(2009) 07 SHI CK 0001

In the High Court Of Himachal Pradesh

Hari Dutt Sharma APPELLANT

Vs

State of H.P. and Others RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Citation : (2009) 07 SHI CK 0001

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldip Chand, J.—The petitioner had filed Original Application No. 864 of 1997 in the H.P. Administrative Tribunal which was abolished vide Notification dated 8th July, 2008. The cases of the erstwhile Tribunal were transferred to this Court in view of the Himachal Pradesh Administrative Tribunal (transfer of decided and pending cases and applications) Act, 2008, on transfer, Original Application No. 864 of 1997 was registered as CWP(T) No. 4320 of 2008 in this Court.

2. The petitioner has filed the present petition in which he has mainly prayed the following reliefs:1

i) The respondent -Corporation may kindly be directed to count the service of the applicant rendered in Indian Navy (Ministry of Defence, Government of India) for the purpose of computing quantum of retrial benefits.

ii) To count the past service rendered in Indian Navy (Ministry of Defence, Government of India) for the purpose of payment of gratuity in accordance with law.

iii) That the respondent -Corporation may further be directed to give all the consequential benefits and the release of arrears thereof along with interest till the date of payment.

iv) That the applicant may be considered for the appropriate compensation and damages for the acts of the respondents for mental agony and torture undergone during the period of deprivation of the rights as admissible to him.

3. The case of the petitioner is that he served the Indian Navy from 6.7.1973 to 31.7.1983 as Leading Sea Man. The petitioner after having served Indian Navy got himself registered in the Regional Employment Exchange, Shimla for civil services. On account of requisition having been sent by respondent No. 2, the State Selection Committee and Sub-Regional Employment Officer (Ex-Servicemen Cell) recommended the name of the petitioner for the post of Junior Scale Stenographer. The petitioner was ultimately appointed as Junior Scale Stenographer vide memo dated 11.3.1985, Annexure A-3. The petitioner joined on 25.3.1985 and continued to serve respondent No. 2 till 16.8.1995 on which date he was retired under the Voluntary Retirement Scheme (for short ''VRS'').

4. The further grievance of the petitioner is that he was given benefit of 10 increments on account of ten years service rendered by him in Indian Navy which is clear from office order dated 2.11.1985, Annexure A-5. The petitioner opted on 9.5.1994 vide Annexure A-6 for retirement under VRS w.e.f. 31.3. 1995. In Annexure A-6, he made it clear that the petitioner be given the benefit of ten years service which he had rendered in the Indian Navy for calculating the retrial benefits. The petitioner made another representation dated 27.3.1995, Annexure A-8. The respondent No. 2 ultimately issued letter dated 25.7.1995, Annexure A-1 informing the petitioner that as per clarification received from the Government of Himachal Pradesh the past services rendered by the petitioner in the Indian Navy cannot be taken into account for the purpose of computing ex-gratia amount under VRS. The petitioner was given the retrial benefits as mentioned in letter dated 16.8.1995, Annexure A-2.

5. The respondents have contested the petition by filing reply. It was submitted that petitioner had applied for voluntary retirement with the condition that he may be given 20 years service benefit including 10 years of defence service. But according to clarification as contained in Ministry of Industry, Department of Public Enterprises to the Government of India Office Memorandum dated 29.5.1992, Annexure R-1 when one employee moves from one enterprise to another enterprise with the consent of management of both the Public Sector Enterprises and the lending organization has liquidated its liability towards CPF, Gratuity, Earned Leave, Half Pay Leave by making lumpsum payment to the borrowing organization in respect of the amount due to the concerned employee for the service rendered in the lending organization and in terms of various instructions only in those conditions, the service rendered in the previous organization would be taken into account for the purposes of determination of ex-gratia. Therefore, the government service would not be taken into account by the Public Sector Enterprises while working out the ex-gratia payment of an employee who subsequently opts for voluntary retirement under the scheme formulated by Public Sector Enterprises. The memorandum dated 29.5.1992, Annexure R-1 was silent about the services rendered by an employee in Navy/ Army. The case of the petitioner was referred to State Government for

clarification. It was clarified by the Government that past service rendered by the petitioner in the Indian Navy, Ministry of Defence , Government of India cannot be taken into account for purpose of calculating ex-gratia amount under VRS. The petitioner was accordingly informed vide letter dated 23.3.1995, Annexure R-5. The petitioner made representation to the Financial Commissionercum-Secretary (Industries) to the Govt. of Himachal Pradesh who again sent clarification vide letter dated 7.7.1995, Annexure R-9 that benefit of Indian Navy service cannot be given to the petitioner for counting the ex-gratia amount. The petitioner was clearly informed vide letter dated 26.7.1995, Annexure R-10 that benefit of Indian Navy service cannot be given to him for the purpose of ex-gratia amount. The petitioner thereafter gave fresh unconditional option dated 27.7.1995, Annexure R-11, which was accepted on 29.7.1995 vide Annexure A-4 and petitioner was accordingly retired under VRS w.e.f. 16.8.1995. The respondents have denied the claim of the petitioner.

