



2025:DHC:11187-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6424/2021, CM APPLs. 20185/2021 & 35567/2022

J DHEENA DHAYALAN AND OTHERSPetitioners

Through: Mr. Anup Kumar, Ms. Gauri Subramaniam, Ms. Vartika Vaishnavi, Mr. Ritesh Dhir, Ms. Shruti Singh and Ms. Neha Jaiswal, Advs.

versus

UNION OF INDIA AND OTHERSRespondents

Through: Mr. Farman Ali, CGSC with Ms. Usha Jamnal, Adv. for UOI

+ W.P.(C) 6550/2021

J DHEENA DHAYALANPetitioner

Through: Mr. Anup Kumar, Ms. Gauri Subramaniam, Ms. Vartika Vaishnavi, Mr. Ritesh Dhir, Ms. Shruti Singh and Ms. Neha Jaiswal, Advs.

versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Farman Ali, CGSC with Ms. Usha Jamnal, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **10.12.2025**

C. HARI SHANKAR, J.

1. The issue in controversy in this writ petitions is the entitlement of the petitioners to count their service rendered in the Indian Navy

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prior to 31 December 2003 towards their pensionary benefits in terms of Rule 19(1)¹ of the Central Civil Services (Pension) Rules, 1972². If the petitioners are permitted to count the said service, they would be entitled to the benefit of the pre-existing Old Pension Scheme³ which was in force prior to 1 January 2004.

2. All the petitioners joined the services of the Indian Navy prior to 31 December 2003, at which time the OPS alone was in force. Consequent to following the requisite procedure in that regard and grant of approval by the Competent Authority in the Navy, the petitioners were discharged from the Navy after 1 December 2004 to join the Indian Coast Guard⁴. All petitioners joined the services of the ICG after 1 January 2004.

3. By the time, the petitioners joined the services of the ICG, a New Pension Scheme⁵ had been introduced by the Central Government.

¹ 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:

² "the CCS (Pension) Rules" hereinafter

³ "OPS" hereinafter

⁴ "ICG", hereinafter

⁵ "NPS" hereinafter



4. As the petitioners desired to avail the benefit of the OPS, they applied for counting of the past service rendered by them in the Indian Navy towards computation of their pensionary benefits under Rule 19 of the CCS (Pension) Rules.

5. Office Memorandum⁶ dated 26 July 2005, issued by the Department of Pension and Pensioners Welfare⁷ read with OM dated 28 October 2009 permits counting of the past service rendered by persons, who were in service prior to 1 January 2004, and had taken up new appointments with other Ministries/Departments/Central Autonomous Bodies after 1 December 2004, towards their pensionary benefits subject to such persons submitting technical resignation, while relinquishing service from the earlier department. The relevant paragraphs from the two OMs may be reproduced thus:

DOPPW OM dated 26 July 2005

“The various Ministries/Departments/Autonomous bodies have been seeking clarifications from this Department whether the employees appointed on or before 31-12-2003, who were governed by old pension scheme under the Central Civil Services (Pension) Rules, 1972, will be eligible for counting of their past service under Rule 26(2) of the said rules or under the provisions of the DP&AR's O.M.No.28/10/84-PU dated 29-8-1984, as amended from time to time, in the situation where such employees submit technical resignation, on or after 1-1-2004 to take up new appointment in the new Ministry/Department/Central Autonomous Body.

2. The matter has been considered in consultation with the Ministry of Finance and it is clarified as follow:

- (i) All the employees who entered into Central Government service or in the service of an Autonomous Body set up by Central Government (satisfying the

⁶ “OM”, hereinafter

⁷ “DOPPW”, hereinafter



conditions laid down in para-4 of O.M. dated 29-8-1984), on or before 31-12-2003 and who were governed by old pension scheme under the Central Civil Services (Pension) Rules, 1972. will continue to be governed by the same pension scheme and same rules, for the purpose of counting of their past service under the said rules or under the provisions of the DP&AR's O.M.No.28/10/84-PU dated 29-8-1984, as amended from time to time, if such employees submit technical resignation on or after 1-1-2004, to take up new appointment in another Ministry or Department of the Government of India or an Autonomous Body set up by the Central Government, in which the pension scheme under Central Civil Services (Pension) Rules. 1972 already exists for the employees who entered into service on or before 31-12-2003.

