



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: March 18, 2024

+ W.P.(C) 2155/2016

LAXMI NARAIN

..... Petitioner

Through: Mr. Basab Sengupta, Adv.

versus

GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI & ORS.

..... Respondents

Through: Mr. Naushad Ahmed Khan and
Ms. Supriya Malik, Advs. for
respondents

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner with the following prayers:-

“(a) Allow this Writ Petition.

(b) Quash and set aside the impugned judgments/ orders dt. 30.04.2015 and 02.09.2015 of the Central Administrative Tribunal (Principal Bench), New- Delhi.

(c) Direct and order the Respondents to treat the Petitioner as a regularly appointed/re-employed ex-serviceman and declare him as having superannuated from their services w.e.f 13.06.2013.

(d) Direct and order the Respondents to grant the Petitioner all eligible retiral benefits for 13 years of completed service in civilian establishment, including



pension, gratuity, leave encashment, commutation of pension for the period of reemployment.

(e) Award cost of litigation to the petitioner.

(f) Pass any other or further order as deemed appropriate.”

2. It is stated that the present petition has been filed by the petitioner challenging the orders dated April 30, 2015 and September 2, 2015 passed by the Central Administrative Tribunal Principal Bench, New Delhi (“Tribunal”) in Original Application No.2547/2013 (“OA”) and Review Application No.193/2015 (“RA”) respectively.

3. The facts noted from the petition are that the petitioner joined Indian Army on January 05, 1970. He retired from Army on February 01, 1998 while he was holding the post of ECG, Technician after completing 28 years of service. The Delhi Health Services under the Government of NCT of Delhi had issued an advertisement dated February 19, 2000, inviting applications for appointment of Technician in different streams on contract basis. The petitioner applied for the post and participated in the interview process. He was selected which resulted in his appointment on the post of Technician on contract basis in terms of office order dated May 11, 2000. His initial appointment was for a period of six months/till attaining the age of 65 years or till appointment of regular incumbent, whichever is earlier.

4. Subsequently in terms of corrigendum, the age of 65 years was changed to 62 years. There is no dispute that the appointment of the petitioner continued, though the same was on contractual basis. In the



year 2007, the respondents issued a circular dated September 14, 2007, to engage paramedical staff in the Government hospitals on contract basis. It is in the wake of the Circular, the petitioner was called upon to indicate whether he was prepared to function on contractual basis or not. The petitioner gave his consent vide letter dated June 03, 2008. This resulted in the appointment of the petitioner converted as a contractual engagement vide order dated August 6, 2008. The petitioner filed the OA being 2505/2008 to question the aforesaid order as it had the effect of reducing his basic pay from ₹4800 to ₹4500. The Tribunal on November 28, 2008, dismissed the OA with liberty to petitioner to file fresh OA with better particulars. It may be stated here that the respondents discontinued the services of the petitioner vide order dated February 11, 2010. This discontinuance/termination was challenged by the petitioner by filing an OA No.823/2010. The Tribunal allowed the OA with the following directions:-

“We would accordingly allow this OA. The impugned termination of his services vide letter No.F.2(443)/DHS / RTRMH /2000 /1124 dated 11.02.2010 (AnnexureA-1) shall quashed and the same applies to the conversion of the nature of employment of the applicant herein to Contractual. The applicant shall also be entitled to all the relevant consequential relief as well which shall be disbursed within three months from today.”

(emphasis supplied)

5. Pursuant to the order of the Tribunal, the petitioner was reemployed in service and was granted the replacement pay scale as recommended by 6th CPC. On attainment of the age of 62 years, the



services of the petitioner came to an end. In this background, the petitioner filed another OA being 2547/2013, wherein he sought the following prayers:-

- “(a) to accept this OA and quash the impugned order dated 13.6.2013 (Annexure AP/1) illegally and arbitrarily terminating the services of the applicant;*
(b) to direct the respondents to treat the applicant as a regularly appointed ex-serviceman in terms of the provisions of Ex-Serviceman (Re-employment in Central Civil Services & Posts) Rules 1979 and Rule 19(1) of the CCS (Pension) Rules, 1972, and declare him as having superannuated from their services w.e.f. 13.6.2013;
(c) to grant him all eligible retrial benefits for 13 years completed service as re-employed pensioner including pension, gratuity, commutation of pension, leave encashment for the eligible period.
(d) to grant him interest@12% on all retrial benefits upto the period of actual payment of retrial benefits
(e) to award exemplaiy costs in favour of the applicant for the deliberate and willful delay caused by the respondents in payment of retrial benefits and for harassing the applicant by their repeated illegal acts as well as deliberate defiance of Honble Tribunals conducive orders.
(f) to grant any other relief which this Honble Court may be pleased to allow.”

