

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA**

**O.A. 050/00467/2017**

**Reserved on- 24.04.2018.**

**Date of pronouncement 27.04.2018**

**CORAM**

**Hon'ble Shri J.V. Bhairavia, Member [ J ]**

1. Hira Lal Gupta son of late Sita Ram Gupta Ex-ACIO-II/G, Subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India, 6, Serpentine Road, Patna-800001, resident of mohallah-Bhagwanganj, P.O.- & P.S. Bhagwanganj, Via-Nadaul, District- Patna-804454 (Bihar)

.....Applicant

**By Advocate : Shri M.P.Dixit**

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi-110001.
2. The Director, Intelligence Bureau Ministry of Home Affairs, Government of India, North Block, New Delhi-110001.
3. The Joint Director, Intelligence Bureau, Ministry of Home Affairs, Government of India, S.P. Marg, New Delhi-110021.
4. The Joint Director, Subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India, 6, Serpentine Road, Patna-800001 (Bihar).
5. The Assistant Director, Subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India. 6, Serpentine Road, Patna-800001 (Bihar).
6. The Secretary, Ministry of Defence, Government of India, North Block, New Delhi-110001.
7. The Commanding Officer, ASC Centre (South), Bangalore-560007 (Karnataka).

.....Respondents

**By Advocate: Shri Rajesh Kumar for Respondent no. 1 to 5**

Smt. P.R. Laxmi for respondent no. 6 & 7

**ORDER**

**Jayesh V. Bhairavia, M [ J ]:** The applicant has filed this OA praying for the following reliefs:-

*"[8.1] That your Lordships may graciously be pleased to direct/command the respondents to count the past services rendered by the applicant under respondent no.7 since 19.10.1977 to 03.08.1983 for all purposes without any further delay.*

*[8.2] That your Lordships may graciously be pleased to direct/command the respondents to grant/accord all consequential benefits including arrears, revision of pension and statutory interest thereupon in favour of the applicant.*

*[8.3] That your Lordships may further be pleased to set aside any adverse order if issued in this regard.*

*[8.4] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant."*

2. The brief facts of the case, as submitted by the applicant, are as below :-

[i] That the applicant had rendered a service of 5 years 9 months 15 days (19.10.1977 to 03.08.1983) under the respondent no.7 i.e the Commanding Officer, ASC Centre (South), Bangalore-Karnataka as Sepoy/clerk (General duty) vide No. 6372347. (The past military service) Thereafter, the applicant was selected/re-employed against Ex-serviceman Quota on 30.05.1985 to the post of Security Assistant (SA) in Intelligence Bureau under the Respondent no. 1 to 5 where he worked till his retirement i.e 31.12.2016.

[ii] That, the applicant had submitted his representation in the year 1987 for counting his past service rendered under the respondent no.7. for pensioner benefits. Again, he had submitted his representation dated 02.01.1997, 21.04.1997 and 08.01.1999 whereby the applicant had brought the fact to the knowledge of the concerned authority i.e respondent no. 3 that while issuing order of his appointment, he was not directed to give his option for his reemployment as per the requirement of Rule 14 of CCS Pension Rule 1972 and therefore he requested to issue a direction for exercising his option to refund all the gratuity received for the former military service and to count the former military service for future pensionary benefits. (Annexure A/1 series refers.)

[ iii ] In response to the representation of applicant, the respondent no. 3 vide communication dated 02.02.2000 (the office of the respondent no.5) informed the applicant that in 1994, the department vide OM dated 23<sup>rd</sup> May 1994 gave last opportunity to such reemployed military pensioners to exercise options within six months of issue of order. Since, he did not avail the opportunity and exercised option in 1997, no further relaxation in this regard is possible. (Annexure R/1 refers).

[iv] It is submitted that the applicant had again submitted representation dated 08.09.2003 alongwith undertaking for refunding

service gratuity received from the former employer and requested that the period from 19.10.1977 to 03.08.1983 rendered by him in military service may be counted into service being rendered in the present organisation for extending pensionary benefits. (Annexure A/3). It is further submitted that the representation of the applicant dated 08.09.2003 was forwarded by the respondent no.4 to the respondent no.2 vide communication/memorandum dated 11.09.2003 with a recommendation to consider the request of the applicant sympathetically for counting the service period rendered during the military service for extending pensioner benefits. (Annexure A/4 refers).

