

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17348 of 2018

1. The Union Of India through the Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi-110001.
2. The Director, Intelligence Bureau Ministry of Home Affairs, Government of India, North Block, New Delhi
3. The Joint Director, Intelligence Bureau, Ministry of Home Affairs, Government of India, S.P. Marg, New Delhi.
4. The Joint Director, Subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India, 6 Serpentine Road, Patna-800001 (Bihar).
5. The Assistant Director, Subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India, 6 Serpentine Road, Patna-800001 (Bihar).
6. The Secretary, Ministry of Defence, Government of India, North Block, New Delhi- 110001.
7. The Commanding Officer, ASC Centre South, Bangalore- 560007 Karnataka.

... .. Petitioner/s

Versus

Hira Lal Gupta Son of Late Sita Ram Gupta, Ex- ACIO-II/G, Subsidiary Intelligence Bureau, Ministry of Home Affairs Resident of Mohallah-Bhagwanganj, P.O. and P.S.- Bhagwanganj, Via- Nadaul, District- Patna-804454 Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dr. Krishna Nandan Singh, ASGI Mr. Kumar Priya Ranjan, C G C
For the Respondent/s	:	Mr. M.P. Dixit, Advocate Mr. S.K. Dixit, Advocate Mr. S.K. Chaubey, Advocate Mrs. Swastika, Advocate Mr. Shailendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 14-07-2022

In the instant petition, petitioners- Union of India &
Others have assailed the order dated 27.04.2018 passed in O.A.
No. 050/00467/2017, by Central Administrative Tribunal, Patna



Bench, Patna.

2. The sole respondent- Hira Lal Gupta had joined Armed Forces in the Army on 19.10.1977. He had attained age of superannuation on 03.08.1983. Thereafter, on 30th May, 1985 he was appointed as a security Assistant (ACIO).

3. Rule 19 of CCS (Pension) Rules, 1973 (for short 'Rules, 1973) provides for exercising option for the purpose of claiming certain pension with reference to service rendered in Military. In terms of Rule 19 (1)(a), a person who was appointed under the Government of India, he is required to exercise option as to whether the service rendered in the Military is required to be counted in respect of fixation of pension. On 23.05.1994, respondent was asked to opt in terms of Rule 19 (1)(a) of Rules, 1973, there was no response from him. Therefore, it was reiterated to him to exercise option on subsequent date. Further, there was no response. He had submitted representation without exercising option on 02.01.1997, 21.04.1997 and in the year 1999. Since the respondent remained silent in exercising option, therefore, there was a communication on 02.02.2000 in which concerned authority has expressed that respondent did not avail the opportunity of exercising option in the year 1997. Therefore, he is not entitled to relaxation and it is not possible. The



aforesaid communication of the Government of India was communicated to the respondent. When things stood thus in the year 2003 once again respondent agitated in respect of exercising option as is evident from representation. There was inaction on the part of the petitioners. Respondent had attained age of superannuation and retired from service on 31.12.2016. Thereafter, he had submitted a fresh representation on 22.02.2017 for which also there was inaction on the part of the petitioners-department, thereby compelled the respondent to invoke remedy before the Central Administrative Tribunal. Thus, he had filed O.A. No. 050/00467/2017 and it was allowed in favour of the respondent on 27.04.2018 (Annexure-1).

4. Feeling aggrieved and dissatisfied with the order of the tribunal dated 27.04.2018, petitioners-Union of India and Others have presented this petition to set aside the order of the tribunal dated 27.04.2018.

5. Learned senior counsel for the petitioners vehemently submitted that for the purpose of counting of any Military Service towards fixation of pension, relevant provision is Rule 19 of Rules 1973. The aforesaid rule mandate that such of those persons who joined Government of India service they are required to exercise option in order to have certain service



benefits. The respondent did not exercise option as and when he joined service in the year 1985. The Government of India has taken policy decision to give one more chance to such of those persons who have not exercised option in terms of Rule 19(1)(a) of Rule 1973 on 23.05.1994 while providing six months time to exercise option. There was no response from the respondent. The respondent submitted representations on 21.04.1997 and in the year 1999. Thereafter, petitioners have declined in respect of exercising option on 02.02.2000 and it was communicated. The respondent has not questioned the validity of communication dated 02.02.2000 in declining exercise of option by the petitioners. In stead of questioning the validity of communication dated 02.02.2000 he had submitted representation in the year 2003. Thereafter, one more representation was submitted on 22.02.2017, i.e. after his retirement on 31.12.2016.

6. In the light of these facts and circumstances, the tribunal has committed error in allowing the respondent's application ignoring the mandatory provision under Rule 19 of Rules 1973 in respect of exercising option by such of those persons who have rendered Military Services to extend certain benefits by fixing the pension of such of those persons who



would be retiring. It is further submitted that having regard to the conduct of the respondent from the year 1994 to 2000 and he has not assailed the order of communication dated 02.02.2000. Thereafter he slept over the matter for three years. Further between 2003 to 2017, he slept over the matter as he had submitted representation on 22.02.2017. Further he had approached the tribunal in the year 2017.

