



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 31.01.2022

PRONOUNCED ON : 22.02.2022

CORAM

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

W.P.(MD)No.1702 of 2014

G.Dhanapal

... 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, Lodhi Road,
New Delhi- 110 003.

3.The Inspector General of Communication,
Central Reserve Police Force,
Cobra Sector,
CGO Complex, Lodhi Road,
New Delhi- 110 003.

4.The Commandant,
202,Co BRA, SUNABEDA,
Central Reserve Police Force,
Koraput, Odisha.

5.The Accounts Officer,
202, Co BRA, SUNABEDA,
Central Reserve Police Force,
Koraput, Odisha.

... 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 order passed by the 4th respondent in his Order No.D.V-1/2012-Ec-3, dated 18.05.2013 and the consequential order passed by the 5th respondent in his Order No. No.A.I.01/2013-14-202 - cash, dated 23.12.2013 and to quash the same and to direct the respondents to count the services of the petitioner rendered from 15.02.2003 to 12.04.2012 in the CRPF and to pay pension from 12.04.2012 counting as service rendered and leave encashment (earned leave and half pay leave) and continue to pay to the petitioner and to refund a sum of Rs.1,67,012/- for a period from 12.04.2012 and sum of Rs.1,06,123/- for the constable and Head Constable/crypto to till the payment is made @12%.



For Petitioner : Mr.K.Vadivelu
for Mr.A.S.Mujibur Rahman

For Respondents : Mr.K.R.Laxman
Central Government Standing Counsel

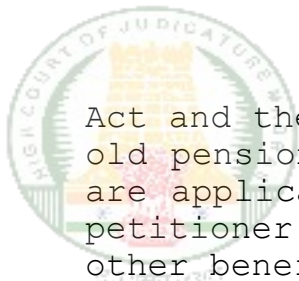
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ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the 4th respondent in his Order No.D.V-1/2012-Ec-3, dated 18.05.2013 and the consequential order passed by the 5th respondent in his Order No. No.A.I.01/2013-14-202 - cash, dated 23.12.2013 and to direct the respondents to count the services of the petitioner rendered from 15.02.2003 to 12.04.2012 in the CRPF and to pay pension from 12.04.2012 counting as service rendered and leave encashment (earned leave and half pay leave) and continue to pay to the petitioner and to refund a sum of Rs.1,67,012/- for a period from 12.04.2012 and sum of Rs.1,06,123/- for the constable and Head Constable/crypto to till the payment is made at 12% interest.

2. The brief facts of the case are that the petitioner joined CRPF on 15.02.2003 as Sub Inspector / GD and resigned on 12.04.2012 by tendering a resignation letter to the fourth respondent to join BHEL as Sub Inspector. The fourth respondent directed the petitioner to deposit a sum of Rs.1,67,017/- towards the training charges on 12.04.2012. The petitioner deposited the said amount and thereafter, permitted the petitioner to resign from the post. The petitioner is working in BHEL Trichy from 16.04.2012 as Sub Inspector Security. The petitioner filed this Writ Petition stating that as per Rule17A, if any resignation is tendered to accepting the job under Central or State Government, the same shall not be required to refund the training charges. Therefore, the petitioner submitted a representation to count the services rendered under CRPF and to pay pension and other retirement benefits on 21.12.2012. The fourth respondent, vide order, dated 18.05.2013, has informed that the petitioner is not entitled to any gratuity as per existing rules, since the petitioner has remitted the training charges to the 6th respondent. The petitioner has resigned from service, under Rule 26(2) resignation amounts to forfeiture of past service. If resignation is tendered for taking up another job with a permission then, forfeiture will not come into effect. The petitioner relied on clause 4 of Office Memorandum, dated 31.01.1986.

3. The contention of the petitioner is that the petitioner is entitled to pension and also entitled to leave encashment, refund of the training charges along interest which was collected illegally. The petitioner has submitted a petition under Right to Information



Act and the department replied that the petitioner is covered by the old pension scheme under CCS Pension Rules and terms and conditions are applicable. Since the claim of the petitioner was rejected, the petitioner has filed this Writ Petition for granting pension and other benefits.

