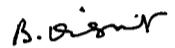


can have no value. We also checked up with Shri Prabhakaran whether he can cite a case of any other person not only in Applicant's office but in any office of the Government of India like Customs, Railways, etc. but he is unable to produce any such case/s even today. In the circumstances, the relief sought in the O.A. cannot be provided and the O.A. is liable to be dismissed.

6. The O.A. is accordingly dismissed with no order as to costs.



(B.N. BAHADUR)
MEMBER (A).



(BIRENDRA DIKSHIT)
VICE-CHAIRMAN.

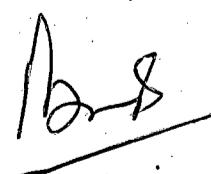
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provided such a benefit. There are specific rules in their cases and the comparison brings no merit to the case of the Applicant. Learned Counsel for the Respondents, Shri V.D. Vadhavkar, argued the case on the basis of their Written Statement and highlighted the fact that Respondents have specifically pleaded that there is no such rule which will help the case of the Applicant.

6. Learned Counsel for Applicant, Shri Prabhakaran, brought to our notice a judgement made by the Hon'ble Supreme Court in the matter of *Raj Pat Sharma & Others v/s. State of Haryana & Others* reported at AIR 1985 SC 1263. We have gone through the judgement and find that this cannot help the cause of the Applicant at all. Learned Counsel had also referred to Swamy's Book on "Pay Rules made easy", where at pages 268 and 269 (Edition 1991) there are notes under the title "Re-employment after compensation or invalid pension or gratuity. These notes reads as follows :

"Re-employment after compensation or invalid pension or gratuity". If a person who has retired on a compensation or invalid gratuity/pension elects to refund his gratuity and keeps his pension in abeyance for the purpose of counting his past service for earning a future pension he shall be treated as if he is not in receipt of any pension for the purpose of fixation of pay. Such a person will also be entitled to the benefits of promotion to another scale or post as the re-employment actually amounts to regular continuous service."

It is important to note that unlike the notes under various Headings and as is usually the practice, in such publications there is no mention of any O.M. or Government instructions or letter, etc. In the absence of any orders of Government, these

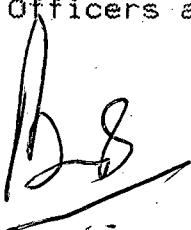


2. The Applicant had stated that on pre-mature retirement from the Army while officiating as a "Major", he had joined the Income-Tax Department as an Inspector, being recruited through the Staff Selection Commission. He made an application for the grant of seniority counting Army Service, which has been rejected by Respondents on 29.01.1996 stating that past services are counted only for pensionary benefits and not for seniority. Chronological events of facts are set out in a tabular form in para 4.3 of the O.A.

3. The Respondents, on the other hand, have filed a statement of reply taking the stand, inter alia, that there is no such rule for providing seniority to the persons like Applicant, who have come in as direct recruits after being released from the Defence Services. Further details of the stand are taken in the statement of the Respondents.

4. We have heard Learned Counsel on both sides, viz. - Shri P.A. Prabhakaran for the Applicant and Shri V. D. Vadhavkar appearing for Shri M. I. Sethna, for the Respondents.

5. The main point in this case is that there should be a specific rule on the basis of which directions in respect of reliefs sought can be provided. We raised this point to Shri Prabhakaran, on the last date of hearing also, and afforded him an opportunity to produce any rule or case law. Learned Counsel has stated that he could not find any rule directly applicable but took recourse to the fact that Emergency Commission Released Officers and "Short Service" Commission Released Officers are



CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. 152 of 1997.

Dated this Monday, the 7th day of October, 2002.

CORAM : Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman.

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

Prabhat Kumar Kapur,
Inspector of Income-Tax,
O/o. Deputy Commissioner of
Income Tax, Range 29,
6th floor, Aayakar Bhavan,
M.K. Road, Mumbai - 400 021. Applicant.

(By Advocate Shri P.A. Prabhakaran)

VERSUS

1. Union of India through
The Chief Commissioner of
Income-Tax, Mumbai
(Ministry of Finance),
Aayakar Bhavan, 3rd floor,
M. K. Road, Bombay - 400020.

2. The Commissioner of
Income-Tax XIII,
Ayakar Bhavan, M. K. Road,
Bombay - 400 020.

Respondents.

(By Advocate Shri V. D. Vadhavkar for
Shri M. I. Sethna).

O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A)

The Applicant in this case is before the Tribunal seeking the relief as follows :

"The respondents may be directed that the Army service rendered by the applicant be counted for the purpose of seniority in the cadre of Inspector of Income-Tax and the seniority of the applicant be fixed accordingly."



**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO. : 152 of 1997

Dated this **Monday**, the **7th** day of **October**, 2002.

Prabhat Kumar Kapur, Applicant.

Shri P.A. Prabhakaran, Advocate for
Applicant.

VERSUS

Union of India & Another, Respondents.

Shri V. D. Vadhavkar for Advocate for
Shri M. I. Sethna, Respondents.

CORAM: Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman.

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

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library.

No

B. N. BAHADUR
MEMBER (A).

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