(ii) The employees who entered into service on or before 31-12-2003 and who were governed by CPF scheme or any pension scheme of Central or State Government, other than the pension scheme under Central Civil Services (Pension) Rules. 1972. on submission of technical resignation to take up new appointment on or after 1-1-2004, cannot be allowed to join the old pension scheme under Central Civil Services (Pension) Rules. 1972 because entry to the said scheme ceased w.e.f. 31-12-2003 and no new entry can be allowed in the pension scheme under above Rules. However, such employees can seek pensionary/terminal benefits, from the previous organisation/ Department. if admissible under the rules of that organisation/ Department, for the period of service rendered under that organisation/ Department.

(iii) All the Central Government employees who entered Central Government service or the service of an Autonomous Body set up by Central Government, on or before 31-12-2003 and who were governed by old pension scheme under the Central Civil Services (Pension) Rules. 1972 and who submit technical resignation on or after 1-1-2004, to take up new appointment under State Government, will be eligible for grant of pro-rata pensionary benefits for the period of Central Government or Central Autonomous Body service, on the lines as provided in the Rule 37 of Central Civil Services (Pension) Rules, 1972 and related orders.

(Geeta Ram)

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Director (PW)
Phone: 24624752”

DOPPW OM dated 28 October 2009

“OFFICE MEMORANDUM

Subject: Mobility of personnel amongst Central /State & Autonomous Bodies while working under Pensionable establishments regarding.

The undersigned is directed to say that while introducing the New Pension Scheme from 1/1/2004, amendments to various existing rules including Rule 2 of the CCS (Pension) Rules, 1972 were made whereby these rules became inapplicable to those appointed to Central Govt. Services and posts from 1/1/2004. Also the new and changed position obtaining on mobility of personnel between Central Government departments; between Central and State Governments; and between Govt. departments and autonomous bodies on technical resignation from: 1/1/2004 under these rules were clarified vide OM of even number dated 26/7/2005.

2. The position has been further reviewed by the Government of India and it has been decided to continue mobility of Govt. servants/Autonomous body employees appointed on or before 31.12.03 and who were governed under the old non-contributory Pension scheme of their respective Governments/organizations in order to provide for the continuance of Pensionary benefits based on combined service in accordance with the CCS (Pension) Rules, 1972 as under:-

- a. between the Central Govt, departments covered under CCS (Pension) Rules, 1972; and Railway Pension Rules, 1993 or other similar non-contributory pensionable establishments of Central Govt, covered by old Pension Rules other than CCS (Pension) Rules, 1972;
- b. between State and Central Govt provided the employees were appointed in the State Govt (s) on or before 31.12.2003 and covered under old pension scheme similar to CCS (Pension) Rules, 1972;
- c. the pre-existing arrangement of mobility between State/Central Autonomous Body to Central/State Govt. and between autonomous bodies that were governed by old pension schemes in force upto 31/12/2003 vide No

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28/10/84-P&PW dated 7/2/1986 and OM. No 28/10/84-Pension unit dated 29/8/1984 stand restored although those under CPF etc. will not be allowed entry into the old pension scheme on appointments from 1/1/2004.

3. These instructions modify/supersede provisions in the OM of even number dated 26/7/2005 to the extent as indicated above and take effect from 1.1.2004.

4. This issues with the concurrence of Department of Expenditure vide their UO No. 335/EV/2009 dt 5/10/2009 and in consultation with C&AG vide their U.O. No.93-audit (Rules)/28-2009 dated 09-10-2009.

(Raj Singh)
Director”

6. The respondents, in their counter affidavit, have acknowledged the fact that, even on the date when the counter affidavit had been filed, the petitioners’ request for counting of their past service in the Navy stood approved by the Naval authorities, thus:

“(2) Subject to the provisions of this Act, the coast Guard shall be constituted in such manner as may be prescribed and the conditions of service of the members of the Coast Guard shall be such as may be prescribed.

