

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/01054/2016

Wednesday, this the 25th day of September, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

Abdul Rahiman, S/o. Late Mohammed Abdulla,
EVRA 326, Lane 12, Carmel Convent Girls High School Road,
Thycaud, Thiruvananthapuram – 695 014, (UDC (Retd.), Regional
Research Institute, (Drug Research) (CCRAS), Poojappura,
Thiruvananthapuram – 695 012). **Applicant**

(By Advocate : Mr. B. Raghunathan)

V e r s u s

1. Union of India, represented by Secretary to Government of India,
Ministry of Personnel, Public Grievances and Pension,
Department of Pension and Pensioners Welfare,
New Delhi – 110 001.
2. Secretary to Government of India, Ayurveda Desk,
Department of Ayush, Ministry of Health and Family Welfare,
Government of India, IRCS Building, New Delhi – 110 001.
3. Director General (Ayurveda), Central Council for Research in
Ayurveda & Sidha (CCRAS), No. 61-65-Institutional Area,
Opp. D Block, Janakapuri, New Delhi – 110 058.
4. Assistant Director (Ayurveda), Regional Research Institute,
(Drug Research) (CCRAS), Opp. Poojappura Mandapam,
Poojappura, Thiruvananthapuram – 695 012. **Respondents**

(By Advocate : Mr. Thomas Mathew Nellimoottil, Sr. PCGC)

This application having been heard on 05.09.2019 the Tribunal on
25.09.2019 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

“(i) to issue a writ of certiorari or other appropriate writ order or direction to call for the records leading to Annexure A1 and quash the same.

ii) to issue a writ of mandamus or other appropriate writ, direction or order to respondents 1 to 4 to sanction the pensionary benefits to the applicant taking into account the 6 years service rendered in GREF from 30.11.1963 to 29.11.1969 along with that of the service rendered from 28.10.1971 to 31.7.2002 in CCRAS with all consequential benefits.

iii) to issue a writ of mandamus or other appropriate writ, direction or order to respondents 1 to 4 to pay interest @ 12% per annum to the retiral/pensionary amount due to the applicant from 1.10.2002 onwards.

iv) to grant such other orders which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

v) to award the costs of this proceedings to the applicant.”

2. The brief facts of the case are that the applicant is a pensioner who had retired from service on superannuation from the Regional Research Institute (Drug Research) (Ayurveda), Thiruvananthapuram on 31.7.2002. Applicant had served for 31 years in the post of GDA/UDC during the period from 1971 to 2002. Before joining the service in Central Council for Research in Ayurveda & Sidha (CCRAS) the applicant had served as an UDC in General Reserve Engineer Force (GREF) for a period of six years during 1963 to 1969. GREF is an integral part of Armed Forces of India for the purpose of application of the provisions under Article 33 of the Constitution of India. The applicant requested the 3rd respondent to take into account the service rendered in GREF as qualifying service to compute his pensionary/retiral benefits. But it was not considered. Aggrieved the applicant filed OA No. 180/280/2014 for redressal of his grievance. This Tribunal vide order dated 28.5.2015 directed the respondents to take a decision on his representation dated 20.11.2012. However, the respondents disposed of the representation vide order Annexure A1 making observations

that his request for counting the past service rendered in GREF cannot be reckoned as qualifying service for the purpose of pensionary benefits under the CCRAS. The GREF had sent his service particulars and no objection certificate to the 3rd respondent to reckon his service in GREF to compute the qualifying service of the purpose of pensionary benefits. However, no action was taken by the respondent No. 3. Therefore, the action of the respondents in issuing Annexure A1 is illegal and unsustainable. Aggrieved the applicant has approached this Tribunal with the present OA.

3. Notices were issued to the respondents. They have entered appearance through Shri Thomas Mathew Nellimoottil, Sr. PCGC. It is contended by respondents that the OA is barred by the law of limitation. The applicant retired from service on 31.7.2002. If the applicant was aggrieved by the non-reckoning of the 6 years service rendered by him in GREF from 30.11.1963 to 29.11.1969 along with the service rendered from 28.10.1971 to 31.7.2002 in CCRAS, he ought to have approached this Tribunal within one year from the date of issuance of Annexure A14 Pension Payment Order. Further it is settled principle that repeated representations would not revive the cause of action for the applicant to approach the Tribunal. The applicant has not stated any reason for the long delay of 12 years in filing the OA. Moreover, the applicant's parent department i.e. the GREF has not remitted the proportionate retirement benefits like retirement gratuity and service gratuity to the applicant nor they were in a position to furnish the service certificate of qualifying service rendered by him in GREF as they have destroyed his service records after

normal retention period. Hence, in the absence of such payment/service records this respondent is not in a position to count the past service of the applicant from 30.11.1963 to 29.11.1969 rendered in GREF. Respondents pray for dismissing the OA.

