

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Applications No 425 of 2005

Jabalpur, this the 4th day of October 2005.

Hon'ble Mr. Madan Mohan, Judicial Member

Chhotelal Rai S/o Late Tulasram Rai
Aged 63 years Ex-Civil Driver,
Central Ordnance Depot Jabalpur
R/o 266, Acchemiya Ka Bada
Sitlamai Jabalpur M.P.

Applicant

(By Advocate – Shri Ashish Agrawal)

VERSUS

1. Union of India
Through Secretary,
Ministry of Defence,
New Delhi.

2. Commandant,
Central Ordnance Depot,
Jabalpur M.P.

Respondents

(By Advocate – Shri A.P.Khare)

ORDER

By filing this Original Application, the applicant has sought the following main reliefs :-

“(i) Quash the impugned order Annexure-A-1.

(ii) Direct the respondents to count the applicant's past service in Military from 1961 to 1971 in the service rendered by the applicant under the respondents for the purpose of retiral benefits and fixation of the pension from the date of his retirement i.e. 17.4.2002.”

2. The brief facts of the case as stated by the applicant are that he had served in army from 17.4.1961 to September 26.9.1971 and thereafter he joined civil post in the Defence department and retired from service vide order dated 17.4.2002. The applicant has not yet



been received any retiral benefits of his past military service. After his retirement the respondents have only counted his civilian service and they have not counted his past military service rendered from 17.4.1961 to 26.9.1971 for pensionary benefits. Thus he filed earlier OA No.1020/2004 which has been disposed of vide order dated 9.12.2004 with a direction to the respondents to consider and decide the representation of the applicant in accordance with rules. However, the respondents without considering his representation rejected the same vide order dated 1.4.2005 (Annexure-A-1). Hence, this OA.

3. Heard the learned counsel for the parties and carefully perused the records.

4. The learned counsel for the applicant has stated that the respondent No.2 has not counted his past military services rendered by him from 17.4.61 to 17.9.1971. After his retirement from military service he has joined as a Driver under the respondents No.2 and after his retirement as such, the respondent No.2 has not counted his past military service for pensionary benefits. The learned counsel for the applicant further argued that the respondents have not complied with the order of the Tribunal and rejected the claim of the applicant without considering all the aspects. He has relied upon the decision of this Tribunal in the case of Johnson Brown Vs. UOI & Ors., passed on 27.9.2001 in OA No.577/99.

5. In reply, the learned counsel for the respondents argued that the applicant had joined military service w.e.f. April, 1961 and he was granted leave from 29th July, 1971 to 26th September, 1971 at his own request. During the aforesaid period he has joined his duties on 6th September, 1971 as Civilin Motor Diriver in COD, Jabalpur, which means that the applicant was holding dual employment under the Central Government during the period 6th Sept. 1971 to 26th Sep., 1971 which is contrary to the existing rules. The learned counsel for the respondents further argued that an ex-servicemen on his re-



employment in Civil Service, has to submit his option for counting of his military service towards civil pension, within a period of three months from the date he is declared permanent in Civil Post. The applicant failed to comply with these instructions. He has submitted his option on 12.10.1994 for counting his Military service towards civil pension. As he was holding dual employment i.e. Civil and Military, his case was not found in order. Hence, the applicant is not entitled to get the retiral dues and pensionary benefits of military service. The case of the applicant has rightly been rejected vide order dated 1.4.2005.

6. After hearing the learned counsel for the parties and on careful perusal of the records, I find that the applicant has claimed to count his previous military service for the purpose of retiral and pensionary benefits. I also find from the reply that the applicant had joined the civil service on 6.9.1971 while he was not retired from the military service till 26.9.1971. Hence, he was holding dual employment under the Central Government during the period from 7.9.1971 to 27.9.1971. However, it is an admitted fact that the applicant had joined the military service on 17.4.61 and he served therein up to 5.9.71. In this case the disputed fact is only that the applicant has simultaneously worked under the Central Government in two different departments and only on this ground the respondents have not counted his past services rendered in army for pensionary benefits. However, I find that the applicant had worked under the military department from 17.4.61 to 5.9.71. I have perused the order passed by the Tribunal in the case of Johnson Brown (*supra*) wherein the Tribunal has directed the respondents to count his previous service of military department for the purpose of retiral and pensionary benefits.

7. After considering all the facts and circumstances of the case, I am of the considered opinion that this OA is liable to be allowed. Accordingly, the same is allowed. The impugned order dated 1/4/2005



is quashed and set aside and the respondents are directed to count the past services of the applicant rendered in the military department from 17.4.1961 to 5.9.1971 for the purpose of retiral and pensionary benefits in accordance with rules. No costs.

(Madan Mohan)
Judicial Member

पृष्ठांकन सं ओ/व्या.....जबलपुर, दि.....

उत्तराधिकार का प्रमाण:-

- (1) सवि,जबलपुर
- (2) उत्तराधिकार का प्रमाणके काउंसल
- (3) उत्तराधिकार का प्रमाणके काउंसल
- (4) उत्तराधिकार का प्रमाणके काउंसल

सूचना एवं आवश्यक कार्यवाही हेतु

रजिस्ट्रार

Filed
4.10.95