of the applicant being 1-4-1943, he would be more than 25 years old in 1969-70. There is, however, no need to go into this aspect of the matter because the prayer of the applicant is not for re-fixation of his seniority or ~~pay~~ on the basis of the length of his military service. His former military service, as discussed above, would be available to him for the limited purpose of adding it to his present Railway service for pensionary benefits only accruing to him on completion of Railway service.

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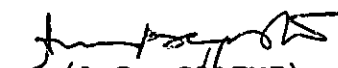
1. Sr. Divisional Personnel Officer, S.C.Railways, Vijayawada.
2. General Manager, S.C.Railways, Rail Nilayam, Sec'bad.
3. One copy to Sri. G.V.Subba Rao, advocate, CAT, Hyd.
4. One copy to Sri. J.R.Gopal Rao, SC for Rlys, CAT, Hyd.
5. One copy to Deputy Registrar(Judl.), CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. Copy to All Benches & Reporters as per standard list of CAT, Hyd.
8. One spare copy.

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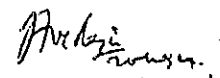
11. The applicant served in the Army Medical Corps for more than 6 years. He was neither dismissed nor removed but was allowed to leave military service on discharge on compassionate grounds. If he was not given any pension or gratuity it was because he was not entitled to it under the extant rules. The discharge certificate shows that his military character was assessed as "exemplary". The facts of the case read in the light of the relevant statutory provisions and the Ministry of Finance O.M. No. F.3(58)-E-V(A)/61 dated 3.2.1962 would clearly indicate that the respondents ought to have accepted the request of the applicant for counting his military service for the purpose of civil pension.

12. In the result, the OA is allowed and the respondents are directed to count the former military service of the applicant as shown in the certificate of discharge (I.A.F.Y. 1964) which is at Annexure 8 to the OA, for the purpose of calculating his civil pension at the time of his retirement from the Railway service. No order as to costs.


(A.B. GORTHI)
Member (Admn.)

Dated 22nd March, 1994
Open court dictation

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Dy. Registrar (Sd.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER (AD)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. R. RANGARAJAN : M (ADMN)

Dated: 22/3/1994

ORDER/JUDGMENT

M.A./R.A./O.A. NO.

O.A. No.

in
345792

T.A. No.

(w.p.)

Admitted and Interim Directions
Issued.

Allowed

Disposed of with directions

Dismissed.

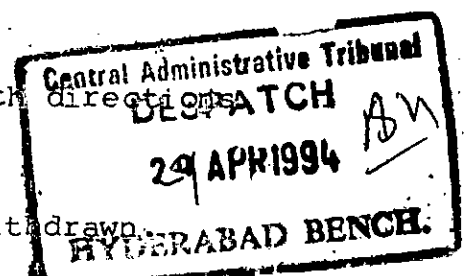
Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

pvm.



Handwritten signature and date 22/3/94.