

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 463/98.

Date of Decision : 29.10.1998.

D. B. Bhosale, Petitioner.

Shri S. S. Karkera, Advocate for the  
Petitioner.

VERSUS

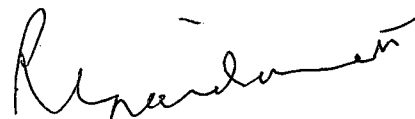
Union Of India & 2 Others, Respondents.

Shri R. R. Shetty for Advocate for the  
Shri R. K. Shetty, Respondents.

CORAM :

Hon'ble Shri Justice R. G. Vaidyanatha,  
Vice-Chairman.

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

  
(R. G. VAIDYANATHA)  
VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 463/98.

Dated this Thursday, the 29th day of October, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,  
VICE-CHAIRMAN.

D. B. Bhosale,  
Retired Driver of Small  
Scale Service Institute.

Residing at -

C/o. Ravindra Mahadeo Kamble,  
At Post Gad Mod Singi,  
Tal. Karveer,  
Dist. Kolhapur.

(By Advocate Shri S.S. Karkera)

... Applicant

VERSUS

1. Union Of India through  
Through the Development  
Commissioner,  
Small Scale Industries,  
Bharat Sarkar,  
Nirman Bhavan,  
New Delhi - 110 001.

2. The Director,  
Small Industries Service  
Institute, Udyog Mantralaya,  
Government of India,  
Saki Naka, Kurla-Andheri Rd.,  
Mumbai - 400 072.

3. The Deputy Director In-Charge,  
Branch Small Industries  
Service Institute,  
Aurangabad.

(By Advocate Shri R.R. Shetty for  
Shri R. K. Shetty).

... Respondents.

: OPEN COURT ORDER :

{ Per.: Shri R. G. Vaidyanatha, Vice-Chairman }

This is an application filed by the applicant  
under Section 19 of the Administrative Tribunals Act.

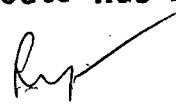
Respondents have filed reply. I have heard the Learned Counsels appearing on both sides.

2. The applicant who is an ex-serviceman was appointed as a Driver in the Department of Small Scale Industries of the Government of India. He has since retired from service on 31.01.1998. His grievance is that, his past military service from 01.08.1963 to 10.06.1970 has not been taken into consideration by the respondents for the purpose of giving him retirement benefits. He has, therefore, approached this Tribunal for a direction to the respondents to treat the applicant's past services in the military for the purpose of retirement benefits and other consequential reliefs.

3. The respondents have filed reply. Their main objection is that the applicant should have exercised option within a period of three months from the date of joining the service under the respondents to claim pension under the Pension Rules as provided in Rule 19(1) of the C.C.S. (Pension) Rules, 1972. It is stated that the applicant has not exercised any such option and therefore it is too late in the day to claim the benefit of past services for the purpose of pension and other retirement benefits.

4. The short point for consideration is, whether the applicant is entitled to the benefit of previous military service ~~for~~ the purpose of retirement benefits or not ?

It is true that the applicant has not exercised option within three months as provided in Rule 19(1) of the Pension Rules. But the applicant's case is that the respondents should have given him a chance to exercise that option while issuing the appointment order as provided under Rule 19(2) of the C.C.S(Pension) Rules. In my view, the discussions about the right of option under Rule 19(1) or (2) is purely academic in view of the subsequent development. There is a recent Government Order dated 29.09.1994 where it is pointed out that many of the Ex-Servicemen have not exercised option within time, as mentioned in Rule 19(1) of the C.C.S. Pension Rules. As a final chance, under this Government order, the Government has one-time relaxation, had given option to all the military pensioners who are now working in Civil post to exercise their option within six months from the date of the order. This Government order was issued on 29.09.1994. Before the issuance of the order, we find that in 1984 itself the applicant has exercised this option, as could be seen from exhibit 'D' at page 22 of the paper book. It is a certificate for verification of military service for the purpose of civil pension under the Civil Service Regulations. Therefore, this certificate has been prepared for the very purpose of granting civil pension under the rules. In this document it is clearly mentioned that the applicant was in Army Service and he was enrolled w.e.f. 01.08.1963 and he was discharged on 10.06.1970. This certificate has been prepared by the officers of the respondents and countersigned by the Accounts Officer. Therefore, the applicant has disclosed to the present employer and necessary certificate has been



prepared for the purpose of claim for civil pension as back as 1984. Therefore, as required under the recent Government Order dated 29.09.1994, the applicant has already exercised option to claim civil pension under the Pension Rules. Hence, the respondents cannot deny the past service to the applicant for the purpose of pensionary benefits.

5. The applicant has also claimed interest on the payment of pensionary benefits at 18% per annum. Since the Tribunal is now deciding that the applicant is entitled to the benefits of previous military service for the purpose of pensionary benefits, I feel that the respondents should not be burdened with the liability to pay interest, provided they comply with this order within a period of three months from the date of receipt of this order. However, if the settlement of revised pension and consequential benefits, as a result of this order, is delayed beyond three months, then the applicant will be entitled to interest at the rate of 6% per annum from the date of expiry of three months from the date of receipt of the order till the date of actual payment of arrears.

6. The applicant will have to refund the gratuity amount he had received along with interest, as a result of military service, before claiming pensionary benefits under the Pension Rules. Infact, the applicant has already given an undertaking that he is prepared to refund that amount. Even the Government Order dated 29.09.1994 in para 3 clearly provides that the amount should be returned with

6 per cent interest. In this case, the applicant *has received*



Rs. 831.20 ps. towards gratuity at the time of discharge from the military service. He is liable to refund the amount of Rs. 831.20ps. together with interest @ 6 per cent per annum w.e.f. 10.06.1970 till the date of <sup>payment</sup> refund. It is open to the applicant to refund this amount within a period of four <sup>weeks</sup> months from today, failing which, the respondents while calculating the pensionary benefits and the arrears may deduct the said amount together with interest at the rate of 6% per annum from 10.06.1970 and pay the balance amount to the applicant.

7. In the result, the O.A. is disposed of with a direction to the respondents to treat the previous military service w.e.f. 01.08.1963 to 10.06.1970 as qualifying service for the purpose of pension, as mentioned in Rule 19(1) of the C.C.S. (Pension) Rules. As a result of the same, the applicant's pension will have to be revised and he will have to be paid the enhanced pension and arrears within a period of three months from the date of receipt of this order, subject to other directions given in para<sup>5 and 6</sup> (5) above. In the circumstances of the case, there will be no order as to costs.

  
(R. G. VAIDYANATHA)  
VICE-CHAIRMAN.