4. Heard Shri B. Raghunathan, learned counsel appearing for the applicant and Mr. Thomas Mathew Nellimoottil, Sr. PCGC, learned counsel appearing for the respondents. Perused the record.

5. The argument put forth by the applicant is that his services rendered in GREF from 30.11.1963 to 29.11.1969 may be reckoned along with the service rendered from 28.10.1971 to 31.7.2002 in CCRAS to compute the qualifying service for the purpose of calculating the pensionary benefits. In this regard this Tribunal find that the Hon'ble apex court in ***R. Viswan & Ors. v. Union of India & Ors.*** - 1983 (3) SCC 401 held as under:

“The fact that the members of the GREF are described as civilian employees and they have their own special rules of recruitment and are governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 is not determinative of the question whether they are members of the Armed Forces. The question whether the members of GREF can be said to be members of the Armed Forces for the purpose of attracting the applicability of Art. 33 must depend essentially on the character of GREF, its organisational set up, its functions, the role it is called upon to play in relation to the Armed Forces and the depth and intimacy of its connection and the extent of its integration with the Armed Forces. The history, composition, administration, organisation and role of GREF clearly show that GREF is an integral part of the Armed Forces and that the members of GREF can legitimately be said to be members of the Armed Forces within the meaning of Art. 33. It is undoubtedly a departmental construction agency as contended on behalf of the petitioners but it is distinct from other construction agencies such as the Central Public Works Department in that it is a force intended primarily to support the Army in its operational requirement.”

6. Therefore, from the above it is clear that the services rendered by the applicant in GREF can be considered as military service reckoned for the purpose of calculating the qualifying service while computing the pensionary benefits of civil post. However, in the present case the services rendered by the applicant in GREF is for the period from 30.11.1963 to 29.11.1969 and vide Annexure A4 the GREF informed the respondent Department that the service documents in respect of the applicant have already been destroyed after completion of its normal retention period and as such they are unable to ascertain the temporary service in respect of the applicant. The respondents in the reply statement categorically stated that the GREF has not remitted the prorata retirement benefits i.e. retirement gratuity and service gratuity of the applicant nor have they furnished the service certificate of qualifying service rendered by the applicant in GREF. In this regard this Tribunal finds that GREF vide Annexure A7 issued a certificate regarding non-grant of pension/family pension to the applicant and a no-objection certificate for counting of past service rendered by the applicant. It reads as under:

“Non Grant of Pension/Family Pension Certificate

1. It is certified that Ex GS-66334 UDC Abdul Rahiman of 23 BRTF was appointed in GREF on 30 Nov 1963 and discharged from service wef 29 Nov 1969 on completion of terms of engagement. At the time of discharge, neither any pensionary benefits like pension/family pension/gratuity etc. were entitled/sanctioned to the individual by this Deptt nor any action for grant of pensionary benefits will be taken by this office in future as the above indvl had not fulfilled the required minimum qualifying service for pensionary benefits.

2. Regarding reckoning of GREF service rendered by the indvl. this department have no objection to count previous service rendered by the individual in this Deptt. The same maybe done as per existing Govt Rules as applicable to present employer.”

7. Therefore, GREF issued a no-objection certificate for reckoning the service rendered by the applicant in GREF for calculating the qualifying service for pensionary benefits in the respondent Department. In Annexure A4 letter dated 20.09.1999 GREF mentioned that they were unable to ascertain the temporary service of the applicant due to lack of service documents. In this regard the respondents submitted in the reply to the rejoinder that the applicant was not a regular employee in the office of GREF and his employment was for a fixed term in a specific project on contract basis and on completion of which he was discharged from his duty termed as non-effective service. Rule 19 of CCS (Pension) Rules, 1972 provides for counting of military service rendered before civil employment. In view of the judgment in *R. Viswan*'s case supra this Tribunal holds that the service rendered by the applicant in GREF can be considered as service rendered in military service. However, under Rule 19 of CCS (Pension) Rules, 1972 certain conditions have to be fulfilled. It reads thus:

“(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
- (b) to cease to draw his pension and refund -
 - (i) the pension already drawn, and
 - (ii) the value received for the commutation of a part of military pension, and
 - (iii) the amount of [retirement gratuity] including service gratuity, if any,

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 [retirement gratuity] and the commuted value of pension and the balance, if any, shall be refunded by him.

