

**CENTRAL ADMINISTRATIVE TRIBUNAL.
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 259 of 2010

This the 07th day of March, 2011

**Hon'ble Mr. Justice Alok Kumar Singh, Member-J
Hon'ble Mr. S.P. Singh, Member-A**

Subhash Chandra Agarwal, Aged about 68 years, S/o late Shyam Lal Gar, R/o C/o Sri Atul Ranjan Agarwal, R/o 3/498 Vivek Khand, Gomti Nagar, Lucknow.

..... Applicant

By Advocate : Sri Shireesh Kumar

Versus.

1. Union of India through the Secretary, Department of Posts & Telegraph, Ministry of Communication, Government of India, New Delhi.
2. The Bharat Sanchar Nigam Ltd(A Govt. of India Enterprises) through its Chairman-cum-Managing Director, New Delhi.
3. Chief General Manager (Telecom), Western, U.P. Meerut, District Meerut.
4. The General Manager (Telecom) Muzaffarnagar, District Muzaffar Nagar.

.....Respondents.

By Advocate : Sri P. Awasthi for Sri R. Mishra for R-1 and Sri G.S. Sikarwar for R-2 to R-4.

O R D E R (Oral)

By Justice Alok K Singh, Member-J

Heard the learned counsel for the parties and perused the material on record.

2. This O.A. has been filed by the applicant with the following relief(s):

“(i) to direct the respondents to count the military service rendered by the applicant as qualifying service for pension and other retrial benefits and fix the pension and retrial benefits accordingly with effect from the date of retirement after taking into consideration theforesaid military service, the pension and other retrial benefits such as gratuity, leave encashment etc. be revised and arrears accruing thereon be paid to the applicant forthwith.

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- (ii) *to direct the respondents to pay interest @ 12% per annum from the date of accrual of revised pension up to the date of actual payment on the arrears of revision of pension, gratuity and leave encashment.*
- (iii) *Any other order which is deemed just and proper in the nature and circumstances of the case be also passed in favour of the applicant in the interest of justice alongwith the cost of this Original Application."*

3. The applicant's case is that he was initially appointed as Soldier in the Indian Army on 12.9.1961. He retired from Indian Army on 20.3.1968 after rendering a total period of 06 years, 06 months and 08 days of service. Thereafter, he was appointed in civil service as Telecom Operator in the Department of Posts & Telegraph w.e.f. 2.8.1972 vide Annexure no.1. He retired from Civil service on 31.3.2003 after attaining the age of superannuation. He submitted his pension papers well within the time. It is said that for governing the pensionary benefits to the Central Government employees, the Central Civil Services (Pension) Rules, 1972 were promulgated and Rule 19 provides for counting of military service rendered before civil employment. Further, the applicant's case is that Rule 19 (2)(a)(i) of CCS (Pension) Rules provides that the authority issuing the order of substantive appointment to a civil service or post shall alongwith such order require in writing the government servant to exercise the option under that sub-rule within three months from the date of issuing of such order. Rule 19(2)(b) provides that 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 (i). It is further said that the official respondents particularly the BSNL failed to comply with the aforesaid rule and they did not seek any option whatsoever from the applicant regarding counting of past service rendered by him towards qualifying service for the purposes of pension and other retiral benefits. It is further said that the Government of India (Department of Pension & Pension Welfare) issued an office memorandum dated 11.4.2001 providing that all the cases of re-employed military pensioners in civil service shall not be subject to any limitation. It is further provided that the cases of re-employed military pensioners who opted for separate military and



civil pension and whose cases were earlier decided otherwise, may be reopened and pensionary benefits may be re-fixed without limitation (Annexure-3). The applicant submitted various representations before the respondents with a prayer that the service rendered by him in Indian army be treated as qualifying service for payment of pensionary benefits, but no decision till date has been communicated to him. Copies of representations have been brought on record (Annexure-4). The applicant received only a sum of Rs. 525.30/-towards gratuity from military service rendered by him and he informed the respondents that he was prepared to deposit this amount to the respondents, but due to inaction on the part of the respondents, the matter for counting the military service of the applicant could not be finalized.

4. The case of the respondent nos. 2 to 4 on the other hand is that no delay has been caused on behalf of the respondents and because of the fact that the applicant did not deposit the amount of gratuity received from military service and did not exercise the option under Rule 19 of CCS (Pension) Rules, his past service rendered by him in Military could not be counted. Further, it is said that after superannuation of the applicant, there is no stage to exercise the option for counting of past military service and the applicant would not get the benefit from the O.M. dated 11.4.2011.

5. In reply to the aforesaid pleadings, the applicant has averred in his Affidavit dated 20.12.2010 that a sum of Rs. 525.30/- which was paid to him towards gratuity from Indian Army rendered by him has already been returned by the applicant to the Defence authorities through Bank Draft dated 1.12.2010. It is said that the photocopy of Bank Draft has also been brought on record. As far as this Bank Draft is concerned, no objection has come-forth from the other side except that only a photocopy of Bank Draft has been received by them.

6. There is no quarrel on certain points. Concededly, the applicant was appointed in Indian Army on 12.9.1961 and retired from there on 20.3.1968 after rendering about 06 years, 06 months and 08 days. Thereafter, he was re-appointed in civil

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service as Telecom Operator in the Department of Posts & Telegraphs, Government of India, from where also, he retired on 31.1.2003 after attaining the age of superannuation.

