



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.01.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.13606 of 2014

and

W.M.P.(MD)No.11599 of 2021 and

M.P.(MD)No.1 of 2014

T.Sreedharan

... Petitioner

vs.

1.The Union of India,
represented by its Secretary to Government,
Ministry of Home Affairs, New Delhi.

2.The Director General,
Central Reserve Police Force,
CGO Complex, Block No.1,
Lodhi Road, New Delhi-110 003.

3.The Inspector General of Police
Central Reserve Police Force,
COBRA Sector Head Quarters,
Block No.11, Old Secretariat,
Civil Lines, New Delhi - 110 054.

4.The Commandant,
Central Reserve Police Force,
210 COBRA Dalgaon,
Darang District, Assam - 16.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the portion of the impugned order passed by the 4th respondent in his No. P-3-2/2014 - Pension - 210, dated 11.03.2014, with respect to the pension and DCRG and to quash the same and to direct the respondents to count the services of the petitioner rendered in the 4th respondent department from 2002 to 16.04.2012 counting as service rendered and to pay DCRG and pro rata pension and continue to pay to the petitioner.

For Petitioner : Mr.R.Pon Karthikeyan

For Respondents : M/s.L.Victoria Gouri

Assistant Solicitor General of India

**ORDER**

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash that portion of the impugned order passed by the 4th respondent in his No. P-3-2/2014 - Pension - 210, dated 11.03.2014, with respect to the pension and DCRG and to direct the respondents to count the services of the petitioner rendered in the 4th respondent department from 2002 to 16.04.2012 counting the service rendered and to pay DCRG and pro rata pension and continue to pay to the petitioner.

2. The facts of the case are that the petitioner joined as Constable GD, in the year 2002, in Central Reserve Police, then, promoted as SI in 2007 and then, as Inspector in 2011. After serving for 10 years in the CRPF, the petitioner submitted technical resignation in March 2012 and vide proceedings, dated 12.04.2012, the fourth respondent has relieved the petitioner. The petitioner joined the BHEL, Trichy as Sub Inspector Grade III Security on 16.04.2012. The petitioner submitted a representation on 20.12.2014, 27.03.2014 and 28.06.2014 by quoting various notifications and pension rules and prayed to grant retirement benefits including pension, commutation of pension, retirement gratuity, leave encashment, etc., The fourth respondent, vide impugned order, dated 11.03.2014, has stated as follows:

<i>Sl.N o.</i>	<i>Nature/Type of Benefit</i>	<i>Amount</i>
01	<i>Pension</i>	<i>Not Applicable</i>
02	<i>DCRG</i>	<i>Not Applicable</i>
03	<i>GPF</i>	<i>Bill sent to PAO vide Bill No.520/13-14-APC-210, dated 17.02.2014</i>
04	<i>GIS</i>	<i>Bill sent to PAO vide Bill No.521/13/14-APC-210, dated 17.02.2014</i>
05	<i>Leave Encashment</i>	<i>Bill sent to APO vide Bill No.53613-14-APC-210, dated 26.02.2014.</i>
06	<i>Risk Fund</i>	<i>Risk Fund Form sent to your home Address vide this office letter No.FP-1/2013-14-apc- 210,DATED 08.01.2014 AND 21.02.2014. But Risk Fund Form not yet received till date.</i>



3.The respondents denied the benefits stating on resignation, because of forfeiture of past service under Rule 26 of CCS (Pension) Rules the petitioner is not entitled to. The petitioner contended that according to other rules and regulations, the petitioner is entitled to pro rata pension. Therefore, the petitioner prayed to quash the impugned order and grant all the benefits.

