

(2000) 03 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3671 of 1993 (R)

Ex-Captain Prem Kumar Malik

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-03-2000

Acts Referred:

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

Citation : (2000) 2 BLJR 1569

Hon'ble Judges : Sanat Kumar Chattopadhyaya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanat Kumar Chattopadhyaya, J.—In this writ application, the petitioner has prayed for a direction to the respondents concerned to grant pro-rata retirement benefits/pension on the ground that he served for more than sixteen years continuously. Further prayer has been made to quash Annexures 6 and 8 series, by which the said relief has been refused by the respondents.

2. The facts of the case may be stated briefly, which are as follows:

According to the petitioner, he joined as Gentleman Cadet in the Indian Military Academy in pre-commissioned training course and was subsequently appointed/commissioned in the Indian Army on 26th April, 1964. On 11th November, 1969, he assumed charge of Assistant Company Commander in the Special Frontier Force as a Class I Gazetted Officer. His period of employment from 2nd September to 11th November, 1969 was condoned and seniority refixed in the new department through a notification. While he was on lien with Special Frontier Force, he was granted short service commission with effect from 12th October, 1972, as he volunteered to rejoin Indian Army and was re-commissioned in the Army. He was sent back to the parent department in October 1974, on completion of two years contract in short service commission. The petitioner continued in the Special Frontier Force up to November, 1975 and on the basis of

no objection from Inspector-General/Special Frontier Force, he joined Central Industrial Security Force (hereinafter referred to as "CISF") as Inspector. He was posted as CISF at Heavy Engineering Corporation, Ranchi. The further case is that before getting his services transferred from Special Frontier Force to CISF, he has granted two days earned leave for 10th and 11th November, 1975 with permission to prefix 9th November being Sunday to avoid break in the service of Central Government. The petitioner joined and took charge on 12th November, 1975 in CISF under the Central Government and, as such, it is asserted that his service is deemed to be continued without break. He continued with the service of CISF till 30th April, 1980. Thereafter in May, 1980, he joined as Security Officer in the Marine Diesel Engine Plant/Garden Beach Ship Builders & Engineers Limited, which is a public sector undertaking under the Ministry of Defence. His case is that since the Garden Ship Builders & Engineers Limited is a public sector undertaking, his services in the Central Government can be deemed to have been concluded on 30th April, 1980, when he left the service of CISF and joined the service of the said Engineers Limited (hereinafter referred to as "GRSE"). The petitioner is still serving under GRSE, which, according to the petitioner a total period of service under the Central Government, is of about thirty years. The contention of the petitioner is that for calculation of the pro-rata retirement/pensioner benefits, his services may be counted less his service in public sector undertaking, but in that event also he has rendered more than 16 years direct service under the Central Government, for which the petitioner is entitled for the relief prayed for.

The petitioner made several representations but without any result. It is stated that the Ministry of Defence, Government of India, has already recommended his case by letter dated 3rd July, 1991, mentioning therein that the services of the petitioner may be counted towards civil pension on refund of the amount of rupees five thousand, which was paid to him by Indian Army as service gratuity and the petitioner expressed his willingness to refund the said amount. The said letter of the Defence Ministry is Annexure-4. However, the petitioner received letter from respondent No. 1 dated 10.9.1992, by which he was informed that his former Military service was not counted and service in CISF was also not confirmed. This letter is Annexure-5. The petitioner also received letter dated 4.1.1993, by which respondent No. 1 refused to accept his prayer on the ground that his services in CISF was not confirmed. This letter is Annexure-6 to the writ application. A further representation was made for reconsideration of his case but the same was also refused by letter dated 30.3.93 and 30.4.93, which are Annexures-8 and 8/1 to the writ application. Another letter was received from Cabinet Secretariat dated 27th September, 1993, which was addressed to the Assistant Director of Accounts, Special Frontier Force mentioned therein that there is also unpaid leave salary to the credit of the petitioner and no gratuity was paid to him. This letter is Annexure-10. The petitioner gave a legal notice to the respondents intimating his intention to take recourse to law. As no relief has been granted to the petitioner despite all the facts, he has moved before this

Court in the present writ application.

