

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI

T.A.NO. 122 OF 2009

(WP(C).No.18561/2009 of the High Court of Kerala)

THURSDAY, THE 6TH DAY OF DECEMBER, 2012/15TH AGRAHAYANA, 1934

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)

HON'BLE LT.GE.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

CAPT.C.STANLEY JOHN,
S/O.LATE SRI.SIMON JOHN,
AGED 78 YEARS, RESIDING AT 8/316,
FERRY ROAD, CHERANALLOOR,
KOCHI – 682 034.

BY ADV.SRI.M.R.HARIRAJ.

VERSUS

RESPONDENTS:

1. THE UNION OF INDIA REPRESENTED
BY THE SECRETARY TO GOVT. OF INDIA,
MINISTRY OF DEFENCE,
NEW DELHI.
2. THE PRINCIPAL CONTROLLER OF DEFENCE
ACCOUNTS (PENSIONS), DRAUPADI GHAT,
ALLAHABAD – 211 014.

ADDL.R3 AND R4 IMPEADED:

ADDL.R3. THE CHIEF OF NAVAL STAFF,
IHQ MOD (N)/PDPA, NAVAL HEADQUARTERS,
NEW DELHI.

ADDL.R4. OFFICER IN CHARGE,
BUREAU OF NAVIKS, CHEETAH CAMP,
MANKHUND, MUMBAI – 400088

ADDL.R3 AND R4 IMPEADED AS PER ORDER IN IA.83/10
DATED 14/7/2010.

BY ADV.SRI.K.M.JAMALUDHEEN, SENIOR PANEL COUNSEL

O R D E R

Shrikant Tripathi, Member (J):

The applicant Captain C. Stanley John initially filed W.P.No.18561 of 2009 in the Honourable High Court of Kerala at Ernakulam for quashing the orders contained in Exts.P8, P10, P12, P13 and P18 and further claimed that his pension be directed to be refixed treating his total qualifying service as 30.5 years. He lastly claimed the relief that his 43% pension be restored according to Ext.P20. Interest has also been claimed.

2. On establishment of this Tribunal, the writ petition

was transferred to the Tribunal and has been registered as T.A.No.122 of 2009.

3. The applicant was inducted in the Indian Navy as an Artificer Apprentice on 23rd January 1948 and on completion of the apprenticeship he was appointed as Engine Room Artificer on 9th August 1952 and rendered service as such upto 16th February, 1957. He was however commissioned as Sub Lieutenant with effect from 17th February 1957. The applicant got due promotions and rose upto the rank of Captain (equivalent to Colonel in the Army) and remained as such upto 30th April 1981. Since he had been on deputation on Mazagon Dock, he opted for his absorption in the said establishment which was allowed with effect from 30th April 1981. Thus he was granted pension for the Navy service with effect from 1st May 1981. In this way, the applicant had rendered 24 years and 73 days of commissioned service, 4 years 6 months and 11 days of

apprentice service and 4 years and 91 days of pre-commissioned service.

4. The first grievance of the applicant was that his service as apprentice as also pre-commissioned officer was liable to be taken into account for the purposes of pension. There had been some dispute with regard to the initial counting of the said apprenticeship service, but in view of the judgment of the Apex Court in **Dilawar Singh Chief v. Union of India and Others** (W.P(C).No.727 of 1996), **G.S.Sharma v. Union of India and Others** (W.P(C).No.913 of 1996) and **Nakesh Kumar v. Union of India and Others** (WP (C).No.71 of 1997), the respondents ultimately agreed to count the two-third of the apprenticeship service, and issued Government letter No.PN/1280/506/CC/C/D (Pen/Sers) dated 5th September 1997 accordingly. In this way, according to the applicant, his total length of service was 30 years and 91 days and

according to the Government Order applicable at that point of time, the said 91 days were liable to be counted as 180 days, therefore, his service was 30.5 years for the purposes of pension. On the other hand, according to the respondents, the total length of service of the applicant including pre-commissioned service and apprenticeship was 30 years and 89 days. Therefore the 89 days being less than six months, was liable to be ignored. The respondents' further stand in this regard is that at that point of time there was no Government Order for extension of three months to six months. The counsel for the respondents submitted that the Government Order for granting extension of three months to six months came to be issued in the year 1984, much after the retirement of the applicant.

5. The next contention on behalf of the applicant was that the applicant was entitled to the weightage of service in terms of the Government letter No. 1(5)/87/D(Pensions/

Services) dated 30th October, 1987 (Annexure B-2). In this connection the submission on behalf of the respondents was that the applicant was not entitled to the weightage in view of the fact that he had taken premature retirement from the Navy for getting absorption in the aforesaid public sector undertaking.

