IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2025

PRONOUNCED ON : 28.01.2025

CORAM :

THE HONOURABLE MR.**JUSTICE S.M.SUBRAMANIAM**

and

THE HONOURABLE MR.**JUSTICE M.JOTHIRAMAN**

W.P.No.17291 of 2023
and WMP.Nos.16436 of 2023 and 3117 of2024

1.The Union of India
rep by its Chairman
Central Board of Direct Taxes,
Ministry of Finance, Department of Revenue
North Block, New Delhi – 110001.

2.The Principal Chief Commissioner of Income Tax,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. … Petitioners

V.

1.Villuri Shanmukha Raju

2.The Registrar
The Central Administrative Tribunal
Chennai Bench, High Court Complex
Chennai. ...Respondents

PRAYER: Writ petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari to call for the records of the 2nd respondent viz., Central Administrative Tribunal, Chennai bench in

OA.No.203/2019 dated 07.07.2022 and quash the same.

For Petitioner : Mr.V.Vijay Shankar
For Respondents : Mrs.N.Fidelia for R1.
R2 - Tribunal

ORDER

(The Order of the Court made by Justice **M. JOTHIRAMAN**)

Under assail is the order dated 07.07.2022 in OA.No.203 of 2019 on the file of the Central Administrative Tribunal, Chennai Bench.

2. The Union of India represented by its Chairman, Central Board of Direct Taxes has preferred the present writ petition.

3. The first respondent joined the Income Tax Department on 11.10.2012 as a Tax Assistant and he is an ex-employee of the Indian Navy served as a Chief Engine Room Artificer. The first respondent was enrolled in the Indian Navy on 30.01.1997 and was discharged from military service on 31.07.2009. After discharge, he was granted DCRG as per entitlement. However, he did not receive any military pension, as he had not completed the qualifying service to enable him to receive the pension. The first respondent submitted his representation dated 05.11.2012, for exercising option for pay fixation and willingness to

surrender the retiral benefits received from Indian Navy on joining the Income Tax Department for Combined Civil retirement benefits.

3(i) The first respondent submitted grievance petition through proper channel to the Chairman, Central Board of Direct Taxes, Military of Finance, Department of Revenue, North Block, New Delhi and requested for immediate action. By communication dated 07.02.2018, the petitioners rejected his request placing reliance upon Rule 19(1)(b) and 19(3)(a) of CCS (Pension) Rules, 1972. Challenging the said order, the first respondent has filed an Original Application, the Central Administrative Tribunal the Tribunal quashed the order dated 07.02.2018 and directed the petitioners to count the past military service of the applicant, viz., 12½ years rendered by the first respondent in the Armed Forces prior to his re-employment in the respondent department according to the Rule 19 of the CCS (Pension) Rules, 1972. The petitioners were directed to permit the first respondent to exercise his option for fixation of pay as per the Government of India Decision No.(5) of CCS (Fixation of Pay of Re-employed Pensioners) Order 1986 (read with Order No.16 of these Orders) as per Clause 6 of his appointment order dated 11.10.2012, and grant all consequential and attendant service benefits. Aggrieved by the same, the Union of India has preferred the present writ petition.

4. The learned Counsel appearing on behalf of the petitioners would submit that the Tribunal failed to take note of the provisions contained in Rule 19(1)(b) of the CCS (Pension) Rules, which states the question of counting past military service arises only in cases where the concerned individual was drawing a pension for the military service. But the first respondent was not drawing pension for the military service, as his service of 12½ years was less than the threshold limit. Therefore, the present case does not fall under the purview of Rule 19(1)(b) of CCS (Pension) Rules. The learned counsel also drew the attention of this Court to Rule 20 (1) to (5) of the Central Civil Services (pension) Rules 2021.

5. Per contra, The learned counsel appearing for the first respondent would submit that as per Rule 19(1)(a)(b) and 19(3)(a) reemployed military personnel who retired before attaining the age of superannuation i.e.,Confirmation in civil service must submit their option within one year from the date of their appointment. Accordingly,

the first respondent submitted his option. The first respondent was appointed as a Tax Assistant by an order dated 11.10.2012. In the appointment order, Paragraph No.7, specifically states that if the candidate, who is a reemployed military personal, desires to take advantage of the retirement benefits based on the Combined Military and Civil Services, as per Rule 19 CCS (Pension) Rules read with G.I.D. thereunder the candidate should exercise an option within a period of one year from the date of joining the civil service. Accordingly, the first respondent exercised the said option and submitted his application through the proper channel on 05.11.2012. However, ultimately the petitioners have rejected the same on 07.02.2018.

6. We have considered the submissions made on either side and perused the materials available on record. Point for consideration arises is that whether the CCS (Pension) Rules 1972 is applicable to the case of the first respondent or not?

7. At this juncture, it is relevant to refer Rule 2 of CCS (Pension) Rules 1972 which is extracted hereinunder :-

> ***2. Application*** *- Save as otherwise provided in*

these rules, these rules shall apply to the Government servants appointed on or before 31st day of December, 2003, including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to,

(a) railway servants ;

(b) persons in casual and daily rated employment ;

(c) persons paid from contingencies ;

(d) persons entitled to the benefit of a Contributory Provident Fund ;

(e) members of the All India Services ;

(f) persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries ;

(g) persons employed on contract except when the contract provides otherwise ; and

(h) persons whose terms and conditions of

service are regulated by or under the provisions of the Constitution or any other law for the time being in force.

