
(2015) 08 DEL CK 0333
In the Delhi High Court
Case No : W.P.(C) 6896/2013

Madan Mohan Tiwari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-08-2015

Acts Referred:

Citation : (2015) 08 DEL CK 0333

Hon'ble Judges : S. Ravindra Bhat and Deepa Sharma, JJ.

Bench : Division Bench

Advocate : Uday Prakash and Savindra Tripathi, Advocates, for the Appellant;
Ashwani Bhardwaj, CGSC, Kavindra Gill and Romil Pathak, Advocates, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The petitioner seeks a direction to the respondents to count the period between 26.12.1984 to 31.07.1990 - when he worked with the Indian Army, for the purposes of service benefits such as gratuity, qualifying service -- for the purposes of pension etc.

2. On being discharged from the Army on compassionate grounds, the petitioner was provided a service mark of "Superior Service" to the Indian Army during his service. He was subsequently selected by the Central Reserve Police Force (CRPF) which he joined on 14.04.1991 at a starting pay of Rs. 855/- per month. It is contended that the petitioner had opted for pay protection and for service benefits on the basis of his previous service in the Indian Army. Apparently, the petitioner's representations have been pending with the respondents since 1999. The petitioner relies upon the verification sought from the Indian Army by the CRPF and a report submitted in that regard in January, 1986 by the concerned division/unit of the Indian Army certifying that he was not drawing pension and the only service gratuity admissible to him was Rs. 5907/-. The report also stated that no gratuity which was refundable to the defence forces was drawn by him and that he was not a recipient of any form of pension - normal or disability.

The report also stated that the petitioner had participated in active operations in Bhutan and Sri Lanka; the latter for one year i.e. 1989-90. The petitioner contends that respondents' inaction in not reckoning or including superior military service prejudices him.

3. The CRPF relies on Rule 19 (1) of the CCS Pension Rules and states that the petitioner - upon his selection and appointment by the CRPF had to opt either to draw military pension or retain service gratuity on discharge in which event his military service was not counted as qualifying service or cease to draw his pension and refund the amount of retirement gratuity received including the amount of service gratuity, if any. In the latter event only, the CRPF contends, would the petitioner be entitled to count the previous period of military service. As is apparent from the factual narrative, there is no dispute that the petitioner had, in fact, rendered almost seven years of military service and had been discharged on an extreme compassionate ground. He had even participated in operation in Sri Lanka and Bhutan. It is also not in dispute that the petitioner received service gratuity of about Rs. 5907/-. The respondent's/CRPF's contention is that his option was not received within the time stipulated and that under these circumstances he is ineligible for pension.

4. Rule 19 (1) of CCS Pension Rules is extracted below:

"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 [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 [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."

5. The facts of this case would disclose that the petitioner did not receive any pension all this while. The only amount that he has received is Rs. 5907/- i.e. the service gratuity element. To deny reckoning the entire period of military service spent by him on the narrow interpretation that he did not opt within time or that he did not refund Rs. 5907/- would be in the opinion of the Court extremely oppressive.

6. In these circumstances, considering the entire perspective of facts, the petitioner shall refund the said amount of Rs. 5907/- with interest at 8.5 per cent per annum for the period between 01.05.1991 till date within a period of four weeks from today and immediately upon receipt of the said amount, the respondents/CRPF shall correct its records and reckon the period spent by the petitioner in military service i.e. between 26.12.1984 and 31.07.1990 for the purposes of all benefits i.e. qualifying service, for the purpose of fixation of pension, calculation of gratuity to be paid by the CRPF and other terminal benefits. The consequential steps in that regard shall be taken by the CRPF within six weeks of the receipt of the amount refunded by the petitioner.

7. The writ petition is allowed in the above terms.