6. The case of the petitioner before the Tribunal in OA 2547/2013 was that in terms of provisions of Rule 18 of the Central Civil Services (Pension) Rules, 1972, (“Rules of 1972”) having completed 13 years of services on his reemployment, he is entitled to all the pensionary benefits.

7. On the other hand, the case of the respondents was that the Rules of 1972 provide retirement benefits only to regular government



servant and since the appointment of the petitioner was only contractual in nature, no terminal benefits/pension can be allowed to him for such service. The Tribunal in the impugned order dated August 30, 2015, specifically from paragraph 4 onwards, was of the following view:-

“4. We heard counsel for parties and perused the record. As can be seen from Office Order No.548 dated 11.05.2000, the initial appointment of the applicant was on reemployment basis for a period of six months or till attaining the age of 65 years or till appointment of regular incumbent, whichever could be earlier. The order read thus:

"OFFICE ORDER NO 548

Consequent upon his selection and acceptance of offer of appointment as per terms and conditions mentioned therein, Director, Dte of Health Services is pleased to appoint Shri Laxmi Narain as (ECG Tech) was retired as ECG Tech.

On re-employment basis wef 24.4.2000 for a period of six months or till attaining the age of 65 years or till regular incumbent are appointed, whichever is earlier, in the pay scale of Rs.4000-100-6000/- which are guided by the instructions contained in the Central Civil Services (Fixation of pay of re-employment pensioners) order 1980 and further instruction issued time to time.

He is hereby taken on the strength of this Directorate wef 24.4.2000 and posted at R.T.R.M. Hospital from the same date.

It is hot in dispute that subsequently, the appointment was specifically converted into contractual appointment and it was only after the order dated 29.09.2010 passed by this Tribunal in OA No. 823/2010 that the applicant was taken back in service and was granted the relief against the conversion of nature of his employment to contractual. As can be seen from the order passed by the



Tribunal, the only view taken by it was that the appointment of the applicant was in regular pay scale 'and it was no where ruled that the appointment itself was regular in nature. Further, though the initial appointment of the applicant was shown as re employment, but the same was virtually contractual in nature. The ramification of the aforementioned order of the Tribunal was that the consolidated pay of the applicant i.e. Rs.9923/- was restored to regular pay scale. As has been ruled by Honble Delhi High Court in LPA 375/2009 (Rajender Prasad Vs. National Human Right Commission), the appointment to a post need to be regulated in terms of the conditions mentioned in the appointment order. Relevant excerpt of the order read thus:-

"4. ..In case of re-employment, there can be no question of any particular terms of employment/ engagement being stipulated in the appointment order, since the regular employment has to expire on the date of superannuation as prescribed in the rules. Therefore, the use of expression on reemployment basis was nothing but a misnomer in the appointment/extension orders issued to the appellant from time to time. More importantly, since the recruitment rules envisaged appointment only on transfer/transfer on deputation basis there can be no question of re-employment till the prescribed date of superannuation.

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11. Dealing with the doctrine of legitimate expectation invoked by the respondents, the Court, after referring to its decision in Sethi Auto Service Station v. DDA : (2009) 1 SCC 180 held that since the terms of the letter of appointment of the respondents made it clear that the appointments were temporary and would not confer any right to claim any permanent post in the department and since no promise of absorption as regular employees had



been made to them and in fact no such promise could be held out in view of the Government OA dated 07.06.1988 which banned employment of persons in regular posts.

