

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 685 of 2015

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. C. V. Sankar, Member (A)

1. SriAtala Bihari Kar, Sub Postmaster, aged about 52 years, S/o – Late Ananta Ram Kar, Street – Neelachal Nagar 1st Line PO – Berhampur – 760010, Dist – Ganjam at present serving as Sub Postmaster, Bhapur Bazar Sub-Post Office, Berhampur-01, Dist. Ganjam.

.....Applicant.

VERSUS

1. Union of India, represented through the Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. The Chief Post Master General, Odisha Circle, Bhubaneswar, Dist – Khurda.
3. The Postmaster General, Berhampur Region, Berhampur – 760001, Dist – Ganjam.
4. The Superintendent of Post Offices, Berhampur Division, Berhampur (Gm.) – 760001.
5. The Director of Accounts (Postal), Dak Lekha Bhawan, Mahanadi Vihar, Cuttack - 753004

.....Respondents.

For the applicant : Mr. G. K. Behera, Advocate.

For the respondents: Mr. C. M. Singh, Advocate.

Heard & reserved on :21.01.2021

Order on :24.02.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *Hold/declare impugned Office Letter No. DA(P)/PAQ/II/Pay-Fixation/Re-employed Pensioner/Tr. 152, Dtd. 26.05.2015/28.05.2015 (Annexure A/7) is bad & illegal;*
- (ii) *Direct the respondents to fix the pay of the applicant in the basic pay at the same stage as the notional last basic pay before retirement so arrived at with the grade pay of the re-employed post and pay him accordingly;*
- (iii) *And pass any such other order (s) as may be deemed fit and proper in the bonafide interest of justice.*

2. The case of the applicants in brief as inter alia averred in the OA is that he had retired as Sergeant in the scale of pay of Rs. 4320/- - Rs. 5595/- from the Indian Air Force on 30.11.2001 and his pay at the time of discharge was Rs. 9040/- in the basic pay of Rs. 4915/-. The applicant was appointed as Postal Assistant in Berhampur Division vide letter dated 02.06.2006 (Annexure A/1). The applicant submitted that after Central Civil Services

Revised Pay Rules, 2008 came into force on 01/01/2008 vide DOPT OM dated 11.11.2008 (Annexure A/2) the benefit was extended to persons re-employed in the Govt. Services. DOPT again came with OM dated 05.04.2010 (Annexure A/3) clarifying pay fixation of re-employed pensioners on re-employment in Central Government, including that of defence forces and stated it is being done in accordance with CCS(Fixation of pay of re-employed pensioners) orders, 1986 dated 31.07.1986. The applicant submitted that as per order vide Annexure A/3 his pay had to be fixed at Rs. 13,950/-, hence he submitted representation dated 17.04.2010 (Annexure A/6) to Respondent No. 4 requesting to fix his pay accordingly. Respondent No. 5 vide his letter dated 09.07.2014 (Annexure A/7) rejected his claim. The applicant submitted vide Annexure A/8 (i) (ii) (iii) that in case of few similarly placed person namely Sri Janardan Singh in department of post, Sri Ashok Kumar Das in Income Tax department and Sri Tapas Patra in CCIT, Bhopal were given re-fixation of pay and the same has been done by the Railways too. Hence this OA.

3. The respondents in their counter inter alia averred that the Director of Postal Accounts constituted a committee in his office to consider the representation received not only from the applicant but from several other employees for re-fixation of pay in the basic pay at the same stage as

the notional last basic pay before retirement so arrived at with grade pay of the re-employed post in accordance with rules. After the committee submitted its report that “the initial pay of re-employed Ex-serviceman who held posts below commissioned officer rank in defence forces and in case of civilians who held below Group A posts at the time of retirement and appointed as Postal Assistants (PA) and Sorting Assistants (SA) in different units shall be fixed in Pay Band – 1 of Rs. 5200-20200 at the stage of Rs. 7510/- with grade pay of Rs. 2400/-. The total initial basic pay shall Rs. 9910/-.” The representations including that of the applicant were disposed of by Director of Accounts letter dated 26.05.2015/25.05.2015. The respondents further submitted that the matter was examined by DOPT and vide DoPT ID Note dated 28.08.2015 and circulated vide letter dated 15.09.2015 reiterating the same stand taken by Director of Posts.