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4. The respondents submitted that the petitioner was discharged from service based on his request, dated 10.03.2012. In the letter the petitioner has requested to discharge, due to domestic problem and he being only son and ought to take care of his aged parents. The respondents state that the petitioner submitted an undertaking letter and has accepted to obey the entire rules and regulations as per existing CRPF Rules. The contention of the respondents is that the petitioner was serving in the CRPF as Sub Inspector/GD, now, the petitioner has taken up a job below the rank of the post when the petitioner was holding in CRPF. Under Rule 12 under the head "Forwarding of Applications" it has been held that for their employment, it has been stated that the employee should register only for a higher post, than the one he is holding under the Government. If the employee is registering themselves in the employment exchange for any post below the rank, then, NOC will not be issued. The respondents contention is that the petitioner is not entitled to pro rata pension, because the petitioner has resigned from service, under Section 26 due to operation of law forfeiture of past employment will come into effect. Under Section 17 and 17 A, the employee ought to refund the training charges if the employee is submitting a resignation or seeking discharge from the said post and the petitioner has refunded the amount. Hence the petitioner is not entitled to the prayer and hence prayed to dismiss the writ petition.

5. Heard Mr.K.Vadivelu, learned Counsel appearing for the petitioner and Mr.K.R.Laxman, learned Central Government Standing Counsel appearing for the respondents.

6. The petitioner has put in service in the CRPF for 9 years 25 days, i.e., from 15.02.2003 to 12.04.2012. Thereafter, he has submitted his resignation in which the petitioner requested to discharge from service and the petitioner was granted discharge from CRPF roll and he joined the BHEL service. Now, the petitioner seeks to consider the service from the year 2003 to 2012 for granting pension and other benefits. The contention of the petitioner is that as per Rule the petitioner is not liable to pay training charges, if any job is taken up with the permission of the CRPF. If the job is taken up with permission then forfeiture of past service is also not applicable. The petitioner relied on Clause 4 of Office Memorandum, dated 31.01.1986 and the same is extracted as under:

"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.
- b) 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."

The period of limitation is granted either to take up one or the other at the earliest and things cannot wait endlessly. However, the concept of condoning is always available based on the facts and circumstances of the case. In this case the petitioner was in confusion and has decided to leave the tough job and was not aware of the consequences of resignation or discharge. Thereafter under Right to Information the petitioner came to understand the options available to the petitioner. Even the respondents are not aware of the benefits available to the petitioner. Hence this Court is inclined to condone the 6 months delay.

7. The contention of the respondents is since the petitioner has not stated that he is going to take up a job in a quasi-government authority, i.e., BHEL, he is not entitled to claim any pension and other benefits and hence the respondents have directed the petitioner to refund the training charges. On perusing the resignation letter, the petitioner has stated that due to his domestic problem since he is the single son who has to take care of his aged parents and he being a bachelor, he wants to discharge himself from CRPF service and nowhere the petitioner has used the word "resignation". The contents of the letter are extracted below:

"Sir, I No.031422716 SI/GD. Dhanapal. G of F/202 Cobra Bn, CRPF, Koraput, Odisha is applying for Discharge from service due to domestic problem. Sir, I am only one son of my parents and also they are aged. Besides I am



Bachelor also, so, they are wish to leave from this job and it will be helpful to lookout them. So, kindly request you to get the permission to discharge from service and relieve as soon as possible."

8. The contention of the respondents even discharge will amount to resignation and this argument is not acceptable and this Court is not appreciating such a submission from the respondent. It is an admitted fact that CRPF, CISF, Army and other like jobs are considered as "tough jobs". So, there will be a natural tendency to shift to the civil side. Therefore, whenever an application is submitted seeking either resignation or discharge, then, it ought to be considered sympathetically and practically. Even the Government has issued government orders and notifications that whenever the employee is taking up any quasi-governmental jobs, they are entitled to pro rata pension and the monetary benefits are granted by taking the service of the Army as well as the civil service.

