
(2018) 07 UK CK 0095
In the Uttarakhand High Court
Case No : Special Appeal No. 428 of 2018

Central Bank of India and others

APPELLANT

Vs

Virender Kumar Suri

RESPONDENT

Date of Decision : 18-07-2018

Acts Referred:

Central Civil Service (Pension) Rule, 1972 — Rule 19

Citation : (2018) 07 UK CK 0095

Hon'ble Judges : K.M. JOSEPH, C.J;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Mahesh C. Pant, P.S. Rawat

Final Decision : Allowed

Judgement

K.M. JOSEPH, C.J. (Oral)

SHARAD KUMAR SHARMA, J.

1. Appellants are the respondents in the writ petition. The writ petitioner sought to quash order dated 22.01.2015 (Annexure No. 9 to the writ petition),

by which his request to count the period of Military Service rendered by him as qualifying service for counting pension was rejected. He also sought to

count the Military Service as provided under Rule 19 of the Central Civil Service (Pension) Rule 1972 read with Regulation 56 of the Bank Employees

Pension Regulations, 1995.

The following is the judgment rendered by the learned Single Judge:

â??Mr. Pooran Singh Rawat, Advocate for the petitioner.

Mr. Mahesh Chandra Pant, Advocate for the respondent.

The petitioner is the Ex-serviceman. He was enrolled in Air Force on 14.11.1964. He was discharged on 15.07.1968. Thereafter, he applied for job in

the respondent-Bank. He was appointed in respondent-bank as clerk. However, the services rendered by the petitioner in Air Force have not been counted as qualifying service.

The attention of the court has been drawn to regulation 24 of the Central Bank of India Employees Pension Regulation, 1995, quoted in letter dated

22.01.2015 (annexure-9) which reads as under:-

â??24. Military Service - An employee who had rendered military service before appointment in the Bank shall continue to draw the military pension,

if any, and military service rendered by the employee shall not count as qualifying service for pensionâ??.

It is evident from plain language of the Regulation 24 that if an employee had rendered military service before appointment in the Bank and drawing

the pension of that eventuality military service rendered shall not be counted as qualifying service for pension.

In the present case, the petitioner has neither claimed nor paid any pension by the Air Force, thus, his period which is rendered in the Air Force as per

Regulation 24 was required to be counted for pensionary benefits.

Air Force Authorities vide annexure No.2 have also categorically certified on 19.11.2012 that the petitioner has not been paid pension by the Air

Force.

Accordingly, the writ petition is allowed. Impugned annexure is quashed and set aside. The respondent-Bank is directed to count the services rendered

in the Air Force as qualifying service while determining the pension to be paid by the Central Bank.â??

2. We heard Mr. Mahesh C. Pant, learned counsel on behalf of the appellants and Mr. Pooran Singh Rawat, learned counsel on behalf of the writ

petitioner.

3. The learned Single Judge has proceeded to reason that since the writ petitioner is not drawing, in point of fact, any pension, Regulation 24 of the

Central Bank of India Employees Pension Regulation, 1995 (hereinafter referred to as the â??Regulationsâ?) entitled him to count the period of

Military Service as part of qualifying service for pension with the Bank. It is this, which is impugned in the appeal. As regards this, after hearing the

learned counsel for the parties, we are of the view that the judgment of the learned Single Judge cannot be sustained.

4. Regulation 24, in our view, is intended to convey the intention that an employee (meaning an employee of the Bank), who has rendered Military

Service before being appointed by the Bank, is enabled by Regulation 24 to continue to draw the military pension, the words, which follow are

significant and they are "if any" i.e. if he continues to draw military pension, then it provides that said period will not be included for determining

as period of service for banking pension, as benefit of said pension for pension purpose already stands available by grant of Military Pension.

Therefore, any Military pension, which he might be drawing, an employee of the Bank is entitled to continue to draw; he may or he may not be in the

receipt of military pension; he may be receiving it or he may not be receiving it.

5. The further provision, which is what the controversy is all about, is that the Military Service rendered by the employee is not to be counted as

qualifying service for pension. It is this portion of the Regulation, which stands against the writ petitioner. In our view, the latter part of the Regulation

makes it abundantly clear that the Military Service cannot be counted as qualifying service for the purposes of pension. It is this reasoning, which has

also been employed in the impugned order dated 22.01.2015 by the Bank. The reasoning of the learned Single Judge that because the writ petitioner is

not drawing any pension, as he has neither claimed nor being paid pension by the Air Force, the period is to be counted under Regulation 24 of the

Regulations, cannot be sustained as the said provision was dealing a situation, not granting a right of inclusion of the period. The Rule is unambiguous

and split into two parts, it only means that the person, who is employed after rendering service, is entitled to continue to draw his military pension and

the further part is that, that portion of the period, which he has spent in Military Service is not to be counted for the purpose of calculating pension to

be paid by the Bank. In such circumstances, the judgment of the learned Single Judge is liable to be set aside. However, Mr. P.S. Rawat, learned

counsel for the writ petitioner would draw our attention to Rule 19 of the Central Civil Services (Pension) Rules, 1972. It reads as follows:

"19. Counting of military service rendered before civil employment." "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 discharged from military service, in which case his further 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 communication of a part of military pension, and

(iii) the amount of retirement gratuity including service gratuity, 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-cum-retirement gratuity which may become payable to his family.

(5) When the 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.â??

6. Learned counsel for the writ petitioner further draws our attention to Regulation 56 of the Regulations. The same reads as follows:

â??56. Residuary provisions.â?" In case of doubt, in the matter of application of these regulations, regard may be had to the corresponding provisions of Central Civil Services Rules, 1972, or Central Civil Services (Commutation of Pension) Rules, 1981 applicable for Central Government employees with such exceptions and modifications as the Bank, with the previous sanction of the Central Government, may from time to time determine.â??

7. The contention of Mr. P.S. Rawat, learned counsel for the writ petitioner, therefore, is that having regard to Regulation 56 of the Regulations, which provides that in case of doubt, the Bank may refer to the corresponding provisions of Central Civil Service Rules, 1972 and the matter is to be processed accordingly, it is his case that Regulation 24 of the Regulations, which we have adverted to, is taken out of Rule 19 and it does not fully embody the said Rule, therefore, there is scope of doubt, and since Rule 19 contemplates, as we have noted, that in case pension is not being paid or if the military pensioner ceases to draw his pension and refund, the pension

already drawn, the employer is to count the Military Service as qualifying service. In fact, the judgment of the learned Single Judge would show that the writ petitioner has neither claimed pension nor is being paid pension.

8. In this regard, Mr. Mahesh C. Pant, learned counsel for the appellants would submit that actually the writ petitioner was not entitled to draw

pension, having regard to the short duration, for which he served in the Military, which is a little over three years. According to him, this is a matter,

where the appellants-Bank does not have any doubt.

9. We would think that we need not be detained, in our judgment, with the argument of the learned counsel for the writ petitioner in this regard.

However, we only wish to make it clear that this will not stand in the way of the Bank, if it considers it appropriate and if it is advised to do so, to

invoke Regulation 56 of the Regulations read with Rule 19 of the Rules.

10. Accordingly, the appeal will stand allowed; the judgment of the learned Single Judge will stand set aside and the writ petition will stand dismissed

subject to the observations, which we have made in our judgment. There will be no order as to cost.