4. Heard learned counsel for both the sides and have carefully gone through their pleadings and materials on record.
5. The Director of Accounts letter dated 26.05.2015 disposing applicant's representation is extracted below:

“A committee was constituted in this office to give its report/observation on the procedure of initial fixation of pay of re-employed pensioners. The committee went into details of the procedure/guidelines as prescribed in Central Civil Services Fixation of Pay of re-employed pensioners orders 1986 issued vide GI DoP&T OM No. 3/1/85-Estt.(P-II) dated 31.07.1986 and as revised from time to time

and as clarified vide DoP&T OM dated 11.11.2008 and 05.04.2010 and furnished its report/observation as follows:

In the case of Ex-servicemen who held posts below commissioned officer rank in defense forces and in cases of civilians who held below Gr. "A" posts at the time of retirement, the entire pension and pension equivalent of retirement benefits shall be ignored and the initial pay on re-employment shall be fixed as per entry pay in the revised pay structure of the re-employed post applicable in the case of direct recruits appointed on or before 01.01.2006.

The initial pay of re-employed Ex-servicemen who held posts below commissioned officer rank in defence forces and in case of civilians who held below Gr. "A" posts at the time of retirement and appointed as Postal Assistants (PA) and Sorting Assistants (SA) in different units of Odisha Circle shall be fixed in PB-1 of Rs. 5200-20200 at the stage of Rs. 7510/- with grade pay of Rs. 2400/-. The total initial basic pay shall, thus be Rs. 9910/-.

Representation of re-employed Postal Assistants/Sorting Assistants have been examined. Their claim for protection of their last pay drawn in defence services at the time of retirement is not in conformity with the Rulings/guidelines prescribed in DoP&Ts OMs ibid."

6. Ministry of Communication and IT, Department of Post vide letter dated 15th September, 2015 (Annexure R/4) circulated the clarification issued by DOPT regarding pay fixation of Pay of re-employed ex-servicemen pensioners retiring before attaining age of 55 years and who hold post below commissioned officer rank in defense forces. The relevant portion of the said clarification is extracted below for reference:

"D/o Posts may please refer to their proposal on preceding page seeking clarification regarding fixation of pay on re-employed/ex-servicemen pensioners retiring before attaining the age of 55 years who held posts below commissioned officer rank in the defence forces and also whether the last pay drawn before retirement is subject to protection.

2. The matter has been examined in this department. It is pointed out that paras 4(a), 4(b) (i) and 4 (d) (i) of CCS (Fixation of Pay on re-employed Pensioners) orders, 1986 as amended vide this Department's O.M. No. 3/19/2009-Estt, (Pay.II) dated 05.04.2010, provide that in case of ex-servicemen who held post below commissioned officer rank in the Defence Forces and in the case of civilians who held posts below Group 'A' posts at the time of their retirement before 55 years of age, the entire pension and pension equivalent of retirement benefits shall be

ignored, that is, no deduction on this count is to be made from the initial pay fixed on re-employment. Also, in terms of the Para 4(b)(i) of CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986, as amended vide this Department's OM No. 3/19/2009-Estt. (Pay.II) dated 05.04.2010, the initial pay on re-employment shall be fixed as per the entry pay in the revised pay structure of the re-employed post applicable in the case of direct recruits appointed on or after 01.01.2006 as notified vide Section II, Part A of First Schedule to CCS (Revised Pay) Rules, 2008. These instructions do not provide for protection of last pay drawn before retirement, in such cases."

7. The applicant has claimed that similar benefit has been given to other employee in other state as shown in Annexure A/8 and pleading to that effect has been made in para 4.13 of the OA. There is much force in the submission learned counsel for the respondent that the said financial benefit even if given to some person cannot form basis for giving financial benefit in favour of the applicant, as the applicant cannot claim negative equality.

8. In an similar case, this Tribunal in OA No. 796/2015 had held:

"16. The issue in this OA is whether the DOPT OM dated 5.4.2010 (Annexure-1A series) is applicable for the applicants' case and if yes, whether the applicants will be entitled for protection of the pay drawn at the time of retirement from defence services. It is noticed that in none of the cases cited by both the parties in this case, the provisions of the para 4(b)(i) of the DOPT's OM dated 5.4.2010 have been challenged.

17. It is noticed that these were challenged in a batch of OAs before Ernakulam Bench of this Tribunal in the case of I. Mahindra Kumar G.R. & another vs. UOI & others in OA No. 192/2015 along with the OA Nos. 438/2015, 50/2016, 291/2016, 429/2016, 525/2016 and 639/2016. The reliefs sought for in these OAs were for fixing the pay of the retired re-employed ex-servicemen based on the last pay drawn at the time of retirement and for declaring the clause 4(b)(i) of the Central Civil Service (Fixation of Pay of Re-Employed Pensioners) Orders, 1986 is discriminatory and void as it refuses the benefit of pay fixation based on the last pay drawn at the time of retirement. The Division Bench of the Tribunal observed that there are conflicting orders passed by different Benches, for which a reference was made to the Chairman for constituting a Full Bench, which was duly constituted to decide the following points:-

5. Accordingly, the Division Bench finally referred the following points for decision of the Full Bench:-

"1. Whether Rule 4(b) (i) of the (Fixation of Pay of Re-employed pensioners) order 1986 is violative of the At.14, 16 & 21 of the Constitution of India due to it being discriminatory against those who are having their entire pension ignored for the purpose of pay fixation and being violative of equality, right to like and liberty?

