

(2009) 01 RAJ CK 0043
In the Rajasthan High Court

Kan Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 2 RLW 1544 : (2009) 4 SLR 400

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.R. Panwar, J.—By the instant writ petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 15.11.2003 (Annex. 9) and order dated 1.5.2006 (Annex. 13) and a direction to the respondents to count service rendered by the petitioner in Indian Air Force i.e. 7 years and 344 days for the purpose of computation of period for grant of pension with the State services rendered by him as also a direction to the respondents to revise the pension of the petitioner w.e.f. 31.12.2002 with all consequential benefits.

2. Briefly stated that facts of the case to the extent they are relevant and necessary for the decision of this writ petition are that the petitioner joined the Indian Air Force on 16th May, 1964 and served the Indian Air Force as a regular employee (combatant member) for 7 years and 344 days as an Airman (Air Craftsman), however, he was discharged from the Indian Air Force on medical ground on 23.4.1972. The petitioner was holding the rank of Air Craft Man-I at the time of his discharge from service on medical ground. The petitioner was neither paid bonus nor gratuity at the time of his discharge but was allowed disability pension of Rs. 71/- per month subject to review Medical Board. However, on resurvey by the Re-survey Medical Board held at Military Hospital, Jodhpur vide Annex. 3, the Medical Board assessed the disability of the petitioner less than 20% for life and therefore, the petitioner was held to be not entitled for the disability pension. The petitioner was appointed by the District Collector, Pali

on the post of L.D.C. on 6.4.1973 vide Annex. 4 on being sponsored by the District Employment Exchange on temporary basis against the Ex-serviceman quota, however, subsequently the petitioner's services came to be confirmed w.e.f. 21.1.1978 by order dated 27.8.1985. After having rendered 29 years 8 months and 20 days service with the State, the petitioner came to be superannuated by order dated 2.8.2002 Annex. 7. While in service, the petitioner approached the respondent employer for counting the service rendered by him in the Indian Air Force for the purpose of pension but the respondents declined to count the services rendered by him in the Indian Air Force by the orders impugned. Hence this writ petition.

3. A reply to the writ petition has been filed by the respondent State stating therein that the Rajasthan Civil Services (Pension) Rules, 1996 (for short "the Rules of 1996" hereinafter) came into force and the Rule 19 of the Rules of 1996 provides for counting of military service rendered before civil employment.

4. Rule 19 of the Rules of 1996 reads as under:

19. Counting of military service rendered before civil employment.

(1)(i) A Government servant who is re-employed in a civil service or post before attaining the age of superannuation and who, before such reemployment had rendered military service after the age of eighteen years which is pensionable under military Rules but which terminates before a pension has been earned in respect of it, may count such previous military service as qualifying service, at his option to be exercised within three months of date of joining civil service or post, subject to the condition that-

(a) he shall be required to refund the bonus and/or gratuity received in respect of his earlier military service, in monthly instalments not exceeding thirty six in number, alongwith interest @ 6% per annum from the date of his joining service under the State Government, the first instalment beginning from 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.

(ii) In the case of a Government servant, who, having elected to refund the bonus and/or gratuity, dies before the entire amount is refunded, the un-refunded amount of bonus and/or gratuity shall be adjusted against the death gratuity which may become payable to the family.

(iii) When an 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 service provided it does not exceed two years.

(2) Service pensionable under military Rules which does not terminate before a

pension has been earned in respect of it shall not be allowed to count for pension under Civil Rules.

5. According to the respondents, Rule 19 of the Rules of 1996 requires a Govt. servant to exercise his option for counting the services rendered by him in the Army, Air Force or Navy within a period of three months of the date of joining civil service.

6. I have heard learned Counsel for the petitioner and perused the material on record including reply and the documents annexed therewith by the respondents.

