

Naresh Kumar

...Petitioner

Versus

Department of Atomic Energy & Ors.

...Respondents

JUDGMENT

Swatanter Kumar, J.

1. The appellant was serving in the Indian Air Force as Air Corporal and after putting in fifteen years of service, he received military pension in accordance with the Rules. On 17th April, 1978, the appellant joined Narora Atomic Power Station as a Tradesman E. The power station was under the control of Department of Atomic Energy, Government of India. The appellant claims that he had a choice to avail pensionary benefits from the Air Force or in the alternative not to take pension from the Air Force but to have the benefit of combined qualifying service for his military and civil services from the Union of India. However, the appellant exercised his option to receive benefits from the Air Force and did not opt for combined benefits of Civil and Military Pension.

2. On 3rd September, 1987, the Government incorporated Nuclear Power Corporation of India Limited (NPCIL) under the provisions of Companies Act, 1956. Consequent upon the incorporation, all the employees of Nuclear Power Board (for short 'NPB') a constituent unit of Department of Atomic Energy (for short 'DAE') were transferred en masse on deputation to the Corporation vide notification dated 4th September, 1987. The conditions of service were finalized and contained in the Office Memorandum dated 26th May, 1994 which came to be challenged before the Central Administrative Tribunal. The concerned authorities were required to consider the matter and finally a revised offer was issued to the

deputationists vide an Office Memorandum dated 24th December, 1997. In the said Memorandum dated 24th December, 1997, it was clearly stated that last date for changing any pension option was 16th February, 1998. On 13th February, 1998, the appellant exercised his option for drawing pro-rata monthly pension and family pension benefits from the date of absorption. The appellant had joined the service of Corporation on 1st January, 1998 and resigned from the service of the Government of India w.e.f. 31st December, 1997. The appellant wanted to change his option in regard to benefits of pension. Vide his request dated 14th January,

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1999, the appellant requested the authorities for change in option from pro-rata pension to pension for combined service put in both under DAE and NPCIL and submitted the requisite option form. However, vide letter dated 18th February, 1999, the appellant was informed that the authorities had not agreed and the Department of Atomic Energy was not willing to permit change in option. The petitioner was drawing independent military pension. On or about 11th April, 2001, the Office Memorandum was issued by the authorities clarifying that rule 18 and 19 of the Central Civil Services (pension) Rules, 1972 (for short 'the Rules') shall apply retrospectively to civil and military re-employed pensioners and shall not be subject to any limitation as per provisions of rule 18(3) of the Rules. The appellant who was in third spell of his service was again informed on 24th September, 2001 that his request cannot be agreed to by the Department of Atomic Energy. After waiting for a considerable time, again on 26th July, 2004, the appellant made a representation to the Additional Secretary of DAE for reconsideration of his grievance. This representation also came to be rejected. Dissatisfied, the appellant moved another representation on 4th July, 2006 which met the same fate. The third and final representation submitted by the appellant on 5th September, 2005 was also disposed of by the authorities by passing the following order:

"...Your representation has been re-considered carefully in the Department and it is regretted that your request for allowing you to change the option of pro-rata pension to

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combind service pension cannot be accepted..."

3. On 31st January, 2006, the appellant retired from the service of

Corporation and finally filed the Writ Petition on 9th January, 2007 before the High Court of Judicature at Mumbai claiming that his services under the Union of India and Military Service should be permitted to be combined for the purposes of pensionary benefits and option be permitted to be re-exercised by him. The Division Bench of the High Court vide its order dated 4th April, 2007 dismissed the Writ Petition filed by the appellant while noticing that the Writ Petition suffered from the defect of unexplained delay and laches. Besides that, even on merits, the appellant had no case. It noticed that the representation of the appellant was first rejected in the year 1999 and he filed the Writ Petition in the year 2007 after a lapse of nearly 8 years and the Bench found no explanation whatsoever for his inordinate delay.

4. Aggrieved from the judgment of the High Court, the appellant has filed the present appeal. According to learned Counsel appearing for the appellant after issuance of the Memorandum by the authorities relaxing and lifting the limitations as contained in Rule 18(3), the appellant had a fresh cause of action and the respondents were expected to consider the case of the appellant for change of option and consequent payment of combined pensions afresh. It is

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further contended that as the High Court has failed to appreciate this contention, the judgment of the High Court is liable to be set aside.

5. On the contrary, the arguments on behalf of the respondent is that the appellant had put up a different relief before the authorities concerned while in the Writ Petition before the High Court and even before this Court, the relief prayed for is entirely different. The appellant cannot get combined pension as he had opted for pro-rata pension at a given point of time and now he cannot be permitted to change the option. In any case the option sought for in the writ petition being distinct from the one prayed in the representation, the petitioner cannot be entitled to any relief.