6. Heard and perused the record. The learned Counsel for the petitioner has submitted that there is no denial of the fact that the petitioner had served in Indian Navy for 10 years which is clear from office order dated 2.11.1995, Annexure A-5. In the petition, the petitioner has sought direction to respondent No. 2 to count the service of the petitioner rendered in Indian Navy for purpose of calculation of retrial benefits. The grievance of the petitioner is with respect to payment of ex-gratia to him after counting his 10 years service only in respondent No. 2 - Corporation and not 20 years service including 10 years service rendered in the Indian Navy. The petitioner has not placed on record the copy of VRS. The petitioner as well as respondents have placed on record O.M. dated 29.5.1992 which is clarification on VRS and not VRS itself.

7. The petitioner gave option under VRS vide letter dated 9.5.1994, Annexure A-6. In Annexure A-6, the petitioner had mentioned that he had completed 20 years of service on 25.3.1995, he may be provided 20 years of service benefit including 10 years of defence service and be relieved on 31.3.1995 only if 20 years benefit is given. The case of the petitioner was referred to Financial Commissioner-cum-Secretary (Industries) to the Govt. of Himachal Pradesh for clarification vide letter dated 31.10.1994, Annexure R-2 with reminder dated 22.11.1994, Annexure R-3. The clarification from Financial Commissioner-cum-Secretary (Industreis) to the Govt. of Himachal Pradesh was received vide letter dated 10.1.1995, Annexure R-4. It was clarified in Annexure R-4 that benefit of service rendered by the petitioner in Indian Navy cannot be taken into account for the purpose of computing the ex-gratia amount under VRS. The General Manager of the Corporation vide letter dated 23.3.1995 Annexure R-5 informed the petitioner the clarification received from the Government. In light of clarification, the petitioner was asked to give fresh option, if he so desired. The petitioner made a representation dated 27.3.1995, Annexure A-8 to Financial Commissioner-cum-Secretary (Industries) to the Govt. of H.P., who vide letter dated 7.7.1995, Annexure R-9 again clarified that service of petitioner rendered in Indian Navy cannot be taken into account for counting ex-gratia amount under

VRS. The petitioner was informed the clarification of the Financial Commissioner vide letter dated 26.7.1995, Annexure R-10. The petitioner was also informed that the option given by him vide letter dated 9.5.1994 Annexure A-6 was conditional and, therefore, same cannot be accepted.

8. The petitioner vide letter dated 27.7.1995 Annexure R11 again gave his fresh option for retirement under VRS along with his dues w.e.f. 31.7.1995 or any other date. The request of the petitioner for retirement under VRS was accepted vide office order dated 29.7.1995, Annexure A-4 and he was relieved from his duties vide letter dated 16.8.1995, Annexure A-2. The petitioner has not placed on record VRS to show what were the terms and conditions of the VRS under which the petitioner was to be retired. The consistent stand of the respondents was that petitioner is not entitled to service which he rendered with the Indian Navy prior to his appointment in the respondent No. 2 - Corporation. The petitioner was conveyed the decisions taken by the Government from time to time that he was not entitled to ex-gratia amount on account of service rendered by him in Indian Navy for seeking retirement under VRS. The option of the petitioner for retirement vide letter dated 9.5.1994, Annexure A-6 was found to be conditional and it was rejected. The petitioner knowing fully well the stand of the respondents that he cannot be given the benefit of payment of ex-gratia under VRS on the service rendered by him in Indian Navy submitted his unconditional option dated 27.7.1995 for retirement under VRS which was ultimately accepted vide Office Order dated 29.7.1995, Annexure A-4 and he was relieved vide letter dated 16.8.1995 Annexure A-2. It cannot be said that the petitioner was not told by respondents that he would not be entitled to payment of ex-gratia amount on the service rendered by him in Indian Navy in case he wants retirement under VRS.

9. The petitioner has failed to point out any provision of VRS under which he is entitled to counting of 10 years service which he rendered with the Indian Navy prior to joining the respondent No. 2 - Corporation for payment of ex-gratia. The petitioner has not prayed for quashing of various decisions noticed above in which his case for counting his Navy service for payment of ex-gratia was rejected. There is no merit in the petition which is liable to be dismissed.

10. As a result of the above discussion, the petition fails and is accordingly dismissed with no order as to costs.