2. Whether Ex-Servicemen, who are PBOR (persons Below Officer Rank), entitled to have their fixation of pay with reference to the pay drawn at the time of their discharge from armed forces or whether they are entitled to fixation at minimum of the pay scale of re-employed pensioners?

3. Whether the Ex-Servicemen who are combatant category are entitled to the benefit of fixation of pay of re-employed pensioners in terms of CCS(Fixation of Pay of Re-employed Pensioners) Order 1986 read with OM No. 03/19/2009-Estt. Pay II dated 05.04.2010 issued by DoPT, G.O.I."

6. As per the order of the Chairman Principal Bench, a Full bench was constituted under R-52 of the CAT rules of practice and the matter was heard. At the time of hearing the counsel appearing on both sides admitted that the Supreme Court had occasion to consider how pay has to be fixed for re-employed Ex-Servicemen in Union Territory of Chandigarh 07 Others V. Gurucharan Singh 7 Another reported in (2013) 12 SCR 853 and the main point to be decided is point No. 1 of the reference i.e. Constitutional validity of Rule4(b)(i) of the CCS(Fixation of Pay of Re-employed Pensioners) order 1986 whether it is discriminatory and violative of Art. 14 & 16 of the Constitution.....

18. The Full Bench of the Ernakulam Bench considered the matter and held as under:-

13. On going through Rule 4 of the Central Civil Services(Fixation of Pay on Re-employment) orders, 1986, we can see that it has given different schemes for pay fixation on re-employment to Commissioned and Non-Commissioned Officers (PBOR). As far as commissioned Officers are concerned, only a minor portion of their pension is ignored (now Rs. 15000/-) and the remaining non-ignorable portion is deducted from the pay fixed on the basis of pay drawn in the forces, But as regards Non-Commissioned Officers the entire pension is ignored while fixing pay in the new scale. They are not given any pay protection. It is here that the applicants would contend that they are discriminated. If we go through the samples of pay fixation given by DOPT, it can be seen that if the pension so ignored plus the pay at the initial stage is taken, it can be seen that the persons who are PBOR do not suffer from any short fall in income which they would have got in the forces at the time of retirement. The object of this separate fixation of pay for Ex-Servicemen had an object that these Ex-Servicemen who had served the better half of their age in the service of the country should not suffer any short fall in income when they retire from the defence force. The reservation is provided to the personnel of PBOR based on Ex-Servicemen (Re-Employment in Central Services & Posts) Rules, 1979. This rule provides for reservation for Non-Commissioned Ex-Servicemen in Group C and D Posts. This clearly indicates that the commissioned officers who are Group-A Officers is not given such reservation and no such officer is going to complete with PBOR

persons in appointment. Besides the ignoring of pension, they are given various benefits like reservation, relaxation of age, educational qualification etc also for getting re-employment.

14. As per the conditions of service of Commissioned Officer, he has to undergo various courses and he is assessed on merits throughout his career as they had to lead the forces of the country. They are considered similar to Group A Officers of the Civil Services. The functions and responsibilities and qualification of these officers are not similar to that of PBOR. Article 16(1) or (2) does not prohibit the prescriptions of reasonable rules for selection to any employment or appointment to any office. In *State of Mysore & Another V. Narasing Rao*(cited supra) had categorically held that giving different scales classifying tracers in the state as Matriculate and non-Matriculate is valid and the said classification was upheld by the Supreme Court. In this case, members retired from the forces were classified as Commissioned Officer and Non-Commissioned Officers for the purpose of re-employment after retirement. The object of giving re-employment is to protect these persons from difficulties on retirement. The classification is mainly made on the basis of qualifications, functions in their employment and the Non-Commissioned Officers are given reservation in Group C & D Posts in Central Civil Services. The Commissioned Officers are Officers coming under Group A category and there is n possibility of these officers to apply for a Group C and D Posts and they are not given any reservations in the 1979 rules. So these two categories stand apart. So, the classifications is on intelligible differentia which distinguishes persons groped together. The object sought to be achieved is the welfare of the Ex-Servicemen who retire from forces before they attain the age of 55 years. The classification made under Rule 4 of the CCS (Fixation of Pay on Re-employment) Order, 1986 for the purpose of pay fixation is reasonable and cannot be considered as discriminatory to PBOR or Non-Commissioned Officer as alleged by the applicant. We cannot find any injustice manifest in the classification made in the rules. Article 16 of the Constitution provides for equality of opportunity. It is only an incident of the concept of equality under Article -14. The concept of equality cannot be confused with absolute equality. What is guaranteed is quality of opportunity and nothing more Article 16(1) or (2) does not prohibit the prescription of reasonable rules for classification for selection or appointment. So, we are of the opinion that Rule 4(b) (i) of the CCS (Fixation of Pay on Re-employment) orders, 1986 does not offend Article 14 and 16 of the Constitution as alleged. No discrimination can be found against Non-Commissioned Officers. The principle of fixation of pay for PBOR and Commissioned Officers stand the test laid down by the Hon'ble Apex Court in *BudhanChaudhary V. State of Bihar*(cited supra). There may be differences in the total benefits received by these two categories. But this type of inequalities have to be mitigated by the executive government and such benefits cannot be granted by the Tribunals. All the applicants were re-employed after 1986 and the rules of fixation given in the rules does not suffer from any arbitrariness or discrimination which is violative of Article 14 and 16 of the Constitution.

