

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO.993 OF 1995

Allahabad, this the 15th day of April, 1999.

CORAM : Hon 'ble Mr.S.Dayal, Member (A)
Hon 'ble Mr.S.K.Agrawal, Member (J)

Moti Lal Gupta, s/o. Late Shri Saukhi,
R/o. Mohalla Girdharganj (Yadav Tola),
P.O. Kunaghat, Distt. Gorakhpur.

..... Petitioner

(By Shri S.S.Tripathi, Advocate)

Versus

1. Union of India through the
Secretary, Ministry of Finance,
New Delhi.
2. The Deputy Commissioner of Income Tax,
Gorakhpur Range,
Gorakhpur.

..... Respondents.

(By Km. S.Srivastava, Advocate)

ORDER (Reserved)

(By Hon 'ble Mr.S.K.Agrawal, Member (J))

In this original application the applicant makes a prayer to quash the order dated 2-2-95 passed by respondents by which respondent No.2 rejected the request of the applicant for condoning the period of break in service of 2 years, 2 months and 21 days between Military Service and Civil re-employment for computation of qualifying service and to grant him pension accordingly.

2. The facts of the case as stated by the applicant are that the applicant was initially appointed as Sepoy Clerk in Indian Army on 5-12-49 and ultimately he was promoted as Junior Commissioned Officer. He was retired with effect from 31-12-77. He tried for re-employment and he could get civil employment as L.D.C. in Income Tax Department after great deal of persuasion and was posted in the office of Income Tax Commissioner, Allahabad w.e.f. 22-3-80. Thereafter he was transferred to the office of Deputy Commissioner of Income Tax, Gorakhpur and retired on 31-5-88 after attaining the age of superannuation. It is stated that after retirement the applicant was not sanctioned pension on the ground that he has not completed ten years of service. The applicant filed O.A.No.625/88 which was also disposed off by an order dated 7-4-93 but respondent No.2 did not comply with the directions, therefore the applicant filed contempt petition which was also disposed off as rejected at admission stage. The applicant filed SLP No.19597/94 and Hon'ble Supreme Court was pleased to issue notice to respondent No.2 thereafter respondent No.2 without undue delay complied with the directions of this Tribunal, but rejected the prayer of the applicant for condonation of break in service. It is stated that action of respondent No.2 in rejecting the prayer of the applicant for condonation of break in service is arbitrary, unjust and legal and cannot sustain in the eye of law and the applicant is entitled to the condonation of the period of break in service for the purpose of computation of qualifying service for pension purpose. The applicant therefore sought the relief as mentioned above.

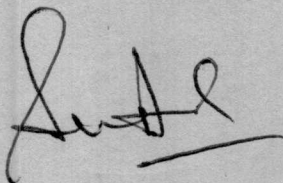
3. Counter was filed. It is stated in the counter

that the applicant after retirement as Junior Commissioned Officer from Military Service was re-employed as Clerk in the Income Tax Department and had not rendered the service for the period of two years, two months and twenty one days, therefore the same was not counted. The applicant approached this Tribunal and ultimately approached to the Hon'ble Supreme Court but his claim of condonation of the period of break in service was rejected by respondent No.2 vide order dated 2-2-95 as the applicant did not render the service for the period. It is stated that circular at Annexure A-9 of this application is applicable only in case of certain categories of political sufferers and the case of the applicant is also not covered under rule 28(a) and rule 30 (1) of CCS(Pension)Rules, 1972 and the present petition is devoid of any merit and therefore liable to be rejected.

4. Rejoinder was filed reiterating the facts stated in the original application.

5. Heard the learned lawyer for the parties and perused the whole record.

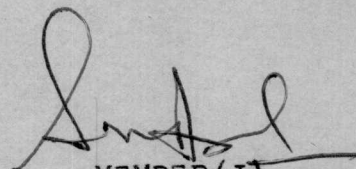
6. It is not in dispute that applicant is getting pension for his services rendered in the Military and he is not getting pension of the civil employment as he has not rendered the service of ten years or more as required under relevant Pension Rules. No rule permits to condone the break in service for the purpose of computing qualifying service for pension. Learned lawyer for applicant has submitted that respondents did not comply query/order dated 24-7-96 of this Tribunal and failed to file the Affidavit to this effect, therefore adverse presumption should be drawn against the




respondents and order dated 2-2-95 be quashed. He has referred Guruvayoor Devaswom Managing Committee Vs. Chairman, Guruvayoor Devaswom Managing Committee and Others (1996) 33 ATC 315.

7. We have respectfully perused and considered the legal citation as referred by the applicant and we are not in agreement with the contention of the learned lawyer for the applicant on the very ground that the applicant did not rendered the service for the period, therefore he is not entitle to be condoned the period of two years, two months and twenty one days as break in service for the purpose of pension and applicant is only entitle to pension if he has rendered the service of ten years or more. Therefore, in our considered opinion the applicant is not entitle to the relief sought.

8. We, therefore, dismiss this original application with no order as to costs.


MEMBER (J)


MEMBER (A)

satya/