5. *In view of the aforementioned, it cannot be held that the appointment of the applicant was regular in nature to entitle him to pensionary benefits. As far as Rule 18 of CCS (Pension Rules) is concerned, in terms of the same, a Government servant who, having retired on compensation pension or invalid pension or compensation gratuity or invalid gratuity is re-employed and appointed substantively to a service or post to which the CCS Rules apply may exercise option either-*

(a) to continue to draw the pension or retain the gratuity sanctioned for his earlier service, in which case his former service shall not count as qualifying service, or

(b) to cease to draw his pension and refund-

(i) the pension already drawn,

(ii) the value received for the commutation of a part of pension, and

(iii) the amount of (retirement gratuity) including service gratuity, if any, and count the previous service as qualifying service.

The Rule 18 read thus:

18. Counting of pre-retirement civil service in the case of re-employed Government Servants.

(1) A Government servant who, having retired on compensation pension or invalid pension or compensation gratuity or invalid gratuity, is re-employed and appointed substantively to a service or post to which these rules apply may exercise option either —

(a) to continue to draw the pension or retain the gratuity sanctioned for his earlier service, in which case his former service shall not count as qualifying service, or

(b) to cease to draw his pension and refund-



- (i) the pension already drawn,
- (ii) the value received for the commutation of a part of pension, and
- (iii) the amount of (retirement gratuity) including service gratuity, if any, and count the previous service as qualifying service:

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 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 his pay shall be set off against the amount of 1[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 pay of the Government servant was reduced on initial reemployment, 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 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 the date of issue of such order, or 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) In the case of a Government servant who opts for Clause (a) of sub-rule (1) the pension or gratuity admissible for his subsequent service is subject to the limitation, that service gratuity, or the capital value of the pension and 1[retirement gratuity], if any, shall not be greater than the difference between the value of the pension and 1[retirement gratuity] if any, that would be admissible at the time of the Government servant's final retirement if the two periods of service were combined and the value of retirement benefits already granted to him for the previous service.

NOTE. The capital value of pension shall be calculated in accordance with the table prescribed by the President under the Civil Pension (Commutation) Rules applicable at the time of the second or final retirement.

(4) (a) A Government servant who opts for Clause (b) of sub-rule (1) shall be required to refund the gratuity received in respect of his earlier service, in monthly instalments not exceeding thirty-six in number, the first instalment beginning from the month following the month in which he exercised the option.

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

(5) In the case of a Government servant, who, having elected to refund the gratuity, dies before the entire amount is refunded, the amount of unrefunded gratuity shall be adjusted against the [death gratuity] which may become payable to his family.

The Rule talks of refund of certain amount by Government employee on his re employment and



counting of the military services for pensionary benefits in the department of reemplo5niient. In the present case, neither the applicant was given any option in terms of Rule 18 nor was any such option exercised by him. It so happened because the appointment of the applicant was not substantive in nature. Once he has not exercised any option as provided under Rule 18, the applicant cannot seek the benefit of the same. Even otherwise also, the substantive appointment as provided in Rule 18 cannot be upto the age beyond the age of superannuation i.e. upto 62 years. The reemployment /contractual appointment of the applicant was not substantive in nature. In terms of Rule 13 of the CCS (Pension Rules), the qualifying service for pension of a Government servant commence from the date he takes charge of the post to which he is first appointed as substantively or in officiating or temporary capacity provided that the officiating or temporary service followed without any interruption by substantive appointment in the same or another service or post. The Rule read thus:

13. Commencement of qualifying service

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that-

(a) in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by clause (a), service rendered before attaining the



age of eighteen years shall not count, except for compensation gratuity.

(c) the provisions of clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19.

The service rendered by the applicant on reemployment was on Contractual basis and cannot be declared as qualifying service for pensionary benefits. In the circumstances, OA is found devoid of merit and is accordingly dismissed. No costs.

8. The submission of learned counsel for the petitioner is that the petitioner being an ex-serviceman who was reemployed in civilian establishment i.e., Government of NCT of Delhi in the year 2000 and having continued till June 13, 2013 i.e., till attaining the age of 62 years when his services were dispense with, the denial of pensionary benefits by the respondents is illegal.