8. Admittedly, the first respondent joined the Income Tax Department on 11.10.2012 as a Tax Assistant is an ex-employee of Indian Navy. The first respondent was enrolled in the Indian Navy on 30.01.1997 and was discharged from the military service on 31.07.2009. On his discharge, the first respondent was granted DCRG entitled to him. However, he has not received any military pension, since he has not completed the qualifying service enabling him to receive the pension.

9. It is also not in dispute that After rendering 12½ years in military service, the first respondent joined the petitioner's department and he is presently working as Inspector of Income Tax. The first respondent made a representation opting for pay fixation and expressed his willingness to surrender the retiral benefits received by him from the Indian Navy so as to count the 12 ½ years of military service along with civil service rendered in the petitioner's department for grant of pension. The department sought for clarifications which were furnished and

further representations were made followed by grievance petitions. However, finally, by letter dated 07.02.2018, the petitioner's department rejected the 1st respondents request placing reliance on Rule 19(1)(b) and 19(3)(a) of CCS (Pension) Rules.

10. It is relevant to refer Rule 19(3)(a) of CCS (pension) Rules 1992 is extracted hereinunder :-

> ***19. Counting of military service rendered before civil employment**.- (3)(a) A government servant, who opts for Clause (b) of such rule (1) shall be required to refund the pension, bonus or gratuity received in respect of his earlier military service, in monthly instalments not exceeding thirty-six in number, the first instalment beginning from the month following the month in which he exercised the option"*

11. It is also requisite to refer Rule 20 (1) to (5) of Central Civil Service (pension) Rules 2021, the said rule is extracted hereunder :-

> "***20. Counting of military service rendered before civil employment.**- (1) A Government servant,*

who after having rendered military service, was re-employed in a civil service or post on or before 31st December, 2003 and who on such reemployment, in accordance with an option exercised under the Central Civil Services (Pension) Rules, 1972, ceased to draw his pension and refunded or agreed to 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;

shall count previous military service, as qualifying service.

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.....

(2) A Government servant, who had exercised the option referred to in sub-rule (1), was required to refund the pension, bonus or gratuity received in respect of his earlier military service, in monthly

instalments not exceeding thirty-six in number, the first instalment beginning from the month following the month in which he exercised the option and in the case of such Government servant, the right to count previous service as qualifying service shall not revive unless the whole amount has been refunded.

(3) In the case of a Government servant, who, having elected to refund the pension, bonus or gratuity, dies before the entire amount is refunded, the unrefunded amount of pension or gratuity shall be adjusted against the death gratuity which may become payable to his family.

(4) Where an order was passed under the Central Civil Services (Pension) Rules, 1972 allowing previous military service to count as part of the service qualifying for civil pension, the order shall be deemed to include the condonation of interruption in service, if any, in the military service and between the military and civil services.

(5) The pension and gratuity for the service

rendered after re-employment in civil service or post shall not be subject to any limitation with reference to the pension and gratuity drawn by the Government servant in respect of the military service."

12. A plain reading of Rule 19(3)(a) of CCS (Pension) rules which also explicit and clearly envisages that Rule 19 will only apply to cases where the concerned individual was drawing pension for military service and not to cases, as such in the present case, where the individual had not completed the minimum required service to draw military pension.

13. It is pertinent to mention that a pension and holistic reading of the CCS Pension Rules, Rule 19 read with instructions issued thereunder will clearly reveal that the basic principle underlying counting of past military service is that the concerned individual must have rendered minimum eligibility service and must be drawing pension for such services. The Tribunal failed to consider the applicability of Rule 19, only to such category of cases and not to cases where the individual was not drawing military pension, such as the present one.

14. The very application of CCS (Pension) Rules, which

enumerates the Rules shall apply to Government Servants appointed on or before the 31.12.2003.

15. The Tribunal following the judgment of the Principal Bench rendered in OA.No.3160/2015 & OA.No.3162 of 2015 without appreciating that the fact situation in the said OA is entirely different from the present case on hand. In the aforesaid OAs, the issue was with regard to the applicability of the old pension scheme, whereas in the case on hand, the seminal issue that arises for consideration is whether an individual viz., the first respondent who had not having completed the minimum required military service and not getting military pension can seek for counting such military service along with civil service in order to claim pension, combining both services. Thus, the reliance placed on the aforesaid orders of the Principal Bench is misplaced. If the arguments of the learned counsel for the first respondent is taken into consideration for grant of benefit to individual dehors the rules and instructions will result in a flood of similar claims causing huge drain on the public exchequer. The Tribunal failed to consider the very applicability of Rules 2 and 19 of CCS (Pension) Rules.

16. In the light of the above discussions, there are merits in the writ petition. We are inclined to interfere with the order of the Tribunal.

17. In the result, the writ petition stands allowed, by quashing the order of the Central Administrative Tribunal, Chennai Bench dated 07.07.2022 in OA.No.203 of 2019. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S., J.) **(M.J.R., J.)**
28.01.2025.

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Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

The Registrar
The Central Administrative Tribunal
Chennai Bench, High Court COmplex
Chennai.

S.M.SUBRAMANIAM.J,
and

M.JOTHIRAMAN.J,

tsh

Pre-Delivery order in

W.P.No.17291 of 2023

28.01.2025.