

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA

O.A. 1490 of 2014

Order dated: 12/5/2016

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Shri Prabhat Kumar Ghosh,
Son of Late Kalidas Ghosh,
Aged about 63 years,
Retired Upper Division Clerk,
Office of the Deputy Director,
Eastern Region, Hindi Training Scheme,
Kolkata,
Residing at 71, Gourbabu Road,
P.O. Kanchrapara,
Dist. North 24-Pgs,
Pin : 743 145.

..... Applicant.

Versus

1. Union of India,
Through the Secretary to the
Govt. of India,
Ministry of Home Affairs,
Department of Official Language,
4th Floor, B-Wing,
NDCC Building – II,
Jay Sing Road,
New Delhi – 110 001.
2. The Director,
Central Hindi Training Institute,
7th Floor, CGO Complex,
Lodhi Road,
New Delhi – 110 003.
3. The Secretary to the Govt. of India,
Department of Personnel & Training,
North Block,
New Delhi – 110 001.
4. The Deputy Director (ER),
Hindi Training Scheme,
Nizam Palace,
2nd MSO Building, 18th Floor,
234/4, AJC Bose Road,
Kolkata – 700 020.
5. The Principal Controller of Defence
Accounts (Pensions),
Draupadighat,
Allahabad – 211 014.

..... Respondents.

For the Applicant : Mr. S.K. Datta, Counsel
For the Respondents : Mr. C.R. Bag, Counsel
Mr. U.P. Bhattacharyya, Counsel

ORDER

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. Aggrieved due to rejection of his prayer for change of option, in order to retain military pension that was more beneficial to him instead of foregoing Military pension to count Military service for pension, this application has been filed by the applicant seeking the following reliefs:

"8.(a) An order quashing and/or setting aside the impugned communication dated 29.9.2014.
(b) An order holding that the option invited from the applicant and exercised by the applicant pursuant to such opportunity to exercise option prior to confirmation of the applicant in the Department of Official Language and denial of an opportunity to exercise option on his confirmation in terms of Rule 19 of the CCS (Pension) Rules, 1972 and treating the earlier option prior to confirmation of the applicant as final are bad in law and arbitrary.
(c) An order holding that the decision as contained as well as the reasons as stated in communication dated 29.9.2014 for rejection of the claim of the applicant are bad in law, arbitrary, unreasonable and unsustainable in law as well as on fact.
(d) An order holding that the treatment of regular service of the applicant as a permanent one before confirmation is totally arbitrary, illegal, misconceived, motivated and cannot be sustained.
(e) An order directing the respondents to produce/cause production of all relevant records.
(f) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

3. This is the second journey of the applicant to this Tribunal. He has assailed an order dated 29.9.2014 issued by the Administrative officer, Dept of official language, Central Hindi Training Institute, whereby and whereunder the applicant was informed

that his request for change of option exercised on 3.2.94 to forgo Military pension has been rejected.

The order as per translation of the letter issued in Hindi vernacular) is as under:

"Pension & Pensioner's welfare department has informed that the option available under rule 19 of C.C.S.(Pension) rules as was beneficial at that time, has got no justification/provision changing again and again. Under compliance of the decision of CAT, as reconsideration of the case it is said that though in the matter of permission of alteration of option under rule 19 regarding retaining pension the pension rules are silent, still it is general assumption that once option exercised is considered to be final. To permit changing the option will give rise to administrative and financial problems in administrative dept. At the same time if it is allowed once, if will become a precedent and enumerable cases will come to the forefront asking for such concession/relaxation. It will weaken the C.C.S. (Pensioner) rules. So keeping in view all the above mentioned facts, this proposal of giving relaxation in pension rules under rule 88 is not desirable.

Shri P.K. Ghosh be informed."

