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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1458/2003

New Delhi. this the 20th day of April. 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

Mahender Singh
s/o Sh. Bharat Singh
r/o WZ 177, M 33
Hari Nagar
New Delhi - 64. ... Applicant

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Chief Secretary.
GNCT, Players Building
Secretariat, GNCT
ITO, New Delhi.

2. Director of Education
Directorate of Education
Behind Old Sectt.
Shamnath Marg
Delhi.

3. Deputy Director (West Zone)
Directorate of Education, GNCT
New Moti Nagar
Karampura
Delhi. .. Respondents

(By Advocate: Sh. Mohit Madan, proxy for Mrs. Avnish Ahlawat)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Mahender Singh) had joined Indian Army and worked there from 15.11.1962 to 5.12.1966. He left the Indian Army due to compassionate grounds. On 25.1.1973, he was selected and joined as a Junior Physical Education Teacher in the then Govt. National Capital Territory of Delhi (Delhi Administration).

2. By virtue of the present application, the applicant seeks to quash and setting aside of the order dated 12.7.2000 issued by the respondents and order dated 25.2.2003 issued by the Deputy Director of

Education. Distt. West-A. and to direct the respondents to count his military service rendered, for purposes of seniority and pensionary benefits with consequential benefits.

3. According to the applicant, Punjab Government National Emergency (Concessions) Rules, 1965 had been framed, according to which a person who had served the nation during the period of National Emergency, is entitled to certain benefits. But the applicant had been informed that he is not entitled to the pensionary benefits with respect to the said service. (4). It is in this backdrop, that he assails the order dated 25.2.2003 referred to above which reads:

> "Sub: Counting of previous services rendered in Military from 16-11-62 to 5-12-66 in r/o Sh. Mohinder Singh, PET.
>
> With reference to endt. no.224 dated 8-1-2003 on the above cited matter forwarding representation of Sh. Mohinder Singh, PET, it is reiterated that upon consideration of the case by the H.Q. it was informed that no pensionary benefits is permissible to Sh. Mohinder Singh, PET under Rule 20(2) of the CCS (Pension) Rules, 1972 of such services.
>
> Sd./
> (Sushma Minocha)
> Deputy Director of Education
> Distt. West-A"

5. The application has been contested. According to the respondents, though the applicant served in the Indian Army from 15.11.1962 to 5.12.1966, he has filed the present application on 21.5.2003 which is barred by time. Further more, it is asserted that the applicant had never opted for counting of previous military service as qualifying service. Under Rule 19 of CCS (Pension) Rules, 1972,

it has clearly been stipulated that the 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 or service. Plea has been raised that even under Punjab Government National Emergency (Concessions) Rules, 1965, a person who has been released from the military service on compassionate grounds is not entitled to the concession.

6. The short and the only question agitated before us was that as to whether in the facts of the present case, the applicant is entitled to count his past military service for purposes of calculating his pension or not?

7. On behalf of the applicant, strong reliance is being placed on the decision of this Tribunal in the case of **S.S.DAHIYA** v. **UNION OF INDIA & ANR.**, OA NO.2419/2002, decided on 15th July, 2003. In the cited case, the facts were that Shri S.S.Dahiya in the wake of the emergency, joined the Armed Forces, i.e., the Indian Air Force on 6.4.1963. He continued to serve there till 1984. After his release, he had applied as ex-serviceman for service with the Union of India and was appointed as Technical Assistant. This Tribunal had disposed of the said application holding:

> "(i) the impugned order dated 27.5.2002 which reiterates the earlier OM issued by the respondents dated 17.4.2002 is quashed and set aside.
>
> (ii) the respondents are directed to pass necessary orders in respect of continuing applicant s period

> of war service during the National Emergency declared in the year 1962, for purposes of granting him increments and for pensionary benefits after his superannuation from service."

8. From the perusal of the aforesaid, it is clear that the cited decision is clearly distinguishable because therein Shri S.S.Dahiya has not been released from the Armed Forces at his own request on compassionate ground. This Tribunal had clearly directed that the claim of the applicant has to be considered for pensionary benefits in accordance with the relevant rules/circulars. As would be noticed hereinafter, the relevant rules do not help the applicant in the present case. Consequently, the rules which had not been taken note of by this Tribunal in the earlier decision, cannot be taken as precedent. Accordingly, we hold that the decision is distinguishable.