9. According to the counsel for the petitioner, the appointment being on reemployment basis, the same is covered by Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979, ("Rules of 1979") as amended from time to time. As per Rule 3 thereof, these Rules apply to all the Central Civil Services and Posts. Therefore, the petitioner having rendered more than 10 years of service, in light of the extent rules/instructions, he is entitled to pensionary benefits. According to the counsel, the earlier conversion of the petitioner services from non-contractual to contractual and subsequent termination of his services was set aside by the Tribunal in OA 823/2010. Hence, it would mean that the subsequent employment of the petitioner was on reemployment basis and as such, he is entitled



to the pensionary benefits. In support of his submissions for the claim of pensionary benefits, the petitioner has relied upon the judgment in the case of ***Government of NCT of Delhi & Ors. v. Mahender Singh, W.P.(C) 5114/2014*** decided on ***August 19, 2014***.

10. On the other hand, the learned counsel for the respondents by drawing out attention to the counter affidavit filed by them would highlight the fact that the appointment of the petitioner vide order dated May 11, 2000, was though on reemployment basis but for a period of six months or till attaining the age of 65 years or till regular incumbent was appointed in the pay scale of ₹4000-₹6000. Later on, a corrigendum was issued for modification of age of retirement to 62 years instead of 65 years. The petitioner was granted extension for every six months after seeking concurrence from the Finance Department through DHS from time to time. As fresh instructions were issued on September 14, 2007, in accordance thereof, a fresh engagement/extension of Group-C Paramedical/Nursing Staff or other staff on contract basis was issued. Only those persons, who agree to serve as per the terms and conditions as mentioned in the offer letter, were issued letter(s) of engagement on contract basis in the prescribed proforma 'H'. Accordingly, the petitioner was asked for his consent to serve as per the terms and conditions as mentioned in the offer letter dated May 19, 2008. The petitioner had given his consent and accepted the said offer to continue the services on contract basis vide letter dated June 03, 2008. After acceptance of all the terms issued in the letter dated June 03, 2008, the competent authority engaged the



petitioner as ECG Technician on contract basis vide office letter dated August 06, 2008, on consolidated remuneration w.e.f. June 07, 2008.

11. The petitioner made a representation dated January 16, 2009, wherein he requested that his pay may be fixed in terms of 6th CPC provisions in accordance with the instructions dated November 14, 2008, issued by the respondents. After examining the matter, the respondent No.2 ordered that the services of the petitioner be terminated forthwith. Pursuant thereto, an order dated February 11, 2010, was issued by the respondents terminating the services of the petitioner. The termination of the petitioner became the subject matter in OA 823/2010 before the Tribunal, which allowed the OA, the directions thereof, shall be reproduced in paragraph 15 of this judgment.

12. It is the submission of counsel for the respondents that in the implementation of the order passed by the Tribunal dated September 29, 2010 in OA 823/ 2010, the petitioner was re-employed in service and was granted the replacement pay scale as recommended by 6th CPC and on attaining the age of 62 years, the engagement of the petitioner was discontinued.

13. Having heard the learned counsel for the parties and perused the record, the substantive claim of the petitioner before the Tribunal was for grant of pensionary benefits on the date of his superannuation, June 13, 2013, i.e., attaining the age of 62 years, on the ground that his re-employment was on regular basis and not contractual, as per the terms of the appointment.



14. Whereas, in substance, the plea of the counsel for the respondents is that even if the contractual employment was set aside by the Tribunal, the same will not help the case of the petitioner inasmuch as, even as per the initial appointment as ECG Technician issued in the year 2000, the same though on re-employment basis, was a contractual employment for a period of six months or till attaining the age of 62 years or till regular incumbent is appointed, whichever is earlier. In other words, the terms of appointment do not depict that the appointment was on regular basis.

15. Therefore, it is required to be determined, what is the consequence of the judgment of the Tribunal in OA No.823/2010. In this regard, we note the conclusion drawn by the Tribunal as below:-

21. It would be relevant to notice here that the wrong 'clubbing' of the re-employed ex-serviceman/applicant with the contractual employees came to be documented by the departmental authorities in the course of (Office) note Annexure A-6.

