

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

**M.A. No.060/00189/2018 &
O.A.NO. 060/00153/2018 Date of order:- 11.3.2019**

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs.P.Gopinath, Member (A).

Jagdev Singh son of late Sh. Mauji Ram (Retd. Gallery Attendant Group D), r/o village Samchana, Tehsil Sampla, District Rohtak, Haryana (124001).

.....Applicant.

(By Advocate :- Mr. Sandeep Singal)

Versus

1. Union of India through its Secretary, Ministry of Culture, Shastri Bhawan, New Delhi-110001.
2. Chief Controller of Accounts(Pension), Central Pension Accounting Office, Trikoot-II, Bhikaji Cama Place, New Delhi-110066.
3. Administrative Officer, National Museum, Janpath, New Delhi-110011.
4. Pay & Accounts Officer, Department of Culture, National Archive Annexe, Janpath, New Delhi-110001.
5. Officer in charge Records(OIC), Artillery Records, Pin-908802 (c/o 56 APO).
6. Principal Controller of Defense Accounts (Pensions), Draupadi Ghat, Allahabad,)Pin 211014.

...Respondents

(By Advocate : Mr. V.K.Arya).

O R D E R (Oral).

Sanjeev Kaushik, Member (J):

Present OA has been filed by the applicant with a prayer to direct the respondents to count his past military service from 25.1.1962 to 18.11.1971 towards qualifying service for pension and

retiral benefits under Rule 19 of the Central Civil Services (Pension) Rules, 1972 along with revised pay and arrears thereof.

2. Applicant has also filed a Misc. Application under Section 21 of the Administrative Tribunals Act, 1985 for condonation of delay of 4664 days in filing the present petition, to which the respondents have filed reply.

3. The facts broadly are not in dispute. The applicant was initially recruited as Soldier in Indian Army on 25.1.1962. After completion of 11 years & 14 days of service with the Army, the applicant was discharged from service in low medical category (CEE) vide order dated 18.11.1971 and he was allowed disability pension certificate vide certificate dated 30.3.2004. The applicant was re-employed in civil service as Gallery Attendant at National Museum, New Delhi, on 20.5.1980 and later on he was confirmed against the same post. After rendering for about 20 years service, the applicant retired from service on 31.10.2002 on attaining the age of superannuation and was granted pension @ Rs.1275/- per month. In terms of Rule 19 of the Central Civil Services (Pension) Rules, 1972, the applicant is entitled for counting of his past military service towards qualifying service for pension and other retiral benefits. It is the case of the applicant that he submitted various representations followed by a legal notice dated 19.7.2016, but the same was not considered. Earlier the applicant approached the Tribunal by filing O.A.No.060/00832/2016, which was disposed of vide order dated 7.9.2016 by directing the respondents to decide the legal notice within a period of three months. The said legal notice was rejected vide order dated 6.12.2016 against which the applicant is before this Court.

4. Heard the learned counsel for the applicant who vehemently argued that since it is continuing cause of action, therefore, the applicant be allowed to count his past military service, as such, the delay in filing the OA be condoned. To buttress his plea, he placed reliance on a judgment passed by the Hon'ble Apex Court in the case of **Union of India & Ors. Versus Tarsem Singh** (2008(4) S.C.T. Page 19).

5. On merit, learned counsel for the applicant submitted that once the respondents have themselves, while disposing of the legal notice, vide order dated 6.12.2016, had opined that as soon as National Museum receives the reply from the concerned department of Army, the matter of re-fixation of pay pension of the applicant will be examined for further action in the matter as per rules, thus, it is also submitted that there is no delay and once the respondents are seized of the matter, the OA be allowed and the respondents be directed to count the past military service towards qualifying service for grant of pension.

6. The respondents while filing written statement to the Misc. Application for condonation of delay, have stated that since there is delay of more than 14 years, therefore, the OA be dismissed.

7. On merit, Shri Arya, learned counsel for the respondents stated that since the applicant has not submitted his option in terms of Rule 19 of 1972 Rules, therefore, at this stage, the applicant cannot be granted the said benefit as prayed in the present OA. However, he has not disputed that the applicant was discharged from military service on medical grounds.

8. We have given our thoughtful consideration to the entire matter with the able assistance of learned counsel for the parties.

9. Though there is delay in filing the OA, but considering the fact that the applicant submitted his discharge certificate while entering into civil service, therefore, it was incumbent upon the respondents themselves to count his military service towards grant of relevant benefits including the pension and pensionary benefits. Thus, they cannot take benefit of their own wrong. Even the Lordships in the case of Tarsem Singh (supra) have held that the delay will not be fatal to the relief claimed if it is having continuing cause of action. Thus, we are of the view that the present petition cannot be thrashed on the ground of limitation as the Lordships have already held that at the most relief relating to arrears can be restricted to three years from the date of filing of the petition.

10. Therefore, we dispose of the present petition by directing the respondents to count the past military service rendered by the applicant from 25.1.1962 to 18.11.1971 towards qualifying service for pension and retiral benefits. Let the above exercise be carried out within a period of two months from the date of receipt of certified copy of this order. No costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(P.GOPINATH)
MEMBER (A).**

Dated:- 11.3.2019.

Kks