9. In this case, on perusing the representation of the petitioner for discharge, it is seen that the petitioner was having an oscillation in mind for resignation and hence he has used the word as "discharge". The petitioner has shown inclination to settle to a normal civilian life. The Government has granted benefit to the employee, on superannuation, the permanent Government servants are entitled to pro rata pension. The petitioner is still in BHEL service on attaining superannuation, based on this notification, the petitioner is entitled to pro rata pension by taking CRPF service as well as civil service in BHEL.

10. The contention of the respondents that under Rule 12 the employee would be entitled to "No Objection Certificate" only if he registers for a higher post seems to be very impractical. If a person is choosing a job which is less tension or which is not as tough as CRPF job, it is his prerogative right. The respondents cannot impose condition that he should take up a job, above the job he was holding. Therefore, the contention of the respondents that he has taken up a job below the rank of the job he was holding in CRPF is erroneous and non-implementable.

11. The respondents also submitted that the Government of India had issued a notification on 28.12.2002, thereby, the Central Civil Service Pension Rules, 1972, was sought to be amended wherein, after Sub Rule 11 in Rule 37 A was sought to be amended and inserted as under:

*"No.4/61/99-P&PW(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Pension and Pensioners' Welfare)*

New Delhi, December 28, 2002.



NOTIFICATION

S.O 4000- In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Services (Pension) Rules, 1972, namely:-

1.(1)These rules may be called the Central Civil Services (Pension) Amendment Rules, 2002.

(2)They shall Come in to force on the date of their publication in the Official Gazette.

2.In the Central Civil Services (Pension) Rules, 1972, in rule 37 A.

(a) after sub rule (8), the following explanation shall be inserted, namely:-

"EXPLANATION:

The amount of pension/family pension of the absorbed employee on superannuation from public sector undertaking/autonomous body shall be calculated in the same way as would be the case with a Central Government servant, retiring on superannuation, on the same day":

(b) after sub-rule (11), the following shall be inserted, namely:-

"(11 A) A permanent Government servant absorbed in a public sector undertaking/autonomous body or a temporary/quasi permanent Government servant who has been confirmed in the public sector undertaking/autonomous body subsequent to his absorption therein, shall be eligible to seek voluntary retirement after completing **10 years of qualifying service with the Government and the autonomous body/public sector undertaking taken together**, and he/she shall be eligible for pro-rata pensionary benefits on the basis of combined qualifying service":

(c)in sub-rule (24) in clause (c), for the word "review" the word "confirmation" shall be substituted.

(Sujit Datta)

Director (PW) "

12.The petitioner is having 10 years of service **with the Government (in the present case CRPF) and the autonomous body/public sector undertaking (in the present case BHEL) taken together**, then the employee is entitled to pro rata pension on the basis of combined qualifying service.

13. Therefore, the respondents are directed to give no objection certificate so that the petitioner is entitled to gratuity. As far as the remittance of training charges are



concerned, the petitioner has put in 9 years of service in CRPF and the petitioner has taken up public sector undertaking i.e. BHEL job. Therefore, the petitioner is not liable to pay any training charges and he has served the country for 9 years. Therefore, the impugned orders are set aside and this Court is of the considered view that the petitioner is entitled to all reliefs and the respondents are directed as following:

- a. To repay the training charges to the petitioner.
- b. To issue no objection certificate to the petitioner for taking up civil job in BHEL.
- c. To approve the discharge letter as a permission letter and grant technical resignation.
- d. To confirm with all benefits as per Rules and regulations.
- e. The respondents are directed not to insist on the six months period to exercise the option and this Court has condoned the delay.

14. Before concluding the Writ Petition, this Court directs the first and second respondents, especially whenever a person, who is serving in Army, CRPF, CISF, Border Security Force and other tough jobs are seeking resignation or discharge, a counselling should be given to them to make them understand the consequences of their resignation or discharge and whatever is beneficial to such employees ought to be granted. The first and second respondents are directed to take this observation seriously and implement it in letter and spirit.

15. With this observation, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (W)

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/ /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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

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+1 CC to M/s.A.S.MUJIBUR RAHMAN, Advocate (SR-7687[F] dated 22/02/2022)

+1 CC to M/s.V.AKILAN, Advocate (SR-8177[F] dated 23/02/2022)

W.P. (MD)No.1702 of 2014
22.02.2022

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