

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3160/2015
with
O.A.No.3162/2015

Order Reserved on: 06.02.2017
Order pronounced on 13.02.2017

Hon'ble Shri V. Ajay Kumar, Member (J)

O.A.No.3160/2015

Suresh Kumar Bukka
[working as Assistant Electrical Inspector, aged about 36 years]
S/o Sh. Trinadha Rao Bukka
Flat No.221, Block E-3
Paradise Apartments, Sector-18
Rohini, Delhi-89. Applicant

(By Advocate: Shri M.K.Bhardwaj)

Versus

1. Govt. of NCT of Delhi & Ors.
Through Chief Secretary
Govt. of NCT of Delhi
I.P.Estate, New Secretariat
New Delhi.
2. The Labour Commissioner
Department of Labour
5, Sham Nath Marg, Delhi-54.
3. The Department of Pension and Pensioners Welfare
Ministry of Personnel, Public Grievances and Pensions
New Delhi
Through its Secretary,
North Block, New Delhi. Respondents

(By Advocate: Shri Amit Anand)

with

O.A.No.3162/2015

A.V.Koteswara Rao
 (working as Asst. Electrical Inspector, aged about 37 years)
 S/o A. Neelakanteswara Rao
 Flat No.577/E3, Block E, Pocket-3
 Paradise Apartments,
 Sector-18
 Rohini, Delhi-89. ... Applicant

(By Advocate: Shri M.K.Bhardwaj)

Versus

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 Ministry of Personnel, Public Grievances and Pensions
 New Delhi
 Through its Secretary,
 North Block, New Delhi. ... Respondents

(By Advocate: Shri Amit Anand)

O R D E R (Common)

Since the question of law and facts involved in both the OAs are identical, they are being disposed of by this common order.

2. For the sake of convenience, brief facts of both the cases, relevant to the controversy involved, are mentioned, as under:

3. O.A.No.3160/2015:

- i) The applicant joined in Indian Navy on 04.08.2000 as Sailor and was discharged with effect from 31.08.2010, after serving for 10 years and 27 days, without any remark or blemish.
- ii) In pursuance of an Advertisement issued by the UPSC, the applicant was selected and appointed as Assistant Electrical Inspector in the Labour Department of the Government of NCT of Delhi w.e.f. 01.09.2010. After his joining he submitted a representation dated 28.10.2010 opting for counting of his past Military Service rendered in Indian Navy towards pension as required under Rule 19 of the CCS (Pension) Rules, 1972. Subsequently, the applicant received the Gratuity amount, including service gratuity and death cum retirement gratuity from the Indian Navy due to him. Since the applicant had already opted for counting of his military service under Rule 19, he informed the receipt of the said benefits from the Indian Navy, to the respondents. After repeated reminders, finally the respondents, vide impugned Annexure A1 dated 03.01.2014, rejected the claim of the applicant.

4. O.A.No.3162/2015:

The applicant joined Indian Navy on 05.02.2000 and was discharged on 31.05.2010 and rest of particulars mentioned above are more or less same in the case of this applicant.

5. Aggrieved by the rejection of the claim of the applicants in counting of their past Navy service for the purpose of pension in civil service, the applicants filed their respective OAs.

6. Heard both sides and perused the pleadings on record.

7. The respondents rejected the claim of the applicants vide Impugned Annexure A1, dated 03.01.2014 by stating as under:

“2. In this regard it is stated that only appointees to civil pension establishments upto 31st December, 2003 being covered by the old pension scheme/rules can take the benefits mentioned in Rule 19 of opting to count previous military service. Those appointed on or after 01.01.2004 not being covered by the old pension scheme obviously are not eligible for any of the benefits in these rules including Rule 19.”

8. The respondents both in their counter affidavits and also through their oral arguments reiterated the same stand, as taken in their impugned orders.

9. However, it is stated by the learned counsel for the applicants in Para 4.10 of the OA that some of the persons similarly placed like the applicants worked in Indian Navy, namely, S/Shri M. A. K. Jeelani, Naveen Kumar, Parveen Kumar and Jogender Singh, were allowed to count their past service for the purpose of pension by their respective departments, which is evident from the Annexures A10 to A12 (Colly.), therefore, denying the same benefits in the case of the applicant is illegal and arbitrary.