4.The respondents have filed a counter affidavit stating that on resignation, the petitioner name was stuck of from CRPF strength with effect from 15.04.2012. The petitioner's resignation cannot be termed as technical resignation and it is only formal resignation. The technical resignation is applicable only when an employee joins another Central or State Government Department and not PSE or PSU, etc. Because of his resignation, the petitioner is not entitled to pension, DCRG as the rules applicable. The rules applicable to the petitioner is CRPF Rules, 1955 and the petitioner has quoted all CCS Pension Rules which is not applicable. As per the Rule 43(d)(i) of CRPF Rules, 1955 (Annexed as annexure-G), retirement benefits are admissible only after completion of at least 20 years of service. The respondents also stated in paragraph No.7 of the counter that the respondents are not having any objection if BHEL allows him the benefit of past service for fixing the pay, pension etc. The resignation of the petitioner was duly accepted by the competent authority and falls under the category of Rules 26 (1) (Annexed as annexure-J) and not Rule 26(2) of CCS (Pension) Rules, 1972. The counter affidavit also states that the petitioner was already paid GPF of Rs.2,23,114/- on 28.08.2014 and GIS for Rs.4,126/- on 14.03.2014, leave encashment, Rs.33,691/- on 25.09.2014 and Risk Fund of Rs.23,124/- on 20.09.2014.

5.The respondents have filed a better affidavit on 27.01.2022. it is stated that the petitioner had served for 10 years and 22 days in CRPF service. Under Chapter 47 of Swamy Establishment & Administration Manual explains the release of government servant for appointment in Central Public Enterprises as follows:

"the government servant who has been selected for a post in a Central Public Enterprise / Central Autonomous Body may be released only after obtaining and accepting his resignation from the government service. Resignation from the Government service with a view to secure employment in a Central Public Enterprise with proper permission will not entail forfeiture of service for the purpose of terminal benefits".

In the absence of appropriate procedures in the parent organization, the Central Civil Services Rules would apply. The Rule 37 (3) of the CCS Pension Rules read with Appendix 7 grants an option to the employee either to count the service under Central Government in that body or receive retirement benefits for the service rendered



under the Central Government. Order 3 of Appendix 7 of CCS Pension Rules (Government of India, Department of Pension and Pension Welfare, OM No. 4(12)85-P&P.W dated 31st March 1987 in point (ii) states those absorbed in the autonomous bodies having pension scheme shall have an option to receive pro-rata retirement benefits or continue to have the benefit of combines service under the government and autonomous body subject to conditions laid down in the Department of Personnel and A.R.'s OM No. 28/10/84-PU dated 29.08.1984 and 12.09.1985 (vide order (6). Such option should be exercised within 6 months from the date of permanent absorption. In case no option is exercised he will be eligible for pension based on combined service.

6. Through OM No. 28-10/84-Pension Unit dated 29.08.1984 Government of India, Department of Pension and Pension Welfare in clause (ii) which deals with the case of Autonomous Bodies where pension scheme is in operation permits the government / autonomous body (vice versa) discharge of its pension liability by paying in lumpsum as a onetime payment, the pro-rata pension / service gratuity / terminal gratuity / retirement gratuity upto the date of absorption in the autonomous body / government as the case may be, in clause 5(1) it states as follows:

"the employees of a Central Autonomous Body or Central Government as the case may be who have already been sanctioned or have received pro-rata retirement benefits or other terminal benefits for their past service will have the option either:

- (a) To retain such benefits and in that event their past service will not qualify for pension under the autonomous body or the central government, as the case may be or*
- (b) to have the past service is counted as qualifying service in the new organization in which there is pro-rata pension and which already received by them will have to be deposited along with the interest there on from the date of receipt of other benefits till date of receipt of autonomous body. The right to grant the previous service as qualified service was not revived until the whole amount has been refunded."*

7. It is stated that the concept of counting past service on mobility of employees from Central Government to autonomous bodies or vice versa came to be existence, vide orders, dated DP & AR's OM No.28/10-84-PU, dated 29.08.1984. In terms of the same, the employees who were absorbed in Central Government to Central autonomous bodies or vice versa has to exercise an option to receive pro rata retirement benefits within a period of six months from the date of permanent absorption. In case no option is exercised within stipulated period, he will be eligible for pension based on combined



service.

8. Heard Mr.R.Pon Karthikeyan, learned Counsel appearing for the petitioner and M/s.L.Victoria Gouri, learned Assistant Solicitor General of India appearing for the respondents.