[ v ] The applicant was awaiting the positive response from the respondents as the identically situated officials were granted the benefits as claimed by the applicant. Meanwhile, the applicant superannuated from service on 31.12.2016 and received the pension and other benefits for the shorter period of service, his past service under the military was not considered for the purpose of pension and pensionary benefits. He came to know that due to lack of final decision on the request/representation of the applicant, the applicant was granted pension for short service period. Therefore the applicant had submitted another application dated 22 February 2017 and requested the respondents to re-look into the matter of the applicant because he had requested the concerned authority in the year 1997 for allowing him to exercise his option for the pensioner benefits and thereafter his application was also forwarded for consideration in the year 2003 by the office of respondent no.5. (Annexure A/5 refers). The said application dated 22.2.2017 also remained unattended and the applicant was deprived of his legitimate right to receive appropriate pension. The said illegal, arbitrary action of the respondents is a continuous wrong which may be rectified at any point of time.

[vi] On the above stated facts, the applicant has filed this O.A for the reliefs sought for in this OA and the learned counsel for the

applicant submitted that the action of the respondents for not counting his past service for pensioner benefits is illegal, unjust, in violation of Article 14,16,21 and 311 of Constitution of India as also against the provisions laid down under CCS (Pension) Rule 1972. Therefore, the applicant has filed this O.A. as there is no other alternate remedy available to him.

3. In response to the notice, the respondent no. 1 to 5 have filed their written statement dated 14.03.2018 and additional reply dated 23.04.2018. The said respondents have submitted their written arguments, and the same was taken on record. The respondents have denied the contention of applicant with respect to consideration of his past service for the purpose of counting pensioner benefits. The learned ASC for respondent no. 1 to 5 vehemently submitted that the applicant had joined the service at Patna on 30.05.1985 but he has not exercised the option as per the requirement of Rule 19 of CCS (Pension) Rules 1972. The applicant had not given his letter or representation dated 23 February 1987 with regard to exercising his option but the said letter only pertains to a reply of some queries and it was not any type of representation or a claim for counting his past service. It is submitted that the applicant himself has accepted/admitted in his letter dated 08.09.2003 that he was not aware of any provision of exercising the option for counting the past service before 2<sup>nd</sup> January 1997. In fact, the applicant had requested 1<sup>st</sup> time i.e on 2<sup>nd</sup> January 1997 for allowing him to exercise his option under the provision of Rule 19. The applicant offered his willingness to exercise the option after 12 years of his re-employment. The request of the applicant was examined thoroughly in consultation with DOPT and final reply in this regard was conveyed to him vide memo dated 02.02.2000 making it clear to the applicant that no any further relaxation will be provided to him. It is further contended that the letter dated 11.09.2003 referred by the applicant was never meant for the applicant. It was an internal communication of the SIB with IB Headquarter and was not addressed to the applicant. The final result on his representation was communicated vide letter dated 02.02.2000. The applicant did not avail the opportunity within one year of employment not only that in the year 1994 vide OM dated 23.05.1994 the respondents had granted opportunity to all the identically

situated re-employed military pensioners to exercise their options within six month of issue of the said OM. Since the applicant did not avail the said opportunity and only in the year 1997 requested to allow him to exercise his option which was denied in the year 2000 itself. After 08.09.2003 till the date of his retirement i.e 31.12.2016 he had not raised any grievance whatsoever and he had raised the issue only on 22<sup>nd</sup> February 2017 by submitting a fresh application in order to revise the issue which has already been finally settled. Therefore, the applicant is not entitled for any relief as sought for.

4. On behalf of respondent no. 6 & 7 i.e office of Ministry of Defence, GOI and the Commanding Officer, ASC, Bangalore a written statement dated 19.03.2018 has been filed and contended that the claim of applicant is found to be genuine, the applicant had rendered his service with the respondent no. 6 & 7 for the period of 19.10.1977 to 2<sup>nd</sup> August 1983 and they have no objection in counting his former service in the army for the purpose of grant of pension from the office of respondent no. 1 to 5 where the applicant was re-employed.

5. The applicant had filed his rejoinder to the written statement filed by the respondent no. 1 to 5 and contended that the reply of the said respondents is misleading, false and contrary to the reply filed by the respondent no. 6 & 7.

