

(2015) 07 JH CK 0044
In the Jharkhand High Court
Case No : Writ Petition (S) No. 643 of 2013

Kameshwar Mandal

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Citation : (2015) 07 JH CK 0044

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Deepak Kr. Prasad, for the Appellant

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.

1. Heard learned counsel for the parties.
2. The petitioner had earlier also approached this Court in W.P. (S) No. 6112 of 2011 with a prayer to give him seniority by counting the military service rendered by him prior to his appointment as Correspondence Clerk in the office of Executive Engineer, Works Division, Bhagalpur on 12.05.1977 relying upon Rule 87(1)(a) and 2(a) of the Jharkhand Pension Rule, 2001. He also sought consequential benefits after counting the military service in the matters of 1st Time Bound Promotion and 2nd ACP. He has also prayed that his representation preferred before the concerned respondent for the aforesaid relief be directed to be disposed of.
3. The petitioner was said to be in the military service for a period from 26.10.1967 to 17.04.1977 before he joined the Civil post pursuant to his appointment on 12.05.1977. The respondent- Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Rural Works Department, Government of Jharkhand has rejected his representation vide impugned order dated 01.06.2012, Annexure-4. The petitioner has challenged the said order in the

present writ petition while reiterating the prayer made in the earlier writ petition. For Considering the claim of petitioner relating to counting of military service after his re-employment on the present post, it is proper to refer to the Rule 87 under Section (III) of Chapter-V, which deals with service qualifying for pension. Section III thereof is in respect of counting military service toward civil pension. For better appreciation, provisions of Rule 87 is quoted hereinunder:-

"87. A Government servant who is re-employed in Civil Service or post before attaining the age of superannuation and who, before such re-employment, had rendered regular military service after attaining the age of eighteen years, may, on his confirmation in a Civil service or post, opt, either:

(1)(a) to continue to draw the military pension or retain gratuity received on discharge from military service in which case his former military service shall not count as qualifying service; or

(b) to refund the pension or gratuity and count the previous military service as qualifying service in which case the services 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.

(2)(a) The option under sub-rule (1) shall be exercised within three months of the date of issue of the order of substantive appointments to a Civil service or post on re-employment or if the Government servant is on leave on that day, within three months of his return from leave, whichever is latter.

(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 or gratuity received in respect of his earlier military service, in monthly installment not exceeding thirty-six in number, the first installment 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 whole amount has been refunded.

(4) In the case of a Government servant who, having elected to refund the pension, 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 an order is passed under this rule allowing previous regular 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 service."

4. Perusal of the said Rule indicates that the Government Servant, who is re-

employed in Civil Service or post before attaining the age of superannuation and who had rendered regular military service after attaining the age of eighteen years may on his confirmation in a Civil service or post, opt, either: (1)(a) to continue to draw the military pension or retain gratuity received on discharge from military service in which case his former military service shall not be counted as qualifying service; or (b) to refund the pension or gratuity of military service for counting the previous military service as qualifying service on his re-employment on civil post.

5. This provision, however, is hedged with the condition of sub-Rule 2(a) of the Rule 87, which provides that the option under sub-rule (1) shall be exercised within three months of the date of issuance of the order of substantive appointments to a Civil service or post on re-employment or if the Government servant is on leave on that day, within three months of his return from leave, whichever is later. Sub-clause (b) further provides that if no option is exercised within the period referred to under clause (a), the Government servant shall be deemed to have opted for clause (a) of sub-rule (1), that means he would be deemed to continue to draw the military pension or gratuity on discharge of military service.

6. In the facts of the present case, the petitioner has not been able to show that he had exercised his option within three months period from the date of issuance of the order of substantive appointment i.e. on 12.05.1977. Sub-clause 2(a) appears to be mandatory in nature in view of the expression used therein "shall" as the consequences of non exercise of such option is also indicated in sub-Rule 2(b). Therefore, the exercise of option becomes a mandatory requirement for availing of the military service as qualifying service on re-employment on a civil post. As noticed hereinabove, counsel for the petitioner has not been able to show any document on record that such option was ever exercised by the petitioner. The reasoned order though does not deal with the provisions of Rule 87 on that point but the petitioner does not seem to have produced any documents before the respondent No. 3 either to show that he had exercised his option. If the petitioner had not exercised such option, the question relating to counting of his military service on his re-employment also does not arise. Therefore, no claim for Time Bound Promotion or 2nd ACP based upon such claim of qualifying service of military service could be extended to the petitioner.

7. Learned counsel for the petitioner informs that otherwise counting the period of his service on his re-employment on 12.05.1977, he has got the relevant ACP benefits.

8. Be that as it may, the petitioner has failed to make out any grounds for the grant of the reliefs as prayed for in the writ petition Accordingly, the writ petition is dismissed as no interference is required in the impugned order.