**Before The Hon'ble State Administrative Tribunal At Shimla**

O.A. No.:\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Application under Section 19 of the State Administrative Tribunal Act, 1985.

Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

Respectfully Sheweth :-

1. Particulars of the Applicant :

As given in the Memo of Parties.

2. Particulars of the Respondents :

As given in the Memo of Parties.

3. Particulars of orders against which this application is made :

That the applicant is directing this application against the inaction of the respondents in not granting the benefits to the applicant under the Rules though the same have been granted to similarly situated persons in pursuance to the judgment of this Hon'ble Tribunal in catena of cases.

4. Jurisdiction of Tribunal :

That the applicant declares that the subject matter of this application is within the jurisdiction of this Hon'ble Tribunal and it is competent to issue the directions to the respondents for full compliance.

5. Limitation :

That the applicant further declares that the application is within the limitation period as prescribed in Section 21 of the Administrative Tribunals Act 1985.

6. Facts of the Case :

6.1 That the applicant joined Indian Army on \_\_\_\_\_ and was released from the Army on \_\_\_\_\_, by which time the applicant has completed \_\_\_\_\_ years of service. The applicant is an ex-serviceman and entitled for all the benefits as are applicable to ex-servicemen in the State of HP.

6.2 That during the Army service, the applicant participated in the Wars during the period \_\_\_\_\_\_\_\_.

6.3 That the applicant joined civil service in the respondent department as a \_\_\_\_\_\_\_, against reserved post for Ex-Serviceman on \_\_\_\_\_ and ever since the applicant has been discharging his duties to the entire satisfaction of his superiors.

6.4 That the applicant joined Army with great fervour and zeal to serve the nation. The applicant was initially enrolled for \_\_\_\_\_7 years of colour service and 8 years of reserve liability. However, the service of the applicant was extended by the Army authorities in the wake of external aggressions and as such the applicant served in the Army for the term when he was released on completion of service. The applicant served through whole length and width of the country, during Wars, Operations, and Exercises conducted by the Army authorities. \_\_\_\_\_Interestingly, the applicant served in the Army during all the major Wars. It would be pertinent to mention here that when the applicant was released from the Army his character was assessed as Exemplary, which is the highest degree of character.

6.5 That the state government has framed Rules under which the released Ex-serviceman are extended benefits of approved Military service on his rejoining the civil service in accordance with the provisos of these Rules. These rules are equally applicable to the respondent department.

6.6 That the applicant on release from the service joined the respondent department on the initial post of \_\_\_\_\_ and is serving as such eversince. The applicant was appointed against reserved vacancy on sponsorship by the Ex-serviceman Cell and therefore, was entitled for the benefits under these Rules.

6.7 That the applicant applied to the respondent department for granting the benefit of approved military service to the applicant for the purpose of pay fixation and seniority. The respondent department has not granted the same to the applicant till date despite many personal as well as written requests. It is pertinent to submit herewith that the applicant has \_\_\_\_\_ years of approved military service to his credit to be counted for the purpose of pay fixation and seniority.

6.8 That \_\_\_\_\_\_\_\_

GROUNDS

6.9 That feeling aggrieved by such an arbitrary, malafide, discriminatory and illegal actions of the respondents, the applicant seeks the indulgence of this Hon'ble Tribunal on the following grounds amongst others which may be taken at the time of arguments, each one of which is without prejudice to and independent of others :-

(a) That the impugned inaction of the respondent is arbitrary, malafide, illegal, ultra vires, against the Articles 14 and 16 of the Constitution of India, dehors the rules and regulations and against the natural justice.

(b) That the classification of released Ex-serviceman on the basis of pre-62 and Post-62 is unreasonable, arbitrary, discriminatory and violative of Article 14 and 16 of the Constitution of India and is thus liable to be struck down as unconstitutional. Moreover, the similarly situated persons have been granted benefits and the same have not been granted to the applicant.

(c) That the respondent department has created distinction between the Ex-serviceman which is not based on any intelligible differentia which can distinguish an Ex-serviceman grouped together for the purpose of extending benefits under the Rules and has no nexus with the object sought to be achieved by these Rules; i.e.; to compensate the former defence personnel for their lost opportunity because of their joining the Armed Forces to serve the nation.

(d) That the impugned classification creates fictional and irrational bar to derive the benefits under the Rules and the differentia on which the classification is founded is lacking in rational relation to the object sought to be achieved by the Rules. The impugned classification does not sub-serve the purpose and object sought to be achieved.

(e) That it is settled law that the denial of entitled pay fixation and seniority is a recurring injury, therefore, the applicant could not have been denied the benefits under the Rules.

(f) That the respondents are estopped due to their own act, deeds and conduct. The principle of the Promissory Estopple applies against the respondents.

(g) That the impugned inaction is against the well-settled principles of the law as laid down by the Hon'ble Supreme Court and this Hon'ble Tribunal in catena of cases.

7. Reliefs Sought :

That the applicant, therefore, prays that your Lordship be pleased to issue an appropriate writ, orders or directions to grant the following reliefs in favour of the applicant in the interest of justice: -

(a) Quash the impugned action/order A-\_\_\_\_\_\_ of the respondent department whereby they are not granting the benefit of approved military service to the applicant for the purpose of pay fixation and seniority being arbitrary and illegal;

(b) Direct the respondents to count the approved military service of \_\_\_\_\_\_ years of the applicant for the purpose of pay fixation and seniority and accordingly re-fix the pay and seniority of the applicant by adding these many years and grant all the consequential benefits with arrears and interest thereon @ 18% pa till the date of realisation of the same;

(c) Direct the respondents to grant all the benefits to the applicant admissible under the Rules;

(d) Direct the respondents to produce all the relevant records of the case alongwith their reply for perusal by this Hon'ble Court;

(e) Allow the cost of this O.A.;

(f) Such other orders be also passed in favour of the Applicant as deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE HUMBLE APPLICANT AS IN DUTY BOUND, SHALL EVER PRAY.

8. Interim Orders, if Prayed for :

At present no interim orders are prayed for.

9. Details of Remedies Exhausted :

That the applicant submits that there is no other alternative speedy and efficacious remedy available to him except to approach this Hon'ble Tribunal matter being of urgent nature.

10. Matter Not Pending With Any Other Courts Etc:

That the applicant further declares that the matter regarding which this application has been made, is not pending before any court of law or any other Authority or any other bench of this Hon'ble Tribunal.

11. Particulars of Court Fees :

Court Fees worth Rs. 50/- is attached herewith.

12. Details of Index :

An index containing the details of the documents to be relied upon is enclosed herewith.

13. List of Enclosures :

As per index attached.

Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O.A. No.:\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Affidavit in support of Application under Section 19 of the Administrative Tribunal Act, 1985.

I,\_\_\_\_\_\_, do hereby solemnly affirm and declare as under:-

1. That the accompanying O.A. has been drafted under my instructions.

2. That the contents of paras 1 to 13 of the O.A. are correct and true to the best of my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and true, no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this the \_\_\_\_\_\_.

Deponent

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No:\_\_\_\_\_\_ of 2004

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Shimla Applicant

\_\_\_\_\_\_ Through, Advocate