

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Dated this Thursday the 28th day of March, 2002

Coram: Hon'ble Mr. B.N. Bahadur - Member (A)  
Hon'ble Mr. S.L. Jain - Member (J)

O.A.820 OF 1996

Prabhat Kumar Kapoor,  
Inspector of Income-tax,  
O/o Deputy Commissioner of Income-tax,  
Range 29, 6th Floor, Aayakar Bhawan,  
M.K.Road, Mumbai.

(By Advocate Shri P.A.Prabhakaran) - Applicant

VERSUS

1. Union of India  
through the Chief Commissioner of  
Income-tax, (Ministry of Finance),  
Aayakar Bhawan, (3rd Floor),  
M.K.Road, Mumbai.
2. The Commissioner of Income-tax,  
City XIII, Ayakar Bhawan, M.K.Road,  
Mumbai - 400 020.
3. The Deputy Commissioner of Income-tax,  
Range 29, 6th Floor, Aayakar Bhawan,  
M.K.Road, Mumbai.  
(By Adv. Shri V.D. Vadhavkar on behalf  
of Shri M.I. Sethna) - Respondents

O R D E R

By Hon'ble Mr. B.N. Bahadur, Member (A) -

This application has been filed by Shri P.K.Kapoor seeking the relief from this Tribunal as follows:-

- (a) The respondents may be directed to effect the pay fixation of the applicant in terms of the orders/rules narrated in para 5 above and the representations dated 8.3.95 and 28.3.95 without any further delay;
- (b) The respondent may be directed to pay the arrears of pay with reasonable interest wherever due within a stipulated time frame.



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A perusal of Para 5 and the letter dated 28.3.1995 referred to above (as indeed the arguments made on behalf of the applicant) shows that the applicant is really seeking the refixation of pay in terms of an option which is allowed to re-employed pensioners.

2. The facts of the case as brought out by the applicant are that after his premature retirement from the Army (where he was a Major) he took up civil employment in the Income-tax Department as Inspector in 1990. He is aggrieved in the matter of fixation of pay and describes it in his OA at Para 4.2 onwards. It is to be noted here that in terms of the rules as annexed by the applicant at pages 15 and 16 of the Paper Book, he wants his pay to be fixed at the time of joining Civil Service at the maximum of the pay scale in which he joined viz. in the pay scale of Rs.1640-2900/-.

3. The respondents have filed a brief reply at first and followed it up by more detailed averments in further statements dated 5.7.1999 and sur-rejoinder dated 28.7.2000. It is stated by the Respondents that the applicant is confusing the issue of counting of Military Service and fixation of his intial pay. Regarding fixation of pay, the respondents stated that since the applicant exercised option for counting his past service, he is considered to see he is drawing pension as per Rule 18 (1) of the CCS (Pension) Rules. He is then required to refund pensionary benefits accordingly. It is stated that the applicant's pay has been correctly fixed at Rs.1640/- in the scale of Rs.1640-2900/-.



..3/-

4. The respondents state that the applicant till this date has not fulfilled the requirements of Rule 18 (1) of the CCS (Pension) Rules and even though he has not refunded his Gratuity etc. to government as per option in the application and miscellaneous petition, the applicant is taking the benefits accruable for granted on the ground that these can be adjusted towards the future benefits. It is contended by the respondents that there is no provision for such adjustment in Pension Rules.

5. We have considered all papers in the case and have heard the learned counsel on both sides viz. Shri P.A.Prabhakaran, learned counsel for applicant and Shri V.D.Vadhavkar on behalf of Shri M.I.Sethna, learned counsel for the respondents. The learned counsel for the applicant first took us over the facts of the case stating that as per Rules the pension should have been fixed at the maximum. He made the point that fixation of pay and counting of service are two different matters all together. In this connection he referred to Rule 19 of the CCS (Pension) Rules, 1972 (extract at page 16 of the Paper Book). He argued that ignoring of military service is covered under Rule 19 of the CCS (Pension) Rules. It was also urged on his part that notice was required to be served by the respondents on the applicant and that the applicant was prepared to pay the amounts which he had not paid now. On being asked regarding the option not being exercised, at the relevant time, it is



argued by Shri Prabhakaran that this was not relevant since what was involved was fixation of pay. Shri Prabhakaran referred to the case law decided by this Bench of the Tribunal in OA 553 of 1998, OA 100 of 1996 in the matter of Mahindra Vs. Union of India, (1996) (32) ATC 574. He has provided us copies of these judgments.