4. The order supra was issued pursuant to the direction of this Tribunal in O.A. 1613 of 2013, rendered on 5.2.2014 in the following words:

"5. Heard Ld. Counsel of both the sides and perused the documents. The respondents seem to have rejected the claim on a wrong premise. The applicant does not seem to be particularly aggrieved with non-grant of ACP benefits. He simply prays for a direction to allow him to exercise fresh option for his continuation of Military Pension with an assurance to refund the amounts as required. There seems to be no bar in allowing a person to exercise option afresh if the earlier option was to his prejudice which he could not foresee at the time of exercising such option particularly in view of Rule 88 of CCS (Pension) Rule, and by the appropriate authority. Hence, the OA is disposed of with a direction upon the concerned respondent to refer the matter to the concerned appropriate authority for re-consideration of the matter in terms of Rule 88 of CCS (Pension) Rules, and if there is no express bar to such reconsideration to pass appropriate order within a period of three months."

A bare perusal of the order would clearly demonstrate and exemplify that it clearly mandated consideration in terms of Rule 88 of CCS (Pension) Rules which laid down the following:

"...88. Power to relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, cause undue hardship in any particular case, the Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such

extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Proved that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms".

5. Rule 19 of the Pension Rules also in unambiguous words spell out the right of option, either retaining Military pension or refund of Military pension & gratuity for counting such "service for pension". It reads as under:

"19. Counting of military service rendered before civil employment

(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, 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
- ²(b) to cease to draw his pension and refund -

Footnote : 2. Substituted by G.I., M.H.A., Dept. of Per. & A.R., Notification No. 6 (1)-Pen. (A)/80, dated the 30th July, 1981.

- (i) the pension already drawn, and
- (ii) the value received for the commutation of a part of military pension, and
- (iii) the amount of ³[retirement gratuity] including service gratuity, if any,

Footnote : 3. Substituted vide G.I., Dept. of P. & P.W., Notification No. 2/18/87-P. & P.W. (PIC), dated the 20th July, 1988. Published as S.O. No. 2388 in the Gazette of India, dated the 6th August, 1988.

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 of fixation of pay shall be set off against the amount of ¹[retirement gratuity] and the commuted value of pension and the balance, if any, shall be refunded by him.

Footnote : 1. Substituted vide G.I., Dept. of P. & P.W., Notification No. 2/18/87-P. & P.W. (PIC), dated the 30th July, 1988. Published as S.O. No. 2388 in the Gazette of India, dated the 6th August, 1988.

EXPLANATION. - In this clause, the expression '*which was taken into account*' means the amount of pension including the pension equivalent of gratuity by which the pay of the Government servant was reduced on initial re-employment, and the expression '*which was not taken into account*' shall be construed accordingly.

- (2) 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 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).

Footnote : 2. Substituted by G.I., M.F., Notification No. F. 3 (6)-E. V (A)/75, dated the 24th February, 1976.

- (b) If no option is exercised within the period referred to in Clause (a), the Government servant shall be deemed to have opted for Clause (a) of sub-rule (1)

- (3) (a) A Government servant, who opts for Clause (b) of sub-rule (1) shall be required to refund the pension, bonus or gratuity received in respect of his earlier military service, in monthly instalments not exceeding thirty-six in number, the first instalment beginning from the month following the month in which he exercised the option.
- (b) The right to count previous service as qualifying service shall not revive until the whole amount has been refunded.

- (4) In the case of a Government servant, who, having elected to refund the pension, bonus or gratuity, dies before the entire amount is refunded, the unrefunded amount of pension or gratuity shall be adjusted against the ³[death gratuity] which may become payable to his family.

Footnote : 3. Substituted by G.I., Dept. of P. & P.W., Notification No. 2/18/87-P. & P.W., (PIC), dated the 20th July 1988. Published as S.O. No. 2388 in the Gazette of India dated the 6th August, 1988.

- (5) When an order is passed under this rule allowing previous ¹[] military service to count as part of the service qualifying for civil pension, the order shall be deemed to include the condonation of interruption in service, if any, in the military service and between the military and civil services.