9. In that event, reliance is being placed on the decision of the Supreme Court in the case of **Dhan Singh & Ors.** v. **State of Haryana & Ors.** Civil Appeal No.1060/90 decided on 5.12.1990. The Supreme Court held:

> "On account of the external aggression by the Chinese forces in the Indian territory, the emergency was imposed by the President of India in 1962. In order to attract young men to join military service at that critical juncture, the Central Government and the State Governments issued different circulars and advertisements on the radio and in the press promising certain benefits to be given to those young men who join the military service.
>
> The young persons who have joined the military service during the national emergency and those who were already in service and due to exigencies of service had been compelled to serve during the

emergency from two distinct classes. The appellants and the petitioners who joined the army before the proclamation of emergency, had chosen the career voluntarily and their service during emergency was as a matter of course. They had no option or intention of joining the government service during the period of emergency as they were already serving in the army. The persons who enrolled or commissioned during the emergency, on the other hand, had on account of the call of the nation joined the army at that critical juncture of national emergency to save the motherland by taking a greater risk where danger to the life of a member of the armed forces was higher. They include persons who could have pursued their studies, acquired higher qualifications and joined a higher post and those who could have joined a higher post and those who could have joined the government service before attaining the maximum age prescribed and thereby gained seniority in the service. Forgoing all these benefits and avenues. they joined the army keeping in view the needs of the counter and assurances contained in conditions of service in executive instructions. The latter form a class by themselves and they cannot be equated to those who joined the army before the proclamation of the emergency. Benefits had been promised to such persons who heeded to the call of the nation at that critical juncture. Older man by joining the military service lost chance of joining other government service and when he joins such service on release from the army younger man had already occupied the post. To remove the hardship, the benefit of military service was sought to be given to those young persons who were enrolled/commissioned during the period of emergency forgoing their job opportunities. The differentia is, therefore, intelligible and has a direct nexus to the objects sought to be achieved. The petitioners cannot, therefore, challenge the rule as discriminatory or arbitrary. Such of those appellants and the petitioners who have joined the army before the proclamation of the emergency are not. therefore. entitled to the benefit of military service as per the Emergency Concessions Rules."

(Emphasis supplied)

10. This decision had been pronounced by the Supreme Court under the Punjab Government National Emergency (Concession) Rules, 1965. They would be

applicable to the areas to which the said Rules are applied. Admittedly, they do not apply to Union Territory of Delhi. Therefore, the cited decision also will have little role to play in the facts before us.

11. Reverting back to the present case, the record reveals that the applicant after serving in the Armed Force for six years, before fulfilling the conditions of his service, at his own request was released on extreme compassionate grounds. Therefore, it is not one of those cases where a person had served the Armed Forces in the wake of the emergency that had been proclaimed and had continued to serve as such. The service rendered was not pensionable because he has not yet been enrolled.

12. Sub-Rule (2) to Rule 14 of the CCS (Pension) Rules, 1972 reads:

> "(2) For the purposes of sub-rule (1), the expression "Service" means service under the Government and paid by that Government from the Consolidated Fund of India or a Local Fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government."

13. Once the applicant had not earned the pensionable service, it is patent that he did not fulfil the necessary conditions.

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14. Not only that, rule 19 of the CCS (Pension) Rules, 1972 specifically prescribes that an option has to be exercised within one year of being re-employed in civil service. The relevant portion of Sub-Rule (1) to Rule 19 reads:

> "(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 after attaining the age of eighteen years, 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-
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> (i) the pension already drawn, and
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> (ii) the value received for the commutation of a part of the military pension, and
>
> (iii) the amount of [retirement gratuity] including service gratuity, if any."

15. This clearly shows that in the present case, no option had been exercised within one year and as there is not even an averment in this regard, question of other conditions being so satisfied will not arise.

16. It is patent from the Government of India s decision dated 31.5.1988, which is not challenged, that the option necessarily, if any, had to be exercised within one year. The only conclusion, therefore, possible would be that in the facts of the present case, applicant cannot claim the benefit of the said service for purposes of the pension as

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claimed by him. more so when he was released from the Indian Army at his own request. on compassionate grounds.

17. No other arguments have been advanced.

18. For these reasons. OA being without merit must fails and is dismissed.

(S.A.Singh)
Member (A)

(V.S. Aggarwal)
Chairman

/NSN/