The applicant has further stated that vide letter/memorandum dated 21.08.2003 the office of Assistant Director, IB, Ministry of Home Affairs, GOI New Delhi, informed the office of respondent no.5 i.e the Assistant Director, SIB, Patna that in response to circular/memorandum dated 10.10.2002 on the subject of counting of past military service of ex serviceman of IB for pensionary benefit they have received options in respect of some of the officials including the applicant whose case was rejected by DoP & PW and in this regard after scrutiny of the applications/options of the officials, it was requested to provide the details of reasons for not exercising options within stipulated dates as per Rule 19 (1) and 19 (2) (a) of CCS (Pension) Rules 1972 and further sought the details that whether the officer is willing to refund the government pension/gratuity etc. already drawn with interest from the date of joining of civil service. A written undertaking from the officer is required to be submitted. (Annexure P/1 refers). Therefore, even after the decision dated 02.02.2000 the representation/request for allowing to exercise the

option was very much under active consideration before the respondent no. 2 to 3 and this view of the fact the stand of respondent no. 1 to 5 is contrary to their own communication and wrongly denied the legitimate right of pensioner benefits.

6. In response to the rejoinder filed by the applicant, the respondent no. 1 to 5 had submitted their additional reply dated 23.04.2018 through Section Officer, SIB, Patna and reiterated the submission and contention stated in their earlier written statement. Further, it is submitted that the department's letter dated 21.08.2003 produced by the applicant at Annexure P/1 of his rejoinder is self explanatory that the claim raised by the applicant was already rejected by the office of DoP and PW and the further explanation sought under the said letter was not meant for applicant as it was a common letter issued in respect of other officials and therefore, applicant is not entitled for any relief.

It is further submitted by the respondents that the petitioner was re-employed by the office of respondent no. 1 to 5. At the relevant time the provision of incorporating the term of exercising of the option by the military the past service in the offer of appointment "as a clause" in the order of re-employment was formulated on 31.5.1988 (R /3 refers) since 31<sup>st</sup> May, 1988, the department has inadvertently incorporating the terms as "a clause" in offer – appointment itself. In the case of the applicant, no such provision was provided or in force and therefore, in the appointment letter issued to the applicant the clause of exercising his option was not incorporated.

Lastly the learned ASC for respondent no. 1 to 5 has submitted that the claim of applicant is grossly delayed and no reason whatsoever has been stated by the applicant for such gross delay of more than thirteen years. The learned counsel for the respondents placed reliance on the judgment passed by Hon'ble Apex Court in the case of S.S. Rathore vs. State of M.P, reported in 1990 SCC (1) page 50 and submitted that successive representation cannot extend the period of limitation. In the present case, the applicant has submitted his application in the year 2003 and thereafter, he remained silent till his superannuation in 2016. The learned counsel further relied upon the order passed by this Tribunal in OA 120 of 2005 in the case of Dularchand vs. U.O.I and submitted that by this judgment / order, this Tribunal was pleased to hold that old claims not to be entertained. Further, By relying on the

judgment passed in Commandant TSP vs. Easarwar Moorthy, reported in 1999 SCC ( L&S) ( 2 ) 643, the Hon'ble Apex Court in the said judgment held that " any case is to be filed within a limitation period, otherwise, if the case is barred by limitation, then any relief cannot be considered. The applicant has approached this Tribunal in year 2017 without explaining the delay. If such application is considered, in that case it will open the flood gate for non-deserving employee and therefore also the application deserves to be dismissed.

7. Heard the parties and perused the records.

8. I have carefully examined the pleadings of the parties and material on record. It reveals from the record that the applicant had, before joining the office of respondent no. 1 to 5 i.e Intelligence Bureau against Ex-servicemen quota as Security Assistant (SA) on 30.5.1985 on re-employment, already put in service of 5 years 9 months 15 days i.e (19.10.1977 to 03.08.1983) under the respondent no.7 i.e the Commanding Officer, ASC Centre (South), Bangalore-Karnataka as Sepoy/clerk (General duty) vide No. 6372347. He continued as SA under the respondent no. 1 to 5 and he retired from government service as JIO -II /G PIS No. 120035 with effect from 31.12.2016.

9. The applicant, through this OA, prayed for direction to the respondents to count the past service (Military Service) rendered by the applicant under the respondent no. 7 for the period from 19.10.1977 to 03.08.1983 for the purpose of pensionary benefits. The applicant had submitted his applications/representations in the year 1997 -1999 by which he had requested the competent authority to allow him to exercise his option to refund all the gratuity received from the former military service and also to count the former military service for future pensionary benefits. It is also the case of the applicant that at the time of his re-employment, he was not offered or directed by the respondents to give such option and he was not aware of such requirement at that point of time. In response to the said representations, the respondents, vide letter dated 20.02.2000, turned down his claim on the ground that vide O.M dated 23.5.1994, a last opportunities were provided to the re-employed military pensioners to exercise option within six months of issue of the said order. However, though the applicant, being the reemployed military pensioner, had not availed the said opportunity and exercised

his option in the year 1997 and therefore, further relaxation in this regard was not possible.

