

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.80 of 2014

Monday, the 12th day of January 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Rank-Lt. Col.(Retd) Name-A.Srinivasan
Service No.TA-41953-X
S/o Late S. Arunachalam, aged about 61 years
G-1, Raghavendra Nilayam
House No.1-7-19, JSN Colony
Street No.8, Habsiguda,
Behind Devi Garden
Hyderabad-500 007.

.. Applicant

By Legal Practitioners:
M/s. M.K. Sikdar & S. Biju

vs.

1. Union of India,
rep. by the Under Secretary
Government of India
Ministry of Defence,
New Delhi-110 011.

2. The Additional Directorate General
Territorial Army
General Staff Branch
Integrated HQ of MOD (Army)
"L" Block, New Delhi-110 001.

3. The Controller General of Defence
Accounts, Ulan Batar Road
Palam, New Delhi-110 010.

4. The PCDA (P)
Draupadi Ghat
Allahabad (U.P)
Pin-211 014.

.. Respondents

By Mr. N. Ramesh, CGSC

ORDER

(Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiah, Member (Judicial))

1. The applicant has filed this application for setting aside the impugned order dated 31.03.2014 passed by the 1st respondent and for directing the respondents to grant Territorial Army Pension from 01.01.2009 along with interest and consequential monetary benefits and also to consider the applicant's civil service in CDA from 01.01.2009 to 31.12.2012 as re-employment after his superannuation from Territorial Army and cease the civil pension thereafter, if not eligible.

2. The factual matrix of the case of the applicant would be as follows:
The learned counsel for the applicant submits that the applicant joined in Defence Accounts Department as LDC on 08.07.1971, promoted as Section Officer and served for about 14 years as civilian. Thereafter, he volunteered for service in Territorial Army (T.A) and was commissioned in Territorial Army on 25.07.1985 as 2nd Lieutenant. He was promoted to the rank of Lieutenant Colonel on 16.12.2004 and retired on

superannuation from Territorial Army on 31.12.2008. The applicant opted to count the previous civil service to get T.A. pension since his total pensionable service was 37 years 05 months and 24 days. Though the 1st and 2nd respondents called for the said option and directed the 4th respondent to count the former civil service of the applicant towards Territorial Army service for pensionary benefits, it was not granted. In the meanwhile, the 2nd respondent reverted the applicant to his parent Department and posted him to CDA, Secunderabad as Senior Accounts Officer with effect from 01.01.2009. The applicant represented on 27.01.2011 that he was even willing to refund the pay and allowances drawn with effect from 01.01.2009 to 27.01.2011 on receipt the Territorial Army pension, but the respondents did not act on the same. The applicant was not having any other option except to claim civil pension as an intermediate relief till the applicant was receiving the Territorial Army pension as advised by the CDA, Secunderabad. The 2nd respondent had written to the 3rd respondent vide letter dated 12.07.2013 to consider the case of the applicant stating that the government employees when joining the Territorial Army need not resign technically from their parent department and can serve in both the departments simultaneously as per TA Regulation Appendix II (Pay & Allowances) para 23 (a) & (c), that the applicant's service in parent department from 01.01.2009 to 31.12.2012 may be considered as re-

employment after his superannuation from T.A. and suggested that the 3rd respondent may consider afresh the applicant's plea for granting of TA pension without any delay. However, the 3rd respondent did not grant him T.A. pension. The said action of the respondents is biased, arbitrary, unlawful and not in accordance with the Pension Regulations for the Army, 2008. The applicant further submits that he is suffering from ailments, his wife is a cancer patient and he is unable to avail ECHS facilities which are better than CGHS facilities. The applicant submits that as a non-pensioner (defence), he is deprived of the status of Ex-Servicemen and because of the same, he was unable to avail ECHS facilities etc. Therefore, the applicant requests that this application may be allowed.

