
(2011) 03 SHI CK 0072
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 12006 of 2008

Pritam Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 19, 88

Citation : (2011) 03 SHI CK 0072

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner joined the Indian Army on 20.5.963. He was discharged on 30.4.988. He got his name registered with the Ex-Servicemen Cell at Hamirpur. State Government had decided to fill-up the posts of Constable. Petitioner's name was sponsored by the Ex-Servicemen Cell, Hamirpur, i.e. Respondent No. 4 for appointment to the post of Constable on 26.12.1991 against 15% vacancies reserved for Ex-Servicemen. However, the appointment letter was not issued to the Petitioner even after the recommendations made by the Ex-Servicemen Cell. Petitioner was appointed on 16.10.1992. He superannuated on 31.12.2001.

2. Mr. H.K. Paul, learned Counsel for the Petitioner has vehemently argued that his client was entitled to combine military and civil service for the purpose of pension. He also contended that the Petitioner's case was required to be looked into in view of Rule 88 of the Central Civil Services (Pension) Rules, 1972. He lastly contended that two similarly situate persons, namely, Tarsem Singh and Parmeshwari Dass had been appointed in HPAP, 2nd Battalion, Dharamshala on the basis of recommendations made by the Respondent No. 4 in the year 1991.

3. Mr. P.M. Negi, learned Deputy Advocate General has strenuously argued that since the Petitioner has completed only 9 years, 2 months and 16 days qualifying

service, he could not be granted pension.

4. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

5. Petitioner had served Indian Army with effect from 20.4.1963 to 30.4.1988. His name, admittedly, was sponsored by Respondent No. 4 on 26.12.1991. However, according to the Respondents, in the meantime the Respondent-State has taken a policy decision on 3.10.1991 to make appointments district-wise on the basis of population. Name of the Petitioner was again sponsored by Respondent No. 4, pursuant to which the Petitioner was appointed as Constable. Petitioner has retired on 31.12.2001 after putting in 9 years, 2 months and 16 days" service. He preferred O.A. No. 3483 of 2003 before the learned Himachal Pradesh Administrative Tribunal seeking pensionary/ retiral benefits. The learned Tribunal on 9.12.2003 disposed of the original application with a direction to treat the same as representation to the Commandant, 2nd Armed Police Battalion, Dharamshala, District Kangra. He rejected the same on 26.12.2003. Primarily, the representation has been rejected on the ground that the State Government has taken a policy decision to make appointments district-wise on the basis of population. Petitioner again made a fresh representation on 30.11.2004 which was rejected by respondent No.5 on 15.3.2005.

6. The Court is of the considered view that the petitioner's case ought to have been considered at par with Tarsem Singh and Parmeshwari Dass. Respondent-State has tried to distinguish the cases of these two Constables merely on the pretext that they were appointed in HPAP 2nd Battalion, Dharamshala and the petitioner was appointed in HPAP Battalion No.1, Junga. The names of S/Shri Tarsem Singh and Parmeshwari Dass were also sponsored by the Ex-Servicemen Cell on 26.12.1991. Respondents have treated the equals as unequals.

7. The matter is also required to be considered from another angle. The Petitioner has served the Indian Army with effect from 20.5.1963 to 30.4.1988. The service rendered by the Petitioner in Indian Army followed by appointment in Police Department was required to be taken into consideration for the purpose of pensionary benefits. The Petitioner has made detailed averments on the basis of Central Civil Services (Pension) Rules, 1972 in the rejoinder. It is abundantly clear from Annexure A-7, dated 27.10.2001 that the Petitioner was confirmed with effect from 1.3.1998. This letter was sent by the Commandant, HP AP 2nd Battalion, Dharamshala to the Senior Deputy Accountant General (A&E) in sequel to communication dated 5.10.2001 (Annexure R-1).

8. It will be apt at this stage to take note of Rule 19 of the Central Civil Services (Pension) Rules, 1972, which reads thus:

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 or 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 for 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.

(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).

(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 [death gratuity] which may become payable to his family.

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

9. What emerges from the plain reading of Rule 19 and the decision taken on 26.2.1988, is that the re-employed Government servant can opt to continue to draw military pension or he can get the previous military service counted as qualifying service. However, he will cease to get pension already drawn and the value received for the commutation or a part of military pension and the amount of retirement gratuity including service gratuity.

10. According to Sub-rule (2)(a) of Rule 19, the authority while issuing order of substantive appointment to a civil service or post shall alongwith such order require in writing him to exercise the option within three months of the issuance of such order.

11. In the instant case, the Petitioner has been confirmed with effect from 1.3.1988. Respondents have not placed any material on record to establish that alongwith letter of confirmation the Petitioner was called upon to exercise his option. The Petitioner has also not been given the opportunity by bringing to his notice the notification dated 22.8.1994 issued by the State Government whereby he could also give his option within a period of six months. These provisions are benevolent and are required to be considered liberally. The objective of these Rules is to facilitate an ex-serviceman to combined Military and civil service for the purpose of pension.

12. Mr. H.K. Paul, learned Counsel for the Petitioner has also drawn the attention of the Court to instructions issued on 31.5.1988, appended below Rule 19. A bare perusal of decision No. 3 makes it clear that in order to facilitate compliance with the requirement of exercising the 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. In this case, the Petitioner has joined after the instructions issued on 26.2.1988. Respondent-State has failed to point out that such clause was incorporated in the appointment letter of the Petitioner in the year 1992. Moreover, Petitioner's option was also required to be sought at the time he was confirmed with effect from 1.3.1998.

13. Accordingly, in view of the observations and discussion made hereinabove, the petition is allowed. Annexures A-5, dated 26.12.2003 and A-6, dated 15.3.2005 are quashed and set aside. Respondents are directed to pay and release the Petitioner the pensionary/retiral benefits by combining his military and civil service, within a period of two months after the production of certified copy of this judgment. The pending application(s), if any, also stands disposed of. No costs.