It also appears from the records that subsequently, similarly situated re-employed military pensioners, including the applicant had submitted their representations / options again for counting of past military service for pensionary benefits. Considering the said request/options submitted by such employees, the office of the Assistant director, I.B, respondent no. 3, vide its letter dated 21.8.2003 had informed the respondent no. 5 that in response to the circular memorandum dated 10.10.2002 on the said subject, the said office had received the option of the officials, including the applicant and on scrutiny, it was found by the said respondents that the certain details have not been given by the respondent no. 5 while forwarding the applications. Therefore, it was requested to provide the details of reasons for not exercising options within stipulated dates as per Rule 19 (1) and 19 (2) (a) of CCS (Pension) Rules 1972 and further sought the details that whether the officer is willing to refund the government pension/gratuity etc. already drawn with interest from the date of joining of civil service. A written undertaking from the officer is required to be submitted. (Annexure P/1 refers).

10. It is also noticed that in response to letter dated 21.7.2003 issued by respondent no. 3, the applicant had again submitted representation dated 08.09.2003 along with undertaking for refunding service gratuity received from the former employer and requested that the period from 19.10.1977 to 03.08.1983 rendered by him in military service may be counted into service being rendered in the present organisation for extending pensionary benefits. (Annexure A/3 refers). The said details were forwarded by the respondent no. 5 with recommendation to the respondents no. 3 vide its communication dated 11.9.2003 as asked for vide memorandum dated 21.8.2003. Since then the claim of the applicant remained pending before the respondents till his retirement.

11. In the present case, the basic issue to be decided is whether it is incumbent upon the applicant to exercise his option on his re-employment under Rule 19(1)(a) on his own volition or it was incumbent upon the respondent organization to ask for the option from such ex-serviceman under the provision of



Rule 19 ( 2 ) (a) of CCS (Pension) Rules, 1973, within three months of his re-employment, and ex-serviceman was duty bound to reply within one year of the re-employment.

12. In this regard, Rule 19 of the CCS(Pension) Rules deals with the counting of military service rendered before civil employment. Rule 19(1) provides general statement, which reads as under:

19(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 service, may, on his confirmation in a civil service or post, opt either –

(a) to continue to draw the military pension or retain gratuity received on discharge from military service, in which case his former 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, if any,

and count previous military service as qualifying service, in 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 on 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 of 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.

EXPLANATION. - In this clause, the expression 'which was taken into account' means the amount of pension including the pension equivalent of gratuity by which the pay of the Government servant was reduced on initial re-employment, and the expression 'which was not taken into account' shall be construed accordingly.

Rule 19(2) of the CCS (Pension) Rules, 1972 further provides as under:

( 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, whichever is later and also bring to his 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)

13. It is pertinent to note here that the words used in Rule 19(2)(a) of CCS(Pension) Rules, 1972 are abundantly clear that the onus rests upon the authority making re-employment to ask the ex-serviceman so re-employed to exercise the option under sub-rule(1). The said Rules came into force before the applicant herein was reemployed against ex-servicemen quota by the respondents no. 1 to 5. It was incumbent upon the respondent no. 1 to 5 to ask the applicant to exercise his option under Rule 19 (2) ( a ) either to draw the military pension or retain gratuity or to refund the pension and gratuity drawn by him, but they have admittedly failed to do so.

In this regard, it is the stand of the respondents that at the time of reemployment of the applicant in civil service on 30.5.1985, the respondents department did not have any guidelines or policy to incorporate the terms of directing the appointee to provide his option, and therefore, in the case of the applicant, no specific direction or conditions were incorporated in his offer of appointment. It is the contention of the respondents that only in the year 1988, the department had adopted the policy to incorporate the term of exercising of options by military pensioners for counting the past service in the offer of appointment. To justify their decision dated 2.2.2000 for denying the relaxation for belated exercise of option by the applicant, it is submitted by the respondents that though vide OM dated 23/05/1994, due opportunity was provided to such reemployed military pensioners, the applicant did not avail the said relaxation and thereafter it is not open for any further grant of time. At this stage it is important to take notice of the fact that the aforesaid decision of the respondents and contentions runs contrary to their own communication on record. In this regard, subsequent to the decision dated 2.2.2000, the office of the respondent no. 3 called for reasons for not exercising option within stipulated dated as per Rule 19 ( 1 ) and 19 ( 2 ) (a) of CCS (Pension) Rules, 1972, as also sought the information whether the officer is willing to refund Govt. Pension/gratuity etc already drawn with interest from the date of joining the civil service, and for that purpose, a written undertaking from