7. In the light of these facts and circumstances, the order of the tribunal dated 27.04.2018 is liable to be set aside and the present petition be allowed.

8. Heard the learned counsels for respective parties.

9. Undisputed facts are that respondent was appointed in the Armed Forces, i.e. in the Army on 19.10.1977. He has rendered services up to 1983. Thereafter, he was appointed as a Security Assistant (SIO) on 30th May, 1985 and he has attained age of superannuation and retired from service on 31.12.2016. Core issue involved in the present litigation is whether the respondent is entitled to exercise option to have certain benefits of pension under Rule 19(1)(a) of Rules, 1973 or not?



Rule 19(1)(a) of Rules 1973 reads as under:-

“19(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”

10. In terms of the aforesaid statutory provision such of those persons who were re-employed as a government servant with reference to their service rendered in the Armed Forces, they are entitled to have certain benefits in respect of fixation of pension. Such option was not exercised by the respondent during the period from 30th May, 1985 till 02.01.1997. During the intervening period, namely, 23.05.1994, the petitioners have given chance to the respondent to exercise option in terms of the aforesaid statutory provision while providing six months time to exercise option. The respondent did not opt, in other words, he was silent on the issue of exercising option. Thereafter, for the first time on 02.01.1997 he had submitted representation while exercising option. Since there was no response from the petitioner-department, respondent reiterated in submission of two more representations



on 21.04.1997 and in the year 1999. Thereafter, petitioner-department declined exercising option by issuing a communication dated 02.02.2000. The communication dated 02.02.2000 reads as under (page 105):-

**“No. 35/Estt/97(9)-1346
Subsidiary Intelligence Bureau,
(MEA), Govt. of India
6, Serpentine Road, Patna-1
Dated; the**

Memorandum

Kindly refer to your letter dated 5.1.99 regarding counting of previous Military Service for pension on re-employment.

2. As per reply received for IB Hqrs., New Delhi, the DOP & T who have informed vide their I.O. NO. 15542/99 P&PW(B) dated 5.1.2000 that in 1994, the Dept. vide OM No. 28/29/93-P & PW(B) dated 23.5.94 gave last opportunity to such re-employed military pensioners to exercise options within six months of issue of order. Since you did not avail the opportunity and exercised option in 1997, further relaxation in this regard is not possible.

Section Officer/E

**To
Shri H.L, Gupta, JIO-II/G
SIB, Imphal.
C/o Assistant Director/E,
SIB, Imphal.”**

11. The respondent has not questioned the validity of the communication dated 02.02.2000. On the other hand, he



slept over the matter for about three years and once again he had submitted representation in the year 2003. Thereafter, he had submitted one more representation on 22.02.2017, i.e. after retirement on 31.12.2016. Respondent had cause of action with reference to 02.02.2000 communication by which claim of exercising option was declined. Further even after submission of a fresh representation in the year 2003, he did not agitate before the appropriate forum like, Central Administrative Tribunal, Patna Bench, Patna. He kept quiet for 14 years as is evident from the latest representation dated 22.02.2017.

12. Learned counsel for the respondent submitted that communication dated 02.02.2000 is not a rejection.

13. Perusal of the communication dated 02.02.2000 it is evident that petitioners-department have blatantly stated that further relaxation in this regard is not possible which amounts to rejection of respondent's claim relating to counting of previous Military Service for pension on account of re-employment. Therefore, the aforesaid contention of the respondent that it is not a rejection cannot be appreciated. Further, he has pointed out that the tribunal has rightly assessed the matter in para 13, 16 and 17 as to how the respondent is entitled to exercise option for the purpose of fixation of pension



on re-employment with reference to Military Service. Para 13, 16 and 17 of the tribunal order is not with reference to the communication dated 02.02.2000. There is no recording by the tribunal that respondent had cause of action on 02.02.2000. Thereafter, he has slept over for about 17 years for the reasons that he had invoked tribunal jurisdiction for the first time in the year 2017. We could have exercised power under Article 226 in extending benefit to the respondent. However, our hands are tied in view of Rule 19 of Rules, 1973 which is statutory provision in respect of exercising option. That apart, the conduct of the respondent to the extent that he was provided opportunity of exercising option within six months from 23.05.1994, he did not opt. Thereafter, in the year 1997, he had submitted representation. When the statutory rule provides exercising option within a reasonable period of time. That too in the present case, petitioners-department had taken lenient view in providing further time in the year 1994 for about six months and there was inaction on the part of the respondent.

14. Perusal of the dates and events it is evident that the respondent was not interested in exercising option in terms of Rule 19 of Rules, 1973 for the purpose of counting Military Service towards fixation of pension and to have additional



benefits timely.

15. In the light of these facts and circumstances, the petitioners-department have made out a *prima facie* case so as to interfere with the order dated 27.04.2018 passed in O.A. No. 050/00467/2017 by the Central Administrative Tribunal, Patna Bench, Patna (Annexure-1). Thus, the order of the tribunal dated 27.04.2018 is set aside and O.A. of the Respondent stands rejected.

16. Accordingly, the present petition is allowed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.07.2022
Transmission Date	