22. The following facts are, thus, apparent from the above discussion.

(a) The initial appointment of the applicant herein is not indicated to be contractual in character. In fact, it is proved to have been made in a regular pay scale;

(b) Policy decision Annexure-3 cannot be said to be applicable to the applicant herein as he was not a contractual employee;

(c) The option, for continuation of services on contractual basis, had been obtained from the applicant herein under



duress and on pain of termination and, for that reason, it shall stand invalidated.

23. Having said that on the merits of the cause, we also cannot be unmindful of the fact that the applicant herein has already rendered services for about a decade by now. By the very nature of things, he must have become overage for any other re-employment. He must have incurred enhanced family responsibilities in the meantime. Throwing him on the road at this stage of his career and age, would not be appropriate.

24. We would, accordingly, allow this OA. The impugned termination of his services vide letter No.F.2 (443)DHS/RTRMH/2000/1124 dated 11.02.2010 (Annexure A-1) shall stand quashed and the same applies to the conversion of the nature of employment of the applicant herein to contractual. The applicant shall also be entitled to all the relevant consequently relief as well which shall be disbursed within three months from today.

25. Though we express our anguish at the manner in which the matter had been handled on the departmental front, we would restrain from granting any further orders as we have not been persuaded to hold that there were any malafides on the part of those who acted in the matter. The applicant, shall, however, be entitled to the costs of the cause quantified as Rs. 5000/-.

16. That pursuant to the judgment of the Tribunal in the aforesaid OA, the respondents passed the following order:-

“Order No. 377

Sub: Pay Fixation case of Sh. Laxmi Narain ECG (Tech) in pursuance of Hon'ble CAT judgment/ Order.

As per service record Shri Laxmi Narain was reemployed on 11th May, 2000 to the post OF ECG (Technician) as ex-serviceman in the scale of Rs. 4000-



100-6000 for a period of Six Months or till attains the age of 62 years or till regular incumbent is appointed. This appointment continued in the above scale upto 5th August 2008 and had been earning increment every year in the scale. Thereafter, vide an order of 6th August 2008, the service of Shri Laxmi Narain ECG (Tech.) has been deployed as Contractual employee on consolidate remuneration. Later on his service as contractual employee has been terminated on 11.02.2010 and he moved to Hon'ble court/ CAT where the Hon'ble CAT pass an order dated 29.09.2010. In pursuance of the order/ judgment, Shri Laxmi Narain is reemployed in the same pay scale with same term and condition with annual increment till date. He is also granted replacement scale of 6th CPC. He is reinstated in service with all benefit and joined his service w.e.f. 14.03.2011. The pay of Shri Laxmi Narain ECG (Tech.) is done as under:-

1. Pay as on 01.01.2006 in the Pay Scale Rs. 4500/- of Rs. 4000-100-6000 with the date of increment 01.04.2005.

2. Pay Fixed in Revised Pay Band Rs. Rs. 8370+2400= 5200-20,000 with Grade Pay Rs. Rs.10,770/- 2400.

3. Date of Next increment 01.07.2007.

4. Pay after annual increments

I) As on 01.07.2007 @8700+2400= 11,100

II) As on 01.07.2008@9040+2400= 11,440

III) As on 01.07.2009 @9390+2400= 11,790

IV) As on 01.07.2010@9750+2400= 12,150

The Pay Fixation of Shri Laxmi Narain, ECG (Tech.) is issued with the approval of Account Authority of this Department.

Sd/-

(Dr. L.R. Richhele)
Head of Office, RTRMH"



17. Having noted the contents of the aforesaid order passed by the respondents, it is clear that they have granted the benefit of the regular pay scale to the petitioner.

18. Now coming to the reliefs as sought by the petitioner in O.A. No.2547/2013. The same are in effect, the following:-

- a. The order dated June 13, 2013, passed by the respondents illegally terminating the services of the petitioner, be quashed;
- b. The respondents be directed to treat the petitioner as a regularly appointed ex-serviceman in terms of the provisions of Rules of 1979 and Rule 19(1) of the Rules of 1972;
- c. The petitioner be granted all the eligible retiral benefits for rendering 13 years of complete service as reemployed pensioner, including pension, gratuity, leave encashment and commutation of pension for the period of reemployment.