3. In the counter-affidavit respondent No. 1, Commandant of CISF Unit, HEC Ranchi, has taken stand that the case regarding counting of former Military service is regulated under the provisions contained in Rule 19 of CCS (Pension) Rules, 1972 and the case of the petitioner is not covered by the said Rule. According to him, the petitioner joined CISF on 12th November, 1975 and remain posted at HEC Ranchi up to 31st of March, 1980. He reported to 1st Reserve Battalion on 18.4.1980 on regular posting. He submitted his resignation voluntarily on 9.4.1980, which was accepted on 23rd April, 1980. Further contention is that CISF is not concerned about the fact that the petitioner has served in the Army and the point is as to whether his former Military service would be counted towards civil service or not. On perusal of the service record of the petitioner, it was noticed that the previous Military service was not counted towards civil service as he was not confirmed in CISF. It is asserted that minimum ten years of service is essential in CISF for entitlement of volunteer retirement benefits, whereas the petitioner served only for four years five months and eighteen days. It is also stated that the letter of the Ministry of Finance dated 8.4.1976 for grant of volunteer retirement benefits are only applicable to the permanent Central Government employees, permanently absorbed in the public sector undertaking with proper permission. Similarly, when the petitioner was paid gratuity amounting to Rs. 5,000/- (five thousand), he was not entitled to pro-rata pension. Denying the assertion of the petitioner that he was transferred from Army to CISF, it is contended that there is prescribed procedure for counting of former Military service of Ex-servicemen, which is contemplated under Rule 19 of CCS (Pension) Rules, 1972. On the other hand, it is asserted that the petitioner joined the CISF on 12.11.1975 in the capacity of Ex-serviceman and, as such, his former Military service was not counted towards the civil service because he was not confirmed in the CISF. Respondent No. 1 has further stated that while posted in CISF he reported to 1st Reserve Battalion on 18.4.1980 on regular posting and he submitted his resignation voluntarily, which was accepted and his name was struck off from CISF. Under these circumstances, it is said that the petitioner only served in CISF for four years and some months. There is also no record available that the petitioner applied for the post of Security Officer in GRSE through proper channel and his application was forwarded to the said organization by the CISF. According to the respondent, the CISF personnel are governed by the Central Civil Services Rules and not by the Defence Rules and, as such, petitioner's case is to be regulated under Rule 19 of CCS (Pension) Rules, 1972. The statement of the respondent that the petitioner left the services of CISF of his own has not been controverted, though in reply, it is stated that the petitioner left the services of CISF after talking proper permission and, as such, he was relieved. In this connection, he has annexed the certificate dated 28.5.80 as contained in Annexure-12.

4. On going through the averments made in the writ application, I find that the

petitioner has not annexed the relevant documents to substantiate his several claims. According to him, after completion of training in Indian Military Academy, Dehradun, he was commissioned/appointed in the India Army with effect from April 1964. However, no such document has been annexed to show that he was commissioned in Indian Army with effect from 26th April, 1964. On the other hand, the certificate contained in annexure-1 reveals that he was granted commission as a Second Lieutenant from 9th February, 1964. Similarly, the alleged notification of the Cabinet Secretariat, by which the petitioner's period of employment, from 2nd September to 11th November, 1969 was condoned and seniority was refixed has not been annexed. Though according to him on getting no objection from Inspector-General/Special Frontier Force, Cabinet Secretariat, he joined CISF but the said no objection certificate is also wanting. It is true that by Annexure-2 on application filed by the petitioner on 5th November, 1975, two days earned leave for 10th and 11th November, 1975 was granted but this does not mean that he was granted permission to prefix 9th November being Sunday, to avoid break in the service of Central Government. On the other hand, the petitioner has subsequently admitted that he resigned from CISE for joining to GRSE and the statement of the respondent that he joined CISE on 12.11.1975 in the capacity of Ex-serviceman has not been denied by the petitioner. On the other hand, his case is that even he served the CISF only for four years and some months, his previous Military service was to be counted towards civil pension.

5. The impugned order dated 4th January, 1993, as contained in Annexure-6 reveals that the case of the petitioner for grant of pro-rata retirement/pension benefits was examined in detail and it was found from the records that the petitioner was not confirmed in CISF in any rank and, as such, his claim was refused. The same has been reiterated by letter dated 30th March, 1993 and 30th April, 1993 as contained in Annexure-8 series.

6. Learned Counsel for the petitioner strongly relied on Annexure-4, the letter dated 3rd July, 1991, of the Government of India, Ministry of Defence, addressed to the Pay and Accounts Officer, Ministry of Home Affairs, New Delhi. This letter shows that the petitioner was paid rupees five thousand as terminal gratuity and it is also clarified that his military service can be counter towards civil pension subject to refund of the said amount. Paragraph-5 of the said letter reads thus:

5. Since the Officer got himself released from CISF prior to joining GRSE, a Public Sector Undertaking under the Ministry of Defence, you are requested to process his case for the grant of pensioner benefits for the service rendered by him in various Government Departments before joining GRSE. Ex. Capt. Malik is being requested vide endorsement to this letter to forward the earlier service particulars and other relevant papers to you.

7. One of the grievances of the petitioner is that in spite of this request made by the Under Secretary, Government of India, the authority concerned has not considered his case in accordance with law and by cryptic order has refused the

prayer of the petitioner by mentioning that as he was not confirmed in CISF in any rank he was not entitled for pro-rata pensioner benefits. Though the contesting respondent No. 1 has not stated anything about the letter as contained in Annexure-4 but averments made in paragraph-20 have been replied by tailing the stand that CISF personnel are governed by the Central Civil Services Rules.

Rule 19(1) of the Central Civil Services (Pension) Rules, inter alia, contemplates that "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 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....

(emphasis added).

8. It is not in controversy that the petitioner's service was not confirmed in CISF and that he received the gratuity from Military service. The fact that he joined CISF on 12.11.1975 and remain posted at HEC Ranchi since that date to 31.3.1980 and thereafter submitted his resignation and the same was subsequently accepted is also not in dispute. From CISF, it appears, he joined 1st Reserve Battalion on regular posting. In such circumstances, it cannot be said that the petitioner was entitled to get his services counted for the period during which he remained in service under CISF. It is not denied that for entitlement of pro-rata retirement benefits minimum ten years of service is essential, which admittedly the petitioner did not complete under CISF.

Considering the aforesaid facts, I am of the view that no relief can be granted to the petitioner in this writ application.

9. I find no merit in this writ application, which is, accordingly, dismissed.