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CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA No.44/92

New Delhi this the 6th day of March, 1996.

Hon'ble Sh. B.K. Singh, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

1. Amrik Singh,
S/o Sh. Sohan Singh Minhas,
WZ-41 Sahib Pura,
New Delhi-110018.
2. T.R. Kakaria,
S/o Sh. Surti Ram Kakaria,
WZ-5B, Block B, Gulab Bagh,
Uttam Nagar,
New Delhi-110059.Applicants

(By Advocate Sh. O.P. Sood)

Versus

1. U.O.I.
through Director General
EME Directorate,
Army Headquarters,
DHQ PO New Delhi-110011.
2. Commander,
HQ Technical Group EME
Delhi Cantt-110010.
3. Controller of Defence Accounts
(Pension) Draupadi Ghat,
Allahabad.Respondents

(By Advocate Sh. M.K. Gupta)

ORDER (Oral)
(Hon'ble Mr. B.K. Singh, Member (A))

This O.A. has been filed by the two applicants, viz., Amrik Singh and T.R. Kakaria seeking the following reliefs:-

"(a) to issue appropriate Writ, direction, order to the Respondents to restore the status of ex-servicemen and return the discharge certificate of military service;

"(b) to consider the options given for single pension withdrawn/annulled and allow drawing military pension and civil pensions separately."

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2. On notice, the respondents filed their counter-reply contesting the application and grant of reliefs prayed for.

3. We have heard the learned counsel for the parties and perused the records of the case.

4. The learned counsel for the applicant wanted the status of the applicants restored as ex-Servicemen by returning the pension book and discharge certificate of the military service which was handed over to the respondents for verification of the record of their service. In para (j) it has been averred that as ex-servicemen the applicants are entitled to certain facilities which they are not in a position to avail of for want of the return of the pension book and the discharge certificate taken by the respondents. The learned counsel for the respondents drew our attention to the fact that the affidavit filed by Colonel K.B. Wadhwan clearly states that pension book and the discharge certificate have both been returned to them. In the rejoinder affidavit, however, the learned counsel for the applicant has again refuted the claim of the respondents. The respondents are the custodian of the record and Colonel Wadhwan has categorically stated that these have since been returned. Under 114 (e) of the Indian Evidence Act if a statement is made about official records by the concerned officials this will be deemed to be correct unless the same is rebutted on very strong grounds. However, the learned counsel appearing on behalf of

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the respondents has no objection to a direction being issued to the respondents to again look into the matter and if the pension book and the discharge certificate are with them they return the same within a period of three months from the date of receipt of a certified copy of this order. This is being done in order to restore their status as ex-servicemen and to enable them to avail of the facilities admissible to them as ex-servicemen.

5. As regards the seond relief, the OA suffers from serious infirmities in the sense that the learned counsel, appearing for the respondents has drawn our attention to Annexure R-8 enclosed with the counter-reply which goes to show that a reply has already been given to Sh. Kakaria in regard to the counting of military service towards pension and Sh. Kakaria has already noted the contents of this letter. This letter from the respondents is dated 11.8.88 and has been issued to the Commandar (Headquarters) Technical Group EME, Delhi Cantt where the applicant Sh. Kakaria was then serving. The letter was shown in original and he has noted the contents. This letter has not been impugned and is not under challenge and, therefore, the reliefs prayed for cannot be granted. As regards the second applicant the letter issued by the respondents is marked as Annexure R-10 and this is addressed to Headquarters Technical Group EME Delhi Cantt by the office of Controller of Defence Accounts, Allahabad on 30.6.88. The only difference between this Annexure R-10 enclosed with the counter-affidavit and

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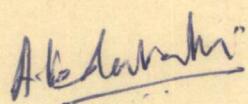
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Annexure R-8 is that in the first contents were noted by Sh. Kakaria and in the second it is not clear whether the applicant Sh. Amrik Singh was shown this letter or not but the date and the letter number are all correct. The learned counsel for the respondents has also drawn our attention to the Presidential order issued in November 1978. In response to this option invited vide 13.11.78 letter, Sh. Amrik Singh has exercised his option dated 6.3.79 which is within six months as per the time schedule given in the letter dated 13.11.78 whereas in the case of Kakaria there is another letter at Annexure R-4 which indicates that he had exercised option on 14.6.76 and did not revise the option in the light of the letter issued in November, 1978 whereas Amrik Singh has done so. The Rules clearly provide that option once exercised shall be final. A last opportunity was given by the Presidential order issued on 13.11.79 in pursuance of which Amrik Singh exercised his option and Kakaria exercised his option in June, 1976. Both the options are final because the rules provide that option once exercised shall be treated as final and the reply to that effect is already on record. This being so, the applicants are not entitled to any relief and this Tribunal is not competent to give any direction to relax the rules in case of the applicant. However, if the applicants so desire they may file a representation and the discretion is left to the respondents to consider the same if so advised

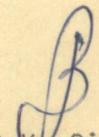


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in accordance with law. The OA thus is disposed of accordingly, but without any order as to the costs.



(Dr. A. Vedavalli)
Member(J)



(B.K. Singh)
Member(A)

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