
(2020) 10 SHI CK 0286
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 1220 Of 2020

Kesar Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 06-10-2020

Acts Referred:

Demobilized Armed Forces Personnel (Reservation Of Vacancies In Himachal State Non Technical Services) Rules, 1972 — Rule 1, 5(1)
Central Civil Services (Pension) Rules, 1972 — Rule 19, 19(3)

Citation : (2020) 10 SHI CK 0286

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Anup Rattan, Sudhir Bhatnagar, Arvind Sharma, Kunal Thakur

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. After having rendered service in Indian Army for more than 18 years, petitioner, after his retirement, from Indian Army, came to be appointed as a Forest Guard in the Forest Department in the pay scale of Rs.3330-6200 against post reserved for ex-serviceman under Rule 5(1) of the Demobilized Armed Forces Personnel (Reservation of Vacancies in Himachal State Non-technical Services) Rules, 1972 (hereinafter, 'Rules') with effect from 6.7.2000. It is not in dispute that the respondents having taken note of 18 years of approved military service rendered by the petitioner prior to his engagement as a Forest Guard in the Forest Department, extended him benefit of the Army service while raising his pay from Rs.3330 to 6200 with effect from 6.7.2000. Having rendered more than 9 years 7 months and 22 days service in the Forest Department, petitioner superannuated from service on and with effect from 28.2.2010, but since he did not complete the requisite qualifying service required for pension under CCS (Pension) Rules, i.e. ten years, his case for pension was rejected. Petitioner by way of the representation claimed that service of 2 years, 5 months and 12 days

rendered by him in the Defence Security Corps after his discharge from Army, is required to be taken into consideration while determining qualifying service for the purpose of pension under CCS (Pension) Rules, 1972, however, representations filed by the petitioner were not paid any heed by the respondents, as such, he was compelled to approach this Court by way of CWP No. 6439 of 2011, which came to be disposed on 20.3.2015 with a direction to the respondents to decide the representation of the petitioner for counting period of six months towards his qualifying service in light of the averments contained in the writ petition having been filed by him. Pursuant to aforesaid direction issued by this Court, respondents vide order dated 3.3.2018 though considered the representation, but rejected the claim of the petitioner (Annexure A-2). In the aforesaid background, petitioner has approached this Court in the instant proceedings, praying therein for following main reliefs:

"i) That the order dated 3.3.2018 passed by the respondents may very kindly be quashed and set aside.

ii) That the respondents be directed to count service of two years five months and twelve days rendered by the petitioner in Defence Security Corp for the purpose of pension and gratuity as per Rule 19(3) and Government of India decision applicable to state as per CCS Pension Rules, 1972.

iii) That the respondents be directed to grant and forward the case of pension to appropriate authority for grant of pension to the petitioner by counting two year five months and two days service rendered by him in Defence Security Corp with the service rendered in the Forest Department for nine years seven months and twenty two days and prepare pension case of the petitioner from the date of his retirement, in the Forest Department with all consequential benefits."

2. Having heard learned counsel for the parties and perused the material available on record, this Court finds that there is no dispute inter se parties that the petitioner after his discharge from Army, also served with Defence Security Corps for two years five months and twelve days, whereafter, he came to be appointed as Forest Guard in the Department of Forests. Similarly, there is no dispute that benefit of 18 years approved military service rendered by the petitioner prior to his engagement as Forest Guard, stands accorded in the case of the petitioner, because on the basis of same, pay of the petitioner was raised from Rs.3330 to Rs.6200/- with effect from 6.7.2000, as has been taken note herein above. But since the petitioner superannuated with effect from 28.2.2010, after having rendered 9 years, 7 months and 22 days, service in the Forests Department, his case for pension has not been processed on the ground that he did not render requisite period for pension under CCS (Pension) Rules, 1972.

3. It is not in dispute inter se parties that the petitioner has rendered 9 years, two months and seven days service in the Forest Department but the question which requires adjudication in the case at hand is whether services rendered by the petitioner for the period of two years, five months and 12 days, in the

Defence Security Corps prior to his engagement as Forest Guard is required to be taken into consideration, while determining/computing qualifying service of the petitioner for the purpose of pension under CCS (Pension) Rules, 1972, which admittedly provides that the person claiming pension should have completed 10 years qualifying service.

4. Learned Additional Advocate General, while inviting attention of this Court to the reply filed by respondents Nos. 1 and 2 contends that since benefit of 18 years approved military service stands already granted to the petitioner, while enhancing his pay from Rs.3330 to 6200/-, no further benefit, if any, can be claimed by the petitioner on the basis of service, if any, rendered by him in Army prior to his posting as Forest Guard. Besides above, Mr. Arvind Sharma, learned Additional Advocate General contends that since service rendered by the petitioner in Defence Security Corps is less than 5 years, he cannot be treated as an ex-serviceman for the purpose of counting army service as per rule 1 of Booklet on Service Matters (Annexure R-2).

5. However, having perused averments contained in the petition vis-à-vis reply filed by the respondents as well as CCS (Pension) Rules, 1972, this Court is not in agreement with aforesaid submission made by learned Additional Advocate General, being contrary to provisions of law. It is not the case of the respondents that the petitioner once having availed benefit of approved military service cannot claim benefit of service rendered by him with Defence Security Corps, which is otherwise an independent service. Petitioner otherwise stands declared as an ex-serviceman on account of his having rendered 18 years service in the Army and probably his subsequent selection in the Defence Security Corps was also on account of his status of ex-serviceman, as such, there is no force in the submission of learned Advocate General that since the petitioner has served for less than five years in Defence Security Corps, he cannot be considered an ex-serviceman, for the purpose of counting army service. Otherwise also, petitioner has not claimed any benefit of service rendered by him in Army for computing qualifying service for the purpose of pension, rather, his precise case is that subsequent service rendered by him for two years, 5 months and 12 days with Defence Security Corps after his discharge from Army, is required to be taken into consideration while determining his qualifying service for the purpose of pension.

6. Rule 19 of the CCS (Pension) Rules, 1972 provides for counting of military service rendered before civil appointment. Rule 19 of CCS (Pension) Rules, 1972 provides as under:

19. Counting of military service rendered before civil employment

(1) 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, 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 discharge from military service, in which case his former 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 commutation of a part of military pension, and

(iii) the amount of 3[retirement gratuity] including service gratuity, if 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 1[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). 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 3[death gratuity] which may become payable to his family.

(5) When an order is passed under this rule allowing previous 1[] 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.

7. Clause (4) of Government of India's Decisions as compiled in CCS (Pension) Rules, 1972 provides as under:

"It has been decided that ex-Defence Security Corps personnel on their re-employment in any civil post will be permitted to count in full of the former service rendered by them in the Defence Security Corps for the purpose of pension and gratuity."

8. Aforesaid clause provides that ex-Defence Security Corps personnel on their re-employment in any civil post will be permitted to count in full of the former service rendered by them in the Defence Security Corps for the purpose of pension and gratuity and as such, prayer made in the instant petition deserves to be allowed.

9. Consequently, in view of above, present petition is allowed. Order dated 3.3.2018 (Annexure A-II) passed by respondents is quashed and set aside. Respondents are directed to grant benefit of service rendered by petitioner with Defence Security Corps for the purpose of counting the same towards qualifying service for the purpose of pension, in accordance with law and rules occupying the field.