They had joined Indian Navy before 31 December 2003 as sailors and were released on compassionate grounds at their own request. The approval of competent authority for release in the case of Dy comdt JD Dhayalan (0664-J) was issued vide IHQ of MoD letter NO. RP/1201/06 dated 16 Jun 2006. A copy of said letter is annexed as Annexure P-7 to the Writ Petition. Later on, the Petitioners joined Indian Coast Guard service as Assistant Commandant on different dates after commencement of New Pension Scheme w.e.f. 01 Jan 2004. The plea of the Petitioners is for counting of former military service rendered by them in Indian Navy as qualifying service for getting pension under Rule 19 of CCS (P) Rules, 1972. Details of all the eight petitioners expressing qualifying service to be counted for getting pension are tabulated as under:-

Direct Recruited through proper channel

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Sl. No.	Rank, Name & P.No.	DOJ Guard Coast	Former Military service rendered in	Period of qualifying service to be counted		Status
				From	To	
(a)	Dy Comdt JD Dhayalan (0664-J)	26-06-2006	Navy	09-09-1996	23-06-2006	Approved
(b)	Comdt (JG) Rohitash Kumar (0724-S)	02-07-2007	Navy	02-02-2000	01-07-2007	Approved
(c)	Comdt (JG) Mohit Kumar (5101-Q)	11-08-2007	Navy	30-04-1999	10-08-2007	Approved
(d)	Comdt (JG) PK Khatkar (0744-P)	31-12-2007	Navy	05-02-2000	28-12-2007	Approved
(e)	Comdt (JG) AP Singh (0756-Q)	07-07-2008	Navy	30-01-2003	04-07-2008	Approved
(f)	Dy Comdt Brijesh Bhatt (0784-E)	04-01-2009	Navy	26-07-2002	03-01-2009	Approved
(g)	Dy Comdt Satish Kumar (0883-S)	20-01-2010	Navy	01-02-2001	18-01-2010	Under Process
(h)	Dy Comdt Vivek Kumar (0905-E)	19-07-2010	Navy	30-07-2003	16-07-2010	Approved.

7. Thus, at the respondents' end, the case of all the petitioners, except Deputy Commandant Satish Kumar, for counting of their past service in the Navy towards their pensionary benefits in terms of Rule 19 of the CCS (Pension) Rules, stood approved.

8. The petitioners have also placed on record communications

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addressed by the Coast Guard Headquarters to three of the petitioners, to the effect that the former service rendered by them in the Indian Navy had been counted towards pensionary benefits by the PCDA (P) Allahabad. We may reproduce by way of example, one such communication dated 15 April 2010 addressed by the Coast Guard Headquarters to the Commandant, Coast Guard Region (East) with respect to Assistant Commandant Mohit Kumar, who is the petitioner in WP (C) 6424/2021:

“TATRAKSHAK MUKHAYALAYA
Coast Guard Headquarter
National Stadium Complex
New Delhi - 110 001

OF/0303/5101-Q

15 Apr 2010

The Commander
Coast Guard Region (East)
Chennai

COUNTING OF FORMER SERVICE TOWARDS CURRENT
ENGAGEMENT IN RESPECT OF ASST COMDT MOHIT
KUMAR (5101-Q)

1. Refer this Headquarters letter of even number dated 22 Sep 2009 addressed to PCDA(P), Allahabad.
2. Former service rendered in Indian Navy by Asst Comdt Mohit Kumar (5101-Q) for the period from 30 Apr 1999 to 10 Aug 2007 has been counted towards pensionary benefits by PCDA(P), Allahabad vide their letter No. G-1/C/Counting/112/2009/V dated 19 Mar 2010. A copy of the said letter is enclosed. Necessary entry to this effect has been made on page No. 5 of the officer's service book.
3. The officer may please be informed accordingly.

(RK Sharma)
SCSO (OA&R)
For Director General”

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9. Before advertng to the basis for filing the present writ petition, we may note the fact that the entitlement of the petitioners, and persons similarly situated, to the benefit of Rule 19 of the CCS (Pension) Rules also stand vouchsafed by Government of India OM dated 17 June 1965, DOPT OM dated 22 January 1993, DOPT OM dated 17 August 2016 and DOPT OM dated 27 August 2018.

10. By way of example, we reproduce the relevant paragraphs from OM dated 17 August 2016 thus:

“The undersigned is directed to refer to this Department's OM of even number dated the 26th December, 2013 on the above subject and to say that guidelines/ instructions regarding Technical Resignation have been issued from time to time. It is now proposed to further consolidate these instructions, as the Department continues to receive frequent references on these issues.

