
(2011) 07 SHI CK 0098
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 11842 of 2008

Paras Ram

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 19, 19(1), 19(2), 49

Citation : (2011) 07 SHI CK 0098

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayer:

That the Respondents be directed to consider the case of the applicant to grant the benefit of pension on account of period for which he has served with the Respondents by taking into account the period for which he has served in the Indian Army.

2. In reply, Respondents No. 1 to 3 have taken the following stand, vide paras 1 & 2 of the preliminary submissions:

1. That the claim filed by the applicant is hopelessly barred by limitation as he did not ever file any representation with respect to the claim during the period of his re-employment with the Respondents since January 9, 1989 to July 31, 1998 (i.e. the date of retirement of the applicant) and even thereafter till the date of filing of the present O.A. i.e. on April 3, 2005. Hence, the application filed is not at all maintainable being the same barred by limitation and as such, the same deserves to be dismissed straightway on this ground alone.

2. That the case of the applicant, otherwise also, is not covered under the CCS (Pension) Rules, 1972, which provide that a re-employed Military Pensioner in civil services should exercise option under Rule 19 (1) within one year from the date of his re-employment for the purpose of considering and combining his military service with the civil services for making ten years complete or more

service to unable such a re-employed pensioner entitled for civil pension and gratuity etc. The rules *ibid* further provide that after the option of such a re-employed pensioner tendered by him within a prescribed period of one year, he shall have to refund the pension and gratuity etc. already drawn by him from the Military to the Government with interest at the rate available and existing at a particular point of time on GPF from the date of his joining the civil service. The applicant was granted five increments in advance, but No. application or any representation for counting of service under Rule 19(1) for the purpose of Pension and Gratuity etc. was ever moved and filed by the applicant during the entire period of his civil service with the Respondents. It is also provided under the CCS (Pension) Rules, 1972 that the right to count previous service as qualifying service for the purpose of pension and gratuity etc. shall not revive until the whole amount has been refunded to the Government. Hence, the claim being filed by him at this stage after a gap of more than 16 years is not at all justified under any set of Rules and that being so, the application filed deserves to be dismissed on this ground also.

3. The following averments have been set up on behalf of Respondent No. 4, vide para 6 of the reply:

6. In reply to this para it is respectfully submitted that as per O.A., the applicant is stated to have been appointed as Cook w.e.f. 7.1.1989 and retired from Govt. service on attaining the age of superannuation w.e.f. 31.7.1998. Thus qualifying service of the applicant is 9 years and 5 months. Since qualifying service is less than 10 years which is minimum for pensionary benefits under Rule 49 of CCS (Pension) Rules, 1972, the applicant is not entitled to pensionary benefits. Moreso, the Respondent-department has not even forwarded the pension case of the applicant. Thus at present there is No. action on the part of the replying Respondent. Rest of the averments need No. submission.

4. Shorn of details factual matrix of the case is that the Petitioner, who is an Ex-Indian Army Personnel had rendered military service w.e.f. 17.9.1965 to 1.1.1971. Lateron, he had joined civil service as a Class IV official in the establishment of Respondents No. 2 & 3. Ultimately, he retired from service on 31.7.1998. However, since the civil service rendered by him was only for 9 years 6 months and 24 days, he did not qualify for grant of pension. The grievance raised by the Petitioner is that his military service was not counted for the purposes of pension as required under Rule 19 of the Central Civil Services (Pension) Rules, 1972 (in short the Pension Rules). As per Sub-rule (2)(a) of Rule 19 of the Pension Rules, the authority issuing the order of substantive appointment to a civil service or post is required to call upon the Government servant to exercise the option under sub rule (1) of the Rules *supra* within three months from the date of issue of the order of appointment. However, according to the Petitioner, he was not afforded an opportunity to exercise such option. As per Government of India decision, dated 26.2.1988/31.5.1988, mentioned at serial No. 3, under Rule 19 *supra*, which is extracted below a recital with regard

to exercise of the above option is required to be incorporated in the order of re-employment itself:

3. In order to facilitate compliance with the requirement of exercising option in time, it has been further decided that the Administrative Authorities concerned should incorporate in the order of re-employment itself a clause to the effect that if the re-employed ex-serviceman desires to take advantage of the retirement benefits based on combined military and civil services, he should exercise option within a period of one year from the date of his re-employment.

5. Against the above backdrop, the following order was passed by this Court on 21.2.2011:

Respondent-State is directed to place on record the appointment letter of the Petitioner to ensure whether the instructions issued on 26th February, 1988 had been complied with or not, by the next date.

6. In compliance of the above order, dated 21.2.2011, supplementary affidavit of the Director, Health Services, Himachal Pradesh, has been filed along with a copy of office order dated 7.1.1989, vide which the Petitioner was appointed as a Class IV official in the civil service. A perusal of the same would go to show that the same does not contain any recital or stipulation with regard to exercise of option for counting of military service towards civil service for the purpose of pension. Meaning thereby that there was an infraction on the part of the concerned authorities to inform the Petitioner about his legal right to exercise such option.

7. In view of the above, the petition is allowed with a direction to the Respondents/competent authority to count the military service rendered by the Petitioner along with civil service rendered by him for the purpose of pension in accordance with law within three months from the date of completion of the requisite codal formalities and production of copy of this judgment by the Petitioner, failing which interest at the rate of 6% per annum shall also be payable on the amount of consequential benefits, if any. It is made clear that the case of the Petitioner for counting military service along with civil service for grant of pension shall be considered only after he deposits the amount of military pension, if any, and gratuity received by him on account of such military service in accordance with Rule 19 of the Pension Rules.

8. The petition stands disposed of in the above terms, so also pending application(s), if any.