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W.P.Nos. 13439 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2024

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**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

W.P.No. 13439 of 2020

A.N.Ramadoss

..Petitioner

Vs

1. Union of India,
Rep by the Secretary Public Grievances and
Pension Department of Personnel and Training,
New Delhi.

2.The Director General of Signals
General Staff Branch,
Army Head Quarters, Chennai.

3.The Chief General Manager,
Bharat Sanchar Nigam Limited,
Tamil Nadu Circle,
Chennai-600002.

4.The General Manager
Bharat Sanchar Nigam Limited,
Market Committee Building,
Tollgate, Vellore – 632001.



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5. The Registrar,
Central Administrative Tribunal,
Chennai-600104.

..Respondents

Prayer : Writ petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorarified Mandamus, calling for the records of the 5th respondent viz., Central Administrative Tribunal, Chennai Bench in O.A.No. 902 of 2007, dated 22.10.2009 and quash the same and consequently direct the 1st respondent to include the Army Service rendered by the petitioner from 09.08.1965 to 09.06.1971 (i.e) 5 years 303 days with the service rendered by the petitioner in the Telecom Department (now BSNL) and revise the quantum of pension and pay the arrears of difference in pension.

For Petitioner : Mr.V.Vijayashankar

For Respondents : Mr. M.T.Arunan – R3 & R4
R5- Tribunal.

Not ready notice -R1 & R2

ORDER

(Order of the Court was made by D.KRISHNAKUMAR, J.)

Challenging the order passed by the tribunal /5th respondent in O.A.No. 902 of 2007, dated 22.10.2009, the present writ petition has been filed.

2. Brief facts of the case:

The petitioner had joined service in Indian Army as Soldier on 11.08.1965 and after rendering service of 5 years and 10 months, discharged



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from Indian Army on 09.06.1971. Thereafter, on 02.11.1972, the petitioner joined as Telecom Operator in the Post and Telecom Department (now BSNL) and retired from service on superannuation on 30.06.2005. Immediately, after joining service in BSNL, the petitioner had made representation on 28.02.1973 exercising option to count his service rendered in Army Force, along with the service rendered in BSNL. The said request was not considered by the respondents, hence the petitioner has filed an application in O.A.No. 902 of 2007 before the Central Administrative Tribunal. The said application was dismissed by the tribunal on 22.10.2009. Challenging the same, the present writ petition has been filed.

3. Mr.V.Vijayshankar, learned counsel appearing for the petitioner has submitted that after joining the 3rd respondent organization, the petitioner had made representation through proper channel to the 4th respondent vide letter date 28.02.1983 exercising his option to count his earlier service rendered in the Indian Army Service of 5 years and 33 days as qualifying service for fixation of his pension which would be accrued on his superannuation under Rule 19 of CCS Pension Rules, 1972.



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4. The learned counsel would further submit that pursuant to the said representation dated 28.02.1973, the petitioner had submitted further representations on 17.01.1997 and 27.09.2004. Meanwhile, the petitioner had retired from service on superannuation on 30.04.2005, thereafter, the 3rd respondent by communication dated 04.03.2006 informed the petitioner that no action could be taken on the request of the petitioner as the records had been destroyed in the 2nd respondent office. Challenging the said order of the respondent, the petitioner has filed an application in O.A.No. 902 of 2007 before the Central Administrative Tribunal/5th respondent. The tribunal without taking into consideration the earlier request made by the petitioner immediately after joining service in the BSNL (i.e within one year) and without considering provisions prescribed under Rules 18 and 19 of CCS Pension Rules, dismissed the application on the grounds that the petitioner had failed to satisfy that he got re-employment in the BSNL office based on his earlier service under the 2nd respondent and failed to prove that the petitioner made request to authorities concerned immediately after joining of the service in BSNL. The said impugned dismissal order passed by the tribunal is erroneous and unsustainable in law and liable to be set aside.



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5. On the other hand Mr.M.T.Arunan, learned counsel appearing for the respondents 3 & 4 would submit that they have not received any request for exercising his option to count his earlier service rendered in the Indian Army Service after his joining in the services of 3rd respondent. Further, in accordance with the service rendered by the petitioner in their department, they have fixed the pay of the petitioner and granted pension and other benefits. Therefore, the impugned dismissal order passed by the tribunal is perfectly valid and does not require any interference by this Court.

6. Heard both sides and perused the materials available on record.

7. According to the petitioner the tribunal without considering the records which clearly establish the fact that the petitioner rendered service for more than 5 years and 305 days in the Indian Army Service and without considering the request dated 28.02.1973 made by the petitioner after he joined service in the 3rd respondent organization, dismissed the application on the ground of delay, hence the said dismissal order is liable to be set aside.



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9. Further, the documents filed in the typed set of papers substantiated the contention of the petitioner that he had made request on 28.02.1973 to the authorities concerned, exercising option to count his earlier service rendered in the Indian Army, within a period of one year, immediately after joining service in the 3rd respondents office i.e on 11.11.1972. These aspects were not considered by the tribunal while rejecting the petitioner's claim.



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10. In view of the aforesaid discussion, We are of the view that the ground on which the tribunal had rejected the claim of the petitioner that no documents are available to consider the claim to count his earlier service rendered in the Indian Army for pensionary benefits is untenable and unsustainable in law. Accordingly, the following order is passed;

- i. The impugned order passed by the tribunal in O.A.No. 902 of 2007, dated 22.10.2009 is set aside.
- ii. The petitioner is permitted to submit fresh application along with supportive documents to the respondents-authorities within a period of two weeks from the date of receipt of a copy of this order.
- iii. Upon receipt of such application, the 3rd & 4th respondents are directed to consider the same in light of Rule 19(1) CCS Pension Rules and to pass appropriate orders, in accordance with law. Entire process shall be completed within a period of twelve weeks.
- iv. It is needless to say that if the petitioner fails to submit application



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within a stipulated period, the same shall not be entertained by the respondent authority.

11. With the above directions, the writ petition stands allowed. No costs.

(D.K.K., J.) (K.B., J.)

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Index: Yes / No

Internet: Yes

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1. The Secretary Public Grievances and
Pension Department of Personnel and Training,
New Delhi.

2. The Director General of Signals
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