

(2009) 06 JH CK 0031
In the Jharkhand High Court

Suresh Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:

Citation : (2009) 06 JH CK 0031

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard Mrs. Sarita Gupta, learned Counsel for the petitioner and Mr. Md. Mokhtar Khan, learned Counsel for the Respondent-Union of India.

2. Petitioner in this writ application, has prayed for a direction to the Respondents to allow the benefits of Rule 19 (1) of the Central Civil Service Pension Rule, 1972 and to count the period of military service rendered by the petitioner before he had taken civil employment from 08.11.1965 to 13.11.1974 and to give him all the consequential benefits of pension by counting his previous service.

3. The petitioner's case in brief is that he had rendered 9 years and 23 days of service in the Indian Air Force from 08.11.1965 to 13.11.1974 and in confirmation thereof a discharge certificate dated 13.06.2006, was issued to him by the Department of Air Force Record. Thereafter, the petitioner joined the service under the Department of Telecommunications at the Telephone Exchange, Dumka on 23rd June, 1977.

After joining his civil employment, he submitted an application before the Controlling Authority, namely, D.E.T., Patna on 31.12.1977 informing the concerned authorities of the fact that he had completed 9 years 23 days" of continuous service in the Indian Air Force and had requested therein, that the period served by him in the Indian Air Force be counted together with his present service in the Civil employment and had enclosed therewith the discharge

Certificate issued by the I.A.F.

Prior to the date of his retirement, he had again submitted his application 22.02.2006 with a request to count his period of service in the Indian Air Force together with his present service in the Telecommunication Department, for the purpose of computing pension.

4. His application was however, rejected by the impugned order (Annexure-6), on the ground that the petitioner was not entitled to claim the addition of his previous service in the Indian Air Force under the provisions of Rule 19 (1) of the CCS (Pension) Rules, 1972.

5. Denying and disputing the entire claim of the petitioner through the counter affidavit, the Respondents have sought to explain the grounds for rejecting the petitioner's prayer which are as follows:

(i) Under Rule 19 (1) of the CCS (Pension) Rules, 1972, a Government servant who retires on superannuation or invalidation without confirmation after rendering not less than ten years" combined military and civil service shall be entitled to the benefit of counting of service. The petitioner having not completed ten years" of military service prior to his joining in the civil employment, is not entitled to the benefit of counting of his previous military service.

(ii) There is no entry in the service book of the petitioner to confirm that he had submitted his option within a period of one year from the date of his joining in the re-employment.

6. Assailing the impugned order, whereby the petitioner's claim for counting his previous military service was rejected, learned Counsel for the petitioner submits that the grounds on which the prayer was rejected, are totally misconceived and misleading. Learned Counsel explains that the petitioner had retired from the military service on 30.11.1974 and after a gap of about three years, on 23.06.1977, he was appointed as Telephone Operator under the D.O.T. (now absorbed in the B.S.N.L.) at the Telephone Exchange, Dumka. Learned Counsel further submits that within one year from the date of his joining service under the Department of Telecommunications, the petitioner had not only informed his Department Head about his previous Military service but had also requested that the period of his former military service be counted together with his civil employment for the purpose of pensionary benefits. Learned Counsel explains further that after relinquishing his office in the Indian Air Force, he had not availed any pensionary benefits before joining the civil employment.

Referring to the provisions of Rule 19 (1) of the CCS (Pension) Rules, 1972, learned Counsel submits that the Rule does not stipulate any minimum period of ten years" of military service for the purpose of counting of qualifying service. Learned Counsel explains further that Rule 19 (1) of the CCS (Pension) Rules, 1972, as it existed at the time of the petitioner's opting out for the military service, did not contain any such stipulation that a Government servant should

exercise his option for counting the previous military service within a period of one year from the date of joining of his civil service. Nevertheless, the petitioner had within one year from the date of his joining the civil service, duly informed his Department Head conveying his option for counting the period of his former military service. Furthermore, the authority who had issued the order of the petitioner's substantive appointment in the civil service, did not call upon the petitioner in writing to exercise his option or to refund the amount of service gratuity received by him.

7. Learned Counsel for the Respondents on the other hand reiterates the same grounds emphasizing mainly on the ground that the petitioner had not submitted his option within the period of one year from the date of his joining civil employment and neither had the petitioner refunded the amount of gratuity, which he had received towards the period of his military service. Learned Counsel would refer in this context to the Government of India's Decisions.

8. Since the controversy raised by the Respondents is in relation to the provisions under Rule 19 of the CCS (Pension) Rules, 1972, it would be appropriate to refer to the relevant portion of Rule 19, which reads as follows:

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 after attaining the age of eighteen years, 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 1[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

reemployment 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 1[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 installments not exceeding thirty-six in number, the first installment 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 1[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. It may be noted that the amount of "retirement gratuity including service gratuity", referred to in Sub-rule (b) (iii) of Rule 1 was introduced by Gazette Notification published on 06th August, 1988 indicating thereby that necessity for refunding the retirement gratuity was not stipulated in the original Rule 19 either at the time of the petitioner's separation from the military service or on the date of his joining the civil service. Likewise, the Government of India's Decisions,

referred to by the learned Counsel for the Respondents whereby a period of one year from the date of re-employment was prescribed for exercising the option by the re-employed military personnel, was introduced for the first time by Gazette Notification dated 26th February, 1988. As such, the petitioner's prayer for counting his military service cannot be rejected on the ground that he has not exercised his option within one year from the date of his re-employment in the civil service.

As regards, the ground that the petitioner had not refunded the amount of Gratuity, which he had received in respect of his earlier military service, the petitioner's contention is that he was not required by the authority issuing the order of his substantive appointment in the civil service, to exercise his option for counting the previous military service nor was he asked to refund the amount of Gratuity received by him in respect of his earlier military service.

The Rule, as quoted above, requires that the Government servant, who is re-employed in the civil employment, may submit his option before his employer for counting the former military service as qualifying service for the purpose of pension. Admittedly, even as appearing in the impugned order, the petitioner had submitted his request to his departmental head within one year of his joining the civil employment, not only informing about his previous military service but also requesting to count the former military service together with the period of his civil service for the purposes of computing the amount of pension payable to him. The authorities concerned ought to have considered the petitioner's request, dated-31.04.1977 and treat the same as his expression of option for counting his former military service. Merely because the petitioner has not refunded the amount of Gratuity received by him towards his former military service, this in itself cannot frustrate his claim for counting the period of his previous military service together with the period of his service in the civil employment for the purposes of computing the amount of pension payable to him. The petitioner was never required by the concerned authorities to refund the gratuity amount. Even otherwise, the petitioner has himself offered to refund the same together with interest. The Respondents ought to have accepted the offer for refund or at best adjusted the amount towards the amount of gratuity, payable to him at the time of his retirement from civil employment.

10. For the reasons discussed above, I find merit in this writ application. Accordingly, the same is allowed with the following directions:

(a) The petitioner shall refund the amount of gratuity and the amount of the D.C.R.G. which was received by him in respect of the period of his former military service together with interest @ 6 per cent per annum from the date of his confirmation in the civil employment, within three months from the date of this order.

(b) Within three months from the date of refund of the aforementioned amount by the petitioner, the Respondents shall give the petitioner all the benefits of

pension as per the Rules counting the period of his past military service.