

Reserved

Central Administrative Tribunal
Allahabad Bench, Allahabad.

Dated: Allahabad, This the 24th fourth day of November 1999.

Present:- Hon'ble Mr. Rafiq Uddin, Member (J.)

Original Application No. 903 of 1996.

Hans Raj Singh, U.D.C. S/O Late Sri Rampati Singh,
173, M.I.G./D.S. Preetam Nagar
Allahabad.

. . . Applicant.

(Through Sri A.K. Banerjee, Adv.)

Versus

1. Union of India through Secretary,
Ministry of Finance, Govt. of India,
New Delhi.
2. Chief Commissioner of Income Tax,
Lucknow.
3. Assistant Commissioner of Income Tax
(Administration), Allahabad.
4. Accountant General of Uttar Pradesh
at Allahabad (Pension Cell)

. . . Respondents.

(Through Sri Ashok Mohiley, Adv.)

Order (Reserved)

(By Hon'ble Mr. Rafiq Uddin, Member (J.))

The applicant has filed the present O.A.
claiming pensionary benefits from 31st May 1995
along with interest.

2. According to the applicant after serving
Indian Air Force nine years and eighteen days
regular service he was discharged on medical ground
on 8th October 1964 as Corporal. Thereafter he

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was appointed as L.D.C. in the Income Tax Department and joined the service on 9th July 1970. During the course of his service in Income Tax Department he was promoted as U.D.C. and retired from that department on 31st May 1995.

2. The case of the applicant is that he had an option to get his services in the Air Force counted for qualifying service in the Income Tax Department within prescribed period. The Income Tax Department, however, did not count his previous service in the Air Force and as a result his promotion from the post of L.D.C. to U.D.C. was delayed for nine years. The respondent No.3 asked the applicant to sign his pension papers but the applicant refused to do so because his previous service in the Air Force was not counted. The applicant vide his letter dated 16.5.95 requested respondent No.3 to rectify the error but the respondent No.3 did not do so and in order to harass the applicant sent a letter dated 18th May 95 (Annexure-4) raising absolutely untainable objections which were refuted by the applicant vide his letter dated 22.5.95 (Annexure -5). The applicant has claimed that he has completed all the formalities on his part but the respondent s have failed to grant the pensionary benefits to him and as per his calculation he is entitled monthly pension of Rs.1600/-. The applicant has become entitled to receive aforesaid pension but inspite of his oral and written requests the respondents have not paid the same hence this D.A.

3. The respondents have opposed the claim on the ground that the applicant had concealed the

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correct facts about his previous service while joining the Income Tax Department. The applicant has refused to sign the pension papers on one pretext or the other and also failed to submit any document/paper required from him to prove his previous service. The Service Book/personal file of the applicant is silent about his previous service in the Air Force. It is stated that neither the discharge certificate nor the pension payment order or any other paper regarding his previous was filed by him. The applicant himself did not exercise the option within the prescribed time of one year in the Income Tax Department for counting of his past service, and therefore his services could not be added to the qualifying service for retirement benefits. It is alleged that the applicant had suppressed all these facts while applying for service in the Income Tax Department because he was discharged on medical ground from Indian Air Force and was medical unfit for future service in Air Force.

4. The applicant on the other hand has claimed that discharge certificate was duly deposited by him at the time of his initial appointment otherwise he would not have got benefit of relaxation ^{of age} in the year 1970 when his age was 32 years. Consequently it was the respondents/are responsible for not mentioning ^{who} in the service record the fact of his previous service.

5. I have heard the arguments of the learned counsel for the applicant and the learned counsel for the respondents and perused the entire record.

6. The applicant has claimed having served the Indian Air Force as Corporal. The applicant was

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discharged from Air Force after having been found medically unfit for further service in the Indian Air Force. It is obvious that the applicant was in Military Service and a period of Military service rendered by the applicant before joining the Income Tax Department is liable to be counted ^{Q1} ~~as component service~~ for the purpose of pensionary benefits provided certain conditions are fulfilled by him. The relevant provision of counting of Military service rendered before Civil Employment are contained in Rule 19 of C.C.S. Pension Rules 1972. The relevant part of the aforesaid rule is extracted as under:-

- (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-
 - (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~~ pension, and (iii) the amount of (retirement gratuity) including service gratuity, if any.

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- (2)(a) The authority issuing the order of substantive appointment to a Civil service or post as is referred to in sub-rule (1) shall along with such order require in writing the Government servant to exercise the option

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under that sub-rule within three months of date of issue of such order, if he is on leave on that day, within three months of his return from leave, whichever is later and also bring to his notice the provisions of Clause (b)

(b) If no option is exercised within the period referred to in Clause(a), the Government servant shall be deemed to have opted for Clause (a) of sub-rule(1)

(3)(a) A Government servant who opts for Clause (b) of sub-rule(1) shall be required to refund the pension, bonus or gratuity received in respect of his earlier military service, in monthly instalments not exceeding thirty six in number, the first instalment beginning from the month following the month in which he exercised the option.

(b) The right to count previous service as qualifying service shall not revive until the whole amount has been refunded."

The perusal of the aforesaid provisions clearly indicate that in order to get the previous military service counted as qualifying service it is necessary to the incumbent to exercise option for the purpose. It is also evident from sub-rule 2(a) of Rule 19 that the authority issuing the order of substantive appointment to a Civil post was along with such order required in writing the Government **servant** to exercise the option under that sub rule within three months of date of issue of such order. It is also worth mentioning that the Government of India under O.M.No. 29/93/P- and P.W.(B) dated 23.3.94 has also decided as a one time relaxation to provide a last opportunity to military pensioners who are presently re-employed in civil post to exercised the option for counting

of military service as qualifying service within a period of six months from the date of issuing of aforesaid order, i.e. upto 23.11.94.

