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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2224/99
M.A.No.2585/2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 10th day of November, 2000

Prem Prakash Patney
Civilian Store-Keeper (Retired)
s/o Shri Laxmi Narain Patni
1539, Wazir Nagar, Kotla
New Delhi. ... Applicant
(By Shri K.N.R.Pillai, Advocate)

Vs.

1. Union of India through
The Secretary to the Govt. of India
Ministry of Defence
South Block
New Delhi.
2. The Engineer-in-Chief
Army Headquarters,
Kashmir House
Rajaji Marg
New Delhi.
3. The Chief Engineer
Central Command Headquarters
Lucknow Cantt.
4. The Garrison Engineer
Mathura.
5. The Chief Controller of Defence
Accounts (Pensions)
Draupadi Ghat
Allahabad (UP). ... Respondents
(By Shri K.Parashar, proxy of Shri N.S.Mehta, Advocate)

1. To be referred to the reporter or not - Yes/*✓*
2. To be circulated to the benches of the
Tribunal. - Yes/*✓*

[Signature]
(V.Rajagopala Reddy)
Vice-Chairman(J)

(S)

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O R D E R (Oral)

Justice V. Rajagopala Reddy:

The short question that arises for our consideration for our consideration in this case is whether the applicant is entitled for counting the previous service during which he served in the Air Force before his appointment in the Military Engineering Service (MES) as a civilian. He served in the Air Force from December, 1957 to 14.3.1961 as Aircraftman and he was discharged on that date on compassionate grounds. He was appointed on 25.1.1967 and thereafter he retired from service after attaining

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(16)

the age of superannuation on 31.7.1996. The applicant now seeks that his entire period from 1957 to 1996 should be counted for the purpose of qualifying service for pensionary benefits. He also seeks interest for delayed payments of pensionary dues.

2. The respondents have filed counter affidavit and contested the case. It is their case that on the applicant was not reappointed after his discharge from service, Rule 19 of the CCS (Pension) Rules has no application.

3. Heard the counsel for the applicant and the respondents. It is not in dispute that the applicant was appointed on 25.1.1967 in civilian service after discharge from the Air Force service in 1961. It is however, contended by the learned counsel that the applicant's appointment should be treated as reappointment in terms of the Rule 19 of the CCS (Pension) Rules. Let us notice the applicability of Rule 19 of the CCS (Pension) Rules. It allows the counting of the previous military service for the purpose of the qualifying service for the purpose of pensionary benefits, if a Government servant was reemployed in the civil service. Rule 19 is reproduced below to the extent it is relevant:

"(1) A Government servant who is re-employed in a civil service or post before attaining the age of superannuation and who, before such re-employment, had rendered military service after attaining the age of eighteen years, may, on his confirmation in a civil service or post, opt either-



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- (a) to continue to draw the military pension or retain gratuity received on discharge from military service, in which case his former military services shall not count as qualifying service; or
- (b) to cease to draw his pension and refund-
 - (i) the pension already drawn, and
 - (ii) the value received for the commutation of a part of military pension, and
 - (iii) the amount of [retirement gratuity] including service gratuity, if any.

and count previous military service as qualifying service, in which case the service so allowed to count shall be restricted to a service within or outside the employee's unit or department in India or elsewhere which is paid from the Consolidated Fund of India or for which pensionary contribution has been received by the Government."

4. It is also clear from the above that a Government servant on his confirmation in the civil service should exercise an option to cease to draw his pension and refund the pension already drawn, as contemplated in clause (b) to sub-rule (1) of Rule 19 and then only he was entitled for counting previous military service as qualifying service. The applicant has not made any such option in this case. As per clause (b) of sub-rule(2), the option should be exercised as required within the period referred to in clause (a), of sub rule (3), i.e., three months of his appointment. If not done so, he was not entitled to count the previous service. In the instant case, the above conditions are not fulfilled. In the



circumstances, the applicant cannot be allowed to the relief of counting past Military Service. The relief prayed by the applicant is rejected.

5. The next question in this case pertains to the delayed payment of pensionary benefits. It is stated that GPF was paid in January, 1997 whereas he was retired from service on 31.7.1996. The applicant is therefore entitled for interest at 15% from the due date till the date of actual payment. It is also submitted that the applicant was not paid the leave encashment of 300 days. He was only given credit to 240 days leave. If the applicant is having 300 days leave to his credit on the date of his retirement, he is entitled for the difference amount. The above directions shall be complied within three months from the date of receipt of a copy of this order. The OA is disposed of accordingly. No costs.

/RAO/

GOVINDARAJ. TAMPI
MEMBER(A)

V.RAJAGOPALA REDDY
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)