

(2001) 08 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2533 of 1999

Khushbash Singh

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 03-08-2001

Acts Referred:

Citation : (2003) 2 SCT 904

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : V.B. Gupta, Advocates appearing for the Parties

Judgement

Tejinder Singh Doabia, J.—The petitioner submits that he had served Indian Navy from 15/10/1969 to 20/1/1976. He submits that he saw

action in the IndoPak War of 1971. He further submits that he was decorated with War Medals on account of the exemplary service rendered by

him. The further case of the petitioner is that he came to be appointed as Librarian in temporary capacity in Radio Kashmir, Jammu. An order to

this effect came to be passed on 25/02/1978. He was adjusted in the pay scale of Rs. 330650/-. The petitioner submits that after he was appointed

in the Radio Kashmir, which is looked after by the Ministry of Information and Broadcasting, New Delhi, he made a request that his service

rendered in Indian Navy be counted for giving service benefits in the Civil Employment. The petitioner submits that he was called upon to give his

option. For this reliance is being placed on annexure 'C'. The petitioner submits that as in this letter it was indicated that the petitioner is supposed

to give his option on his confirmation, he waited for this event to happen. When the petitioner was confirmed, he is said to have exercised his

option and also refunded DeathcumRetirement Gratuity given by Indian Navy along with interest. The requisite averments are made in paras 6 and

7 of the petition. The petitioner submits that he is entitled to get the benefits of the service rendered by him in the Indian Navy. If that be given to

him then he would be entitled to other consequential benefit on the basis of service so rendered by him. This according to him would give him

seniority over some other colleagues and thereafter he would be entitled to better promotional avenues. So far as counting of military service

rendered before civil employment, this is dealt with all the Central Civil Service Rules. For facility of reference, the rule is reproduced below :

19. Counting of military service rendered before civil employment.

(1) A Government servant who is reemployed 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

(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 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 of 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 date of reemployment 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 reemployment 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 for fixation of pay shall be set off against the amount of retirement gratuity and the commuted value of a pension and the balance, if any, shall be refunded to 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 reemployment, 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 subrule (1) shall along with such order require in writing the Government servant to exercise the option under that subrule 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).

(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 subrule (1).

(3)(a) A Government servant, who opts for clause (b) of subrule (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 death gratuity which may become payable to his family.

(5) When an order is passed under this rule allowance 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.

2. It is submitted that the petitioner has complied with the formalities which he was supposed to do. He was supposed to deposit the benefits

accrued to him in the military service. He submits that he has deposited the gratuity and interest. He submits that he is entitled to the benefit of subrule (5).

3. The petition stands admitted. Counter has not been filed. A plain reading of Rule 19 and the assertion made by the petition it becomes apparent

that the petitioner is entitled to get his service which he has rendered in the Indian Navy counted for service benefit in the civil employment. This

beneficial provision is meant for ExNaval employees is to be construed in a manner which confers benefit of them. As a matter of fact, on the plain

reading of Rule, the petitioner becomes entitled to claim what he is claiming. The petitioner having complied with the conditions stipulated in the

Rule is held entitled to the benefit of subrule (5). The petition is allowed. The consequential benefits would be given to him within a period of three

months from the date, copy of the order passed by this court is made available by the petitioner to the respondents.