3. The respondents filed reply-statement which would be as follows:

The learned counsel for the respondents would submit that when the applicant joined Territorial Army, he was employed as LDC in CDA. The qualifying service for grant of Territorial Pension to the applicant was 25 years 05 months and 22 days (civil service plus Territorial Army service). The applicant though exercised his option for Territorial Army pension, he did not resign from his parent department. Subsequent to his retirement from Territorial Army, he rejoined the office at parent department on the very next day of his retirement from Territorial Army, i.e., on 01.01.2009. The reasons for non-grant of Army pension

were duly deliberated in the letter dated 07.11.2012 of CGDA, viz., that the term "former service" is self-explanatory in itself and implied counting of former service rendered before current service for which previous service is to be counted for pensionary benefits, that the service rendered after superannuation from Territorial Army cannot be counted towards grant of T.A. pension, that there is no proof of the applicant having given resignation/technical resignation from his civil department before proceeding on superannuation from T.A. and that the officer has rejoined the parent department, with effect from 01.01.2009 and that his service has not ceased after 31.12.2008. Since the applicant on his superannuation from Territorial Army service rejoined his civil department, his claim that his service from 08.07.1971 to 24.07.1985 be considered as former service has become infructuous. The applicant earlier filed O.A.No.62 of 2013 before this Tribunal and that was disposed of granting liberty to the applicant to file a fresh O.A., in case he is not satisfied with the decision of the Ministry of Defence and as per the directions of this Tribunal, application of the applicant was rightly disposed of by an order dated 31.03.2014. As the applicant rejoined his parent department immediately on retirement from Territorial Army, it was not possible to grant him pension while he continued in civil service also. The issue of technical resignation submitted by the applicant is totally illogical and infructuous. The

applicant should have submitted his technical resignation before retirement from Territorial Army and only then, his service in civil department would have become "former service". The technical resignation was an after-thought and has no validity since he had already completed his terms of engagement with Territorial Army. The intention of the applicant from the beginning was to extract maximum benefits from both the organizations. The applicant's claim could not be accepted as per Pension Regulations for the Army 2008 which is exhaustive on this aspect and there is no scope for any ambiguity in the Rules. Therefore, the respondents submit that this application may be dismissed as devoid of any merit.

4. The respondents filed Additional Reply-statement which would be as follows:

The concept of Territorial Army is to provide part-time military training to gainfully employed citizens who can serve the nation as a soldier during national emergency or war. T.A. does not offer a full-time career. T.A. personnel are required to report to their respective units for two months every year and undergo military training which is imparted to them by organizing Annual Training Camp (ATC) and on completion of ATC, all T.A. personnel are expected to revert back to their civil vocation. Gainful employment is a pre-requisite for seeking commission in T.A. Due consideration was given to ensure that T.A.

personnel are not deprived of the benefit of former service they have rendered in parent department/Army/Navy and Air Force. While extending the benefit of counting former service, the principles that are being adhered to are, that an individual cannot draw dual pension/pensionary benefits from the same service, that pension and pay cannot be granted simultaneously which implies that one pension is released by counting service in a particular department, then the individual cannot continue to serve in that particular department and as the age of superannuation in two departments is different, an individual who prefers to draw army pension is required to resign from parent department in order to get his civil service counted towards the Army pension. The respondents also submit that the applicant subsequent to his retirement from T.A., i.e., on 31st December 2008 rejoined his parent department and continued to serve for four years and finally retired from civil department and during this period, he also got promoted from LDC to SAO. Accordingly, at the time of retirement, he was granted pension for the rank he held in his parent department and the period of service rendered in T.A. were taken into account for fixation of pension. The respondents further submit that the pension is a post-retirement benefit, grant of army pension to the applicant with effect from 31st December 2012 while he continued to be in service will not only be against the basic principles of pension, but will also be

injustice to all such Central Government employees who also served in T.A. and who had forgone their balance service in civil department as they opted for Army pension. It will also be an injustice to the individual against whom he accepted promotion in his civil department. If army pension is granted to the applicant, in future similar claims will also be forwarded by presently serving T.A. officers who are also employed in civil department of Central Government service. Therefore, the respondents request that this application may be dismissed as the same is devoid of any merit.

5. On the above pleadings, we find the following points emerged for consideration:

(1) Whether the applicant is entitled for the grant of Territorial Army Pension to the applicant with effect from 01.01.2009?

(2) Whether the civil service in CDA from 01.01.2009 till 31.12.2012 be considered as re-employment after the applicant's superannuation from Territorial Army?