the officer was required to be submitted vide letter dated 21.08.2003. In the said letter the name of the applicant was placed at sl. No. 7 and after take into considering the earlier decision of 02.02.2000 the requests/options submitted by the applicant and other were taken it for reconsideration by the said respondents and for that purpose details were sought for. It is not in dispute that the said details were submitted by the applicant and it was forwarded for further consideration to respondent no. 3. However, thereafter, it appears that no decision had been taken by the said authority. Therefore, it cannot be said that the applicant had not submitted his option as per requirement of the pension rules, and thus, the applicant cannot be faulted for that. The submissions of the respondents that letter dated 21.08.2003 is not meant for applicant is without any support and therefore the said submission is also contrary to the material on record.

14. The Principal Bench of this Tribunal, while dealing with an identical matter arising out of same department i.e. respondent no. 1 to 3 ( OA 34 of 2009 – Manohar Singh Chana vs. U.O.I), was pleased to hold as under:-

*"Para 22. We, therefore, conclusively hold that it was incumbent upon the appointing authority before the CCS (Pension) Rules, 1972 coming into force, to give an upgradation after having ascertained the fact. It has omitted to do so. Rule 19 of the CCS(Pension) Rules, 1972 is not a sudden break on the past, but rather constitutes a continuity. This Rule clearly places the onus upon the employing organization. We further find that the respondent organization have omitted in their duties and therefore, they stand atoned for the same. We also conclusively reject the argument of the respondents that since the option had not been exercised in the first three months, it is not exercisable now. The argument of limitation has been conclusively rejected by the Honble High Court of Delhi in WP(C) No. 4552/2011 dated 19.02.2013 and, therefore, we do not devote much time to it. It emerges from the above that it is a case of fixation of pension. Had the period rendered by the applicant in Military (Naval) service been reckoned as provided under Rule 19 of CCS(Pension) Rules, the pension of the applicant would have definitely been higher. Therefore, under the case of M.R. Gupta Vs. UOI & Ors. (1996 AIR SC 669], the matter continues to be alive.*

*23. We also reject the argument of the respondents that if this case were to be allowed, it would open a Pandora box and so many persons would be applying for the same. We, on the contrary, hold that where the respondents have committed an act of injustice with the applicant by not giving him an opportunity to exercise his option and similar injustices have been committed with others, it would rather give an opportunity of such injustices being redeemed. One cannot be threatened to give a judgment in a particular manner merely because a large number of similar cases will have to be allowed.*

*In view of the aforesaid circumstances, I am of the view that the respondents are totally wrong to deprive the benefit of the past 'military service' to the applicant from 15.12.59 to 10.7.70 for counting pension on his re-employment in civil post under the respondent Nos. 3 & 4 basing upon the notification dated 5.8.58 (Annexure-A/1 to the reply) as the said decision contained in the Annexure-A/1 to the reply cannot be applied to, when the Rule 19 of the CCS (Pension) Rules, 1972 itself is specific and clear and does not speak about the limit of the period for condonation for granting benefit to a Govt. servant on a re-employment in civil service under Rule 19 of the CCS (Pension) Rules. In view of the aforesaid circumstances, I hold that the said*

*memorandum dated 1.7.96 (Annexure-9) is wholly arbitrary illegal and the said memorandum is contrary to the provision of the Rule 19 governing the service condition of the applicant for counting benefit of pension under CCS (Pension) Rules. So, I set aside the order dated 1.7.96 (Annexure-9) and I further hold that the applicant is entitled to get benefit of past military service for the purpose of pension as per provision of Rule 19 of the CCS (Pension) Rules. Therefore, I direct the respondents to count military service of 10 years, 6 months and 26 days from 15.12.59 to 10.7.70 as admissible to the applicant under Rule 19 of the CCS (Pension) Rules after accepting the draft of Rs. 2325/- which was deposited by the applicant for the said purpose. It may be mentioned here that the applicant is to deposit the interest at the rate of Rs. 6% p.a. on that amount of Rs. 2325/- from the date of receipt of the amount till the date of deposit of the draft in favour of the Accounts Officer of the Military service within one month from the date of this judgment. The respondents are also directed to give all benefits of pension as per rules after counting his past military service of 10 years from 15.12.59 to 10.7.70 within three months from the date of deposit of the interest as ordered. The application is allowed awarding no costs."*

