

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

C.W.P. No.4135 of 1995

Date of Decision : 29.07.2015

Ami Chand

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. R.D. Bawa, Advocate
for the petitioner.

Ms. Balwinder Kaur, Senior Panel Counsel
for the respondents-UOI.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By this petition the petitioner is seeking direction to the respondents to count his service from 22.11.1965 to 31.05.1967 for the purpose of pension and gratuity etc.

The case of the petitioner was that he joined as MT/Driver in General Reserve Engineers Force (GREF) on 22.11.1965 and was allotted GREF No.95034. Due to reduction in Establishment the petitioner was

declared surplus and his services were terminated w.e.f. 31.05.1967 and a discharge certificate to this effect was issued. He was recalled for appointment by the respondent-department and appointed as MT/Driver on 09.10.1967. He was confirmed w.e.f. 01.05.1981, however, the said confirmation was never conveyed to the petitioner. When he came to know about the confirmation he immediately applied for counting of his previous service from 22.11.1965 to 31.05.1967. Thereafter the petitioner represented to the respondent-department on various occasions but to no avail and at last the same has been rejected on the ground that since the service documents of the petitioner regarding previous spell of his service have been destroyed, the said period cannot be counted with the present period of service.

Learned counsel for the petitioner has argued that the respondents are under legal obligation to count the previous service of the petitioner under Rule 19(1)(b) of the Central Civil Services (Pension) Rules, 1972 as has been done in the case of many other similarly situated persons. Rule 19(1)(b) of the CCS(Pension) Rules is 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 after attaining the age of eighteen years, may, on his confirmation in a civil service or post, opt either -

- (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 2[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."

Learned counsel for the respondents has argued that once the petitioner was confirmed and informed about the orders of confirmation, it was his duty to give any option within a period of three months of the date of order as required under Rule 19(2) of CCS (Pension) Rules, 1972 and therefore his application cannot be allowed at the belated stage. She has further argued that the service documents for the former GREF service of the petitioner have been destroyed and it is now not possible to count his

earlier service for the purpose of pension etc.

In the opinion, there is no weight in the argument of the learned counsel for the respondents. As regards the argument about applying late for counting earlier service, learned counsel for the respondents has not been able to place any material on record which shows that the confirmation order was conveyed to the petitioner. As regards the argument that earlier service record have been destroyed, this is no ground to reject any benefit to the employee. Once the petitioner has all details with him and the respondents are not in a position to deny the fact of his past service they can not deny benefits for the aforesaid period and as per Rule 19(1)(b) of the Act he is entitled to get benefits of earlier service as well though he had not given any option since the same was due to lapse on the part of the respondents.

No other argument has been raised by the learned counsel for the petitioner.

In the circumstances, the respondents are directed to count the past service of the petitioner from 22.11.1965 to 31.05.1967 for the purpose of retiral benefits.

Petition stands disposed of in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

July 29, 2015

ashish

**(AJAY TEWARI)
JUDGE**