

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.618/06

Friday this the 22nd day of February 2008

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

P.Rajagopalan Nair,
S/o.late N.Padmanabhan Nair,
Assistant Security Officer,
O/o the Development Commissioner,
Cochin Special Economics Zone,
(Erstwhile Cochin Export Processing Zone), Cochin – 37.
Residing at C51, Block 17, CPWD Quarter, Kochi – 683 030. ...Applicant

(By Advocate Mr.P.A.Kumaran)

Versus

1. Union of India represented
by the Secretary to Government,
Ministry of Commerce and Industry, New Delhi.
2. The Development Commissioner,
Cochin Special Economic Zone,
Kakkanadu, Cochin – 37.
3. Deputy Development Commissioner,
O/o the Development Commissioner,
Cochin Special Economic Zone,
Kakkanadu, Cochin – 37. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 22nd February 2008 the
Tribunal on the same day delivered the following :-

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant was in Defence Force from 2.9.1978 to 8.10.1981.
when he was medically invalidated. Thereafter, the applicant was
appointed as Assistant Security Officer on regular basis on 10.8.1991 and
after completion of his probation he was appointed substantively to the post
of ASO on 10.8.1993.

.2.

2. Provisions existed for counting of past military services vide Rule 19 of the CCS (Pension) Rules. Rule 2(a) thereof mandates the authority issuing the order of substantive appointment to require in writing along with such order of substantive appointment to the Govt. servant to exercise the option under Rule 19(1) within three months of the date of issue of such order. If no option is exercised within the period of three months, the Govt. servant shall be deemed to have opted for clause (a) of sub rule (1) of Rule 19 which states that such Govt. servant may 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 for qualifying service.

3. It appears that the respondents had not taken into account this mandatory requirement at the time of issue of order of confirmation vide Annexure A-5 Office Order dated 2.6.1997. The applicant also did not exercise any option at the relevant point of time. However, for the first time in 2003, the applicant had made a representation in respect of counting of past services and when the matter was taken up with the Department of Commerce by the 2nd respondent, the Department of Commerce had not given its sanction for condonation of delay. As such, the applicant was informed that as he had not exercised his option within time his request for counting of past military services cannot be acceded to. The applicant has come up against the aforesaid order of rejection of his request.

4. The respondents have contested the O.A and the above fact of delay not being condoned by the Department of Commerce has been highlighted in Paragraph 4 of the counter.

.3.

5. Counsel for the applicant relies upon the decision dated 5th March 2003 in O.A.515/01 in which an identical situation was discussed.

6. Counsel for the respondents submitted that since the applicant has not exercised his option within time his request cannot be acceded to. He relied upon Rule 19(1) of CCS (Pension) Rules.

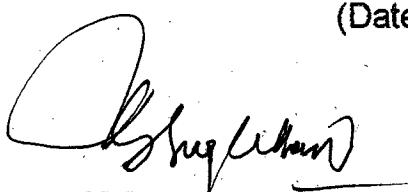
7. Arguments were heard and documents perused. Counting of past services is on the basis of option exercised by the employees. However, there is a specific provision under Rule 19(2) (a) that it is for the respondents to advise the employee concerned as to exercising of such an option with a specific mention therein that in case no option is exercised within the prescribed time limit, benefit of counting of past services cannot be available to the concerned employee. Admittedly, this part of the requirement by the respondents to communicate in writing at the time of issuing of substantive appointment order has not been performed by the respondents. The question of exercise of option by the applicant is only to follow such an action by the respondents and as such his failure to exercise such option within time cannot be attributed entirely upon the applicant. As the applicant had not been asked to exercise the option on time, he did not exercise so. The Department cannot take benefit of its own mistake. It has been held in the case of Rekha Mukherjee Vs. Ashis Kumar Das (2005) 3 SCC 427. The respondents cannot take advantage of their own mistake.

8. In view of the above, if the applicant is otherwise entitled to counting of past military services, his case should not be thrown on account of non exercising of the option within the stipulated time. In view of the above, the

.4.

O.A is allowed. Respondents are directed to consider the application of the applicant for counting his past military services and if he fulfills the requirement as per Rule 19 of CCS (Pension) Rules (except as regards time limit for exercising the option) the period of past services, namely, from 2.9.1978 to 8.10.1981 be counted for the purpose of pension. No order as to costs.

(Dated this the 22nd day of February 2008)



K.S.SUGATHAN
ADMINISTRATIVE MEMBER

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K.B.S.RAJAN
JUDICIAL MEMBER