

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No.150 of 2013

Monday, the 27th day of October, 2014

The Honourable Justice V.Periya Karuppiah
(Member-Judicial)
and
The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

Ex-Naik Chinna Kolandai
Service No. 2555308-H
Son of Late Ratanam, aged about 71 years
House No. B 60, Village & Post – Kalambur (TP Nagar)
Tahsil – Polur, District-Tiruvannamalai
PIN: 606903

....Applicant

By Legal Practitioners:
Mr.M.K.Sikdar, Mr. M.Dakshnamurthi and Mr.S.Biju

vs

1. The Union of India
Rep. by The Additional Directorate General
Adjutant General Branch (AG / PS 5)
Pers Services, IHQ of MOD (Army), 'A' Wing
Sena Bhavan, New Delhi – 110 015
2. The Officer-in-Charge
The Madras Regiment, Records
Wellington, The Nilgiris
3. The Officer-in-Charge
Raksha Suraksha Corps Abilekh
Defence Security Corps Records
Mill Road, Cannanore
PIN: 670 013

....Respondents

Mr.B.Shanthakumar, SPC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

The applicant, Ex-Naik Chinna Kolandai, *vide* his application has challenged the impugned order No.Pen/SP-3/2555308/SR dated 08th November 2011 passed by the 3rd respondent against the non-grant of dual pension to the applicant for services rendered in the Army and, thereafter, in the Defence Service Corps (DSC).

2. The applicant was enrolled in the Indian Army on 11 February 1963 and was discharged from service on 31 October 1978 after fulfilling the conditions of enrolment and was granted service pension by the Army. Thereafter, he had re-enrolled himself in DSC on 29 July 1981. The applicant submits that on re-enrollment in the DSC, he was advised by the 3rd respondent to submit an 'option to cease Pension and count former service' for more benefits and the applicant, being an illiterate person, signed the same on 30 May 1983. The applicant would further submit that his Army pension had ceased but he was not given any benefit out of it by counting the formal service with DSC. The applicant was subsequently discharged from DSC on 28 February 1998 after fulfilling the conditions of enrolment and was granted DSC pension. Thereafter he would submit that he opted for dual service pension. However, the same was denied to him by the respondents and he would further submit that his 15 years with Army service was not counted for promotion or for any financial benefits as promised by the 3rd respondent though, on the verge of his retirement, he was promoted to the rank of Naik and was granted pension from 28 February 1998. Although he was entitled to two separate

pensions on account of his service with Army and DSC, however, his pension was fixed only at Rs.518/- (Rs.1368 with Dearness Allowance). He would submit that his contemporaries, on the other hand, were getting two pensions which is more than what he was awarded though he had served for similar periods as his contemporaries in the Army and DSC. The applicant submits that he had served a total of 32 years, 3 months and 24 days in both the services but was drawing only a pension of Rs.10,422/- as on date and is not commensurate with the length of service that he had put in nor the dual pension he was otherwise entitled to.

3. The applicant would submit that he had made a number of representations to the respondents, on 12 July 2007, 23 November 2007, 27 July 2008, 12 August 2010 and 20 August 2011 requesting for grant of dual service pension. However, the respondents have not granted the same *vide* impugned order No. Pen/SP-3/2555308/SR dated 08 November 2011 stating that since he had opted for option to cease pension and to count former service for pension, he was entitled to only one pension and that all the benefits that accrue in such cases had been given to him and, therefore, his claim was rejected. He would further submit that he is suffering from irreparable financial loss and mental agony and, therefore, has filed this application seeking the indulgence of the Hon'ble Tribunal to set aside the impugned order of the 3rd respondent and to grant him dual service pension from Army and DSC for the respective spell of services, with interest, costs and all monetary benefits.

4. The respondents, in their reply statement, would state that the applicant had served in the Army from 11 February 1963 till 31 October 1978 and, thereafter, was