6. The respondents have taken a specific step in the counter affidavit filed before this Court as well as earlier that the details of absorption of the deputationists as well as option to be exercised by the employees was stated in a booklet which was circulated. In that booklet, it had been specifically stated that

whosoever opts for a monthly pro-rata pension would not be allowed to commute any part of pro-rata pension either at the time of permanent absorption or at any time thereafter. The petitioner having opted and taken benefit for all this period cannot be permitted now to alter the option to the prejudice of the Corporation. Another submission which carries some weight on behalf of the Corporation is

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that this practice has been uniformly followed till date and a large number of employees had exercised their option like the petitioner, none was permitted to change such option, by the Corporation at any subsequent stage. If the case of the petitioner is now accepted, it will cause tremendous administrative and financial problems for the Corporation. It is true that normally the matters which are settled should not be permitted to be unsettled on the mere asking. As per practice, the Corporation has followed this as a Rule and has applied it to all concerned uniformly for all these years and even petitioner whose request was declined in the year 1999 did not bother to approach the Court of law for claiming appropriate relief till the year 2007. Thus, in addition to the other reason that the petitioner is not entitled to the relief on merits, we even find substance in this argument on behalf of the Corporation.

7. From the above noticed facts, it is clear that the appellant had served in the Air Force at the first phase of his employment whereafter he served DAE and in the third and last phase, he served the Corporation. The representation which the appellant moved even on 14th January, 1999, he had submitted that pension for combined service put in both under DAE and NPC be granted to him by change in option and that he was willing to refund the amount of pro-rata pension paid to him. This representation came to be rejected on 18th February, 1999 but still the appellant chose not to challenge the same and waited for considerable

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years. The circular dated 11th April, 2001 hardly had any bearing on the case of the appellant. That circular was applicable to the re-employee pensioners who opted for separate military and civil pension and whose cases were earlier decided were permitted to be reconsidered and pensionary benefits for civil service may be fixed without limitation as provided in the paragraphs of that circular. Rule 18(3) provided that 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 retirement gratuity, if any, shall not be greater than the difference between the value of the pension and 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. This obviously meant and was to be examined in contrast to the service rendered in the armed forces and subsequently, in the civil services. As already noticed, the appellant was claiming combining of the pension of DAE and the Corporation none of them being the part of the military or Air Force service.

8. Now, let us examine the option exercised and the proforma filled in by the appellant as back as on 13th February, 1998 much after his retirement even from the DAE. The relevant paragraph of the option reads as under:

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"2.3.1 I opt to draw pro-rata monthly pension and family pension benefits from the date of absorption."

9. This representation was filled in by the appellant after having gone through and understood the terms of absorption in the Corporation and it was relatable to the service rendered in the Corporation and absorption therein and pro-rata pension of the service rendered in the forces. His request for change which was rejected by the authorities related to declining of combining the service of DAE and NPC, which itself was not the intent of the circular. In the Writ Petition before the High Court, the appellant had prayed for a direction to the respondents to accept his option for combined service pension. Even the circular issued on 27th January, 2003 (Annexure 'P-7') clearly stated that in case of re-employment of military pensioner in civil service, the pensionary benefits for second spell of service shall not be subject to any limitation as per provisions of rule 18(3) of the Rules. In other words, it is not relatable to service rendered in DAE vis-à-vis combining the same with the Corporation service. The relief claimed even in the present petition thus, is misconceived and cannot be granted on the facts of the case. Merely because the case of the appellant was forwarded by the Department vide its letter dated 27th January, 2007 for

favourable consideration, would not vest any right in the petitioner and can hardly be of any material consequence. If an employee keeps making representation

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after representation which are consistently rejected then the appellant cannot claim any relief on that ground. We are unable to find any merit in the contention raised before us and we are also of the view that the High Court was not in error while dismissing the Writ Petition even on the ground of unexplained delay and laches. The representation of the appellant was rejected as back in the year 1999 and for reasons best known to the appellant he did not challenge the same before the Court of competent jurisdiction.

10. For the reasons afore-stated, we find no merit in the present appeal and the same is dismissed however, leaving the parties to bear their own costs.

J.

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[DR. B.S. CHAUHAN]

J.

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[SWATANTER KUMAR]

New Delhi
July 08, 2010

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ITEM No.1UUU

COURT NO.1

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.3138 of 2008

NARESH KUMAR

Appellant(s)

VERSUS

DEPARTMENT OF ATOMIC ENERGY & ORS.

Respondent(s)

Date : 08/07/2010 This Appeal was called on for judgement today.

For Appellant(s) Mr. Rajesh Srivastava,Adv.

For Respondent (s) Mr. Sameer Parekh,Adv.
for M/s. Parekh & Co.,Advs.

Hon'ble Mr. Justice Swatanter Kumar
pronounced the judgement of the Bench comprising
Hon'ble Dr. Justice B.S. Chauhan and His Lordship.

The civil appeal is dismissed, leaving the
parties to bear their own costs.

[T.I. Rajput]
A.R.-cum-P.S.

[Madhu Saxena]
Assistant Registrar

[Signed Reportable judgement is placed on the file]