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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
JAIPUR.

OA No.192/95 : Date of order: 9.10.1995

Radhey Shyam Sharma : Applicant

Versus

Union of India & Ors : Respondents

Mr.C.B.Sharma, Counsel for the applicant

Mr.Hawa Singh, brief-holder for

Mr.V.S.Gurjar, counsel for the respondents

CORAM:

HON'BLE MR. PATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE MR.PATTAN PRAKASH, MEMBER (JUDICIAL))

The applicant Shri Radhey Shyam Sharma has filed this application under Section 19 of the Administrative Tribunal's Act, 1985 to claim the relief to the effect that the respondents may be directed to count the services of the applicant rendered in Indian Air Force towards pensionary benefits in Civil Services on superannuation.

2. Facts relevant to this application are that the applicant initially joined the Indian Air Force on 2.3.1956 and was discharged there from on 17.7.1961 after rendering services of five years 148 days where he served in the grade of Leading Air Craftsman (LAC). He was paid by the Air Force authority an amount of Rs.763/- on account of service gratuity. It is the case of the applicant that after discharge from the Indian Air Force,

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he could not apply for further employment in Civil Departments due to ill-health. In the year 1970, he joined the Postal Department on 7.7.1970 on the post of Clerk now designated as Postal Assistant against the Ex-Serviceman quota. The appointment letter is dated 21.4.1971 (Annexure A-5). It is further the case of the applicant that he was substantively posted in the year 1974 w.e.f. 1.3.1974 but the appointing authority did not ask for option as required under Rule 19(2)(a) of the CCS(Pension) Rules, 1972 and as such the services of the applicant have not been counted for pensionary benefits so far. It is further averred by the applicant that respondent No.1 circulated instructions issued by the Department of Pension and Pensioners Welfare, Government of India dated 8.7.1994 and re-circulated by respondent No.2 vide his letter dated 26.7.1994 (Annexure A-2) through which options were called for within six months. It is further the case of the applicant that after coming to know of the above instructions, he made a request to the respondent No.3 vide Annexure A-1 dated 5.8.1994 which has not been responded to by the respondents so far. Hence, this application to claim the aforesaid reliefs.

3. The respondents have opposed this application by filing a written reply to which the applicant has not filed any rejoinder. The chief stand of the respondents has been that although the applicant

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was appointed to the respondent department w.e.f. 7.7.1970 but he did not raise any grievance till 12.3.1993 vide his request at Annexure A-6 and hence the OA is hopelessly barred by the limitation. It has further been averred on behalf of the respondents that the applicant ought to have applied for counting of service under rule 19(1) of CCS (Pension) Rules after joining the civil Service within one year. Since he failed to give any option and nor he requested to credit pension/gratuity etc. already drawn by him from Air Force as required under Rule 19(2) of CCS (Pension) Rules, the question of counting his service for pensionary benefits does not arise. It has also been averred that the representation as at Annexure A-1 of the applicant has not been received in the office of the Senior Superintendent, Post Offices, Jaipur City Division, Jaipur, hence, there is no question of consideration or pendency of such representation and as such it has been stressed that the application deserves rejection.

4. I heard the learned counsel for the applicant as also the learned brief-holder at the stage of admission on merit as well.

5. The only question for determination in this OA is whether it was incumbent upon the applicant to give an option within one year of joining his service with the respondent department and he having failed to do so cannot now claim the reliefs prayed for in this OA?

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6. It has been argued by the learned counsel for the applicant that as per the provisions contained under rule 19 (2)(a) of the CCS (Pension) Rules 1972 it was incumbent upon the respondents to ask for the option within three months of the date of issue of order of appointment in the Civil Service and as the respondents have failed to comply with this mandatory provision, the respondents should be directed to consider his representation and award the benefit of past services rendered in the Indian Air Force. The learned counsel for the applicant has also drawn my attention to OM dated 23.5.94 issued by the Government of India, Department of Pension and Pensioners' Welfare which has been re-circulated by respondent No.2 vide his endorsement dated 26.7.1994. On the basis of this OM, it has been argued that consequent to the directions given in this OM, a last opportunity has been provided to Military Pensioners who are presently re-employed in civil service to exercise their option for counting of military service as qualifying service within a period of six months from the date of issue of the orders. It has been urged by the learned counsel for the applicant that consequent upon the issue of this OM, the applicant made the representation dated 5.8.1994 (Annexure A-1) to the respondent No.3, still the respondents have not considered it nor have granted the benefit conferred under it. On the point of limitation, it has been

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argued by the learned counsel for the applicant that the applicant being still in service and he having made a request for counting his previous service with the Indian Air Force on 12.3.1993 and further on 5.8.1994, the application is not barred. Reliance in this connection has been placed on a decision in H.Rama Rao vs. Plant Protection Advisor to GOI and Others of the Hyderabad bench of the Tribunal 1993 (1) (CAT) SLJ 424. It has therefore been urged that the applicant is entitled for the reliefs claimed by him in his OA.