discharged on fulfilling his terms of engagement and was granted service pension. He, thereafter, joined DSC on 21 July 1981. On joining DSC, his former service pension was suspended under the provisions of Rule 267 (d) of Pension Regulations for the Army (Pt I), 1961 and his former service was counted towards DSC service for the purpose of enhanced rate of pay and allowances. Further, on issue of Government of India, Ministry of Defence letter No. PC III to MF No.A 00592/DSC-2/54-C/D(GS-IV) dated 3rd March 1983, the applicant was given an opportunity to exercise his option to render willingness to continue to draw his former service pension or to discontinue the same for the sake of getting enhanced rate of pension and gratuity with service in DSC. The applicant elected to cease to draw his pension and opted to count his former service towards enhanced rate of pay and allowances to pension and gratuity with DSC service. He was also granted extension of service from time to time upto the age of his superannuation when he was finally discharged from DSC on 28 February 1998. Considering the applicant's aggregate service both in the Army and in DSC, i.e., 32 years, 3 months and 24 days, the applicant was correctly granted enhanced rate of pension with effect from 01 March 1998 for life with DA as admissible from time to time. They would further submit that the applicant had knowingly and willingly drawn enhanced rate of pay and allowances throughout his service with DSC and he very well knew that his counterparts who had exercised the option to not count former service for enhanced pension were drawing less pay than him. Hence, after exercising the option and enjoying the benefits accrued to him out of the said option, he can not now claim for dual service pension for the former service in the Army and DSC service separately, which is tantamount to claiming double benefits.

4. The respondents would cite judgments of the Hon'ble Delhi High Court order of 24 August 2005 in WP(C) No.7351/2003 in the case of ex-Naik Roshan Lal vs UoI and Others, as well as WP(C) No.5964/2003 of ex-Naik Sanwant Ram vs UoI and others. They would also quote the Hon'ble Delhi High Court judgment No.WP(C) No.244/2003 in the case of ex-Sepoy Datta Ram vs UoI and others wherein the Court had held "*that the option for counting the former service with DSC service was signed by the applicant therein with his open eyes and knowing fully well the implications thereof. The applicant also enjoyed full benefits accruing therefrom, namely, enhanced rate of pay and allowances throughout his DSC service taking into account the service rendered with the Bengal Engineer Group which was his former employment*". Accordingly, the petitions were dismissed in all cases. They would also argue that this case also squarely fits with the above-mentioned cases and, therefore, did not have any merit and substance and hence deserves to be dismissed.

5. On the above pleadings, we have heard the arguments of Mr.M.K.Sikdar, learned counsel for the applicant and Mr B Shanthakumar, learned Senior Panel Counsel, assisted by Maj Suchithra Chellappan, JAG Officer (Army) representing for respondents and also perused all the documents and written arguments that were placed before us.

6. Based on the arguments, the following points have been framed for consideration:

- (a) *whether the impugned order dated 08 November 2011 is sustainable?*
- (b) *Whether the applicant was given enhanced rate of pay and allowances for having opted to count his former service while serving with DSC?*

(c) *What relief, if any, the applicant is entitled to?*

7. Points 1 and 2: The applicant had served in the Army from 11 February 1963 till 31 October 1978 when he was discharged after fulfilling the conditions of enrolment and was granted service pension by the Army. The applicant then re-enrolled himself in the DSC on 29 July 1981 and served till 28 February 1998 when he superannuated from service. On joining DSC, his former service pension was suspended under the provisions of Rule 267 (d) of Pension Regulations for the Army (Pt I), 1961. Government of India, Ministry of Defence *vide* its letter dated 03 March 1983 issued instructions on the subject of Regulation of Pension and fixation of Pay of DSC personnel. The objective of the letter was to improve the terms and conditions of DSC service personnel, in line with military personnel re-employed in civil service. *Inter alia*, DSC personnel were given opportunity to exercise one of the following two options:

- (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 the previous military service as qualifying service.*

8. The applicant, on his own admission, had opted for option (b) above, i.e., cease to draw pension and to count the previous military service as qualifying service for fixation of pay in DSC. In the oral arguments, the counsel for the applicant would claim that the applicant was illiterate and, therefore, was not in the know of the implications of the said option and that he exercised the option based on the advice of the 3rd

respondent. From the records available, we note that the applicant was illiterate at the time of joining the Army; however, we also note that he had passed Army Education Certificate Class III (Hindi Class III) during his service in the Army and therefore, can no more claim to be illiterate. Further, a soldier, with 15 years long service would normally have adequate knowledge of pay and allowances and the emoluments due to him. Therefore the applicant's claim that he was not aware of the implications of the said option does not seem to be logical or true. It appears that the applicant had exercised the option after reasonable knowledge of the merits and demerits of the choices that were offered to him.

9. The second issue raised by the applicant was that his former service was not counted and that he was only drawing a pension of Rs.10,422/- as on date which was not commensurate to the quantum of service that he had put in. The respondents in the impugned order have clearly stated that he was granted enhanced rate of service pension taking into account both spells of service, i.e., 15 years, 261 days rendered with the Army and 16 years, 6 months and 29 days rendered with DSC making a total of 32 years, 3 months and 24 days. He was accordingly granted enhanced pension with effect from 01 March 1998 *vide* PPO No.S/005803/97. We note that the applicant has not challenged the said PPO at any stage.