10. At the outset, the learned counsel for the applicants has produced a copy of the Judgement passed by a Division Bench of this

Tribunal in O.A.No.2802/2012 (**Bhaskar Mishra v. Union of India & Others**), decided on 16.01.2017 and stated that this Tribunal considered the identical issue, i.e., counting of past service for the purpose of pension on reemployment. In the said case, the applicant worked as LDC in the Department of Posts for certain period and later joined in the Employees Provident Fund Organization and when his identical request was rejected, by the EPFO, by treating his reemployment as fresh employment, this Tribunal, after considering OM No.28/30/2004-P&PW (B) dated 26.07.2005 of the Department of Pension and Pensioners Welfare, on the issue of counting of past service, on submission of technical resignation on or after 1.1.2004, along with OM dated 28.10.2009 and DoPT OM dated 17.08.2016, held that the applicant therein is entitled to same benefits on par with the said persons. But in the present case, the issue is counting of past Military Service, which governed by different Rules, hence, the said case has no direct bearing on this case.

11. In any case, nowhere in the counter filed in the present case, the respondents have stated that the service rendered by the applicant, in the Indian Navy as Sailor, was a non-pensionable establishment and the applicants have not opted for pension as required under Rule 19 of the CCS (Pension) Rules, 1972.

12. Further, as the learned counsel for the applicants stated that some of the persons similarly placed like the applicants worked in Indian Navy, were allowed to count their past service for the purpose

of pension by their respective departments, we have perused the said Annexures and find that some of the Ministries/Departments in Union of India and also by the Govt. of NCTD, have counted the past service rendered in Indian Navy for the purpose of pension, therefore, the applicants in the present case are also liable to be granted the same benefits.

13. Further, a Division Bench of this Tribunal, allowed OA No.4069/2013 (Mrs. Sosamma K. Sam v. All India Institute of Medical Sciences & Others), on 10.02.2017, basing on the Judgement in O.A.NO.T-19-CH-2009 (CWP NO.10281 of 2001) [**Capt. (Mrs.) Surjit Kaur and Others v. Post Graduate Institute of Medical Education & Research, Chandigarh & Others**) of the Central Administrative Tribunal, Chandigarh Bench wherein, after considering the various decisions of this Tribunal, observed, as under:

"10. The contention of the respondents that the applicant's services were not confirmed is also rejected as they themselves stated in their counter that the applicant was regularized as Staff Nurse on 25.10.1985.

11. In **Captain (Mrs.) Surjeet Kaur** (supra), the applicants who were also discharged from the service of the Armed Forces and later appointed as Sister Grade-II in the Respondent-Institute, filed the said OA seeking identical relief, i.e., counting of their Military service for fixation of pay and for the purpose of pension, in terms of Rule 19 of the CCS (Pension) Rules, 1972. A Coordinate Bench of this Tribunal, considering the identical submissions and in the identical circumstances, while holding that the respondents therein have wrongly rejected the claim of the applicants therein, allowed the OA to the extent of direction to the respondents to reconsider the case of the applicants in the light of the observations made therein and to pass appropriate orders within a specific period.

12. In **Manohar Singh Chana** (supra), a Coordinate Bench of this Tribunal, considered the identical issue and allowed the OA by directing the respondents to count the Military service of the applicant therein for notional initial pay fixation and consequential fixation of pension.

13. In the circumstances and for parity of reasons, the OA is allowed and the respondents are directed to consider the case

of the applicant for notional fixation of her initial pay by counting her Military Nursing Service, with all consequential benefits including for fixation of pension. However, in the circumstances, the applicant is entitled for arrears w.e.f. the date of filing of the OA, i.e., from 18.11.2013. The respondents shall complete the aforesaid exercise within three months from the date of receipt of a copy of this order. No costs."

14. Since the facts in the present OAs and the facts in **Mrs. Sosamma K. Sam** (supra) and **Capt.(Mrs.) Surjit Kaur & Others** are akin, the applicants herein also deserve to be granted with the same reliefs.

15. In the circumstances and for parity of reasons, both the OAs are allowed and the respondents are directed to consider the case of the applicants for notional fixation of their initial pay by counting their respective Military Service rendered as Sailor in the Indian Navy, with all consequential benefits including for fixation of pension. However, in the circumstances, the applicants are entitled for arrears, if any, with effect from the date of filing of their respective OAs, i.e., from 29.07.2015. The respondents shall complete the aforesaid exercise within three months from the date of receipt of a copy of this order. No costs.

Registry is directed keep a certified copy of this order in OA No.3162/2015.

(V. Ajay Kumar)
Member (J)

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