2.1 Technical Resignation

2.1.1 As per the Ministry of Finance OM No. 3379-E.III (B)/65 dated the 17th June, 1965, the resignation is treated as a technical formality where a Government servant has applied through proper channel for a post in the same or some other Department, and is on selection, required to resign the previous post for administrative reasons. The resignation will be treated as technical resignation if these conditions are met, even if the Government servant has not mentioned the word "Technical" while submitting his resignation. The benefit of past service, if otherwise admissible under rules, may be given in such cases. Resignation in other cases including where competent authority has not allowed the Government servant to forward the application through proper channel will not be treated as a technical resignation and benefit of past service will not be admissible. Also, no question of benefit of a resignation being treated as a technical resignation arises in case of it being from a post held on *ad hoc* basis.

2.1.2 This benefit is also admissible to Government servants who have applied before joining the Government service and on that account the application was not routed through proper channel. The benefit of past service is allowed in such cases subject to the fulfillment of the following conditions:



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- (i) the Government servant should intimate the details of such application immediately on their joining;
- (ii) the Government servant at the time of resignation should specifically make a request, indicating that he is resigning to take up another appointment under the Government for which he applied before joining the Government service;
- (iii) the authority accepting the resignation should satisfy itself that had the employee been in service on the date of application for the post mentioned by the employee, his application would have been forwarded through proper channel.”

11. Insofar as the petitioners were concerned, there had been repeated communications from the Naval Authorities as well as from the CGPDA, justifying their claim for counting of their past services in the Navy towards their pensionary benefits in terms of Rule 19 of the CCS (Pension) Rules, viz.

- (i) On 16 October 2018, the Naval Pension Office wrote to the Chief of the Naval Staff, with respect to the petitioner in WP (C) 6424/2021, J. Dheena Dhayalan, thus:

“The Chief of the Naval Staff
For Dte of Personnel
HQ MoD (Navy)
D-II Wing Sena Bhawan
New Delhi - 110011

COUNTING OF FORMER NAVAL SERVICE
TOWARDS CIVIL PENSION JD DHAYALAN, EX-EAP
3. NO. 198079-F

Refer to CGDHQ 4 letter no 252/JDD dated 22 May 18

The case of the above mentioned CG officer has been examined at this office and requisite inputs sought from

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CABS/SSO(Admin). In the context following is submitted-

(a) As per PCDA(P) Allahabad Circular No C-166 (G1/C/077/Vol-XII/Tech) dated 16 Ju 17 (Copy Enclosed), counting of previous service (rendered in Military) towards seeking pensionary benefits due for the current service is permissible only when discharge from the previous service was due to technical resignation. CABS has submitted that in accordance with GoI/DOPT office memorandum No 28020/1/2010-Estt (c) dated 26 Dec 13 (Copy Enclosed). Technical Resignation means that "In case where a government servant applied for post in the same or other department through proper channel and on selection is require to resign from the previous post for administrative reasons, the benefit of past service, otherwise admissible under rules, is given treating the resignation as a "Technical Formality". Resignation submitted for any other reasons or if the competent authority has not allowed him to forward his application though proper channel is termed as a Resignation and the benefit of past service will not be admissible in such cases.

(b) The ex-sailor was released from the Navy on compassionate grounds. However, he has requested that his discharge may be considered as Technical Resignation. CABS had brought out that though the sailor had applied for discharge through proper channel and the same was accorded due approval for the ex-sailor to apply for the post of Asst Commandant(General Duty) in Indian Coast Guard. On being selected for the post the ex sailor then requested for discharge from the Indian Navy on compassionate ground under Article 2810 of Regs Navy Part III to join the said post The sailor's application for discharge on compassionate grounds was approved by IHQ MOD (N) and he was discharged from Naval Service w.e.f. 23 Jun 06. In the instant case, the sailor had applied through proper channel for the post of Asst Commandant (General Duty) in Indian Coast Guard and on selection he had sought discharge from Naval Service to join the said post, hence his discharge seems to be similar to the above conditions and can be treated as equivalent to Technical Resignation.

It is pertinent to mention that there is no provision for Technical Resignation in Regs Navy and though the instant case is a case of discharge on compassionate grounds, the ex-sailor officially recorded request to join the Indian Coast Guard cannot be set aside. The exact reason for the ex-sailor having to seek discharge on compassionate grounds



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and not wait for due approval for securing Technical Resignation are not known to this office, and the same may be reconciled with available records at IHQ MoD(N)/DOP, if possible.