6. The third grievance raised on behalf of the applicant was that he was not given any benefit of the Government of India letter No.B/41250/AG/PS4(c)/1155/A/D (Pens/Sers) dated 03rd July 1989 (Exhibit P24), only on the ground that the option was not given by the applicant in time and he had already received full commutation value of the pension. In this connection the counsel for the applicant submitted that on expiry of the 15 year commutation period, the applicant's pension stood revived, therefore, the benefit provided by the said Government letter of 03rd July 1989 ought to have been given to the applicant with effect from

the date of the revival of the pension on completion of the commutation period of 15 years. It was next submitted that the applicant had no knowledge of the aforesaid Government letter dated 03rd July 1989 and he came to know about the letter when he was informed by Mr.D.R.Acharya, Commander vide letter dated 23rd October 1989 and he immediately thereafter submitted the option. Therefore the respondents were not justified in rejecting the applicant's claim only on the ground of delay in exercising the option.

7. We have to consider the applicant's case point-wise.

8. The first and foremost question raised on behalf of the applicant was with regard to his total length of qualifying service. Initially the dispute had been between the applicant and the respondents with regard to counting of service rendered by the applicant as apprentice. But now it is a conceded fact that apprenticeship service to the extent of

two-third was liable to be taken into account, therefore, the respondents are directed to count the apprenticeship service of the applicant to the extent of two-third of total apprenticeship service, if not already counted. The two-third pre-commissioned service of the applicant was also liable to be taken into account and according to the parties, this service has already been taken into account, therefore, it requires no further direction. In this way, the applicant's total service, commissioned, pre-commissioned and apprenticeship, comes to 30 years and 91 days, according to the applicant and 30 years and 89 days, according to the respondents. In our view, there is no dispute between the parties so far as 30 years service of the applicant is concerned. In our view, in the present matter, the position will not change if the period beyond 30 year is treated either as 91 days or 89 days. According to Government of India letter No.1(4)/60/595/8/1/D (Pensions/Services) dated September 28, 1960, which was applicable at the time of

applicant's retirement from the Navy, the total period of qualifying service which was six months or more but less than one year, it was to be treated as completed one year for the pension/gratuity purposes. The Government of India, Ministry of Defence issued another letter No.B/38076/AG/PS4(a)/2190/A/D (Pensions/Services) dated 6th August 1984 and thereby a modification was made to the aforesaid scheme and according to the said 1984 amended scheme, the period of three months and above but less than six months was required to be treated as six months (half year). However the previous scheme introduced by the 1960 Government letter regarding counting of the period of six months and above but less than one year as complete one year was allowed to continue. This procedure with regard to computation was made operative with effect from 20th June 1983, which is a date subsequent to the date of the retirement of the applicant, therefore, the applicant was not in any way entitled to the benefit of the Government

letter No. B/38076/AG/PS4(a)/2190/A/D(Pensions/Services) dated 6th August 1984. In this way the applicant's 91 days of service beyond 30 years could not be treated as a half year as claimed by him and as such the stand of the respondents that the said period 91 days or 89 days, as the case may be, was of no use for computing the qualifying service for pension purposes, seems to be perfectly correct and requires no interference. In our view, the applicant's total length of service for pension purposes was only 30 years. His due pension on 01.05.1981, being the date next to his date of retirement, was liable to be computed accordingly in terms of the rules, regulations and Government Orders applicable at that point of time. The respondents are directed to do so, if not already done, and to re-fix the applicant's basic pension as on 01.05.1981. If on the basis of the exercise so made, applicant's basic pension increases as on 01.05.1981 by any amount, whatsoever, the commuted value of the pension shall also be

correspondingly increased and the arrears thereof shall be paid to the applicant with interest at the rate of 07% per annum from the date of the payment of the commuted value of the pension already paid to the applicant. However nothing is to be paid to the applicant if the basic pension already paid as on 01.05.1981 remains the same even after such exercise.

9. So far as the applicant's contention with regard to the weightage of service in terms of the aforesaid Government letter of the year 1987 is concerned, his case has no substance. Para 5(b) of the Government letter provides weightage rankwise. Note (1) appended to para 5 of the letter clearly provides that there will be no weightage for officers and personnel below officer rank (PBOR) who retire prematurely for permanent absorption in public sector undertakings and autonomous bodies. In view of the fact that if the applicant had not retired from the Navy on

30th April 1981, he would have continued in the service of the Navy upto the year 1986, but he took premature retirement from the Navy for serving the aforesaid public sector undertaking, therefore, his case falls within the four corner of Note (1) appended to para 5 of the aforesaid Government letter and as such he was not entitled to the benefit of the weightage and therefore the stand of the respondents in this regard seems to be perfectly correct and requires no interference.

10. The Government of India, Ministry of Defence letter No.B/41250/AG/PS4(c)/1155/A/D/(Pens/Sers) dated 03rd July 1989 (Ext.P24 (1)) provided certain benefits to the pensioners. According to the applicant, he was entitled to the benefit in view of the para 5 of the aforesaid Government letter which is re-produced as follows:

"5. On the lines of the decision taken by the Department of Pension & PW, it has been decided to allow a fresh option to

service officers who retired after 30.4.79 but not later than 30.1.82 to choose either of the two alternatives given in para 1. The officers who retired between 31.1.82 and 30.3.85 and who had opted for alternative (a) of para 2 will also have to be given an opportunity to exercise a fresh option. As laid down in the Department of Pension & PW OM this option has to be exercised within a period of 6 months. The revision of pension will be from 1.4.86 and no commutation for enhanced pension will be allowed."

