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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2419/2002

Tuesday, this the 15th day of July, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri S.S. Dahiya son of late Shri G.R.Dahiya
Resident of Village & Post Office Nilauthi
Distt. Rohtak (Haryana)

..Applicant.

(By Advocate: Shri A.S. Chauhan)

Versus

1. Union of India through
the Director General
Directorate General of Supplies & Disposals
Deptt. of Supply, Jeevantara Building
Parliament Street, New Delhi-1

2. Deputy Director (Administration)
Section-14
Directorate General of Supplies & Disposals
Jeevantara Building, 5 Sansad Marg
New Delhi-1

..Respondents

(By Advocates: Shri Bhasker Bhardwaj and Shri Gyanender Singh)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, VC (J):-

In this application, the applicant has prayed for setting aside the impugned Office Memorandum dated 27.5.2002 issued by the respondents rejecting his claim for counting his war service for seniority and increments, and for a further direction to the respondents to count the period of war service he had rendered during the National Emergency from 6.4.1963 to 10.1.1968 so as to give him the increments and seniority in his service with respondent No.1.

2. The brief relevant facts of the case are that the applicant states that while he was a student in 1962 when the National Emergency was declared by the Govt. of

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India due to external aggression by the Chinese and following the appeals of the Govt. of India on radio and print media, etc., he joined the Armed Forces, i.e., the Indian Air Force on 6.4.1963. Shri A.S. Chauhan, learned counsel for applicant has submitted that the applicant, instead of pursuing his studies at that time, served the nation by joining the Indian Air Force during the National Emergency. He had continued in the Air Force till 30.4.1984. After his release from the Air Force, he had applied as an ex-serviceman for service with respondent No.1 and was appointed as Technical Assistant in that service on 24.3.1987. He is still continuing in that service.

3. The grievance of the applicant is that by the impugned Office Memorandum dated 27.5.2002, which had in fact reiterated the earlier Office Memorandum issued by the respondents dated 17.4.2002, the respondents have stated that his service conditions are governed by the CCS (Fixation of pay of re-employed pensioners) Orders, 1986, and the National Emergency Rules, 1965 are not applicable to his case. According to the respondents, this matter has been adjudicated by the Tribunal in OA-214/99 which was decided on 11.10.2000 and that order has been upheld by the Hon'ble Delhi High Court vide order dated 20.9.2001.

4. On the other hand, Shri A.S. Chauhan, learned counsel submits that the issue raised in the present application, namely, granting of seniority, increments and pension to the applicant by counting the war service

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put in by him during the National Emergency w.e.f. 06.4.1963 to 10.1.1968 had not been raised in the aforesaid application (OA-214/99). Apart from that, he has relied on the judgment of the Hon'ble Supreme Court in Dhan Singh & Ors. v. State of Haryana & Ors., with connected cases (Civil Appeal No.1060/90) decided on 5.12.1990, copy placed at Annexure-2. In this judgment, the Hon'ble Apex Court has held as follows:-

"On account of the external aggression by the Chinese forces in the Indian territory, the emergency was imposed by the President of India in 1962. In order to attract young men to join military service at that critical juncture, the Central Government and the State Governments issued different circulars and advertisements on the radio and in the press promising certain benefits to be given to those young men who join the military service.

The young persons who have joined the military service during the national emergency and those who were already in service and due to exigencies of service had been compelled to serve during the emergency from two distinct classes. The appellants and the petitioners who joined the army before the proclamation of emergency, had chosen the career voluntarily and their service during emergency was as a matter of course. They had no option or intention of joining the government service during the period of emergency as they were already serving in the army. The persons who enrolled or commissioned during the emergency, on the other hand, had on account of the call of the nation joined the army at that critical juncture of national emergency to save the motherland by taking a greater risk where danger to the life of a member of the armed forces was higher. They include persons who could have pursued their studies, acquired higher qualifications and joined a higher post and those who could have joined a higher post and those who could have joined the government service before attaining the maximum age prescribed and thereby gained seniority in the service. Forgoing all these benefits and avenues, they joined the army keeping in view the needs of the counter and assurances contained in conditions of service in

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executive instructions. The latter form a class by themselves and they cannot be equated to those who joined the army before the proclamation of the emergency. Benefits had been promised to such persons who heeded to the call of the nation at that critical juncture. Older man by joining the military service lost chance of joining other government service and when he joins such service on release from the army younger man had already occupied the post. To remove the hardship, the benefit of military service was sought to be given to those young persons who were enrolled/commissioned during the period of emergency forgoing their job opportunities. The differentia is, therefore, intelligible and has a direct nexus to the objects sought to be achieved. The petitioners cannot, therefore, challenge the rule as discriminatory or arbitrary. Such of those appellants and the petitioners who have joined the army before the proclamation of the emergency are not, therefore, entitled to the benefit of military service as per the Emergency Concessions Rules."