Notwithstanding the above and also considering the fact that the ex-sailor (now a CG officer) had initiated the due process to seek discharge as a Technical Resignation, his actual discharge on compassionate grounds is highly recommended for consideration as a 'Technical Resignation'. If approved, claim of ex-sailor would be processed towards counting of former Naval Service for attaining pensionary benefits from his current employer, the Indian Coast Guard.

The relevant documents have been placed at enclosure for reference. It is requested the case be examined and necessary directives pertaining to the issue of considering the above mentioned ex-sailor's discharge as a Technical Resignation be issued to this office.”

(ii) On 26 October 2020, the Controller General of Defence Accounts, wrote to the PCDA (P) Allahabad, specifically stating that there was no need for the relieving order issued by the Naval Authorities to refer to the fact that the petitioners had applied for technical resignation in order for them to be entitled for counting of their past service in Navy in terms of Rule 19 of the CCS (Pension) Rules.

(iii) *Vide* communication dated 12 October 2020 addressed to the PCDA (P), the Coast Guard Headquarters specifically recommended the case of the petitioners for counting of their past service under Rule 19 of the CCS (Pension) Rules, thus:

**“REVIEW OF FORMER MILITARY
SERVICE COUNTED TOWARDS
COAST GUARD SERVICE FOR THE**

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**PURPOSE OF PENSIONARY
BENEFITS UNDER CCS (PENSION)
RULES, 1972**

1. Refer to PCDA (P) letter No. G-1/C/Counting/Imp.letter/V/2017 dated 14 Jul 17.

2. In accordance with PCDA(P)'s circular ibid, the matter regarding counting of former military service in respect of Coast Guard Officer's appointed in Coast Guard through proper channel from defence services on or after 01 Jan 2004 was examined. The details of such officers are placed at Encl-I to this letter. Accordingly, taking a view of various administrative and legal ramification on implementation of PCDA(P) Circular ibid, the matter was taken up with the Office of CGDA for necessary clarification/action. O/o the CGDA has examined the proposal thoroughly and finally referred the case to MoD/D(Civ-II) vide UO No. 5162/AT-P/Vol-LX dated 01 Oct 2018 (Encl-II) with a request to take up the case with DoP&PW to review the OM dated 28 Oct 2009 and extend the provisions of Rule 19 of CCS(Pension) Rules, 1972 to re-employed military pensioners post 2004 as well.

3. MoD/D(Civ.II) examined the case in consultation with Coast Guard Headquarters and O/o the CGDA and accordingly took up the case with DoP&PW. On recommendations of DoP&PW, the case was also referred to DoP&T.

4. MoD/ D (Civ) after examining the comments of DoP&T and DoP&PW, vide Dy No 1828 dated 06 Nov 19 has intimated the following for further action: -

(a) Since CCS (Pension) Rules, 1972 are not applicable to the Government servants joined civil service on or after 01 Jan 2004, there is no question of extending the benefit of Rule 19 of CCS (P) Rules to Government servants who joined civil service on or after 01 Jan 2004.

(b) However, counting of past service on technical resignation under Rule 26(2) as available under DoP&PW OM No 28/10/84-P&PW dated 07 Feb 1986 and 28/10/64-Pension Unit dated 29 Aug 1984 have been restored vide OM dated 28 Oct 2009. Hence counting of past service rendered on or before 01 Jan 2004 under Old Pension Scheme on



joining new organization under Central Government after tendering technical resignation on or after 01 Jan 2004 can be considered provided the pensionary benefits availed for previous service is refunded with interest.

(c) For counting of past service on mobility through technical resignation, there is no need to mention technical resignation on the relieving order from the previous post. It is, however, mobility of Government servant resigning previous Government service through proper channel and through proper permission.

5. Accordingly, respective record offices were requested to certify that whether releasing of the respective officers from their previous office/services fulfills the manner/procedure as clarified by MoD/D (Civ). The requisite documents/certificates in this regard were also sought.

