

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1985/1994

New Delhi, this 10th day of August, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Dharam Singh
Village & Post Kair
New Delhi

Applicant

(By Mrs. Kusum Singh, Advocate)

versus

1. Director General (Works)
Central Public Works Department
Nirman Bhavan, New Delhi
 2. Dy. Director Administration
Central Public Works Department
Nirman Bhavan, New Delhi
- Respondents

(By Shri Jog Singh, Advocate through proxy
Shri S.K. Gupta, Advocate)

ORDER(oral)

Hon'ble Smt. Lakshmi Swaminathan

Heard learned counsel for both parties. Applicant is aggrieved by the order passed by the respondents dated 20.7.93 rejecting his request for refixing his pay in the post of Lower Division Clerk (LDC for short) on the basis that he was an ex-serviceman.

2. The relevant facts in this case are that the applicant had worked as Havildar in the Army from 30.10.56 to 1.11.71. On discharge from the Army, he was appointed as LDC in CPWD with effect from 16.7.73. His basic ^{pay} was fixed @ Rs. ¹⁸310 in the pay scale of Rs. 260-400. His main grievance in this application is that the respondents ought to give him 17 increments for the 17 years he had put-in in the Army while fixing his pay. Ms. Kusum Singh, learned counsel for the applicant has submitted that the applicant had made representation on

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this plea right from 1976 followed by several others which were rejected finally by the impugned order dated 20.7.73. Hence this OA.

3. Learned counsel for the applicant^{has 18.} relied on the Full Bench judgement of this Tribunal dated 13.3.90 in B.Ravindran & Ors. Vs. Director General of Posts (OA 3/89 with connected cases), which ^{18.} ~~has been referred to~~ on an appeal by the respondents has been dealt with by the Supreme Court in the order dated 8.11.96 in Director General of Posts Vs. B.Ravindran & Ors. (1997(1) SLR 147). The learned counsel has drawn our attention particularly to paragraphs 7, 10 and 15 of the judgement. In para 1, it has been mentioned that the "point which arises for consideration in this batch of appeals is whether an ex-serviceman, who after his retirement before attaining the age of 55 is re-employed in civil service, while getting his pay fixed, is entitled to an advance increment only if his pay plus pension plus pension equivalent of gratuity is less than the last pay drawn at the time of retirement". In para 7 of the judgement, reference has been made to the Full Bench decision of the Tribunal wherein direction has been given to the respondents to exclude the ignorable part of pension while deciding whether undue hardship was caused to the applicants by fixing their re-employment pay at the minimum of the pay scale of Postal Assistant.

4. In para 15, the Apex court had referred to certain ^{issued 18.} orders by the Government and it has been stated as below:

"The effect of benefit was to be given at a stage prior to the consideration of hardship. The ignorable part of the pension was to be ignored while totalling up the initial pay plus

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the pension in order to find out whether the retired pensioner thereby was likely to get more or less than what he was getting at the time of his retirement. To that extent the 1958 policy stood altered or modified. Though the said four orders did not directly deal with the aspect of hardship they did by widening the gap between the initial pay plus the non-ignorable part of the pension and the pay he drew before his retirement and thereby further necessitated giving of advance increments to alleviate hardship. It is therefore not correct to say that these orders had no concern with the aspect of hardship. What the contention raised on behalf of the appellants further overlooks is that pursuant to the orders issued in 1963 and 1964 corresponding amendments were made in Articles 521 and 526 of the Civil Service Regulations. The said Regulations were made sometime prior to 1914 and had acquired statutory authority under Section 96 B(4) of the Government of India Act, 1919 and have been continued in force by virtue of Article 313 of the Constitution. They are, therefore, statutory in nature".

The Apex court has held in para 16 that:

"Subsequent orders issued in 1978 and 1983 were supplementary in nature and did have a binding force. Under these circumstances, the Government could not have, under the guise of a clarificatory order, taken away the right which had accrued to such re-employed pensioners with retrospective effect by declaring that while considering hardship the last pay drawn at the time of retirement was to be compared with the initial pay plus pension whether ignorable or not. The 1985 clarificatory instructions were not only inconsistent with the relevant provisions of the Civil Service Regulations and the 1978 and 1983 orders but its effect was to supersede the said provision and the orders. The Tribunal was, therefore right in holding the said instructions in so far as it directed to take into consideration the ignorable part of the pension also while considering hardship invalid and without any authority of law".

(Emphasis added).

5. The applicant has admitted that he had received 5 advance increments ~~for~~ his service in the Army while the respondents fixed his pay as LDC. His claim is that he should be given further 12 increments in the basic pay i.e. ^{the} for ₁ balance 12 years service which he had rendered in the Army.

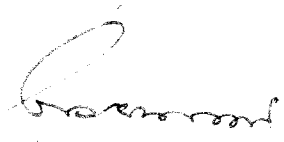
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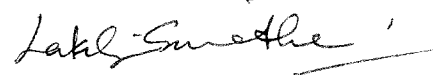
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6. The law laid down by the Hon'ble Supreme Court is binding on the respondents and in the present case respondents will have to give the benefits to the applicant herein as has been granted to the applicants in the aforesaid case of B. Ravindran (supra).

7. The judgement of the Supreme Court in the case of M.R. Gupta Vs. UOI (1995(2) ATJ 567) is also applicable to the facts of this case as what the applicant is claiming is correct refixation of his pay with effect from 16.7.73 i.e. the date he was appointed as LDC with the respondents. However, as observed by the Supreme Court in M.R. Gupta's case (supra) since the applicant has only filed this OA on 21.9.94, he shall not be entitled to the arrears of pay from 16.7.73. In the facts of the case, we hold that taking into account the provisions of Section 21 of the AT Act, 1985, while the applicant shall be entitled to refixation of pay on notional basis in accordance with the decision of the Supreme Court in B. Ravindran's case (supra), the arrears of pay on such refixation will be payable from 2 months from the date of filing of this application, i.e. 21.11.94.

8. In the result, the OA partly succeeds to the extent indicated in para 7 above. Necessary action shall be taken by the respondents within four months from the date of receipt of a copy of this order. No costs.


(S.P. Biswas)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

/grv/