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Sr. No.	Date	Orders
		<p align="center">IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p align="center">+ W.P.(C) 3368-69/2004</p> <p align="center">I.C.A.R. & ANR. Petitioners</p> <p align="center">Through Mr. J. Maldahiya, proxy counsel for Mr. V.K. Rao, Advocate</p> <p align="center">versus</p> <p align="center">SUKHI RAM MALIK Respondent</p> <p align="center">CORAM:</p> <p align="center">HON'BLE MR. JUSTICE B.A. KHAN HON'BLE MR. JUSTICE MUKUL MUDGAL</p> <p align="center"><u>ORDER</u> 23.04.2004</p> <p><u>CM 4463/04 in WP(C) 3368-69/04</u></p> <p>This application seeks recall of Court's order dated 15th April, 2004 whereby petitioner's writ petition was dismissed for its failure to file some documents as requested by its counsel.</p> <p>This order dated 15th April, 2004 is recalled. Writ petition stands restored to its original number.</p> <p>Application stands allowed and disposed of accordingly.</p> <p><u>WP (C) 3368-69/2004</u></p> <p>This petition is directed against impugned Tribunal Order dated 26th August, 2003, directing the petitioner to count the military service of respondent towards seniority by following the decision of the Hon'ble Supreme Court in <u>Raj Pal vs State of Haryana</u> reported as 1985 (Supp) SCC 72 which held that persons released on compassionate grounds from military are ex-servicemen and are entitled as such to</p>

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		<p>all benefits available to the ex-servicemen category. The respondent averred in the Tribunal that he had prior to joining the petitioner seen action in Indo-Pak war of 1965. Reliance has also been placed by the Tribunal on similar benefits having been granted to one Prashar. The refusal of ICAR/petitioner to treat the military service of respondent for seniority led to the OA in the CAT. Furthermore we are distressed to note that the obduracy of the petitioner/ICAR in resisting the legitimate stance of the respondent on the wholly meritless and hypertechnical plea that an ex-serviceman who was discharged on compassionate grounds is not entitled to benefits of military service. The petitioner's persistence in pursuing this petition is even more surprising when no back wages have been given and only notional promotion affecting merely pensionary and other terminal benefits granted by the impugned order of the tribunal. Furthermore the frivolous and indeed vexatious nature of this writ petition is demonstrated eloquently by the following position of law laid down by the Hon'ble Supreme Court in Raj Pal Sharma's case (supra) in Para 6:-</p> <p>"It is true that the principle of equality in Article 14 of the Constitution does not take away from the State the power of classifying persons for legitimate purposes. Every classification in some degree is likely to produce some inequality and mere production of inequality is not enough. Differential treatment does not per se constitute violation of Article 14. It denies equal protection only when there is no reasonable basis for differentiation. If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. What Article 14 prohibits is a class legislation and not reasonable classification for the purpose of legislation. If the legislation takes care to reasonably classify persons for legislative purposes and it deals equally with all persons belonging to a well-defined class, it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons. In order, however, to pass the test of permissible classification two conditions must be fulfilled: (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the</p>

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		<p>group, and (2) that the differentia must have a rational rational relation to the object sought to be achieved by the statute in question. In the instant cases the petitioners are all ex-military personnel. They have also been released from military service. All those persons released from military service constitute one class and it is not possible to single out certain persons of the same class for differential treatment. There appears to be no reasonable classification between the persons who were released on compassionate grounds and those who were released on other grounds and in this respect the petitioners have been deprived of the equal opportunity. The amendment, therefore, is violative of Articles 14 and 16 of the Constitution and, therefore, bad."</p> <p>Since this decision was cited before and referred to by the CAT in its impugned judgment the petitioner was presumed to be aware of the law laid down by the Hon'ble Supreme Court and not expected to drag an ex-serviceman and its retired employee to this Court on a petition wholly devoid of any substance.</p> <p>The Tribunal had rightly found that petitioner had refused to count this respondent's military service on untenable ground. Nothing has been shown or suggested that Tribunal order was wrong on any count. On the contrary the judgment of the Tribunal is entirely in accordance with the judgment of Supreme Court in Raj Pal Sharma's case (supra).</p> <p>The writ petition is accordingly dismissed.</p> <div style="text-align: right;">  B.A. KHAN, J </div> <div style="text-align: right;">  MUKUL MUDGAL, J </div> <p>APRIL 23, 2004 ak</p>