6. Requisite clarification/certificate/documents in respect of the following 14 officers have been received from their record office and the same are forwarded as Encl-III to this letter for perusal and necessary action:

SI	Rank, Name, P. No.	Period of Former Military Service (FMS)	Whether FMS approved/Under Process of approval at PCDA (P)
(a)	Dy Comdt J D Dhayalan (0664-J)	09-09-96 to 23-06-06	Approved vide GI/C/Counting/111/2010/V dated 19 Mar 2010
(b)	Comdt(JG) Rohitash Kumar(0724-S)	02-02-2000 to 01-07-07	Approved vide GI/C/Counting/33/2014/V dated 06 May 2014
(c)	Comdt(JG) Mohit Kumar (5101-Q)	30-04-99 to 10-08-07	Approved vide GI/C/Counting/112/2009/V dated 19 Mar 2010
(d)	Comdt(JG) PK Khatkar (0744-P)	05-02-2000 to 28-12-07	Approved vide GI/C/Counting/150/2010/V dated 13 Oct 2010
(e)	Comdt(JG) Bablu Kumar (0755-P)	28-07-99 to 02-07-08	Approved vide GI/C/Counting/151/2010/V dated 13 Oct 2010



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(f)	Comdt(JG) AP Singh (0756-Q)	30-01-03 to 04-07-08	Approved vide GI/C/Counting/34/2011/V dated 01 Apr 2011
(g)	Dy Comdt Brijesh Bhatt (0784-E)	26-07-02 to 03-01-09	Approved vide GI/C/Counting/12/2010/V dated 04 Oct 2010
(h)	Dy Comdt Satish Kumar (0883-S)	01-02-01 to 18-01-10	Under process
(i)	Dy Comdt Vivek Kumar (0905-E)	30-07-03 to 16-07-10	Approved vide GI/C/Counting/190/2012/V dated 27 Nov 2012
(j)	Comdt Surendranath Sumal, 0635-Q	05-09-98 to 10-11-04	Approved vide GI/C/Counting/130/3-06/V dated 16 May 2006
(l)	Comdt SP Rajesh, 0636-S	28-10-97 to 25-10-04	Under Process
(m)	Comdt Neena Prabhakar, 0942-P	09-03-96 to 05-06-10	Approved vide GI/C/Counting/25/2010/V dated 12 Apr 2010
(n)	Comdt Manish Kumar Singh, 1210-X	03-03-01 to 28-07-13	Under Process
(p)	Comdt P Indu, 1211-C	02-10-03 to 29-08-13	Under Process

7. On scrutiny of the documents ibid, it is found that all officers except Comdt Neena Prabhakar fulfill the manner of technical resignation from their previous service and are eligible for counting of their past military service. It is relevant that Comdt Neena Prabhakar has filed a Writ Petition before Hon'ble Delhi High Court for counting of her past military service wherein PCDA (P) is also a respondent.

8. In view of the foregoing, it is requested that the audit report in respect of the above named 10 officers, whose past military service has already been approved by the PCDA(P) may be re-validated and confirmed to this Headquarters at the earliest. The audit reports issued by PCDA(P) are enclosed herewith (Encl-IV).

9. The case pertaining to remaining officers will be taken up with PCDA (P) in due course on receipt of the documents from respective Record Offices.

Sd.
(Nirmal Prakash)

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Director (OA&R)
for Director General”

(iv) The Controller General of Defence also wrote to the PCDA (P) Allahabad on 26 October 2020, clarifying that the petitioners were covered under the provisions of DOPPW OM dated 28 October 2009 and requesting for processing of their cases accordingly. The letter reads as under:

“To

The PCDA (P)

Allahabad

Sub: Clarification regarding former military service counted towards Coast Guard Services under CCS (P) Rules, 1972.

Ref: Your office letter no. G-1/C/MISC/Counting / V dated 23.10.2020

Please refer to your office letter dated 23.10.2020 cited under reference requesting further guidelines on the captioned subject.

2. Please find enclosed Department of Pension & Pensioners Welfare Note No. OF/0298/21/VC/FMS vide which it has been clarified that there is no need to mention technical resignation on the relieving order from the previous post for counting of past service on mobility through technical resignation. Provision for Mobility of Government Servant resigning previous Government service with the intention to join another Government Service through proper channel and with proper permission exists under Department of Pension and Pensions Welfare OM No. 28/30/2004-P&PW (B) dated 28th October, 2009 wherein it has been clarified that mobility of Government servants / Autonomous Body employees appointed on or before 31.12.2003 and who were governed under the old non-contributory pension scheme of their respective Governments/Organizations would continue to be permissible in order to provide for the continuance of



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pensionary benefits on combined service in accordance with the CCS Pension(Rules), 1972.