(Emphasis supplied)

5. It is seen from the above order of the Hon'ble Supreme Court that it has been observed that benefits had been promised to such persons who heeded to the call of the nation at that critical juncture, i.e., declaration of Emergency by the Hon'ble President of India in 1962, at the time of external aggression by the Chinese forces in ~~the~~ Indian territory. It has also been noted that at that critical juncture, the Central Government and the State Government had issued different circulars and advertisements on the radio and in the press promising certain benefits to be given to those young men who join the military service. In the present case, it has not been disputed that the applicant had joined the Indian Air Force in response to the call of the nation for emergency duties with the Indian Air Force in April, 1963.

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6. Shri A.S. Chauhan, learned counsel for applicant states that he has not been able to procure the concessions that were issued by the Govt. of India at the relevant time but has submitted a list of policy letters from the 'internet', copy placed on record. Shri Bhasker Bhardwaj, learned counsel has referred to some extracts of the amendments issued by the State Governments of Punjab & Haryana relating to National Emergency (Concession) Rules, 1965, whereby instructions dated 5.11.1976 allowing military service benefits to ex-servicemen personnel released on compassionate grounds from Army, have been withdrawn. He has contended that no such orders have been issued in respect of the applicant. However, learned counsel for applicant submits that the applicant himself is from Haryana.

7. Shri Bhasker Bhardwaj, learned counsel has also drawn our attention to the Govt. of India MHA OM dated 28.4.1965 mentioned in the reply. It has been stated by the respondents that this OM is applicable only to such civil Govt. servants, who being in the civil service, had been permitted to take up military services during emergency and to civil Govt. servants who were members of defence Reserves/Territorial Army/Auxiliary Air Force and were called up for military service during ^{the 72} emergency. Hence, he has contended that this OM was not applicable to the case of the applicant because he did not belong to any of the categories mentioned above and was a regular employee of the Indian Air Force prior to his retirement from that service in the year 1984. However, it is relevant to note that the respondents have failed

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to inform or annexe the concessions that were apparently announced by them which has also been noted in the judgment of the Hon'ble Supreme Court dated 5.12.1990 in Dhan Singh's case (supra). Learned counsel for applicant has submitted that even under the CCS (Fixation of pay of re-employed pensioners) Orders, 1986 under paragraph 3 (2) (ix), war service increments are mentioned in the case of a person holding the rank of JCO, NCO, or OR in the Army and the applicant is stated to be holding the rank equivalent to the NCO in the Indian Air Force. In the circumstances, learned counsel for applicant has submitted that there is no reason why the benefit of war service period rendered by the applicant from 06.4.1963 to 10.1.1968 could not be taken into account for purposes of giving him the service increments and other benefits due to him, as admissible under the rules.

8. It is seen from the averments of the respondents themselves in the reply that under Govt. of India MHA OM dated 28.4.1965, which is made applicable to civilian Govt. servants, they were allowed certain benefits when they had been permitted to take up military services during emergency, where they were members of the Defence Establishments mentioned therein. In the present case, it is noted that the applicant has joined the Indian Air Force in April, 1963 during the National Emergency declared by the Govt. of India in 1962. Why the respondents have not attached the relevant circulars issued at that time by the Govt. of India offering certain incentives/benefits to those who joined the Army and other Services in response to the call of the nation

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at the critical juncture, is unexplained. It is also relevant to note from the order of the Hon'ble Supreme Court dated 5.12.1990 in Dhan Singh's case (supra) that indeed benefits had been promised to such persons who heeded to the call of the nation at that critical juncture. If that is so, we respectfully follow the judgment of the Hon'ble Apex Court that persons, like the applicant, who joined the Armed Forces, including the Indian Air Force, as a result of the declaration of National Emergency by the Govt. of India in 1962, cannot be deprived of such benefits, as have been declared at the relevant time. Therefore, in the facts and circumstances of the case, we further see no good grounds as to why such benefits, as are applicable to the persons in civilian service under the Govt. of India MHA OM dated 28.4.1965, cannot be extended to those other persons like the applicant who had also responded to the call of the nation at the time of the emergency to serve the country, like the applicant in the Indian Air Force, who has later been taken in civil service after he was discharged from the Air Force in 1984. Admittedly, the applicant joined the civil service in 1987.

9. We have perused the earlier order of the Tribunal dated 11.10.2000 in OA-214/99. In the facts and circumstances of the case, we see force in the submissions made by Shri A.S. Chauhan, learned counsel for applicant that the issue raised in the present case, which has resulted from the OM dated 27.5.2002, could not have been the subject matter in that OA. Therefore, in the facts and circumstances of the case and following the

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judgment of the Hon'ble Supreme Court in Dhan Singh (supra), the OA succeeds and is allowed with the following directions:-

(i) the impugned order dated 27.5.2002 which reiterates the earlier OM issued by the respondents dated 17.4.2002 is quashed and set aside;

(ii) the respondents are directed to pass necessary orders in respect of counting applicant's period of war service during the National Emergency declared in the year 1962, for purposes of granting him increments and for pensionary benefits after his superannuation from service in accordance with the relevant rules/circulars.

No order as to costs.

(Govindan S. Tampi)
Member (A)

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(Smt. Lakshmi Swaminathan)
Vice Chairman (J)