15. It is also appropriate to mention here that the above stated order passed by the P.B. CAT , New Delhi was challenged by the respondents through writ petition ( c ) No. 8783 of 2014 before Hon'ble Delhi High Court, and the said writ petition was disposed of vide order dated 24.8.2016 whereby the Hon'ble High Court was pleased to hold as under:-

"10. The observation of the Tribunal made in para 22 of the impugned order is to be considered in the backdrop of the order of this Court dated 19.02.2013 which we have extracted herein above. Reading of the order would show that this Court only remanded the matter back after taking note of the decision rendered by the Supreme Court in the case of Tarsem Singh (supra). This Court did not reject the argument on the point of limitation of the petitioner herein. The Tribunal has failed to apply the law laid down in Tarsem Singh (supra) wherein the Apex Court has held that the pensionary claims are recurring cause of action arising each month when pension becomes payable and If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted upto a reasonable period of about three years.

11. The Supreme Court in Tarsem Singh (supra) in para Nos.7 & 8 has held as under:-

"7. To summaries, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re- fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."

12. We find that there is no justification as to why the respondent did not approach the petitioners when he was relieved in the year 1982 or soon thereafter and waited upto the year 2009 to file the first OA. The tribunal ought to have restricted the arrears to only three years before the date of filing of the OA by the respondent.

13. The respondent, therefore, would not be entitled to the entire arrears of revised pension on account of delay in approaching the Tribunal. The arrears can only be limited to a period of three years.

14. The writ petition is allowed in part. The respondent has already been paid his dues as per the direction. However, the respondent submits that the entire dues have not been paid to him for which he would seek appropriate remedy whichever is available to him as per law.

15. The writ petition stands accordingly disposed of in above terms.”

16. From the above quoted rulings, it is clear that the order passed by the PB, CAT, Delhi stood partially modified by the Hon’ble Delhi Court as regards the grant of arrears for entire period and restricted the same only to three years on the ground that the applicant of that OA had approached the Tribunal after a lapse of 16 years. In the present case, it appears that after 2003, neither the respondents no. 1 to 5 had taken any action in terms of Rules 19 ( 2 ) ( a ) in pursuance to letter dated 21.8.2003 and representation dated 8.9.2003 nor has the applicant moved any application till he retired on 31.12.2016. Subsequent to his retirement, the applicant made a representation on 22.2.2017 to this effect which is still pending with the respondents. Therefore, the submission of the respondents that the applicant had moved this application after gross delay of 13 years is not correct in the facts and circumstances as discussed hereinabove. The applicant came to know about the fixation of his pension only after his retirement and thereafter, he had submitted his representation for redressal of his grievances which remained unattended. Therefore, the submission of the respondents that the applicant had moved this application after gross delay of 13 years is not correct in the facts and circumstances of the case.

17. In view of the discussions made hereinabove, I am of the opinion that the claim of the applicant cannot be denied merely on the ground of delay inasmuch as the applicant’s claim of counting past service for the purpose of pensionary benefit is based on continuing wrong and the said claim does not affect any other person’s right. The applicant’s case is squarely covered by the decision of the PB, CAT, New Delhi (Supra) which was affirmed by Hon’ble Delhi High Court with certain modification. Taking a similar view, I hold that the applicant is entitled to get the benefit of past military service for the purpose of pension as per provision of Rule 19 of the CCS (Pension) Rules. Therefore, I direct the respondents concerned to count the past military service for the period from 19.10.1977 to 03.08.1983 i.e

5 years 9 months 15 days for the purpose of calculating pension, gratuity etc and to grant the consequential benefits, including revision of pension in accordance with existing rules. The amount of arrears will be calculated accordingly and interest will be paid thereon at the admissible rate. The applicant is also directed to refund the gratuity amount or any other amount to the concerned respondents which were drawn by him from the military service within three months from this order. The respondents are directed to complete the exercise within three months thereafter. In sum, the OA is allowed in terms of the above direction. No order as to costs.

(J.V. Bhairavia) M [ J ]

/cbs/mks/