(3) Whether the impugned order passed by the first respondent dated 31.03.2014 is liable to be quashed?

(4) To what relief, the applicant is entitled for?

6. We heard Mr. M.K. Sikdar, learned counsel for the applicant and Mr. N. Ramesh, learned CGSC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for the respondents. Written arguments were also submitted on either side.

7. The learned counsel for the applicant would submit in his argument that the applicant joined in Defence Accounts Department as LDC on 08.07.1971 and had completed 14 years and 16 days when he was selected for commissioning in Territorial Army service where he was promoted to the rank of Lt Colonel at the time of his retirement from Territorial Army on 31.12.2008. He would further submit that the applicant had opted for the counting of previous service for pensionary benefits towards the grant of T.A. pension. He would also submit that there was no lapse on the part of the applicant in applying for T.A. pension through his representation dated 16.06.2008, in accordance with the letter of first respondent dated 23.05.2008, well before his superannuation. However, the respondents did not seek any clarification or reply to the said request of the applicant which compelled the applicant to continue his civil service with effect from 01.01.2009 after his retirement from Territorial Army. He would further submit that the failure on the part of the 4th respondent to take action on his representation before his retirement cannot prejudice the right of the applicant to get T.A. pension on the plea that the applicant has

continued his service in civil for his livelihood after his retirement from T.A. He would submit that the applicant was ready to answer any clarification likely to be asked by the respondents in respect of his representation dated 16.06.2008 for the grant of T.A. pension, but nothing was acted upon nor his claim was acceded to by granting T.A. pension. The said attitude of 4th respondent can be seen as malafide, biased and illegal when they directed the applicant to rejoin the civil service. He would also submit that the applicant had no other option except to follow the direction of the applicant for his survival and his family members. Had they asked for technical resignation of civil service from the applicant in response to the request for T.A. pension, he would have furnished the same for the grant of T.A. service pension. He would also submit that the applicant had submitted technical resignation of civil service with effect from 01.01.2009 at a later point of time with an undertaking to repay the pay and allowances drawn from civil service with effect from 01.01.2009 in order to show his bona fide. He would also submit that the request for submission of technical resignation would itself imply that the applicant is otherwise eligible for T.A. pension at the time of his retirement from T.A. He would also submit that the applicant was admittedly promoted to the rank of Lieutenant Colonel and the pensionary service for a period of 23 years, 5 months and 6 days was earned by him by serving the nation in

Territorial Army Service. He also quoted the following judgments of Hon'ble Apex Court to the principle that pension is not a charity or a bounty, but it is an earned right of the individuals.

(1) All India Reserve Bank Retired Officers Assn. v. UOI reported in (1) 1992 Supp (1) SCC 664;

(2) PEPSU RTC and Mangal Singh reported in (2011) 11 SCC 702

8. Relying upon the judgments, he would argue that the objection raised by the respondents that the technical resignation required for the grant of T.A. pension was not submitted would be an empty formality when the pension from T.A. was earned by the applicant and therefore, it should be granted to him with effect from 01.01.2009. The pension ordered in favour of the applicant in civil service with effect from 01.01.2013 is being received by him under protest and it may be adjusted from the T.A. pension to be granted in favour of the applicant. He would also insist for interest on the outstanding pension payable to the T.A. pension to the applicant and for costs.

9. The learned Central Government Standing Counsel assisted by the learned JAG Officer would submit in his argument that the concept of Territorial Army is to provide Military Training to the gainfully employed citizens who can serve the nation as soldiers during national emergency or war and it would not give a full time career. He would also submit

that the personnel of T.A. would be required to undergo military training and also would be required to report to their respective Units for two months every year and on completion of the Annual Training Camp, they are expected to revert back to their civil service. He would also submit that it is only a part-time vocation and does not offer a permanent career of gainful employment in civil for seeking commission in T.A. The T.A. personnel originally were not granted T.A. pension but the grant of pension was introduced in the year 1985 by virtue of the letter dated 11.06.1985. The benefit of former service of T.A. personnel is not deprived when they are rendering service in T.A. He would also submit that the applicant having received the pension for civil service cannot ask for T.A. pension which would be amounting to a grant of dual pension. Further, if T.A. pension is granted in favour of the applicant, he would get the pension after rejecting the pension already received by him with effect from 01.01.2013 and at the same time, he had also received the pay and allowances for the same service till he retired from civil department on 31.12.2012. He would also submit that the claim of the applicant would defeat the intention of the legislature that the grant of pension a post-retirement benefit would be received by the applicant even during his continuation of service for the period commencing from 01.01.2009 to 31.12.2012. He would also submit that the applicant ought to have foregone his civil service