7. It is contended by learned Counsel for the petitioner that the petitioner came to re-employed by the respondent District Collector, Pali on 6.4.1973 and at that relevant time, Pension Rules of 1996 were not in force and the governing Rule for counting the services rendered by the Govt, servant in the military services was Rule 175 of the Rajasthan Service Rules, 1951 (for short "the Rules of 1951" hereinafter) and therefore, according to the Counsel for the petitioner, Pension Rules of 1996 has no application in the case of the petitioner. According to learned Counsel for the petitioner, Rule 175 of the Rules of 1951 do not provide stipulation of period of three months for exercising option to opt for counting of military services for the purpose of pension.

8. Rule 175 of the Rules of 1951 read as under:

175. Counting of Military service for pension under Civil Rules-

(a) Service rendered after attaining the age of 20 years which is pensionable under military Rules but which is pensionable under military Rules but which terminates before a pension has been earned in respect of it may, at the discretion of Government be allowed to count, when followed by service qualifying for pension under Civil Rules as part of such service, provided that any bonus or gratuity received in lieu of pension on or since, discharge from Military Service shall be refunded in such number of monthly Instalments, not normally exceeding 36 and beginning from such date, as in each case Government may decide.

(b) Service pensionable under military Rules which does not terminate before a pension has been earned in respect of it shall not be allowed to count for pension under Civil Rules....

9. According to the learned Counsel for the petitioner, Rule 175 of the Rules of 1951 in clear terms provides that the services rendered after attaining the age of 20 years which is pensionable under military Rules but which terminates before a pension has been earned in respect of it, may, at the discretion of Government be allowed to count, when followed by service qualifying for pension under Civil Rules as part of such service, provided that any bonus or gratuity received in lieu of pension on, or since, discharge from Military service shall be refunded in such number of monthly instalments not normally exceeding 36 and beginning from such date, as in each case Govt. may decide. According to learned Counsel for

the petitioner, the petitioner has neither received bonus nor gratuity In lieu of pension and therefore, the question of refund of such amount does not arise which is also clear from communication of Air Force Record Office, New Delhi dated 12.9.2005 Annex. 10. The communication Annex. 10 in clear terms provides that as per the existing policy, the pensionable service in the Indian Air Force is 15 years and any person who has rendered less than 15 years of service, is not entitled for regular pension, however, the same services can be counted towards civil service pension. It has also been clarified that the petitioner has not been paid any Service Gratuity/DCRG (Death Cum Retirement Gratuity) and therefore, the question of refund does not arise. Thus, the fact remains that the petitioner fulfills the requisites as provided under Rule 175 of the Rules of 1951 for counting Air Force Service rendered by him before Civil employment for the purpose of pension under the Pension Rules and so far as the application of Rule 19 of the Rules of 1996 is concerned, in my view, the Rule came into force with effect from 1.10.1996 whereas the petitioner was appointed by the District Collector, Pali as LDC on 6.4.1973 and therefore, the governing Rule on the date of appointment of the petitioner is Rule 175 of the Rules of 1951. Even otherwise, Rule 19(1)(i) of the Rules of 1996 provides exercise of option within three months of the date of joining civil services for counting of military services rendered by a Govt. servant. Meaning thereby that such an option is to be exercised after coming into force of the Rules of 1996 i.e. w.e.f. 1.10.1996 and then within three months of joining civil service, whereas in the instant case, the petitioner joined the civil services way back in the year 1973 and therefore, at the relevant time, Rule 175 of the Rules of 1951 was in force and there is no time limit prescribed for exercising the option under the Rules of 1951. In this view of the matter, the orders impugned cannot sustain and are liable to be quashed.

10. Consequently the writ petition is allowed. The orders impugned Annex. 9 date 15.11.2003 and Annex. 13 dated 1.5.2006 are hereby quashed and the respondents are directed to count military services rendered by the petitioner i.e. 7 years and 344 days services rendered in the Indian Air Force, for the purpose of pension under the Pension Rules and revise the pension and pay all the consequential benefits to him. This exercise to be completed within three months from producing the certified copy of this order. There shall be no order as to costs.