19. If the reliefs as sought above in the aforesaid OA are meaningfully read together, it was his case before the Tribunal that he be declared as regularly appointed ex-servicemen and as such, his military services be counted till his date of superannuation on June 13, 2013 in the respondents' department for him to be eligible for grant of pension, gratuity, leave encashment and commutation. This we say so, as he has relied upon Rules of 1979 and specifically, on Rule 19(1) of the Rules of 1972.



20. In other words, it is his case that being an ex-serviceman, his service as an ex-serviceman and 13 years of services put in by him on re-employment must also be counted as qualifying service to enable him to draw the benefits of pension, gratuity, commutation, etc. As such, Rule 19 of the Rules of 1972 is reproduced as under for ready reference:-

“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, 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

(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 of fixation of pay shall be set off against the amount of 1[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 exercised the option.



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

(4) In the case of a Government servant, who, having elected to refund the pension, bonus or gratuity, dies before the entire amount is refunded, the unrefunded amount of pension or gratuity shall be adjusted against the [death gratuity] which may become payable to his family.

(5) When an order is passed under this rule allowing previous military service to count as part of the service qualifying for civil pension, the order shall be deemed to include the condonation of interruption in service, if any, in the military service and between the military and civil services.”

21. Perusal of Rule 19 would reveal that the benefit thereof can be only given if a government servant who is reemployed in a civil services or post before attaining the age of superannuation and who, before such superannuation had rendered military services, on his confirmation in a civil service or post, exercises an option in terms of Rule 19(1) of the Rules of 1972. Concedingly, no such option is exercised by the petitioner as nothing has been placed on record in this regard by the petitioner.

22. We also find that the petitioner has relied upon Rule 18 of the Rules of 1972. The same has been dealt by the Tribunal in the manner as reproduced in paragraph 7 above. We agree with the aforesaid conclusion arrived at by the Tribunal insofar as applicability of Rule 18 of the Rules of 1972 in the facts of this case.

23. Moreover, reliance has also been placed by the counsel for the petitioner on Rule 10 of the Central Civil Services (Temporary



Service) Rules, 1965, to contend that in terms of Rule 10(1-B), the petitioner having rendered more than 10 years of services, shall be entitled to pensionary benefits. Suffice to state, neither such a plea was taken by the petitioner in the OA 2547/2013 nor it was taken in the review application being RA 193/2015. In fact, we find, no such stand is noted either in the impugned order passed in the OA or in the RA.

24. We are also of the view that the plea based on Rule 10 of Central Civil Services (Temporary Service) Rules, 1965, is at variance with the stand of the petitioner that he is a regular employee in terms of the judgment passed by the Tribunal in OA 823/2010. This we say so, as Rule 10, is applicable only to temporary Government servants and as such, the status of the petitioner being already adjudicated upon by the Tribunal in OA 823/2010, as a regular government servant, the same will not help the case of the petitioner in drawing the pensionary benefits from the respondents.

25. Insofar as the judgment in the case of *Mahender Singh (supra)* relied upon by the petitioner is concerned, the same has no applicability in the facts of this case inasmuch as in the said case the claim of the respondent therein was for grant of MACP based on a plea that he has rendered 12 years of service pursuant to his reemployment which is not the case in the present petition. Hence, the same shall have no applicability in the peculiar facts of the present case.

26. In light of our discussion above, we are of the view that the Tribunal was justified in dismissing OA filed by the petitioner. Even



the RA has rightly been dismissed by the Tribunal in the following manner:-

“2. It was also the plea raised by the learned counsel for applicant in the OA that the provisions of para 4 of the order relied upon by him (ibid) are pari materia to Rule 18 of the CCS (Pension Rules). While adjudicating the OA, we had deliberated on the issue after taking note of the provisions contained in Rule 18 (ibid).

3. It is settled position of law that after passing the order, the Tribunals and courts become functus officio. Only exception to such principle is review, which is permissible only on limited grounds, i.e. there being an error apparent on the face of record, some documents, which could not be brought to the notice of the Court despite due diligence, are found and brought on record with RA or any other sufficient reason. We do not find any of the yardsticks fulfilled/satisfied in the present Review Application.

4. Review Application is devoid of any merit and is accordingly dismissed. No costs.”

27. The writ petition is accordingly dismissed. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

MARCH 18, 2024/ds