

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.623/94

Dt. of decision: 20-2-1995

BETWEEN:

M. Krishna Murthy .. Applicant

And

1. General Manager,
S.C.R.,
Rail Bhavan,
Secunderabad.
2. Chief Personnel Officer,
S.C.R.,
Secunderabad.
3. Divl. Railway Manager,
S.C.R.,
Vijayawada.
4. Sr. Divl. Personnel Officer,
S.C.R.,
Vijayawada.

.. Respondents

Counsel for the Applicant: Sri Y. Subrahmanyam

Counsel for the Respondents: Sri C.V. Malla Reddy

CORAM:

HONORABLE SHRI A.B. GORTHI : MEMBER (ADMN.)

O.A.No.623/94. Dt. of decision: 20-2-1995.

JUDGEMENT

X As per Hon'ble Sri A.B. Gorthi, Member(A) X

The applicant having served the Army from 1.11.54 to 30.5.61 joined the Railways on 9.1.62. Having served the Railways satisfactorily for about 29 years, he retired on superannuation on 30.9.91. The prayer in this OA is for a direction to the respondents to count his former Military service for the purpose of calculating his pension after his retirement from the Railways.

2. The respondents have contested the claim of the applicant on the ground that as per the rules a reemployed Military pensioner should exercise option within a period of three months from the date of confirmation in the reemployed civil post indicating that he would either continue to draw the Military pension or retain gratuity received at the time of discharge from Military service, or that he would cease to draw the Military pension and refund the service gratuity and reckon the previous Military service for Railway pension. The applicant was confirmed as Driver-C w.e.f. 1.5.70, but did not exercise option within the stipulated period. Similarly when the Railway Board issued Lr.No. F(E)III-82-P-1/2, dt.10.5.82 reiterating the rule position, it once again

gave the opportunity to reemployed Military pensioners to exercise their option, but the applicant did not do so. As the applicant did not exercise the option, as per the extant rules, it was taken that he would ~~con-~~ draw the Military pension or retain gratuity received on discharge ~~from~~ ~~military~~ service.

Heard learned counsel for both the parties. Sri Y. Subrahmanyam, ~~as~~ counsel for the applicant contended that the applicant was kept ~~in~~ ~~regards~~ the requirement of his exercising an option under the rules at the time when he joined Railways in the post of Fireman ~~or~~ when he was confirmed in the post of Driver. In neither capacity he had access ~~to~~ ~~regulations~~. In accordance with the provisions contained ~~in~~ ~~of~~ the Railway Establishment Code and Para. 431 of MRPR, 1950, a Military pensioner is required to exercise the option within three months from the date of confirmation and the authorities issuing the order of confirmation are bound to bring to the notice of the Railway servant in writing the provisions of Rule 2314 while issuing the order of confirmation. According to the applicant's counsel this was not done by the respondents and there is nothing on record to show to the contrary.

4. Sri C.V.Malla Reddy, learned standing counsel for the respondents has drawn my attention to the judgement of this Bench of the Tribunal in O.A.1230

decided on 7.9.94. That was the case of a Military pensioner who was discharged after 15 years of service and after earning service pension. In the case of the applicant before me, he is not a Military pensioner as such, but he was discharged from service when he had rendered hardly seven years of service without any pension. The case of ~~.....~~ is distinguishable from that in O.A.1230/93.

5. The case of the applicant has to be examined in terms of Rule 433(1)(a) and (d) of MRPR, 1950 which is reproduced below:

...433. War/Military service when followed post (whether war reserved or otherwise) and eventful confirmation in Railway service---
(1) A Railway servant who quits service on or after the 1st November 1959 and in whose case War/Military service was followed without interruption by appointment to an eventual confirmation in Railway service against vacancies arising upto 31st December 1947 or thereafter, may count such continuous War/Military service in full towards pension. The grant of the concession is subject to the following conditions:-

(a) The Railway servant concerned should not have earned a pension under the Military rules in respect of the service in respect of the service in question.

Note:- Wherever the disability pension admissible for Military service includes service element, this element has to be surrendered before the War/Military service is allowed to count towards pension.

In a case where under the Military rules a Govt. servant gets disability pension after he becomes eligible for ordinary pension also, and that element of ordinary pension is included in the disability pension, he is not eligible to count War/Military service towards pension.

(b)
(c)
(d) No refund of bonus or gratuity, paid as a reward for his 'War service' shall be demanded from the Railway servant. If however, the Railway servant has been granted any retirement gratuity in lieu of pension, for service covering both the war and post war period, such gratuity shall be refundable. "

The applicant having been discharged from regular Army on 13.5.61 immediately responded to an employment advertisement issued by the Railways on 13.3.61. The process of his selection was soon undertaken and it fructified into his appointment on 9.1.62. Under these circumstances, it cannot be said that there was any interruption in the case of the applicant between his discharge from the Army and his reemployment under the Railways. Consequently, the aforesated rule 433(1)(a) and (d) will apply to the case of the applicant and the respondents have to count his continuous Military service in full towards his pension on superannuation from the Railways.

6. Rule 433 (1) (d) lays down that if the Railway servant has been granted any retirement gratuity in lieu of pension for service covering both the war and post-war period, such gratuity shall be refundable. In the case of applicant the record does not show that he was paid any pension or gratuity, but it merely shows that he was paid differed pay of Rs.184.10 ps. for the period from 1.11.54 to 11.11.59. Notwithstanding the same, if the applicant had in fact received any gratuity, the same shall be liable to be refunded to the respondents. The respondents are therefore directed

to count the former Military service of the applicant towards calculating his pension on his retirement from the Railways and refix his pension accordingly. From the amount of arrears which thus become liable to be paid to the applicant, the respondents may deduct the amount of gratuity, if any, paid to the applicant on account of his Military service. The O.A. is disposed of accordingly with no order as to costs.

7. The respondents shall comply with the above order within a period of four months from the date of receipt of copy of this order.

kmv
(A.B. Gorthi)
Member (A)

kmv
Dt. 20-2-1995.
Dictated in Open Court

kmv
Dy. Registrar (Judl.)

kmv

Copy to:-

1. General Manager, South Central Railway, Rail Bhavan, Secunderabad.
2. Chief Personnel Officer, South Central Railway, Secunderabad
3. Divisional Railway Manager, South Central Railway, Vijayawada
4. Sr. Divisional Personnel Officer, South Central Railway, Vijayawada.
5. One copy to Sri. Y. Subrahmanyam, advocate, H.No.45-58/7, Narasimhanagar, B.P.O. Saligramapuram, Visakhapatnam-024.
6. One copy to Sri. C.V. Malla Reddy, SC for Rlys, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

Rsm/-

DA-623/lay
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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR. A. V. HARIDASAN : MEMBER (S)

AND

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

DATED : 26/2/95

ORDER/JUDGEMENT

M.A.R.P/C.P.No.

in
O.A.NG. 623/lay

Admitted and Interim directions
issued

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Rejected/Ordered

No order as to costs.

YLKR.

NO SPARE COPY

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