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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

R.A.No.21/1994 IN  
O.A.No.1444/88

NEW DELHI THIS THE 4th DAY OF JANUARY, 1995

HON'BLE SHRI J.P. SHARMA, MEMBER(J)

HON'BLE SHRI B.K. SINGH, MEMBER(A)

Lt Col C.M. Gupta (Retd.)  
C/o Tishu & Fibres Ltd.,  
Gol Jamala, Nalagarh,  
Solan, (H.P.) ...Applicant

(By Advocate : Shri Aruneshwar Gupta with  
Shri Karamveer Damija )

**VERSUS**

1. UNION OF INDIA, THROUGH  
Secretary (R)  
Cabinet Secretariat  
Room No.8B, South Block  
NEW DELHI.
2. Cabinet Secretary,  
Prime Minister Secretariat  
South Block,  
NEW DELHI. ...Respondents

(By Advocate: Shri M.K. Gupta)

**JUDGEMENT (ORAL)**

Hon'ble Shri J.P. Sharma, Member (J)

R.A.21/94 in O.A.1444/88; Lt Col  
C.M. Gupta Vs Union of India & Others: By  
a judgement of the Division Bench of this  
Tribunal, the case of the applicant in O.A.1444/  
88 was decided by the Order dated 23.11.1993  
by which the application was dismissed, and  
the relief prayed for by the applicant was  
for a direction to the respondents to formulate

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guidelines for declaring the retired Defence Personnel on re-employment as quasi-permanent and subsequently permanent after they have put in more than 3 years of regular service. It has also prayed that the rule whereby a re-employed pensioner ex-serviceman can be declared permanent only after putting in 6 years of service, be declared un-constitutional and be quashed. The applicant has also prayed for the payment of gratuity for the period he has served on re-employment in the Civil post. At the time of the hearing of the Original Application none had appeared on behalf of the applicant and the case was decided on the basis of the pleadings.

2. The Review Application has been admitted and notices were issued to the respondents i.e. Union of India

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We heard the learned counsel for both the parties.

3. The learned counsel for the review applicant has pressed the relief for non-payment/grant of the gratuity to the applicant as he has served for more than 5 years with the respondents on re-employment after discharge from the military service. The contention of the learned counsel has been gone through by us and he has placed reliance on Rule 50 of CSS (Pension) Rule 1972 wherein a provision has been made for grant of retirement/death gratuity to the government servant who has completed 5 years qualifying service and has become eligible for service gratuity or pension under Rule 49, shall on his retirement, be granted death-cum-retirement gratuity equal to one-fourth of his emoluments for each completed six monthly period qualifying service, subject to maximum  $16\frac{1}{2}$  times the emoluments.

4. The contention of the learned counsel is that since the applicant has completed 5 years of service on re-employment in the Cabinet Secretariat, he is entitled to service

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gratuity at the calculated rates. Though we have considered this fact in our judgement but since none appeared on behalf of the applicant when the case was decided, however, we gave an opportunity to the learned counsel to point out an error apparent on the face of the judgement/<sup>as</sup> that the law relied to by the learned counsel be accepted and the judgement can be reviewed in that light only with regard to the relief of grant of gratuity to the applicant.

5. We have considered this aspect and the learned counsel for the respondents Shri MK Gupta pointed out that in view of the Sub-clause 2 of Rule 7 of the CCS (Pension) Rules, 1972 which is quoted below, the applicant is not entitled to the benefit of gratuity on re-employment:

"Except as provided in Rule 19, a Government servant who, having retired on a superannuation pension or retiring pension, is subsequently re-employed shall not be entitled to a separate pension or gratuity for the period of his re-employment."

It is undisputed that the applicant was not confirmed in the Civil employment after he had been re-employed in the Cabinet Secretariat. The learned counsel for the applicant, however, argued that the sub-clause 2 of Rule 7 has to be read with Clause 1 of the same rule and the re-employment should be confined

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to the same service and it should not be on any other service. We have considered the contention of the learned counsel with reference to the Rule 19, which is an exception to rule, sub-clause 2 of Rule 7 and that squarely covers ex-serviceman who are re-employed after discharge from the military service. The judicial review can only be for interpretation of the clause as per the intention of the legislature. The judicial review cannot enlarge the ambit and scope substituting words not intended by the legislature when the rules were framed. The contention of the learned counsel is that the word 're-employed' has to be taken as re-employed in the same service, cannot be, accepted. This word has its natural dictionary meaning re-employed, means  
/ the re-employed in any service whatsoever.

6. The learned counsel for the applicant has also referred to the qualifying service in the definition clause 3 of the CCS (Pension) Rules, 1972 that the service rendered on duty or otherwise which shall be taken into account for the purpose of pension and gratuity admissible under the rules. It

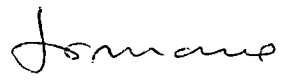
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is undoubtedly an accepted proposition that the applicant has ~~worked~~ for about 5 years but he could not be confirmed because of statutory rules that only after 6 years of completing service, the incumbent can be confirmed; so he could get any benefit because he was not confirmed in his appointment and more so his appointment was contractual basically for one year at the initial posting of -employment and then it was extended from year to year basis.

7. We have gone through our <sup>under review</sup> judgement/ and the conclusion we have arrived at after hearing the counsel is that there is no error on the face of the judgement. The Review Application, therefore, is dismissed being devoid of merit, leaving the parties to bear their own costs.

  
(B.K. SINGH)  
MEMBER (A)

  
(J.P. SHARMA)  
MEMBER (J)

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