

(2) (16)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO.1025/2003

This the 19<sup>th</sup> day of March, 2004

HON'BLE SHRI V. K. MAJOTRA, VICE CHAIRMAN (A)

Ganpat Ram (Ex-Leather Worker)  
S/O Triloki Ram,  
Presently residing at RZ-216,  
Braham Puri, Pankha Road,  
Nangal Rai, New Delhi-110046.

... Applicant

( By Shri R.P.Luthra, Advocate )

-versus-

1. Union of India through  
Secretary, Ministry of Defence,  
New Delhi.
2. Department of Pension &  
Pensioners' Welfare,  
Ministry of Defence,  
Delhi.
3. Commanding Officer,  
Parachute Repair Depot,  
Air Force, Palam,  
New Delhi-11001.

... Respondents

( By Ms. Rinchen O. Bhutia, Advocate )

**O R D E R**

Applicant was employed as temporary Boot Maker in respondents' office w.e.f. 17.12.1965. Later on, he was discharged from service on medical ground w.e.f. 9.4.1977. He was paid compensation gratuity for the period of his service, i.e., 17.12.1965 to 9.4.1977. Thereafter, he was re-appointed at Air Force Station, New Delhi on being medically fit w.e.f. 12.1.1983. At the time of his re-appointment, the applicant did not make any request for counting his past service as qualifying service for purposes of pensionary benefits.

Vb

2. It has been averred on behalf of the applicant that respondents had obtained his resignation from service by fraud and have denied benefit of counting his past service from 17.12.1965 to 9.4.1977 for computing the qualifying service on the ground of his resignation. His representations for the claimed benefit remained unattended. Applicant has sought declaration for his entitlement to grant of pension, arrears and other consequential benefits by counting his past service.

3. The learned counsel of applicant contended that the benefit claimed by the applicant is permissible in terms of Rule 18 of the CCS (Pension) Rules, 1972, however, the respondents never asked the applicant to submit an option in terms of Rule 18.

4. On the other hand, the learned counsel of respondents stated that applicant has been regularly submitting applications of resignation from service. Three of such applications are dated 21.2.1990, 27.9.1988 and 19.7.1988 (Annexure R-1 colly.). The commanding Officer of the Depot vide his letter dated 23.7.1988 (Annexure R-2 colly.) advised the applicant to withdraw his resignation before completion of 90 days notice period, otherwise, as per the Pension Rules, he would not be entitled to pension. Applicant did not withdraw his resignation letter and instead made some more applications for resignation from service. Respondents again vide letter dated 28.2.1990 (Annexure R-2 colly.) advised the applicant to withdraw the resignation letter dated 21.2.1990 by 20.5.1990 lest as per rules he would

16

become disentitled to pension. As the applicant did not withdraw his resignation letter dated 21.2.1990 by 20.5.1990, the competent authority vide letter dated 28.5.1990 (Annexure R-3) accepted applicant's resignation. According to the respondents, applicant had put in a qualifying service of 5 years, 2 months and 26 days. Applicant's case was considered by the Department of Pension & Pensioners' Welfare as well. They advised as per Annexure R-4 dated 13.1.2000 that applicant is not entitled for pension since the resignation tendered at own volition entails forfeiture of past service under Rule 26 ibid.

5. I have considered the rival contentions.

6. As the applicant was discharged from service on medical ground on 9.4.1977, he was paid compensation gratuity for his service period from 17.12.1965 to 9.4.1977. In case applicant wanted his past service to be considered for pensionary benefits, he was required to exercise his option under Rule 18 ibid for counting of pre-retirement civil service for pension and refund the gratuity etc. drawn by him. Rule 18(2)(a) states that the authority issuing the order of re-employment shall require in writing the government servant to exercise the option under Rule 18 ibid within a period of three months of the date of issue of such order. While applicant has denied to have received any such advice from the authority, respondents too have not produced any proof of having informed the applicant that he should exercise option provided under Rule 18. Normally when the

respondents had not asked the applicant to submit his option for counting his past service as qualifying service, respondents could have been called upon even at this stage to ask for applicant's option or on the basis of the present claim, it could have been held that it may be deemed that the applicant had exercised his option in favour of counting previous service as qualifying service in terms of Rule 18 ibid. However, it is of no significance in the present case whether or not the respondents asked the applicant to submit his option or whether or not the applicant submitted his option. In the present case, applicant had submitted his resignation dated 21.2.1990 (Annexure R-1 colly.) on personal grounds. He was advised vide Annexure R-2 by the respondents that on acceptance of his resignation he would not be entitled to pensionary benefits under the rules, therefore, he may withdraw the resignation lest it is accepted on 28.5.1990. As the applicant did not withdraw his resignation dated 21.2.1990, his resignation was accepted by the competent authority on 28.5.1990 w.e.f. 31.5.1990 (Annexure R-3). Rule 26 ibid states that resignation from service, unless it is allowed to be withdrawn in public interest by the appointing authority, entails forfeiture of past service. As the applicant had not withdrawn his resignation dated 21.2.1990 and as the same was accepted by the competent authority vide Annexure R-3, applicant is not entitled to the benefits of counting his past service as resignation from service entails forfeiture of past service under Rule 26 ibid. The documents submitted by the applicant do not indicate any fraud on the applicant; resignation had certainly

W

been submitted by him at his own volition, which he did <sup>as such has to bear</sup> not withdraw despite advice from the respondents and attendant adverse consequences.

7. Having regard to the reasons stated above, this OA is dismissed. No costs.

V. K. Majotra 19.3.04  
( V. K. Majotra )  
Vice Chairman

/as/