***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(C) No.4279/2008

%Date of Decision: 30.05.2008

Vinod Kulshreshta ...Appellant
Through: Mr. Shesh Dutt Sharma, Advs.

Versus

UOI & Ors. ...Respondent
Through: Mr. R.N. Singh & Mr. R.V. Sinha, Advs.

CORAM :-

THE HON'BLE MR.JUSTICE A.K.SIKRI
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

J.R. MIDHA, J. (Oral)

We have heard the learned counsels for the parties finally at the admission stage itself. The necessary factual matrix for the disposal of this petition may first be noted. The petitioner joined the Naval Service as Chief Electrical Artificier on 24th October 1971. He was released therefrom w.e.f. 31st January 1985 as Chief Petty Officer. From 1985-1989, he was unemployed, however w.e.f. 20th September 1989, he joined

as Auditor with the Director of Audit, Defence Services. The petitioner was promoted in this department as Senior Auditor w.e.f. 1st January 1993.

The respondents have issued Assured Career Promotion Scheme (hereinafter referred to as 'ACP Scheme') in August 1999. This scheme inter alia provides two financial upgradations to those employees who are not able to get promotion and stagnant at their present positions. These are given at the end of 12 and 24 years, respectively. The main purpose for this scheme, which was issued pursuant to the recommendation of the Fifth Pay Commission, is to mitigate hardship in cases of acute stagnation either in cadre or in isolated post. It is thus clear that benefit of this ACP is to be given to those employees who are not able to get a promotion in their service career and are facing stagnation in the existing post. In the present case, the claim of the petitioner for ACP was denied on the ground that he got promotion as Senior Auditor w.e.f. 1.1.1993. The petitioner, in these circumstances approached the Tribunal in the year 2005 and filed OA No. 276/2006. He had raised the plea that even after his promotion, the ACP benefit could not have been denied. The other plea was for counting of service rendered by him in the Navy. The Tribunal disposed of the said OA on 5.4.2007 partly allowing the application of the petitioner herein. The perusal of the said judgment

would indicate that the Tribunal mainly dealt with the issue of counting of service of petitioner in Navy. The respondents have argued that Rule 19 of CCS (Pension) Rule 1972 provides that such a service is to be counted in specific circumstances. And if at all be counted, the same has to be for the purpose of pension and for no other purpose. The Tribunal however, stated that this provision has no reasonable nexus and intelligible differentia and therefore, such a service should normally be counted for ACP as well. The impugned order was thus referred back to the respondents for reconsideration. After reconsideration, request of the petitioner was again denied and feeling aggrieved by this same the petitioner was constrained to file another OA No. 273/2007 before the Tribunal. The Tribunal has dismissed the application of the petitioner.

Insofar as on refusal to grant ACP, on the ground that petitioner was given promotion is concerned, we are of the opinion that the judgment of the Tribunal on this account is without blemish. As pointed out above, the objective behind grant of such financial upgradations is only to overcome the hardship of those who are not been able to score promotion and are stagnant. If an employee like the petitioner is able to score his promotion within a period of 12 years, he would naturally not be entitled to the benefit of financial upgradation. It is the second issue which has raised some controversy, namely, whether the service

rendered by the petitioner in Navy is to be counted for computation benefit under ACP. If the period is counted then the total service would be more than 37 years and notwithstanding, one promotion earned by the petitioner, he could well be entitled to one financial upgradation which is payable after 24 years of service.

We may note that the Tribunal while rejecting the second OA of the petitioner vide impugned judgment dated 4.4.2008, has held that in view of Rule 19 of the CCS (Pension) Rules 1972, the Military service, could, if at all, be counted for the purpose of pension alone and therefore, the petitioner was not entitled to count the said service for the purpose of ACP. Submission of the learned counsel for the petitioner is that while taking this view, the Tribunal has ignored its earlier judgment dated 5th April 2007 passed in the first OA where a contrary view was taken. His submission was that in eventuality, the only course open to the Tribunal was to refer the matter to Full Bench. To this extent, we find that the submission of the learned counsel for the petitioner has some force. However, with the consent of the parties, instead of remitting the case back to the Tribunal for consideration by the larger Bench, we proceed to discuss the issue ourselves.

After hearing the counsel for the parties on this aspect we are of the opinion that the view taken by the Tribunal in the second OA vide its

judgment dated 4th April 2008 is the correct view in law. It could not be disputed that Rule 19 of the CCS (Pension) Rules 1972 entitles a person like the petitioner to count the Military service only for the purpose of pension. But in this Rule, services rendered in Military service for the purpose of pension could not have been counted. The Tribunal in its first judgment was not right in holding that reckoning of service for the purpose of pension alone has no reasonable nexus and intelligible differentia. We may note that apart from making a casual observation in this behalf, there is no detailed discussion in the judgment as to how such a conclusion is arrived at. That apart, one has to keep in mind the purpose for which Rule 19 of the Pension Rules was enacted. A person who joins Military service and rendered service therein for some period and thereafter joins Government service, the question of counting of his service in the Government service as civilian for the purpose of giving him pension when he retires as a Government servant was the motive and objective with which Rule 19 was inserted in the Pension Rules. If Military service is counted for all purpose when such an employee joins Government service, it can lead to chaos and absurd situations. In the present case itself, the petitioner had rendered more than 14 years of service in Navy. If he was allowed to count the service for the purpose of ACP on the very first day of joining of service, he could demand first

financial upgradation. This would defeat the very purpose of ACP which is to be given only when a person is stagnant in his existing post for more than 12 years. Furthermore, if such a situation is allowed to prevail, it may create various problems of inter se seniority in the Government service as such an employee, after seeking counting of service rendered in Military, would claim his seniority against all those employees who joined the Government service much earlier to him. It is for this reason that the service in the Military that too after satisfying the conditions laid down in Rule 19 of the Pension Rules, is to be counted for limited purpose only, i.e. as a qualifying service for computing the pension.

We are, therefore, of the opinion that there is no merit in this petition which is accordingly dismissed.

(J.R. MIDHA)
JUDGE

(A.K. SIKRI)
JUDGE

May 30, 2008
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