pension and opted for army pension when he retired from T.A. on 31.12.2008. Having continued in his parent civil service after his retirement from T.A. service, would disentitle the applicant from getting T.A. pension. He would further submit that the applicant while applying for T.A. pension in his representation dated 16.06.2008 ought to have technically resigned from the civil service for consideration of T.A. pension and even if such technical resignation was submitted by him, it would be considered by the competent authorities and the applicant cannot continue in his civil service after his retirement from T.A. service on 31.12.2008. The respondents could not consider the requisition of the applicant for T.A. pension for want of technical resignation. They had to transfer the applicant to his civil service on his retirement from T.A. to which he had accepted and continued service even after 2009. He would further submit that his plea for resignation from civil service after his retirement from T.A. service with effect from 01.01.2009, cannot be received belatedly or considered since it was submitted subsequently while serving in the civil service. He would also submit that the applicant had merrily completed the civil service for a four (4) years tenure and after having obtained the pension for civil service rendered he has now come forward with the claim of Territorial Army Pension which cannot be granted on any ground. He would further submit that there are several T.A. personnel granted T.A. pension on

their resignation from the civil service, as they chose not to continue the civil service after their retirement from T.A. service and if the applicant is granted with T.A. pension, it would be amounting to a wrong precedent. He would therefore request us to dismiss the application.

10. We have given our anxious thoughts to the arguments advanced on either side. We have also gone through the written submissions of either side and also the records produced.

11. **Point Nos.1 to 3:** The indisputable facts are that the applicant joined as LDC on 08.07.1971 in Defence Accounts Department and was promoted as Section Officer and served there for about 14 years as civilian employee and thereafter he was commissioned in Territorial Army on 25.07.1985 and he served there till 31.12.2008, that the applicant was promoted to the rank of Lt Col at the time of his retirement and the service of the applicant in civil service was embodied for the purpose of Territorial Army service and accordingly, he served a total pensionable service of 35 years 5 months and 24 days at the time of his retirement from T.A. service. Further it is also an admitted fact that the applicant had applied for Territorial Army Pension while he was serving in Territorial Army on 16.06.2008 (Annexure R-II) in which he had exercised an option as per Government of India, Ministry of Defence letter, dated 23.05.2008. Further, the said representation dated 16.06.2008 was forwarded by CGDA, New Delhi to PCDA on 16.07.2008

(Annexure R-IV). It is further admitted that the said representation was not processed, but the CGDA, New Delhi passed an order on 22.12.2008 (R-VI) repatriating the applicant to his parent department consequent to his superannuation on 31.12.2008. The applicant accordingly was not granted with Territorial Army Pension as opted to by him and joined his parent department with effect from 01.01.2009.

12. According to the case of the applicant, the requisition made by the applicant with an option to grant T.A. pension was not processed owing to the fault of the respondents and therefore he was made to join his parent department with effect from 01.01.2009 by virtue of the order of CGDA, New Delhi, dated 22.12.2008 (Annexure R-VI). The submission of the requisition for the grant of T.A. pension dated 16.06.2008 was not disputed by the respondents. Per contra, we could see that the said requisition was said to have not been received at the office of PCDA, Allahabad, vide its letter dated 31.12.2008 produced in Annexure R-V. By that date, the applicant was scheduled to have retired. However, the particulars for granting T.A. pension were sought for by 4th respondent towards the grant of T.A. pension. It was not made clear by the respondents as to what happened thereafter to the request of PCDA made in the letter dated 31.12.2008 (Annexure R-V) seeking particulars for grant of T.A. Pension.