(1) Re-employed military pensioners should exercise option under Rule 19 (1) within one year from the date of re-employment. - Under (1) of the CCS (Pension) Rules, 1972, a Government servant who is re-employed in a civil service or post is required to give an option at the time of his confirmation in the civil post whether he would like to get past military service counted for pension in the civil post whether he would like to get past military service counted for pension in the civil post or service. The Government had issued orders vide OM No. 38/16/Pension Unit/80, dated the 30th December, 1980, allowing the Government servants to get pension after completion of twenty years of service either on invalidation or superannuation. In pursuance of Government decisions on the recommendations of the Fourth Central Pay Commission, the Government has further decided vide OM No. 2/4/87-PIC, dated the 14th April, 1987, that a Government servant will get pension under the CCS (Pension) Rules, either on superannuation or on invalidation after rendering ten years of temporary service in the Government. In view of the relaxation allowed recently to temporary Government servants, the matter has been engaging attention of the Government to allow benefit under (1) of the CCS (Pension) Rules, 1972, also to Government servant who retire on superannuation without confirmation. It has been decided that all those Government servants who retire on superannuation or invalidation without confirmation after rendering not less than ten years of combined military and civil service shall be entitled to the benefit of counting of service under (1). The provision of (1) may be deemed to have been modified accordingly. Necessary amendment to the Rule will be issued in due course.

2. It has also been decided that a Government servant applying for counting of service under (1) may be allowed to exercise option for the same within a period of one year from the date of joining the civil service or post. The refund of pension, gratuity, etc., already drawn by such Government servants from the Military authorities shall be refunded to the Government with interest from the date of their joining the civil service. The rate of interest would be simple interest at 6% per annum [Now rate of interest as applicable to GPF deposits refer to DP&PW's O.M.No.38/34/2001-P&PW (F) dated 29-04-2002] The other conditions as mentioned under (1) of the CCS (Pension) Rules, will remain unaltered.

3. In order to facilitate compliance with the requirement of exercising option in time, it has been further decided that the administrative authorities concerned should incorporate in the order of re-employment itself a clause to the effect that if the re-employed ex-serviceman desires to take advantage of the retirement benefits based on combined military and civil services, he should exercise option within a period of one year from the date of his re-employment.

4. These orders take effect from the date of issue.

[G.I., Dept. of P. & P.W., O.M. No. 28/50/87-P. & P.W., dated the 31st May, 1988 and O.M. No. 28/49/87-P. & P.W., dated the 26th February, 1988.]

6. When, this Tribunal was of the opinion that in view of Rule 88 there was no bar in considering the prayer of the applicant for change of option, as such change was more beneficial to him and his case was also duly recommended by the Dy. Director(E) for a change, the order of this Tribunal having attained a finality, being not challenged higher up, rejection and the attempt on the part of the authorities to justify the rejection of claim citing practiced or professed norms was highly illegal and made in an outrageous

attempt to sit over the order passed by a judicial forum with a pernicious move to scuttle its power. Such an act should not be tolerated. Therefore this Tribunal is of the opinion that the authorities have deliberately not considered the matter in the light of Rule 88 (ibid) as was directed; without any just cause.

7. It is settled law that difficulty in implementation of an order by Court howsoever grave its effect may be is no answer for its non implementation [(2009) 1 SCC (L&S) 363]. Therefore the ground for non compliance that, the prayer for change if granted would open a floodgate, is of no excuse. Despite opportunity, no strong reason why the change of option should not be allowed, have been furnished. The enumerated rule position too pose no legal bar. Therefore admittedly and inarguably there was no strong reason available with the respondents in rejecting the claim. The rejection was palpably bad.

8. In such view of the matter, I would dispose of the O.A. with a direction upon the respondents to consider and allow the applicant to change his option that he had exercised prior to his confirmation, in a way that would be beneficial to him.

9. No costs.

[Signature]
(Bidisha Banerjee)
Judicial Member

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