

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.235/96

Wednesday this the 26th February, 1997

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

A.Krishnan,  
Retired Driver,  
National Tuberculosis Institute,  
Bangalore. ....Applicant  
(By Advocate Mr.K.V.Bhadrakumari)

vs.

1. The Director,  
National Tuberculosis Institute,  
No.8, Bellary Road,  
Bangalore-3.
2. The Pay & Accounts Officer,  
Ministry of Health & Family Welfare,  
Government of India,  
103, Usman Road, T.Nagar,  
Madras-17.
3. The Secretary,  
Ministry of Health & Family Welfare,  
New Delhi.
4. Union of India, represented by  
Secretary to Government,  
Department of Pension and Pension  
Grievances, New Delhi. ....Respondents

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

The application having been heard on 26th February, 1997, the Tribunal  
on the same day delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

Applicant is a re-employed Ex-serviceman. After rendering a service  
of 13 years in the Indian Army, the applicant was discharged from service  
on 29.6.55 and got re-employed under the 1st respondent with effect from  
22.2.62 as a Driver. He retired on superannuation on 30.6.83. He was  
granted pension without reckoning the defence service. He made certain  
representations to add the service rendered by him in the Indian Army

for computing the service qualifying for pension expressing his willingness to refund Rs.125/-paid to him as gratuity as he was not granted any pension. The last representation submitted by the applicant was on 23.12.94(Annexure A-6). Respondents did not give him any reply. Therefore, the applicant has filed this application for a declaration that he is entitled to civil pension reckoning the period of military service rendered by him for qualifying service and for a direction to respondents to disburse to him the refixed pension with arrears from the date of his retirement from civil service with interest at the rate of 18% per annum.

2. The respondents in their reply contend that the applicant had not exercised the option to have his army service counted for pension in the re-employed service as required under Rule 19(1) of the C.C.S. Pension Rules,1972 and that the Director General of Health Services has on consultation with the Department of Personnel and Administrative Reforms rejected the claim of the applicant for counting the same by order Annexure-R1(A) dated 9th November,1983 and that therefore, the application has to be dismissed with costs. However, the respondents in the reply statement at para-6 have admitted that by oversight there was an omission to obtain the option of the applicant for counting his defence service for pension and that on 3.10.1980, the applicant had expressed willingness to refund the gratuity and had requested to count the army service for pension. Despite this, the respondents have denied the benefit to the applicant, which is absolutely unjust and arbitrary. The omission on the part of the respondents should not have been made a ground to deny the applicant what is legitimately due to him. Annexure -R1(A) order was neither addressed to the applicant nor was communicated to him, enabling him to challenge it in time. Therefore, we are of the considered view that the respondents are bound to refix the pension of the applicant reckoning the army service also as qualifying service for pension and disburse the revised pension to him. Since there is a

delay in filing the application, the applicant will be entitled to get arrears <sup>only</sup> for the period 3 years prior to the date of filing of the Original Application.

3. In the result, the application is allowed in part. Respondents are directed to:

- (a) refix the applicant's pension taking into account the army service rendered by him also for computing qualifying service for pension and issue a revised PPO within a period of two months from the date of receipt of a copy of this order;
- (b) the amount of Rs.125/-, i.e, the gratuity received by the applicant when he was discharged from army service, shall be adjusted from the arrears due to the applicant;
- (c) the arrears flowing from the revision of pension, as directed above, shall be paid to the applicant only with effect from 19.12.92 (3 years prior to the date of filing of this Original Application).

4. The arrears, as aforesaid, shall also be paid to the applicant within the said period of two months from the date of receipt of a copy of this order.

5. There is no order as to costs.

Dated the 26th February, 1997.

  
P.V. VENKATAKRISHNAN  
ADMINISTRATIVE MEMBER

  
A.V. HARIDASAN  
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A6: True copy of the representation dated 23.12.1994 submitted by the applicant before the 3rd respondent.
2. Annexure R1(A):- True copy of the letter No,F.No. Z 28013/24/83-TB, dated 9.11.1983 issued by the Directorate General of Health Services to the 1st Respondent.

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