3. Coast Guard Headquarters has confirmed vide their letter No. OF /0298/21/VC/FMS dated 12.10.2020 that cases of 14 officers mentioned under para 6 except Comdt Neena Prabhakar are covered under provisions of DOP&PW O.M 28/30/2004- P&PW (B) dated 28th October, 2009. It is requested to process these cases accordingly.

This issues with the approval of Jt CGDA (Pension)

(Rajbir)
(Sr. AO-Pen)”

12. Despite, thus, the case of the petitioners having all but been confirmed as being entitled to the benefit of the Rule 19 of the CCS (Pension) Rules, the benefit of the said Rules has not been extended to the petitioners owing to a complete *volte face* having been executed by the PCDA (Pension) by the following communication dated 15 February 2021 addressed to the RTI Cell of PCDA:

“To

The OIC
RTI Cell
(Local)

Sub: Right to information Act-2005 in r/o Shri JD Dhayalan

Ref: Your letter No. AN/RTI/2813/JDD/2021 dated 21/01/2021

RTI representation 12/01/2021 in respect of the above named applicant received vide your letter cited under reference has been examined and replies of the information required by the pensioner are appended below:

The matter has been referred to HQrs office vide this office earlier letter no. GIC/MISC/Counting/V dated 23/10/2020. Our Hqrs office vide their letter no. 5162/AT-P/Vol-LX(Part File) dated 26/10/2020 has issued direction to this office to re-examine the case. The case has been re-examined in this office in the light of

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government orders on the subject and it has been decided by competent authority that the benefit of DOP& PW Order issued vide their OM NO. 28/30/2004-P & PW (B) dated 26/07/2005 followed by OM dated 28/10/2009 cannot be extended for the purpose of counting of former military service. As petitioner was discharged from service on compassionate grounds at his own request, in accordance with Regulation 280 of Regs Navy Part-III and hence the manner of discharge/release from defence services cannot be termed as Technical Resignation. Accordingly this office has issued clarification to Coast Headquarters, New Delhi vide letter no. G1/Civil/Misc/Counting/V dated 15/06/2020(copy attached).

It is pertinent to mention here that there is no stipulated time frame to clear the intricate cases due to involvement policy matter. However the cases are cleared on priority basis and the cases was not deliberately delayed.

Petitioner may please be intimated accordingly.

Accounts Officer (Pensions)”

13. It appears that the above communication which is essentially addressed to the RTI Cell of the PCDA, has constituted the basis for denial to the petitioners, of the benefit of Rule 19 of the CCS (Pension) Rules.

14. A holistic appreciation of the aforesaid documents makes it clear that

- (i) all the petitioners were in the services of the Indian Navy prior to 31 December 2003,
- (ii) they had followed due procedure before applying for and obtaining appointment in the ICG, which included due approval from the Naval Authorities, and
- (iii) they had been appointed in the ICG after 1 January 2004,
- (iv) the petitioners cannot, therefore, be denied the benefit of Rule 19 of the CCS (Pension) Rules,



(v) the extant instructions make it absolutely clear that the mere fact that the applications of the petitioners did not specifically state that they had sought technical resignation was not a ground to deny them the benefit of Rule 19, and

(vi) in fact, the consideration which applied was whether technical resignation was or was not required before the petitioners obtained employment with the Coast Guard, and not whether they had specifically applied for technical resignation.

15. A wholesome and expansive view has been taken by all authorities including the PCDA prior to the somersault executed in the communication dated 15 February 2021.

16. Mr. Farman Ali, with characteristic candour, pointed out that the petitioners' cases have in fact been recommended even by the Naval Authorities and that the PCDA too had, in its earlier communications, stated that the petitioners were entitled to the benefit of Rule 19 of the CCS (Pension) Rules.

17. In these circumstances, we are of the opinion that the denial of the benefit of Rule 19 of the CCS (Pension) Rules to the petitioners, merely on the basis of the communication dated 15 February 2021 addressed to the OIC of the RTI Cell of the PCDA, was not justified in law.

18. Accordingly, we hold that the petitioners were entitled to count their previous service in the Indian Navy, rendered prior to 31 December 2003, in terms of Rule 19 of the CCS (Pension) Rules, for



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computing their pensionary benefits.