13. The applicant had submitted an undertaking to pay, the pay and allowances he received from the civil department through its letter dated 27.01.2009 (Annexure A.5) hoping that T.A. pension would be given to him as per the extant rules. No doubt there was no provision of payment of T.A. pension for the personnel or officers enrolled or commissioned in T.A. service. It was introduced only in the year 1985 under the policy of Government of India in its letter dated 11.06.1985. In the said ground, the civil servants from the departments of Central Government were not granted T.A. pension, but it was restricted to the Armed Forces personnel alone. Subsequently, the Government of India, Ministry of Defence through its letter dated 23.05.2008 (Annexure R-III) extended the benefits to civilians who are having former service in civil departments of Central Government serving in T.A. would also be eligible for getting T.A. pension. When we apply the policies of the Government of India, Ministry of Defence, the applicant who was commissioned in T.A. service was having an embodied service of 37 years 5 months 24 days and would be eligible, provided the conditions are fulfilled. Even during his service in T.A., the applicant exercised option for T.A. service pension as per the provisions of the letter dated 23.05.2008. We have already seen that the said requisition of the applicant was not processed properly by the

respondents and he was directed to join the parent department by the way of repatriation through the letter dated 22.12.2008 (Annexure-VI).

14. The present argument put forth by the respondents would be that the applicant ought to have submitted his technical resignation from the civil service along with his option and therefore, his claim for T.A. pension was not found to be in order and he is not eligible for T.A. pension. The learned CGSC had referred to Para-26 of Pension Regulations for the Army 2008, Part-I for the position that the former service should have been considered for the grant of T.A. pension and the applicant having joined his parent department after his retirement from T.A. service and served there, his service in civil department cannot be deemed as former service so as to calculate the embodied service in T.A. towards the grant of T.A. service pension. He would also stress in his argument that the applicant would not be eligible for T.A. service pension when his former service is not counted with T.A. service. It is also stressed in the argument of the respondents that the applicant had completed his civil service and retired from there on 31.12.2012 and is receiving civil pension and therefore, he cannot get dual pension for the service rendered in T.A. service.

15. The said argument was countered by the learned counsel for the applicant that the applicant had to receive the civil pension including the period of T.A. service in the last rank held by him only to the survival of

his and his family members and his right to get T.A. service pension already opted is lawful and he may not be stopped from claiming a higher pension when he is eligible to such a pension. The judgment cited by the learned counsel for the applicant reported in **1992 Supp (1) SCC 664** in the case of **All India Reserve Bank Retired Officers Assn. v. UOI** wherein runs as follows:

" 5. The concept of pension is now well known and has been clarified by this Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whims or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution. "

16. In the said judgment it has been clearly laid down by the Hon'ble Apex Court that the pension is not a charity or bounty nor it is gratuitous payment solely dependent on the whims and sweet will of the employer, but it is an earned right for rendering long service by employees. Yet another judgment of the Hon'ble Apex court was cited by the learned counsel for the applicant reported in **(2011) 11 SCC 702** in the case of **PEPSU RTC vs. Mangal Singh**. It has been laid down as follows:

"39. *Pension is a periodic payment of an amount to the employee, after his retirement from service by his employer till his death. In some cases, it is also payable to the dependents of the deceased employee as a family pension. Pension is in a nature of right which an employee has earned by rendering long service to the employer. It is a deferred payment of compensation for past service. It is dependable on the condition of rendering of service by the employee for a certain fixed period of time with decent behaviour.* "

17. The *ratio decidendi* laid down by the Hon'ble Apex Court was reiterated and it has been explained with regard to the nature of right of pension to an employee. It has been referred as a deferred payment of compensation for past service. When we approach this case in the light of the dictum laid down by the Hon'ble Apex Court, we have to consider the facts and circumstances involved in this case. It is vehemently argued by the learned CGSC appearing for the respondents that granting of T.A. pension is normally ordered for those personnel or officers who used to resign or submit technical resignation of their civil service or former service before their retirement and if it is now ordered in favour of the applicant who has not submitted any technical resignation of his former service, it would be a wrong precedent. Per contra, the learned counsel for the applicant would vehemently argue that the respondents did not indicate that technical resignation was a pre-requisite to receive T.A. service pension. On the other hand, the respondents deliberately took no action to process his request for T.A.