7. There is specific rule 19(1)(a)(i) of CCS (Pension) Rules for counting the military service rendered before civil employment. Rule 19(1)(a)(i) reads as under:-

"19 Counting of military service rendered before civil employment – (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 after attaining the age of eighteen years may, on his confirmation in civil service or post, opt either –

- (a) *to continue to draw the military pension or retain gratuity received on discharged from military service, in which case his future 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, and*
 - (iii) *the amount of (retirement gratuity) including service gratuity, any,*

and count previous military service as qualifying service which case the service so allowed to count shall be restricted to a service within or outside the employee's unit or department in India or elsewhere which is paid from the Consolidated Fund of India or for which pensionary contribution has been received by the Government:

Provided that –

- (i) *the pension drawn prior to the date of re-employment shall not be required to be refunded;*
- (ii) *the element of pension which was ignored for fixation of his pay including the element of pension which was not taken into account for fixation of pay or re-employment shall be refunded by him.*
- (iii) *The element of pension equivalent of gratuity including the element of commuted part of pension, if any, which was taken into account for fixation of pay shall be set off against the amount of (retirement gratuity) and the commuted value of pension and the balance, if any, shall be refunded by him."*

8. Similarly Rule 19(2) provides that the authority issuing the order of substantive appointment to a civil service or post shall along with such order require in writing the Government servant to exercise the option under that sub-rule within three months from the date of issuing of such order. This Rule is reproduced here-in-below in verbatim:

"(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 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, which ever is later and also bring to its 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)."

9. Further, it is provided under sub rule (2)(b) that 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). It means that he would continue to draw military pension, in which case, his former military services shall not count as qualifying service.

10. Learned counsel for the applicant submits that the applicant rendered a total period of 06 years, 06 months and 08 days, which was much below for the required minimum service for the purposes of pension. Therefore, the question of getting pension from the military service does not arise.

11. He further submits that the aforementioned Rule has to be read keeping in view the Office Memorandum dated 11.4.2011 issued by Government of India, Department of Pension & Pension Welfare (Annexure-3) which says that in case of re-employment of a military pensioner in civil service, the pensionary benefit shall not be subject to any limitation and cases of re-employed military pensioners, who opted for separate military and civil pension and whose cases were earlier decided otherwise, may be reopened and

pensionary benefits for civil service may be re-fixed without limitation.

12. From the perusal of the aforesaid O.M. dated 11.4.2001, it becomes clear that embargo of limitation of one year has been relaxed. Thus, we find that firstly the respondents failed to call for option from the applicant in writing as provided under Rule 19(1)(a)(i). It is interesting to note that in reply to this specific averment made in para 4.10 of O.A., the respondent nos. 2 to 4 have merely said that there is no dispute to these Rules. No specific denial has been made that the respondents failed to invite option from the applicant at the time of issuance of substantive appointment to civil service. Secondly, we find that embargo of one year has also been lifted by the aforesaid O.M. dated 11.4.2001. In reply to the relevant paragraph of the O.A. in this regard, the respondent nos. 2 to 4 have merely said that this O.M. is not applicable in the case of the applicant. But they have not elaborated as to how this O.M. is not applicable when it clearly appears to be applicable in favour of the applicant.

13. In continuation of the above observation, it is noteworthy that the applicant now claims to have deposited an amount of gratuity to the tune of Rs. 525.30/- with Defence Establishment where he had been initially working though a Bank Draft as has been averred in the Affidavit. As far as the factum of Bank Draft is concerned, it has not been controverted. But the learned counsel for respondent nos. 2 to 4 says in a guarded manner that only a photocopy of the Bank Draft has been given to them. It is true that the applicant ought to have filed the receipt of challan or any other evidence of having remitted the money to the concerned Defence authorities towards refund of military gratuity received by him. But it is a small matter and the applicant has crossed the age of 70 years. Therefore, it would not be appropriate to postpone the final adjudication of the matter merely on this technical ground. Nevertheless, if it is found that the amount of gratuity has not been deposited by the applicant with the Defence authorities, then the order which is being passed here-in-below shall be treated as non-est.

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14. On the suggestion of learned counsel for respondent nos. 2 to 4, it is also provided that if the applicant furnishes a certificate of the relevant Defence authorities in respect of deposit of amount of gratuity to the tune of Rs. 525.30/- then, there would be no impediment in implementing the order of this Tribunal, which is being passed here-in-below

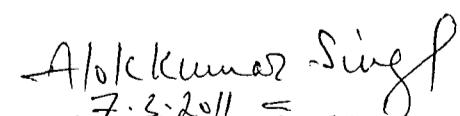
15. Before passing the final order, it would also be appropriate to decide about the payment of interest, which has also been sought by the applicant from the date of accrual of revised pension upto the date of actual payment on the arrears of revision of pension, gratuity and leave encashment. As has already been observed by us, the respondent nos. 2 to 4 failed to call for a written option from the applicant in accordance with Rule 19(2) of CCS (Pension) Rules read with O.M. dated 11.4.2001, it appears appropriate that the amount, in question, is paid alongwith interest @ 9.5% per annum from the date of accrual of revised pension upto the date of actual payment on the arrears of revision of pension, gratuity and leave encashment.

16. In view of the above, O.A. deserves to be and is accordingly allowed subject to above i.e. if the applicant furnishes a certificate of relevant Defence authorities in respect of receipt of deposit of amount of gratuity to the tune of Rs. 525.30 within two weeks from today of this order, then the respondent nos. 2 to 4 shall count the military service rendered by the applicant as qualifying service for the purposes of pension and other retiral benefits w.e.f. the date of accrual of revised pension upto the date of actual payment on the arrears of revision of pension, gratuity and leave encashment and the amount be paid accordingly alongwith aforesaid rate of interest within three months from the submission of the aforesaid certificate from the concerned Defence authorities.

No order as to costs.



S.P. Singh)
Member-A



7.3.2011 =
Justice Alok K Singh)
Member-J