
(2012) 11 DEL CK 0094
In the Delhi High Court
Case No : Writ Petition (C) 1292 of 2012

Rasil Chand

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:

Citation : (2012) 11 DEL CK 0094

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : H.S. Kathuria, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The petitioner had served with Indian Army w.e.f. 13th September, 1969 to 1st October, 1993, rendering 24 years and 7 days service from the discharge book issued to him by the respondents. It is undisputed that the petitioner has been receiving his pensionary benefits which included service, gratuity, etc. from the Army and has been regularly drawing his monthly pension from the Army. The petitioner was re-employed with CISF on 5th August, 1996. During this re-employment, after having rendered 11 years 5 months and 27 days of service, the petitioner submitted an application dated 10th October, 2007 seeking voluntary retirement from service in the CISF w.e.f. 31st January, 2008. This request was erroneously favourably considered by the respondents resulting in issuance of an order dated 16th October, 2007 provisionally accepting the request for voluntary retirement of the petitioner w.e.f. 31st January, 2008 in accordance with the provisions of Rule 48A of the CCS Pension Rules, 1972. It was noticed subsequently that petitioner's request for voluntary retirement could be accepted only after completion of twenty years of qualifying service which fell on 30th April, 2012 and the order dated 16th October, 2007 was cancelled.

2. While rejecting the petitioner's representation by the order dated 18th/19th October, 2007, the respondents have pointed out that in terms of Rule 48A of the

CCS Pension Rules, 1972, a Govt. servant could retire voluntarily from service only after completion of 20 years of qualifying service. As the petitioner had not completed this period, the earlier order of October, 2007 was treated as cancelled. Vide the order dated 17th March, 2008, the petitioner was further informed that in case he was not in a position to serve in the CISF, he could submit his resignation, w.e.f. 31st January, 2008. The petitioner accepted this position and thereafter, moved an application dated 20th March, 2008 seeking to resign from service with the CISF on account of domestic problems w.e.f. 31st March, 2008. This resignation of the petitioner was accepted by the competent authority vide an order dated 24th March, 2008 w.e.f. 31st January, 2008. Upon resignation of the petitioner, all his final payments were duly settled by the respondents.

3. The petitioner has filed the instant writ petition contending that in terms of Rule 35 of the CCS Pension Rules, 1972, the petitioner having rendered more than 10 years of service was entitled to pension from the CISF which has been wrongly denied to him and a challenge has been laid to the order dated 28th January, 2011 passed by the respondents denying the petitioner's request to grant the pension.

4. The respondents have, however, pointed out that at the time the petitioner sought re-employment in CISF, in accordance with Rule 19 of the CCS Pension Rules, the petitioner had exercised the option of not taking into account his past military service as reckonable service for the purposes of his pension computation. It is pointed out that for this reason the petitioner has continued to accept the pension which he was receiving from the Army Authorities. As per the applicable rules, the petitioner could have made such request for change of the option at any time while he remained employed with the CISF for the period of 11 years. But he did not do so.

5. The respondents rely on Rule 19 of the CCS Pension Rules in terms whereof the petitioner duly exercised the option in 1994 which has been placed by the respondent before us which reads as under:-

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 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.

The above factual and rule position would show that the petitioner having exercised the option at the time of his reemployment with the CISF and having not sought any change with regard to the same at any time while he remained in service, is disentitled to draw any pension from his service upon reemployment with the CISF.

In view of the above, the petitioner cannot claim entitlement to pension on the basis of the service rendered by him on reemployment with CISF.

This writ petition is devoid of merits and is, therefore, dismissed.