

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

WRIT PETITION NO.413 OF 2007

Laxman S/o Pandurang
Madhavpurkar

...Petitioner.

Versus

The Union of India
and others.

... Respondents.

...

Mr.S.D.Joshi, advocate for the petitioner.
Mr.Alok Sharma, counsel for Respondent Nos.2 and
3.

...

**CORAM : S.V.GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

Date : 22.08.2017.

PER COURT :

1. The petitioner seeks directions against the Respondents to count the past military service rendered by the petitioner from 23.1.1964 to 22.2.1973 as qualifying service for civil pension. So also assails the order passed by the Respondents thereby negating the request of the

petitioner to count the past service as a qualifying service for civil pension.

2. Mr.Joshi, learned counsel states that the petitioner had rendered service with Army/Air-force for a period of 9 years i.e. from 23.1.1964 till his discharge on 22.1.1973. The petitioner did not receive any pension. The petitioner thereupon joined service with Respondent Nos.2 and 3 in February 1977 and retired on 30.10.2004. The learned counsel submits that on 20.10.1982, upon confirmation of his service petitioner had communicated to the Director General, Posts and Telegraph, New Delhi to count his military service for civil pension. The envelope was returned back. Thereafter, prior to his retirement, the petitioner once again on 6.4.2004 requested to count his past military service of 9 years for the purpose of civil pension. The same is not considered. The learned counsel relies on Rule 19(2) of the Central Civil Services (Pension) Rules, 1972.

3. Mr.Sharma, learned counsel for the

Respondent Nos.2 and 3 submits that the petitioner is required to exercise his option within a period of one year from the date of joining his service and in case he fails to exercise his option then Rule 19(1)(a) would apply automatically. The letter dated 20.10.1982 as averred by the petitioner was never received with the Respondents and for the first time, the petitioner under his letter dated 6.4.2004 requested to count his past military service for civil pension. The same was time barred and could not have been considered. In view of above, the request of the petitioner was rightly rejected.

4. Mr.Joshi, learned counsel for the petitioner submits that the petitioner has not received any pension from his past employer while rendering military service and only gratuity amount of Rs.1,740/- (Rupees one thousand seven hundred forty only) which the petitioner had shown his willingness to refund.

5. Before proceeding to appreciate the

submissions, it will be relevant to refer to Rule 19 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 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 discharged from military service, in which case his further 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 communication of a part of military pension, and

(iii) the amount of [retirement gratuity] including service gratuity, 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 exercises the option.

(b) The right to count previous service as qualifying service shall not revive until the whole amount has been refunded."

6. Perusing the aforesaid Rule, it is manifest that sub-rule (2) requires the authority issuing an order of substantive appointment to a civil service or a post shall along with the order of appointment require in writing the Government servant to exercise the option under sub-rule (1) of Rule 19 with three months of the date of date of issue of such order. If thereafter, the option is not exercised by the employee, it will be deemed that the employee has opted for Clause (a) of sub-rule (1).

7. The initial obligation it appears is cast upon the employer/the authority issuing the appointment order to require in writing the Government servant to exercise the option. In the present matter, we do not find that the

authority issuing the appointment order had asked the Government servant to exercise the option as required under sub-rule (2) of Rule 19.

8. As far as letter dated 20.10.1982 is concerned, the Respondent Nos.2 and 3 in their affidavit have stated that they did not have any record of the said letter. Certainly, the said letter can not be in the record of the Respondents as according to the petitioner the envelope is returned back. However, the letter dated 6.4.2004 written by the petitioner prior to his retirement was received by the Respondents and the claim made therein is rejected.

9. It will not be possible for this Court in Writ jurisdiction to come to a conclusion about the letter dated 20.10.1982 and give a conclusive finding. However, considering sub-rule (2) of Rule 19 the initial duty is cast on the authority issuing order of appointment to call for the option from the Government servant. We do not find any such option being called by the appointing authority from the petitioner.

Sub-rule (2) of Rule 19 is for the benefit of an employee.

10. Considering above, we pass the following order :

(a) The impugned communication is quashed and set aside. The Respondent Nos.2 and 3 shall consider the past service rendered by the petitioner with military as qualifying service for the purpose of computing pension..

(b) Rule accordingly made absolute.
No costs.

(MANGESH S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

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