19. Rule *nisi* is made absolute.

20. Let the benefits in that regard, if any, be computed and disbursed to the petitioners within a period of eight weeks from today.

21. The writ petition stands allowed in the aforesaid terms with no orders as to costs.

W.P.(C) 6550/2021

22. The petitioner, in this writ petition, applied for voluntary retirement on 10 September 2020 from the Coast Guard. The said application was rejected by the Coast Guard Headquarters by the following communication dated 13 November 2020:

Tele: 23115160

TATRAKSHAK MUKHAYAYA
Coast Guard Headquarters
National Stadium Complex
New Delhi -110001

OF/0303/0664-J

13 Nov 20

The Commander
{for CSO (P&A)}
Coast Guard Region (East)
Chennai – 600009

VOLUNTARY RETIREMENT FROM SERVICE
DY COMDT JD DHAYALAN (O664-J)

1. Refer to your letter No 2213 dated 10 Sep 20.
2. The request of the above named Officer for Retirement

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from service has been examined and it is seen that the Officer has completed 14 years of CG service. Since the counting of his former military service is still under process at PCDA (P), Allahabad, the Officer is not eligible for voluntary retirement.

3. It is intimated that the Officer has liberty to submit his case as resignation from service, if he desires so.

(Akhila S Kumar)
CSO
Asst Director (OA&R)
For Director General”

23. Assailing this communication, the petitioner has instituted this writ petition, with the following prayer clause:

“Under the circumstances, it is most respectfully prayed that this Hon’ble Court may be pleased to: -

I. Issue a writ in the nature of certiorari or an appropriate writ(s)/order (s)/direction(s) to quash Annexure P-1/ Impugned letter dated 13.11.2020 issued by Respondent No.2/office of the Director General, Indian Coast Guard, Coast Guard, Headquarters, New Delhi-110001; and

II. Issue a writ in the nature of mandamus and/or an appropriate writ(s)/order(s)/ direction(s) commanding the concerned Respondents to count former services in Indian Navy for the purpose of availing his retirement under the Voluntary Retirement Scheme and other consequential benefits; and

III. During pendency of this writ petition, petitioner be permitted to withdraw/retire/severe from service in Indian Coast Guard subject to the outcome of this writ petition;

IV. confirm rule nisi after hearing the respondents; and

V. Pass such other and further order(s) as this Hon’ble Court may deem fit under the circumstances.”

24. During the currency of these proceedings, the Coast Guard Headquarters revisited the impugned decision and issued the

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following communication dated 20 December 2021:

“FOR INTRA ICG USE ONLY

Tele: 23115162

TATRAKSHAK MUKHAYAYA
Coast Guard Headquarters
National Stadium Complex
New Delhi -110001

OF/0303/0664-J

20 Dec 2021

The Commander
{for CSO (P&A)}
Coast Guard Region (East)
Chennai – 600 009

RESIGNATION FROM COAST GUARD SERVICE
DY COMDT JD DHAYALAN (0664-J)

1. Refer to your letter 2213 dated 21 Sep 2021.
2. The request of Dy Comdt JD Dhayalan (0664-J) for resignation from service has been examined. The Competent Authority has approved the request of the above named officer for resignation from Coast Guard Service under Rule 27 of Coast Guard (General) Rules, 1986 w.e.f. 31 Dec 2021 (AN) without any pensionary benefit till final disposal of WP(C) No 6424 of 2021, J. Dheena Dhayalan Vs Union of India & Ors in the Hon'ble High Court of Delhi at New Delhi.
3. It is requested that the officer may be informed accordingly.

(Sanjeev Kumar)
SCSO(OA&R)
For Director General”

25. The only issue which survives for consideration, therefore, is whether the petitioner would be entitled to count the past services rendered by the petitioner in the Indian Navy for computation of his pensionary benefits, consequent to the aforesaid voluntary retirement/resignation.

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26. Mr. Farman Ali, learned CGSC points that in view of the order passed by us today in WP (C) 6424/2021, the petitioner would be entitled to count the former services in the Indian Navy even towards his pensionary benefits consequent to his resignation.

27. As such, learned Counsel for the petitioner submits that no grievance survives for adjudication in this writ petition which is accordingly disposed of.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

DECEMBER 10, 2025/aky/at/ar