7. On the contrary, the stand of the respondents has simply been that the applicant having failed to give the option within one year of his joining in civil service, his application is highly belated as having been made after a period of 22 years and as such the application deserves rejection on this ground alone. The other contention raised on behalf of the respondents has been that they have not received the representation of the applicant dated 5.8.1994 (Annexure A-1) and hence the applicant cannot seek any relief since there is no pending representation before them. Respondents however admitted that the applicant did raise the grievance only on 12.3.1993 and as such he having entered in the service with the respondent on 7.7.1970 is not entitled to get the relief asked for.

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8. I have given anxious thought to the arguments addressed on behalf of both the sides and have carefully gone through the record in great detail. There is force in the arguments of the learned counsel for the applicant that it was incumbent upon the respondents to ask for the option as required under rule 19(2)(a) of the CCS(Pension) Rules, 1972 within three months of the date of issue of order of appointment with the respondent. The relevant portion of Rule 19(2)(a) of the Rules reads as under:-

"19.

19(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 the 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).....

....."

A perusal of this provision confirms the stand taken by the learned counsel for the applicant. Moreover there is an office memorandum dated 23.5.94 issued by the Government of India, Department of Pension & Pensioners Welfare which is at Annexure A-2 and which reads as under:-

"2. It has been represented to this Department by Associations of Military pensioners and individuals that in some cases it has not been

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possible for Ministries/Departments and field offices to disseminate the information about the facility for exercise of option in terms of the above mentioned orders to the affected officers/servicemen who were posted in the different parts of the Country. As a result, many of these officers/servicemen could not avail of the opportunity to exercise their options within the stipulated period. Keeping in view these representations, it has been decided as a one time relaxation to provide a last opportunity to military pensioners who are presently re-employed in civil posts/services to exercise the option for counting of Military service as qualifying service within a period of 6 months from the date of issue of these orders."

This also gives a last opportunity to all those military personnel who are presently re-employed in the civil posts/services to exercise their option for counting of military service as qualifying service within a period of six months from the date of issue of the orders. The applicant having made his option within six months of the issue of this office memorandum dated 23.5.1994 vide his representation dated 5.8.1994 (Annexure A-1), it was incumbent upon the respondents to accede to the request made by the applicant for counting of his past services in the Indian Air Force. The respondents having failed to comply with the mandatory provisions laid down under Rule 19(2)(a) of the aforesaid Rules as also having not responded to the representation made by the applicant on 5.8.1994 in pursuance of the Office Memorandum dated 23.5.1994, have miserably failed to comply with the mandate given under the rules as well as under the Office Memorandum referred to above.

9. It may also be mentioned that during the arguments the learned counsel for the applicant has placed for a perusal an order dated 15.11.1994 issued from the office of the Chief Post Master General, Rajasthan Circle, Jaipur, Department of Posts India whereby one Shri Kailash Chander Tak at present working as U.D.C. in the circle office Jaipur has been given the benefit of OM dated 23.5.1994 whereby the military service rendered prior to his joining in the civil service by him during the period from 29.3.1971 to 21.10.1975 has been ordered as qualifying service in civil services under the provisions of Rule 19(1)(b) of the CCS (Pension) Rules. The applicant being a similarly placed official is entitled to be granted the same relief. Denying this benefit would amount to invidious discrimination of the applicant as laid down under the constitutional provisions contained under Article 14 read with Article 16 of the Constitution of India.

10. Accordingly for all the aforesaid reasons I am of the considered opinion that the applicant who has rendered five years and 148 days of service in the Indian Air Force prior to his appointment with the respondent department is entitled for counting the aforesaid period as a qualifying service in Civil Service under the provisions of 19(1)(b) of the CCS (Pension) Rules. Consequently, it was not incumbent upon the applicant to give any option as averred to by the respondents in their reply but instead it was incumbent upon the respondents

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to ask for the option of the applicant within three months of joining his service with the respondent department as per provisions of Rule 19(1)(a) of the CCS (Pension) Rules, 1972. Even otherwise, the applicant in pursuance of the OM dated 23.5.1994 is entitled to claim the counting of his past service with the Indian Air Force as has been granted to a similarly situated individual Shri Kailash Chander Tak in the order dated 15.11.1994 referred to above, a copy of which has been produced by the applicant during the arguments.

11. For all the aforesaid reasons this OA is being disposed of at the admission stage itself with the directions to the respondents to count the service of the applicant rendered in the Indian Air Force towards pensionary benefits in Civil Service on superannuation as laid down under the provisions of Rule 19(1)(b) of the CCS (Pension) Rules, 1972.

It is made clear that the applicant shall refund the benefits in accordance with the provisions of Rule 19(1)(b) of the CCS (Pension) Rules, 1972 alongwith 6% simple interest as notified vide Department of Pension and Pensioners Welfare OM No. 28-50/87-P&PW dated 31.5.1988. It is also made clear that the applicant's right to count previous service as qualifying service will not revive until the whole amount as directed above has been refunded

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to the respondents.

12. In these circumstances, the OA stands disposed of with no direction as to the costs.

Rattan Prakash
9.10.95
(RATTAN PRAKASH)
MEMBER (J)