9. The petitioner was relieved from CRPF service on 11.04.2012 and the relieving order is extracted here under:

"Order

No.025240217 Insp/GD Sreedharan T of this Unit is hereby relieved to join Bharat Heavy Electrical Limited (BHEL) as Sub Inspector Grade-III on permanent absorption basis. He should join BHEL by 15/4/12. His resignation from Government service will be effective from the day he actually joins BHEL and it will be notified on the receipt of intimation about the date of his joining BHEL. In case for some reason he does not join BHEL by 15/4/12, he should report back to this office forthwith.

2. The period between the date of relief and the date of join in BHEL will be regularized by grant of any type of leave due and if no leave is at credit, by extraordinary leave."

10. The respondents have circulated Rule 37 with Appendix 7 of CCS Pension Rules. On perusal of the said rule the Government of India has given a "Form of Relieving Order". The relieving order, dated 11.04.2012 and the form prescribed under the annexure is one and the same. There is no deviation from the format. This format is prescribed for granting pro rata pension for retirement benefits to the Government servants. It has also been stated in the circular, dated 31.01.1986 as under:

"(4) Pensionary benefits:

i) Resignation from Government service with a view to secure employment in a central public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all the retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organization.

ii) The officer eligible for pension should exercise an option within 6 months of the date of his resignation for either of the following two alternatives:-

a) Pro-rata monthly pension and death-cum-retirement gratuity as admissible under the relevant rules.

<https://hcservices.ecourts.gov.in/hcservices>) Pro-rata gratuity and a lumpsum amount in



lieu of pension worked out with reference to the commutation tables applicable on the date of resignation. NOTE: Where no option is exercised within the prescribed time limit, the officer will be governed by alternative (a) above. Option once exercised shall be treated as final.

iii) Any further liberalization of pension rules decided upon by Government after the date of resignation of a central Government servants to join the public enterprise will not be extended to him.

iv) A Government servant who opts for pro-rata monthly pension on his resignation from Government service will not be entitled to relief on pension during his service in the public enterprise."

11. On perusal it is seen that the relieving order should indicate the period from which the Officer should join the PSU and it is also stated that the date of relieving and the date of joining period shall be regulated by the grant of leave and if no leave is available by grant of extraordinary leave.

12. On perusing the relieving order of the petitioner along with forms of relieving order prescribed under the annexure, this Court is of the considered opinion that the respondents have treated the petitioner as per the prescribed rules. Even in the latest better affidavit, the respondents have not denied the entitlement of the petitioner. It only states that the petitioner ought to have exercised the option within a period of six months and since the petitioner has not opted the same, he is not eligible. The claim of the respondents if the past service is to be counted as qualifying service in the new organization in which there is pro-rata pension then the petitioner should deposit the amount already received along with interest from the date of receipt of other benefits till date of receipt of autonomous body. The right to grant the previous service as qualified service will not be revived until the whole amount has been refunded.

13. For the discussion and reasons states above this Court is passing the following order:

- a. The impugned order is set aside.
- b. The delay of six months is condoned.
- c. Then the petitioner is directed to deposit the amount already received along with interest.
- d. Then the respondents are directed to grant pro rata pension and other terminal and consequential benefits.
- e. The said exercise shall be carried out within a period of six weeks from the date of receipt of a copy of this order.



14. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Union of India,
represented by its Secretary to Government,
Ministry of Home Affairs, New Delhi.

2.The Director General,
Central Reserve Police Force,
CGO Complex, Block No.1,
Lodhi Road, New Delhi-110 003.

3.The Inspector General of Police
Central Reserve Police Force,
COBRA Sector Head Quarters,
Block No.11, Old Secretariat,
Civil Lines, New Delhi - 110 054.

4.The Commandant,
Central Reserve Police Force,
210 COBRA Dalgaon,
Darang District, Assam - 16.

+1 CC to M/s.R.PONKARTHIKEYAN, Advocate (SR-3210[F] dated 31/01/2022)

W.P.(MD)No.13606 of 2014
28.01.2022

AP(26.02.2022) 7P 6C