ARMED FORCES TRIBUNAL CHANDIGARH BENCH AT CHANDIMANDIR

O.A. No. 12 of 2010

Amarjeet Singh …….. Petitioner

Vs.

UOI & Ors …….. Respondents

ORDER
30-07-2010

Coram: Justice Ghanshyam Prasad, Judicial Member.
Lt Gen H.S. Panag (Retd) Administrative Member.

For the applicant (s) : - Mr. Parmod Parmar,Advocate.

For the respondent (s) : Mr. Mohit Garg, CGC.

JUSTICE GHANSHYAM PRASAD:

This appeal/application has been preferred by the appellant for setting aside the judgment and decree dated 6-11-2009 passed by the Additional civil Judge (Senior Division), Amritsar in Civil Suit No. 438 of 2003.

The plaintiff-appellant filed the above mentioned suit for declaration that he is entitled to get two service pensions i.e. first for the service rendered in Army and the second for service rendered in D.S.C. with retrospective effect.

The case of the appellant in short is that he was enrolled in the Indian Army on 18-06-1960 and after rendering seven years service in the Army he was transferred to Reserve Establishment with effect

from 25-07-1967. After completion of 15 years of combined colour and reserve service he was transferred to Reservists Pension Establishment w.e.f. 31-7-1975 and was granted Reservist Pension. However, he was re-enrolled in D.S.C..on 31-05-1976 and was transferred to Pension Establishment on 31-05-1991 after completion of period of his engagement. During that period the pension of his former service had been suspended, allegedly, arbitrarily and without apprising of this fact to the appellant. During the service in D.S.C. in the year 1983 he was asked to sign an option as to whether to continue to draw his former pension or not. The authority got his signature on option paper without explaining its consequences. The appellant being disciplined soldier signed the option paper. Later on, he came to know that he was deceived and put to financial loss. Had two separate pensions been granted to the appellant for two spell of services, he would have got much total amount of pension after 5th Pay Commission than what at present he is getting for combined services.

The defendants-respondents filed the written statement and contested the suit. It is averred that the appellant is estopped by his own conduct to file the suit as he himself opted for clubbing both the services. Now he cannot claim two separate pensions for both spell of services. It is further averred that after retirement from the Army the appellant was granted pension @ Rs. 15/- per month with D.A. w.e.f. August, 1995. However, it was suspended after re-enrollment in D.S.C. w.e.f. May, 1976. Subsequently, in the light of Government of India (Ministry of Defence) letter No. P.C. II dated 3rd March, 1983 the appellant himself elected by giving option to cease to draw pension and

to count former service towards the D.S.C. service in order to get enhanced Service Pension. Therefore, within frame of rules, the appellant is not entitled to get separate pensions for two services. It is also averred that had the appellant not opted to cease his former pension, he would not have been eligible for re-enrollment in D.S.C. as per rules prevalent at that time.

Both the parties adduced oral and documentary evidence in support of their respective cases.

The learned lower Court framed seven issues. In judgment, the learned Civil Judge took up Issue Nos. 1 and 2 together and after discussion, it has been held that the appellant failed to prove his claim and both the issues were accordingly decided against the appellant. Ultimately, the learned lower Court dismissed the suit with costs.

We have heard the learned counsel for both the parties and perused the pleadings as also the evidence and judgment of the lower Court.

The only point involved in this appeal for consideration is as to whether the appellant is legally entitled to get two pensions for two spell of services i.e one for Military Service and another for D.S.C. The rule is very clear on this point. It has been incorporated in paragraph 126 of Pension Regulations for the Army, 1961 read with Government of India (Ministry of Defence) letter dated 3rd March, 1983 (Annexure D-1). Paragraph 126 of the Pension Regulations for the Army, 1961, runs as under:-

“126. (a) combatants and enrolled non-combatants who have former service to their credit may be allowed by a competent authority to reckon their former service towards pension and gratuity to the extent specified in the Table below subject to the fulfillment of the conditions stated in column 5 thereof and provided that they were not dismissed from service.

Table referred to in Reguation 126

xx xx xx xx xx xx

(b) The conditions 1, 2 and 3 referred to in column o. 5 of the Table are as follows:-

Condition 1-- At the time of re-employment/re-enrolment, the individual shall have declared his former service and cause of discharge therefrom and elected to count that service towards pension or gratuity and retirement/death gratuity. The election once made shall be final.

Condition 2—After re-employment/re-enrolment the individual shall have completed any consecutive period of three years service without two red ink entries or a court martial conviction.

In the case of combatants re-enrolled as such and transferred to the reserve before completing three years’ colour service since re-enrolment, the period of three years for the purpose of this condition may be whether wholly or partly with the reserve.

Condition 3—the individual shall have refunded any gratuity, other than war gratuity, received in respect of his

former service within a period of three years from the date of his re-employment/re-enrolment is not more than 36 monthly installments of his pay. The first instalment shall be payable within three months from the date of re-employment/re-enrolment.

The relevant portion of aforesaid letter dated 3rd March, 1983 runs as follows:-

"The question of improving the terms and conditions of service of DSC personnel has been under consideration of Government. Under the existing orders, an individual, who is receipt of pension in respect of his former service shall have his pension held in abeyance during his service in the Corpsand the re-employed service, shall account for enhancement of pension. As against this, a Government servant, who is re-employed in civil service or post, before attaining the age of superannuation and who, before re-employment, had rendered military service after attaining the age of 18 years may on confirmation in his civil service or post, opt either.

(a) to continue to draw military pension and retain DCRG, or retain service gratuity and DCRG received on discharge from military service in which case his former military service shall not count as qualifying service, or

(b) to cease to draw his pension or refund the service gratuity, including D.C. R. G., if any, and count for the previous military service as qualifying service.

2. It has now been decided that the retired military personnel re-employed in the D.S.C. will be given the options as at Para 1 above. These orders will take effect from 25-1-83. The existing retired military personnel re-employed in the DSC will be required to exercise the option

within six months of the date of issue of these orders. If no option is exercised within the period of six months, such personnel shall be deemed to have opted for the option at clause (a) in para 1 above."

It appears from the record that the appellant gave his option in terms of Government of India, Ministry of Defence, letter dated 3rd March, 1983 to count the previous military service as qualifying service in D.S.C. This option bears the signature of the appellant in English. It is dated 16-05-1983. This document further reveals that the pension etc. of the appellant was fixed at enhanced rate after retirement from D.S.C. service which was accepted by the appellant. At that very time no objection was raised by the appellant. For the first time the appellant raised this matter after lapse of 20 years which is apparently barred by limitation.

The learned counsel for the appellant relied upon a decision of the Jammu and Kashmir High Court dated 31-12-2001. We have gone through the same. We are of the view that it does not help the appellant.

Thus from the above discussion, it is quite apparent that there is no merit in this appeal. The learned lower Court has rightly dismissed the suit declining any relief to the appellant. Accordingly, this appeal is dismissed on contest and the judgment and decree of the lower Court is hereby affirmed.

In the facts and circumstances, there shall be no order as to costs.

(Justice Ghanshyam Prasad)

(Lt Gen H.S. Panag (Retd)

July 30, 2010
'dls'