10. We have examined the pay and allowances paid to the applicant while in service with the DSC from the documents placed before us. In accordance with Ministry of Defence letter No.A/00592/DSC-2/522-C/D(GS-IV) dated 30th September 1983 that persons who have opted for counting their former service would be granted stepped up

pay equivalent to a maximum of 8 increments for the counting of former service with the Army between 01 January 1973 to 30 September 1981. The relevant paragraph of the MOD letter is cited below:

".....

(a) Pay of DSC Sepoys who entered service prior to 01 Oct 81 will be stepped up equal to Rs.230/-, i.e., by granting a maximum of eight increments for the services rendered from 01 Jan 73 to 30 Sep 81 or the actual service, whichever is less."

The applicant joined the DSC on 29 July 1981, i.e., prior to 01 October 1981 and, therefore, was eligible for the said benefit. Further, we have seen that the applicant had served in the Army from 11 February 1963 till 31 October 1978. Therefore, he is entitled for increments for the period 01 January 1973 to 31 October 1978 (in accordance with the above notification). We note from the documents that he was placed in the Pay Band of Rs.190-5-250 and his pay was originally fixed on 29 July 1981 at Rs. 190/- p.m. On 30 July, his pay was stepped up to Rs.200/- p.m. And on implementation of the MOD Notification of 30 September 1983 (Supra), his basic pay was stepped up to Rs.220/- p.m. with effect from 01 October 1981. On the other hand, his contemporaries, similarly placed but who opted for option (a), continued to have their pay in the band of Rs.190-5-250. It is quite clear from perusal of the documents that the applicant had received enhanced pay for having opted for option (b) in comparison to those who opted for option (a).

11. The applicant had further requested that he be permitted to change his option so that he could get two separate pensions, i.e., from the Army as well as DSC. The respondents have cited a catena of judgments of the Division Bench of the Hon'ble

High Court of Delhi (Supra) that have held that after exercising an option and enjoying the benefits accrued out of the said option, the applicant is not entitled to claim dual service pension for the former service and DSC service separately. Further, in dismissing a similar petition, AFT Regional Bench, Chandigarh in TA No.908 of 2010, arising out of CWP No.12046 of 2009, (Charan Singh vs Union of India and others) has made a similar observation. The relevant portion of the judgment is extracted below:

"We are unable to accept the argument of learned counsel for the petitioner that the petitioner being illiterate was unaware of the consequences of signing such an option, as consequent to this option being exercised, two things occur; firstly, his former pension was stopped, and secondly, he was being paid much more pay and allowances than his colleagues and contemporaries in the DSC. These two glaring occurrences would alert even an illiterate person to seek clarification as to why one had stopped and the other increased. We find no merit whatsoever in the line of argument that the petitioner being illiterate was unaware of the consequences of signing such an option. We may also observe that the DSC service is contractual for a period of five years extendable for similar periods till the age of superannuation. An individual re enrolling in the DSC would opt for counting of former service for enhanced pay and allowances as the issue of completing pensionable service in the DSC is uncertain. Such an option cannot be said to be a result of ignorance of illiteracy".

12. Point No.3: From the discussions above, it is apparent that the applicant had exercised his option for counting his former service in the Army for enhanced rate of pay and allowances and pension in the DSC. He was accordingly given a stepped up pay in accordance with MOD letter dated 30 September 1983 and, thereafter, on retirement, his pension was fixed taking into account combined service (Army and DSC) of over 32 years that he had put in. Therefore, we find no merit in his plea to quash the impugned order of the 3rd respondent, dated 08 November 2011.

13. Accordingly, the application is dismissed. No order as to costs.

Sd/-
Lt Gen K Surendra Nath
Member (Administrative)

Sd/-
Justice V.Periya Karuppiah
Member (Judicial)

27.10.2014
[True copy]

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

To:

1. The Additional Directorate General
Adjutant General Branch (AG / PS 5)
Pers Services, IHQ of MOD (Army), 'A' Wing
Sena Bhavan, New Delhi – 110 015
2. The Officer-in-Charge
The Madras Regiment, Records
Wellington, The Nilgiris
3. The Officer-in-Charge
Raksha Suraksha Corps Abilekh
Defence Security Corps Records
Mill Road, Cannanore
PIN: 670 013
4. Mr.M.K.Sikdar
Mr.M.Dakshnamurthi &
Mr.S.Biju
Counsel for the applicant
5. Mr. B. Shanthakumar, SPC
For Respondents.
6. OIC/Legal Cell,
ATNK & K Area,
Chennai-600009.
7. Library, AFT/RB, Chennai.

Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.No.150 of 2013

Dated: 27.10.2014