

(2000) 08 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 15662 of 1996

Krishnan Nair

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 30-08-2000

Acts Referred:

Citation : (2000) 2 KLJ 815

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : K. Ramakumar, for the Appellant; T.C. Ulahannan (Govt. Pleader), for the Respondent

Final Decision : Dismissed

Judgement

C.S. Rajan

1. The petitioner was a re-employed military pensioner who retired from the service of the State Government as a Trade Instructor Grade-H. He retired from military service on 13.6 1980. He got re-employment on 27.10.1981. On superannuation he retired, on 2.6.1990. As per exhibit P1 the petitioner was informed that he was not eligible for pension since his State Government service is only less than 10 years. Thereafter the petitioner sent representations evidenced by Exhibits P3 and P4. Later by Exhibits P6 and P7 orders the petitioner was informed that the military service rendered by the petitioner will not count for pensionary benefits. The petitioner has produced Exhibit P2 G.O. wherein it was ordered that the Government of India employees who were permanently absorbed by the State Government are entitled to count their previous service for the purpose of pension. Therefore, according to the petitioner, he is entitled to get the civil pension counting the service in the military.. For that purpose the petitioner is relying on Rule 103 of Part III K.S.R. which is as follows:

Except as provided in Rules 101 and 102 an employee who having been

discharged with a pension is subsequently re-employed, may not count his new service for a separate pension. Pension if any is admissible only for the new service combined with the bid, the whole being counted as one service.

The petitioner's military pension has been refused while fixing the pay of the petitioner in the civil service.

2. In the counter affidavit filed by the second respondent the stand taken is as follows: The relevant rule applicable to military pensioners is Rule 8(c) of Part III K.S.R. The above rule reads as follows:

Ex-serviceman re-employed in civil service shall be allowed to count their service other than war service in the Armed Forces of India from 1st April, 1946 which is non-pensionable or pensionable under military rules but which terminated before a pension has been earned in respect of it for purpose of civil pension, in cases of retirement from civil service on or after, 14th November, 1966.

Provided that the bonus or gratuity if any received for the period of military service by the person concerned from the defence department is refunded to that department.

Provided also that the person concerned is not in receipt of any military pension in respect of his military service.

Fixation of pay in the civil service counting the period of military service is one thing and admissibility of the above service for pensionary benefits is another thing. The initial fixation of pay of the petitioner was done in the light of Rule 102 of Part III K.S.R. Rule 103 relied on by the petitioner is not applicable to his case.

3. According to Rule 8(c) of Part III K.S.R. Ex-servicemen re-employed in civil service shall be allowed to count their military service for purpose of civil pension. The Proviso says that the person concerned should not be in receipt of any military pension in respect of his military service. Rule 102 which the petitioner relies on deals with the reduction of pay in the case of reemployed military pensioners. According to Rule 103, except as provided in Rule 101 and 102 an employee who, having been discharged with a pension is subsequently re-employed, may not count his new service for a separate pension. According to me, it is Rule 8(c) that is applicable and not Rule 102 of Part III K.S.R. Rule 8(c) specifically says that a person who is in receipt of any military pension in respect of his military service is not entitled to get pension when he is re-employed and retired from civil service. Rule 102 deals with the reduction of pay. for the re-employed military person in accordance with the table shown below Rule 102.- Rule 103 also is specific to the effect that a subsequently re-employed person is not entitled to count his new service for a separate pension/ Therefore, I do not find any justification for accepting the case of the petitioner. The Original Petition is, therefore, devoid of any merit and is dismissed. The dismissal of this Original Petition will not stand in the way of the petitioner getting the ex-gratia pension under G.O. (P) No. 1851/ 99/Fin. dated 18.10.1999 as admitted in the counter

affidavit. If the above amount is admissible to the petitioner, the same should be paid to him within two months from the date of receipt of a copy of this judgment.