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

OA No.: \_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Application Under Section 19 of the Administrative Tribunals 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. Impugned Order:

That the applicant is aggrieved by the impugned order dated \_\_\_\_\_\_\_\_ (Annexure A-\_\_\_\_\_\_\_), whereby the respondents have rejected the request of the applicant for counting of Army service towards pension under the provisions of Rule 19 of the CCS (Pension) Rules and the applicant is also aggrieved by the action of the respondents whereby they have not asked the applicant to exercise option for counting of military service after being confirmed on the post.

4. Jurisdiction

That the applicant declares that the subject matter is within the jurisdiction of this Hon'ble Tribunal.

5. Limitation:

That the applicant further declares that the application is within the limitation.

6. Facts of the Case:

6.1 That the applicant submits that he is an ex-serviceman and has served in the \_\_\_\_\_\_Indian Army for about \_\_\_\_\_ years and \_\_\_\_\_ months from \_\_\_\_\_ to \_\_\_\_\_. The applicant is a \_\_\_\_\_graduate and on retirement from Army the applicant re-joined the services as \_\_\_\_\_ in the respondent department on \_\_\_\_\_ through the Ex-serviceman Cell against the reserved vacancy. \_\_\_\_\_The applicant is in receipt of pension from the Army.

6.2 That after joining of the civil service on initial post, the applicant was confirmed on the same post on \_\_\_\_\_\_\_, vide letter dated \_\_\_\_\_\_. However, the respondent department did not ask the applicant to exercise the option for counting the past military service for the purpose of pensionary benefits.

6.3 \_\_\_\_\_\_\_That when the applicant learnt about the provisions for counting of past military service for the purpose of pensionary benefits with the present post, the applicant immediately applied for the same on \_\_\_\_\_\_ and accordingly.

6.4 That despite this, the respondents have illegally and arbitrarily rejected the request of the applicant on \_\_\_\_\_\_\_ (Annexure A-\_\_\_\_\_\_). \_\_\_\_\_\_The applicant is now nearing towards his retirement within about \_\_\_\_\_ months.

6.5 That Rule 19 of CCS (Pension) Rules provides for counting of military service rendered before civil employment. The applicant is also desirous of counting his military service for the purpose of pension and other allied benefits from the present employer. For this purpose the employee is required to exercise his option after being confirmed in civil post. As the respondents failed to mention the option in the letter of confirmation, thus the applicant has been deprived of his right to exercise his option for counting his past military service for pensionary benefits from his present employment in accordance with rules. The Rule 19 of the CCS (Pension) Rules, 1972 pertains with regard to counting of military service rendered before civil employment. It clearly stipulates that 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 after attaining the age of eighteen years, 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. Sub Rule 2 (a) of Rule 19 further provides that 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).

6.6 That in this regard it is also pertinent to submit that in this regard Government of \_\_\_\_\_\_, Secretary (Fin-Exp) has also issued instruction vide letter No. \_\_\_\_\_\_ dated \_\_\_\_\_\_, addressed to all Heads of Department, University, Board etc.

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 order dated \_\_\_\_\_ (A-\_\_\_\_\_) and the impugned action of the respondents whereby they have not afforded an opportunity to the applicant to exercise his option for counting his past military service for the purpose of pension and other allied benefits from his present employer being arbitrary, malafide and illegal;

(b) Direct the respondents to afford an opportunity to the applicant to exercise his option to count his entire military service for the purpose of pensionary benefits from his present employment;

(c) Direct the respondents to count whole military service of the applicant for pension and grant pension and other allied benefits to the applicant at the time of his retirement and complete all the codal formalities for the same forthwith with all consequential benefits and interest @ 18% pa on the delayed payments of pension and arrears etc;

(d) Direct the respondents to produce all the relevant documents alongwith their reply for perusal by this Hon'ble Tribunal;

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

(f) Pass such other order or directions as deemed fit and proper in favour of the applicant.

8. Interim Orders, If Prayed:

No interim is prayed for at this stage.

9. Details of Remedies Exhausted:

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

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.

Shimla Applicant

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

Verification:

I,\_\_\_\_\_\_, do hereby verify that the contents of paras 1 to 12 of the accompanying application are correct and true to the best of my knowledge and no part of it is false and nothing material has been concealed therein.

Verified at Shimla this the \_\_\_\_\_\_.

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

OA No.: \_\_\_\_\_\_ of 2004

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Shimla Applicant

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