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) (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).
- (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 [death gratuity] which may become payable to his family.
- (5) When an order is passed under this rule allowing previous 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.”

8. This Tribunal finds that the applicant do not fall in any of the above conditions as in Annexure A8 certificate itself the GREF clearly mentioned that the applicant was appointed in GREF on 30th November, 1963 and discharged from service w.e.f 29th November, 1969 on completion of terms of engagement. Further at the time of discharge, neither any pensionary benefits like pension/family pension/gratuity etc. were entitled/sanctioned to the applicant. Moreover, the applicant had not fulfilled the required minimum qualifying service for such pensionary benefits in GREF. Therefore, under Rule 19 of CCS (Pension) Rules, 1972 also the applicant the not entitled to count his GREF service for calculating the qualifying service for civil pension.

9. Taking stock of the entire aspects of the matter, this Tribunal do not find any merit in this Original Application. Accordingly, the OA is dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

“SA”

Original Application No. 180/01054/2016

APPLICANT'S ANNEXURES

Annexure A1 - True copy of letter No. F.3-5/2014-CCRAS/Vig/2729 dated 10.12.2015.

Annexure A2 - True copy of the discharge certificate dated 15.11.1969 issued by GREF.

Annexure A3 - True copy of the letter dated 11.6.1999 of the 3rd respondent.

Annexure A4 - True copy of the letter dated 20.9.1999 of GREF to the 4th respondent.

Annexure A5 - True copy of the letter dated 1.10.2007 of the 3rd respondent.

Annexure A6 - True copy of the letter dated 15.12.2008 of the 3rd respondent.

Annexure A7 - True copy of the letter dated 25.1.2010 of GREF.

Annexure A8 - True copy of the non-granting of pension/family pension certificate dated 25.1.2010 issued by GREF.

Annexure A9 - True copy of the representation dated 20.11.2012 submitted to the 1st respondent.

Annexure A10 - True copy of the order dated 28.5.2015 in OA No. 180/280/2014.

Annexure A11 - True copy of the letter dated 3.11.2015 of the 3rd respondent.

RESPONDENTS' ANNEXURES

Annexure R3(a) - True copy of letter bearing F. No. 3-5/2014-CCRAS/Vig./66 dated 5.4.2018 issued by the Dy. Director (Admin), Central Council for Research in Ayurvedic Sciences to the Director General, HQ, BRO along with letter bearing F. No. 3-5/2014-CCRAS/Vig./2729 dated 10.12.2015 issued by the Director General, Central Council for Research in Ayurvedic Sciences to Sri Abdul Rahiman.

Annexure R3(b)- True copy of letter bearing No. 3-5/2014-CCRAS/Vig/252 dated 23.4.2018 issued by the Dy. Director (Admn.), Central Council for Research in Ayurvedic Sciences to the Director General, BRO, HQ.

Annexure R3(c)- True copy of letter bearing D.O. No. 3-5/2014-CCRAS/Vig/407 dated 8th May, 2018 issued from the office of the Central Council for Research in Ayurvedic Sciences to Shri Harpal Singh.

Annexure R3(d)- True copy of letter bearing F. No. 3-5/2014-CCRAS/Vig/727 dated 30.5.2018 issued from the office of the Central Council for Research in Ayurvedic Sciences to the Asst. Records Officer, OIC Records, along with Discharge Certificate of Shri Abdul Rahiman.

Annexure R3(e)- True copy of letter bearing F. No. 3-5/2014-CCRAS/Vig/728 dated 5.6.2018 issued from the office of the Central Council for Research in Ayurvedic Sciences to the Director General, BRO.

Annexure R3(f)- True copy of reply bearing No. 2400/GEN/157/NER(B) received on 4.6.2018 issued from the office of the GREF Records.

Annexure R3(g)- True copy of Department of Pensioner's Welfare letter bearing No. 28/13/2015-P&PW(B) dated 28.10.2015 issued by Under Secretary to the Govt. of India to Ministry of Ayush.

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