7. In the present case, it is admitted case of the respondents that no option was called for from the applicant to exercise his option in terms of rule 19. The reason being that the applicant had not disclosed the facts about his previous service at the time of joining the service in the Income Tax department. The applicant on the other hand has claimed that he duly submitted discharged certificate from India Air Force at the time of his appointment and the respondents are liable for not acting according to rules ~~xxxxxxxxxxxx~~ ~~xxxxxxxx~~ for counting his previous military service in the present civil service.

8. It is the case of the applicant that he duly deposited the discharge certificate at the time of his initial appointment in the Income Tax Department. He has also claimed that at the time of appointment he also filed the prescribed proforma to be filled in by Ex-Military man at the time of re-employment (Annexure R.A-1). He has also claimed that he had also made an application giving his option to the respondents. In support of his claim he has also filed copies of letters sent to the Indian Air Force by the Income Tax Department vide letter dated 13.6.74 (Annexure R.A-2) The applicant in para 6 of his R.A. has specifically claimed that he did not get any pension from his previous service, therefore filing of any P.P.O by him does not arise. It is thus clear that the main dispute in this case is whether the applicant had disclosed about the past military

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service before Income Tax Department at the time of joining service or not. The respondents have no doubt stated that there is no mention of this fact in the service book as well in the personal file of the applicant. But the same has not been produced before the Tribunal for perusal in order to ascertain the correctness of the claim of the respondents.

9. It has been contended by the learned counsel for the applicant that it was not possible to the applicant to join the Income Tax Department at the age of 32 years unless he was granted age relaxation being Ex-Military personnel. The respondents have not given any satisfactory reply of this argument. But the most important evidence to prove the case of the applicant is a letter which was sent by the respondents department to the Indian Air Force on 13.6.1974 regarding counting the service of the applicant and a copy thereof has been filed as Annexure R.A-2. The respondents have not dared to deny the existence of the aforesaid letter. The perusal of the contents of the aforesaid letter clearly indicate that the aforesaid letter was written by the Under Secretary, Central Board of Direct ^{Taxes} to the Commissioner Income Tax Lucknow in which the reference of letter P.No.47-1538 dated 17.5.1974 in respect of fixation of pay of the applicant who has been shown as released from service in Armed Forces and re-employed as L.D.C. in the Income Tax Department, ^{Similarly} another letter dated 23.4.1975 was also sent by the Commissioner Income Tax Lucknow to the Dy. C.D.A. Air Force Records New Delhi which was also in respect of fixation of pay of the applicant as Ex-Air man and the statement showing the pay drawn by the

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applicant from time to time while in I.A.F. and also the information regarding pension gratuity etc. received by the applicant from Air Force was sought. Even there is also mention of gratuity of Rs.977-50 P having been received by the applicant as pension equivalent to the gratuity, ^{Information about other} and another retirement benefits received by the applicant from the Air Force ^{WAG} were also sought. The correspondence clearly proves the case of the applicant and goes to show that the respondents department had full knowledge about the applicant being Ex-Military man. Therefore, in terms of Rule 19(2)(a) of C.C.S. Rules 1972 the Income Tax Department was required to incorporate in the order of re-employment itself a clause to the effect that if the applicant desires to take advantage of the retirement benefits based on combined Military and Civil services he should exercise option within a period of one year from the date of his re-employment. But it appears that on account of negligence on the part of the officials of the respondent's office it was not done. Hence the applicant can not be held responsible for not counting his service.

10. It is also relevant to point out that the stand taken by the respondents in this matter is contradictory. In the counter affidavit it is the case of the respondents that the applicant failed to disclose the particulars of his previous Military service at the time of his appointment hence action could not be taken to add his military service in the Income Tax Department. Whereas in reply to the application of the applicant for counting his previous service which is letter dated 18th May 1995, a copy of which has been annexed as Annexure-4, the applicant was advised

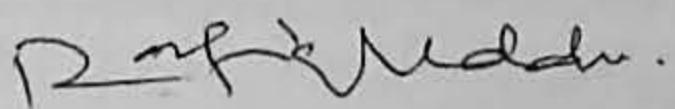
by the respondent No. 3 that his claim for adding his previous service in Air Force, he should apply to the Head of the Department who is the competent authority. In other words, the applicant was not informed that his service record does not disclose about his previous military service. The case taken up by the respondents in the C.A. is but an after thought and is against their own records.

11. From the facts and discussion made above I am convinced that the ~~premises~~ claim of the applicant for counting his previous AirForce service in the present service has been rejected by the respondents without any reason and rhyme. The respondents even have concealed true facts before the Tribunal. I am constrained to observe that in the present case the respondents have unnecessarily blamed the applicant for his plight. The respondents have termed the applicant as 'controversial' 'indisciplined' unnecessarily in the context of the present case. On the other hand the applicant has been unnecessarily harassed by the officials of the respondents in getting his previous service counted. The claim of the applicant for counting his previous Military service is fully established. Consequently the applicant's pension is to be determined after counting his previous service in the present service. The O.A. is liable to be allowed.

12. The respondents are directed to determine the pensionary benefits of the applicant after counting his past Air Force service rendered by him after deducting amount of gratuity if any received by the applicant from Air Force along with simple interest at the rate of Rs.6% from the date of his joining the present department. The respondents

may ascertain the amount of gratuity received by the applicant from concerned Air Force authority.

13. Accordingly the O.A. is allowed with costs which I fix at Rs.1000/-. The necessary order for fixation of the pensionary benefits of the applicant will be passed within three months from the date of communication of this order.



Member (J.)

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