

16

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

OA No.212/99/2014

Dated this Monday the 10th day of February, 2020

**Coram: Dr. Bhagwan Sahai, Member (A).
R. N. Singh, Member (J).**

Prabhat Kumar Kapoor,
Age 61 years, DOB 10.01.1953
Son of Omkar S. Kapoor,
Worked as Assistant Director of
Income Tax, in Group "A" under CIT
(I&CI) Commissioner of Income Tax
(Intelligence and Criminal Investigation),
Earnest House (Aayakar Vibhag)
Nariman Point, Mumbai 400 021,
and residing at 27/23, Sagar Sangam,
K. C. Road, Bandra (West), Mumbai 400 050.
...Applicant.

(By Advocate Shri R. G. Walia).

Versus

1. **Union of India**
Through: The Chairman,
C.B.D.T. (Central Board of
Direct Taxes), North Block,
New Delhi-110 001.
2. **Chief Commissioner
(Income Tax)**
Aayakar Bhavan, M. K. Road,
Churchgate, Mumbai 400 020.
3. **Addl. Commissioner of Income Tax
(Headquarter) Personnel, 3rd Floor,
Aayakar Bhavan, M. K. Road,
Churchgate, Mumbai 400 020.**
4. **Asst. Commissioner of Income Tax,
(S.L.), Pratyaksha Kar Bhavan,
Bandra-Kurla Complex,**

Bandra (East), Mumbai 400 051.

... Respondents.

(By Advocate Shri N. K. Rajpurohit).

O R D E R (O R A L)

Per : R. N. SINGH, Member (JUDICIAL)

Present.

1. Shri R. G. Walia, learned counsel for the applicant.

2. Shri N. K. Rajpurohit, learned counsel for the respondents.

3. Heard the learned counsels for the parties.

4. The present application has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying therein for the following reliefs;

"(a) This Hon'ble Tribunal will be pleased to call for the record and direct the Respondents to count the previous Military Service put in by the Applicant of about 15 years while commuting the civil pensionary dues including monthly pension and accordingly pay and fix the retiral dues of the Applicant.

(b) This Hon'ble Tribunal will be pleased top direct the Respondents to accordingly pay the arrears/difference of pensionary dues including monthly pension to the Applicant with 18% interest thereon by adding previous military

service of 15 years to 22 years 10 months and 6 days of civil service.

(c) This Hon'ble Tribunal will be pleased to direct the Respondents to fix the monthly pension and all other retiral dues by counting the previous military service of about 15 years with the civil service for commuting pensionary dues.

(d) Any Order is per other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

(e) Cost of this Original Application may be provided for."

5. The learned counsel for the applicant submits that the applicant joined the Indian Army on 21.12.1973. He was discharged from the Army on 02.09.1987 when the applicant suffered injury. Subsequently, the applicant joined as Income Tax Inspector under the respondents and his salary was fixed at the minimum of the basic pay, for the post of Income Tax Inspector. The applicant is stated to have retired from the services of the respondents on attaining the age of superannuation. The basic grievance of the applicant in the present OA is that on retirement

from the services of the respondents, the respondents have not counted applicants' service of around 15 years in the Army.

6. In response to the notice from this Tribunal the respondents have filed a detailed reply opposing the claim of the applicant. With the assistance of such reply affidavit, the learned counsel for the respondents submits that the applicant may be directed to file a copy of the discharge book, issued by the Government of India to an ex-serviceman providing full details of service records to establish facts claimed by the applicant about the service rendered in the Indian Army. He further contends that the same is more necessary in view of the fact that the applicant has not impleaded the Army as a party ^{authorities} _K respondents to the present OA.

7. It is further contended on behalf of the respondents that at one place in the OA the applicant has made averment that he was discharged from the service of the Army on suffering injury whereas in para 04.2 of the OA the applicant has asserted that he took Voluntary

Retirement and therefore there is ambiguity to the effect as to whether the applicant has received any disability pension or gratuity on being discharged from the Army.

8. The learned counsel for the respondents further refers to the provisions of the Rule 19(1)(v) of CCS Pension Rules, 1972 and submits that the conditions of such rule has not been fulfilled by the applicant till date and therefore the documentary evidence is required to be filed by the applicant to establish the fact as to whether the applicant has refunded commutation and gratuity received form the Army at the time of re-employment.

9. Per contra, Shri R. G. Walia, learned counsel for the applicant submits that in the service book of the applicant it has already been recorded by the respondents that the applicant is an ex-serviceman and his past service is counted for pensionary benefits and in this regard the learned counsel for the applicant invites our attention to Annexure A-2, stated to be the extract of the applicant's service book.

10. Be that as it may, at this stage, the learned counsel for the applicant submits that the respondents at no point of time ~~has~~ given option to the applicant to submit the relevant documents with regard to his service in the Army or getting any pension, gratuity etc. from the Army or to enable him to submit his willingness to refund the benefits of retirement, gratuity etc, if received from the Army. However, the applicant is willing to submit all the requisite documents to the respondents even at this stage.

11. In view of the aforesaid, the OA is disposed of with directions to the respondents to inform the applicant in writing as to which documents the applicant is required to submit qua his services under the army in order to enable the respondents to take a final decision for counting of the applicant's services under the Army for grant of pensionary benefits within four weeks from the date of receipt of a certified copy of this order and on receipt of such communication the applicant shall comply with the requirements of the respondents indicated in such

letter within four weeks. Once the applicant shall comply with the requirements of the respondents, the respondents are directed to take final decision in the matter and to communicate the same to the applicant as expeditiously as possible and in any case within eight weeks.

12. The OA is disposed of in the aforesaid terms. However, in the facts and circumstance, no order as to cost.

(R. N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

V.

JD
25/11/2020