11. In our view, according to para 5 excerpted above, the applicant was to furnish a fresh option within the stipulated time for claiming the benefit. The applicant furnished the option as required, but it was, according to the respondents, beyond the prescribed period, therefore, the option was not to be considered. In this connection, the learned counsel for the applicant submitted that the applicant had no knowledge of the Government letter, so he

did not furnish the option in time. He got the knowledge only when he received the letter dated 23rd October 1989 (Ext.P37) sent by Mr.D.R.Acharya. According to the applicant, he received the letter on 27th February 1999, so he furnished the option on 28th February 1999, the very next day of the receipt of the letter. There is no other material on record to show as to on which date the letter dated 23rd October 1989 was delivered to the applicant, therefore, we have no option except to believe the applicant's statement with regard to the date of the receipt of the letter. In this way, the applicant's case that he received the letter on 27th February 1999 should be relied on and as such he could not be held responsible for the delayed submission of the option. More so, the applicant is a retired person. The Government letters, particularly with regard to policies, are not directly sent to the retired persons, therefore, there could not be any assumption of knowledge of the letter. The respondents have not stated

anywhere that a copy of the letter dated 03rd July 1989 was sent to the applicant, therefore, the rejection of the option so sent by the applicant only on the ground of the delayed submission, was not proper.

12. The learned counsel for the respondents submitted that the applicant was not entitled to the benefit of the letter dated 03rd July 1989 as he had already been paid 100% commutation value of his pension and was not to be paid anything thereafter. This submission seems to be devoid of merit. In our view, the benefit provided by the letter dated 03rd July 1989 was to be given with effect from 1st April 1986, which is a date posterior to the date of retirement of the applicant. There does not appear to be any dispute that the applicant's pension stood revived on 23rd May, 1997 on completion of the 15 year commutation period of the pension. When the applicant's pension so revived, in our view, he was entitled to the benefit of the

letter dated 03rd July 1989 with effect from the date of revival of the pension in the aforesaid manner. Therefore the respondents were required to compute the applicant's pension with effect from 23rd May, 1997 on completion of the commutation period, keeping in view the letter dated 03rd July 1989 as also the option submitted as aforesaid by the applicant. But in this case this has not been done, therefore, the respondents have to undertake the applicant's matter afresh and re-calculate his basic pension on the aforesaid date of such revival keeping in view the benefit granted by the aforesaid letter dated 03rd July 1989 as also the Government letters issued with regard to revision of pension with effect from 01.01.1996 as per the recommendations of the Fifth Central Pay Commission.

13. No other point arose nor pressed for consideration.

14. The Transferred Application is partly allowed. The

respondents are directed to re-calculate the applicant's basic pension as on 01st May, 1981 keeping in view the various Government Orders, rules and regulations which were applicable on that date. In doing so, the applicant's total Naval service shall be treated as 30 years on the date of his retirement from the Navy. If on such re-exercise, the basic pension of the applicant increases from the amount already computed and taken into account by the respondents for calculating the commuted value of the pension, the amount of the commuted value of the pension shall also be correspondingly increased and arrears thereof with interest as per the observations made in para 7 of this order shall be paid to the applicant. More so, the applicant shall also be extended the benefit of the Government of India, Ministry of Defence letter No.B/41250/AG/PS4(c)/1155/A/D/(Pens/Sers) dated 03rd July 1989 with effect from 23rd May 1997, being the date of revival of his pension on completion of the 15 years

commutation period. Apart from the benefit of the said letter of 03rd July, 1989, the benefit of the Fifth Central Pay Commission in terms of various Government letters issued in pursuance of the recommendations of the said Commission shall also be extended to the applicant on the date of revival of his pension. Accordingly the respondents shall fix the amount of the basic pension due to the applicant as on 23rd May 1997 and calculate the arrears, if any. It is also made clear that the applicant will also be entitled to the benefit extended by the Government with effect from 1st January 2006 in pursuance of the recommendations of the Sixth Central Pay Commission, keeping in view the ultimate result of the exercise with regard to the fixation of the applicant's pension with effect from 23rd May, 1997.

15. The respondents are further directed to pay the entire due arrears of pension and D.A, if any, to the

applicant within four month from today, failing which the unpaid amount will carry a simple interest at the rate of 7% per annum, which shall be recoverable from the respondents.

16. There will be no order as to costs.

17. Issue copy of the order to both side.

LT.GEN.THOMAS MATHEW
MEMBER (A)

an

JUSTICE SHRIKANT TRIPATHI
MEMBER (J)