6. The learned counsel for respondents Shri Vadhavkar argued the case on the basis of the stand taken in the written statement by the respondents. It was pointed out by him that the applicant was confusing issues. He basically depended upon the stand taken by the respondents in their written statement. Towards the end of the arguments when the applicant's learned counsel stated that the applicant was even now willing to pay back the pension and Gratuity amounts etc., we allowed time to counsel for respondents to take instructions in the matter. Upon this the respondents have filed a separate affidavit, and also stated orally through their counsel, that the respondents are now not in a position to make concession in rules and allow the applicant to refund the pensionary benefits and review its orders. The applicant has not refunded pensionary benefits to the department as yet, it has been stated in the latest affidavit of the respondents dated 11.7.2001. It is further stated that the department is not in a position to accept the invalid option of the applicant now, even with interest and penal interest. It is further stated that since the applicant has not filed any valid option he is deemed to have continued to draw pension or to ignore his past military service.



7. We have gone through the rules and various stands taken by both sides and have also considered the arguments made on behalf of the applicant and respondents. It must be stated that the applicant has admittedly submitted his option much beyond the allowed period of one year. When this is so a default option system operating as per rules as on record has to operate. It has accordingly operated. The action of the applicant in not refunding the pensionary benefits in terms of the rules is also something that goes against him. It is unfortunate if the option has not been properly exercised at the correct time and more unfortunate that what had to be taken as follow up measures after default option has also not been done.

8. When a system of options operates as per rules and there is no specific provision in the rules for changing an option it would not be possible for Tribunals like ours to exercise discretion and allow the applicants who come in late to operate fresh options. We did explore however considering difficulties and of ex-Army officer, the possibility of the respondents themselves agreeing to refund of the pensionary amounts as per rules at this stage perhaps with some interest etc. We allowed time to respondents counsel to take instructions as discussed above by adjourning the case.

9. As described above, the respondents have come up with further affidavit in the matter and have stated that it would

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not be possible for them to allow any options now. They have reiterated that the applicant has not refunded pensionary benefits to the department even now and since the applicant has not filed any valid option he is deemed to have opted to have drawn pension or to ignore his past military service. We must also reproduce here Para 4 of the reply in the latest affidavit of the respondents dated 11.7.2001 which reads as follows:

"4. The applicant has quoted a departmental reply No.DC(HQ)Pers/Rep.PKK/96 dated 29.1.96 issued by the then DCIT(HQ) Personnel, Mumbai a letter in which it was mentioned that past service is counted only for pensionary benefits (subject to relevant conditions being fulfilled) and not for seniority. It was not an order of Competent Authority under the rules. The respondent are issuing corrigendum to this effect after giving due notice to the applicant. The option could have been admissible to the applicant if the same was validly made."

We will not comment on this further as this is not an issue involved. Much the applicant may have to suffer in financial terms, it is difficult for the Tribunal to provide the kind of relief asked for by judicial determination when his own lack of action results in non-compliance of the rules. We are therefore unable to help him with the reliefs that he seeks. In the consequence, this OA fails and it is accordingly dismissed without any order as to costs.

*J.S.Jain*  
(S.L.Jain)  
Member (J)

*B.N.Bahadur*  
(B.N.Bahadur)  
Member (A)

*dt 28/3/02*  
Order/Judgement despatched  
to Applicant, Respondent(s)  
*on 23/4/02*

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

R.P. NO. 25/2002 IN O.A. NO. 820/1996

Dated this Monday the 15<sup>th</sup> day of July, 2002.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

Shri P. K. Kapur ... Applicant

VERSUS

Union Of India & Others ... Respondents.

TRIBUNAL'S ORDER ON CIRCULATION :

The Applicant in (O.A. No. 820/1996) has filed this Review Petition bearing No. 25/2002 stating that the order in the O.A. suffers from numerous inaccuracies, infirmities, non-application of the relevant rules, application of irrelevant rule and even mixing up of the submissions of the Applicant and Respondents.

2. We have perused the Review Petition and have considered the essential points made therein. Before arriving at a conclusion, we remind ourselves that we are looking only for error apparent on the face of the record, as indeed is the procedure known to the Applicant, as clear from para 2 of the Review Petition.

*B.YM* -

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