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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A No. 412 of 2010  
Pranabandhu Agasti .... Applicant  
Vs  
UOI & Ors. .... Respondents

Order dated - 13.7.2011.

CORAM:  
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

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Facts of the case are that after retirement from Indian Army where he was working since 17.2.1981 as Electrical and Mechanical Engineering (EME) (Technical), the Applicant was reemployed in the post of Motor Pump Attendant (Sr. Skilled) on 07.03.1988 under the Respondents. According to the Applicant, by submitting representations dated 18.09.1988 & 18.05.2006 he requested for counting his previous military service so as to enable him to get the full pensionary benefit after his retirement. In letter dated 09-02-2007 the Respondent No.3 informed the Applicant that as he had failed to exercise his option within the stipulated time as required under the Rules his case had already been rejected by the Respondent No.2 vide letter dated 05-05-1998, but the applicant denied to have received any such letter of rejection of the Respondent No.2. However, a copy of the letter of the Respondent No.1 dated 26.6.2007 permitting the applicant to exercise his option was forwarded by the Respondent No.3 to the applicant in

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letter dated 19.6.2007. In pursuance of the said letter, the applicant in his representation dated 20.6.2007 requested the authority to inform him the amount to be deposited as well as the mode of the deposit. He also requested in letter dated 5.7.2007 to exempt the payment of interest on the gratuity amount of Rs.4176.50 which he had received from Army Service and sought to be deposited. The order of rejection was challenged by the Applicant in OA No. 355 of 2007. This Tribunal in order dated 25.11.2008 quashed the order of rejection and directed the Respondents to consider the appeal of the applicant afresh taking into account the grievance of the applicant on humanitarian ground and pass a reasoned and speaking order within a specified period. The Respondents rejected the prayer of the applicant on the ground that there is no provision in the Govt. rules to waive the interest on money receivable and that the pecuniary condition of the applicant does not call for the extreme humanitarian consideration and communicated the decision in letter under Annexure-A/13. Hence this Original Application with prayer to quash the order under Annexure-A/13 dated 27.10.2009 and to direct the Respondents to exempt the interest amount on gratuity received by the applicant from Army Service and count his past Military Service towards seniority and Civil Pension. The contention of the applicant, in

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support of the relief is that it is settled principle of law that the appointing authority while issuing orders of appointment should have directed the employee in writing to exercise his option within one year of the date of his reemployment in regard to refund of the gratuity amount etc. whereas in his case the Respondents directed to exercise his option after 19 years vide letter dated 19<sup>th</sup> June, 2007. Despite giving in writing the matter was not settled with promptitude. As the delay is not attributable to him asking him, to pay interest on the gratuity amount is not tenable in the eyes of law.

2. Respondents filed their counter in which it has been stated that after the reemployment of the applicant, Respondents vide letter dated 1<sup>st</sup> October, 1997 wrote letter to the CDA Patna for counting his Military service. The CDA Patna vide letter dated 5<sup>th</sup> May, 1998 informed that on reemployment in civil post after retirement from military service, in terms of Rule 19 (1) of CCS (Pension) Rules, 1972 (Govt. of India decision No.1), he/she has to exercise his option within a period of one year from the date of joining in the new post. Since he failed to exercise his option within the stipulated period the request for exemption of interest cannot be considered unless it is condoned by the Government of India. It is the responsibility of the applicant to give option for

counting of his previous military service to the appointing authority at the time of his reemployment. But the individual failed to submit such option. He has not deposited the gratuity plus interest in the Government Treasury as required under the Rules. Further it has been stated that as per the existing rules the retirement gratuity will be based on the actual qualifying service plus weightage of five years subject to maximum period of 33 years of qualifying service. The date of joining of the applicant is 7<sup>th</sup> May, 1988. He will be retiring after attaining 60 years. As such the total period of service will be 30 years and in case the applicant deposits the gratuity amount which he had received from military service plus interest then three years weightage would be added to his existing period of service so as to allow him to draw the gratuity on the length of service of 33 years. Hence, according to the Respondents since the delay is attributable to the Applicant he is to pay the interest on the gratuity amount. On the above ground the Respondents have prayed for dismissal of this OA.

3. Learned Counsel appearing for respective parties have reiterated their stand taken in the pleadings. Having heard the matter at length perused the materials placed on record.

4. The only dispute in this OA is in regard to payment of the interests on the gratuity amount of Rs.4176.50 which the

applicant had received from the Military service. For this purpose it is relevant to see whether it was the duty of the employer to give in writing for exercising such option or the employee to exercise his option suo motto. In this connection we have perused the Rules in which it has specifically been provided that the appointing authority while issuing the orders of appointment should direct the employee in writing to exercise the option within one year of the date of his reemployment. It is not the case of the Respondents that with due intimation the applicant failed to exercise his option or deposit the gratuity amount which he had received from his Military Service. Hence it is held that for non-compliance of the Rules, the applicant cannot be held responsible and thus is not liable to pay the interest. Therefore, the order under Annexure-A/13 is hereby quashed. As a result, on depositing the principal amount of gratuity he had received from military service, the Respondents should take into consideration such of the short fall period from his military service so as to enable the applicant to receive his gratuity on the total maximum length of service of 33 years after retirement from his present employment.

5. In the result this OA stands allowed to the extent stated above. There shall be no order as to costs.

  
(C.R.MOHAPATRA)  
Member (Admn.)