service pension. Instead, the respondents directed him to join the parent department by way of repatriation and therefore, the applicant should not suffer for the laches of the department. We have already dealt with the records and the correspondence of the respondents in Annexures-R-IV, R-V and R-VI and found that the requisition of the applicant for T.A. pension was not processed at all. We also found that the 4th respondent processed the same only on the date of his retirement requesting for the technical resignation from the applicant and it was also not communicated to the applicant immediately. However, the applicant had submitted his technical resignation even after continuing his service in civil department which was also not accepted. Therefore, it is a peculiar and unique case in which the applicant was made to join his parent Department as if he has not asked for or exercised his option for T.A. service pension through the order of CGDA, New Delhi contained in Annexure-R-IV. Therefore, this case cannot be considered as a wrong precedent at all, if T.A. service pension is ordered in favour of the applicant.

18. In the backdrop of the case when we consider the requisition of the applicant for the grant of T.A. pension, it is clear that he had completed civil service and is in receipt of civil pension which includes the period he served in T.A. also. The applicant was holding a higher

rank, viz., Lieutenant Colonel in T.A. service and if the T.A. service is taken into account for the grant of his pension, it would be much more than that of civil pension now he is receiving at the rank of Senior Accounts Officer in CDA, Secunderabad. The right to receive pension should not be defeated as per the dictum laid down by the Hon'ble Apex Court. It is also true that a dual pension cannot be ordered as per the rules enumerated in Pension Regulations for the Army 2008, Parts-I and II. Whether the applicant's claim be ignored by virtue of this provision especially when he had exercised his option promptly before his retirement is the question. The applicant had to continue his service in civil department owing to the repatriation order made in Annexure-VI on the failure of respondents to process the option exercised by the applicant for T.A. service pension. If it was pursued and processed by the respondents, the applicant would have submitted his technical resignation even during his T.A. service period and he would have been permitted to receive T.A. service pension as per rules. It cannot be disputed by the respondents that the applicant retired from T.A. service with effect from 31.12.2008. His service in T.A. could not be continued since the applicant superannuated in T.A. service. As already discussed, T.A. service pension at the rank of Lieutenant Colonel would be more beneficial than that of the civil pension granted to the applicant at the rank of SAO when he retired on 31.12.2012. The service

rendered by the applicant in T.A. would have earned more pension than the civil service and he had exercised his option for the said T.A. service pension. The continuance of his service in civil department was purely due to the laches of the respondents and therefore, it cannot be claimed by the respondents that the applicant cannot be granted with T.A. pension since he was repatriated to his parent department and continued his service till his retirement. The applicant had submitted his technical resignation from the civil department immediately after he was repatriated to his parent department and sought for T.A. service pension. That was also not pursued by the respondents stating that such a technical resignation should have been given while he was in T.A. service. The undertaking to repay the pay and allowances earned by the applicant was also not responded by the respondents. The pension earned by the applicant in T.A. service embodied with the previous service in civil department at the rank of Lieutenant Colonel was an earned right of the applicant for which he also exercised his option promptly. Such an earned pension of the applicant should not be defeated for no default of the applicant but was patently due to the laches of the respondents. Therefore, the earned pension of the applicant in the rank of Lieutenant Colonel in T.A. service where he was admittedly retired ought to have been sanctioned even at the time of his submission of technical resignation in the month of January 2009 by

respondents after owning the mistake committed by the respondents in not processing the requisition of the applicant. Being a peculiar and solitary case, it would not form a wrong precedent, if the applicant is ordered with the grant of T.A. service pension. Further, he would not be entitled to draw T.A. service pension for the period from 01.12.2009 to 31.12.2012, i.e., for the period he was drawing pay and allowances in the Government civil service.

19. However while granting T.A. pension in favour of the applicant, the rules and regulations are to be followed as laid down in Pension Regulations for the Army 2008 Part-I. The applicant is already receiving the civil pension for the service rendered throughout in his civil department including the period of T.A. service. The applicant had to receive the said pension on his retirement in civil department owing to the necessity of maintaining himself and his family members. His case was that he has received the civil pension under protest while his claim for T.A. pension was made already. The applicant has received the said civil pension with effect from 01.01.2013 till date and the said pension cannot be continued since the T.A. service pension is payable from 01.01.2009 onwards. The T.A. service pension payable to the applicant for the embodied service in T.A. till 31.12.2008 and with effect from 01.01.2009 shall be deducted from the already paid civil pension and necessary provisions shall be made in the PPO to be

issued in favour of the applicant for the grant of T.A. service pension. In the said circumstances, the service rendered by the applicant in civil department on and after his retirement from T.A. service shall not be included in the quantum of pensionable service for the grant of T.A. service pension. Further, he would not be entitled to draw T.A. service pension for the period from 01.12.2009 to 31.12.2012, i.e., for the period he was drawing pay and allowances in the Government civil service.

20. As regards the undertaking given by the applicant for returning the pay and allowances earned by the applicant in civil service with effect from 01.01.2009, such an undertaking was not responded by the respondents and therefore, it would not be a material one. Moreover, the pay and allowances received by the applicant in civil service from 01.01.2009 till the date of his retirement on 31.12.2012 was towards his service rendered to the civil department. No person can be deprived of wages for the exercises done by him is the rule. Therefore, the pay and allowances were paid to the applicant for the work done in the civil department. Even otherwise such a right being accrued to the applicant in law cannot be taken away by virtue of an undertaking given by him. In these peculiar circumstances, we find that had the option given by the applicant for T.A. service pension in his letter dated 16.06.2008 been accepted and granted T.A. pension to the applicant, the anomalies

of repatriation to his parent department and the applicant's service in the parent department till his retirement would not have occurred. These were caused due to the inaction and laches on the part of the respondents. Therefore, we are of the considered view that all the points are necessarily to be answered in favour of the applicant, with a restriction of adjustment of T.A. pension payable with effect from 01.01.2009 till 31.12.2012 from his pay and allowances received for his subsequent civil service for the same period.

21. **Point No.4:** In view of our discussion held in Point Nos.1 to 3 that the application is ordered to the effect that the applicant is entitled to T.A. pension for the embodied service in T.A. rendered till he retired on 31.12.2008 and with effect from 01.01.2009 with the consequential benefits such as Leave Encashment, commutation and gratuity with the proviso that pension for the period from 01.01.2009 to 31.12.2012 would be adjusted in the pay already drawn by the applicant for the Government civil service for the said period. Further, we direct that the civil pension, commutation, gratuity and leave encashment already received by him would be adjusted from out of the T.A. service pension and other allied benefits such as gratuity and leave encashment he is entitled to as retired T.A. officer. The 3rd respondent is also directed to cancel the PPO issued in favour of the applicant for the civil service

rendered by him and to issue a fresh PPO by 4th respondent. Respondents-2, 3 and 4 shall coordinate in issuing a PPO in favour of the applicant granting pension at the rank of Lieutenant Colonel for the T.A. service rendered by him, as indicated above, within a period of three (3) months from the date of receipt of this order. In default, the applicant is entitled to an interest at 9% per annum on the outstanding arrears till it is paid to him.

22. We recommend that the Government frame separate and appropriate rules for grant of T.A. pension to civil servants who are on deputation with T.A. With the aforesaid observations and directions, the application is allowed. No order as to costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

12.01.2015
(True copy)

Member (J) – Index : Yes/No
Member (A) – Index : Yes/No

Internet : Yes/No
Internet : Yes/No

VS

To:

1. The Under Secretary
Government of India
Ministry of Defence,
New Delhi-110 011.

2. The Additional Directorate General
Territorial Army
General Staff Branch
Integrated HQ of MOD (Army)
"L" Block, New Delhi-110 001. - **Office to send a copy**

3. The Controller General of Defence
Accounts, Ulan Batar Road
Palam, New Delhi-110 010.

4. The PCDA (P)
Draupadi Ghat
Allahabad (U.P)
Pin-211 014.

5. M/s. M.K. Sikdar & S.Biju
Counsel for applicant.

6. Mr. N. Ramesh, CGSC
For respondents.

7. OIC, Legal Cell,
ATNK & K Area, Chennai.

8. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

O.A.No.80 of 2014

Dt:12.01.2015