15. In the result we answer the reference in favour of the respondents, Rule 4(b)(i) of the CCS (Fixation of Pay on Re-employment) Order, 1896 does not violate the principle of equality enshrined under Article 14 and 16 of the Constitution. In the light of above discussion, the other points raised by the Division Bench are also decided accordingly, having no

discrimination or arbitrariness and are not violative of principles of equality under Article 14 and 16 of the Constitution of India.

16. The reference is answered accordingly.”

19. It is clear from the Full Bench order dated 27.3.2019 extracted above that the clause 4(b)(i) of the Central Civil Service (Fixation of Pay of Re-Employed Pensioners) Orders, 1986 is valid and it is not discriminatory. Under the said clause, if the pension of the ex-service men is to be ignored fully, then on re-employment in a civil post, his pay is to be fixed at the minimum of the pay scale. This principle has also been laid down by Hon’ble Apex Court in the case of Union Territory of Chandigarh & others vs. Gurcharan Singh & Anr. reported in (2013) 12 SCR 853 and 2014(1) AISLJ 195, in which, it was held on the issue of pay fixation of the re-employed ex-serviceman retired from the defence service as under:-

“10. Upon hearing the learned counsel and upon perusal of the option form dated 18.7.1990, in our opinion, the High Court was in error while allowing the petition because it is clearly revealed from the option form that the respondent had agreed to get his pay fixed as per the minimum of pay in the pay-scale of the Clerk, the post to which he had been re-employed. It is pertinent to note that the respondent has been getting regular pension from the Indian Army. As per the provisions of the Orders and as per the option exercised by the respondent, service rendered by the respondent to the Indian Army cannot be taken into account for the purpose of pay fixation as the respondent would be getting his pension and there would not be deduction from his pension or his salary on account of pension received by him from the Indian Army. If nothing has been deducted from the pension of the respondent upon being re-employed and as the respondent would continue to get his pension and other benefits from the Army for his past services, in our opinion, the High Court was not right while permitting the respondent to get his higher pay fixed by taking into account the services rendered by the respondent to the Indian Army. Even from sound common sense, it can be seen that for the past service rendered to the Indian Army, the respondent is getting pension and other perquisites which a retired or discharged soldier is entitled to even after being re-employed. The respondent would, therefore, not have any right to get further advantage in the nature of higher salary or a higher pay scale, especially when nothing from his salary was being deducted on account of his getting pension or perquisites from the earlier employer.”

20. Applying the ratio of the judgment of Hon’ble Apex Court in the case of Gurcharan Singh (supra) read with the order dated 27.3.2019 of the Full Bench of Ernakulam Bench of the Tribunal, it is found that the letter dated 15.9.2015 of the respondents (Annexure-6) reiterates the position as stated in the DOPT OM dated 5.4.2010 that for the ex-servicemen who held post below Commissioned officers, the entire pension would be ignored while fixing pay on re-employment and when entire pension is ignored, the pay is to be fixed at the 10 minimum of the pay scale with no protection of the pay drawn at the time of retirement. Hence, the letter dated 15.9.2015 (Annexure-6) is in accordance with the judgment of Hon’ble Apex Court in the case of Gurcharan Singh (supra) and also the DOPT OM dated 5.4.2010 which has not been challenged in this OA. The applicant’s challenge of the letter dated 15.9.2015 in this OAs is, therefore, liable to be rejected.

21. Regarding the averment in the OA that similarly situated ex-servicemen on re-employment have been allowed the benefit of last pay drawn at the time of retirement, it is seen that the circular of the EPF Organization and some other employees has been furnished in the OA. Regarding the circular of the EPF Organization, the interpretation of the DOPT OM dated 5.4.2010 in respect of the fixation of pay for retired ex-servicemen retired and re-employed after 1.1.2006, it has been stipulated that the entire pension will be ignored and last pay at the time of retirement will be protected. Such an interpretation is incorrect in view of the order dated 27.3.2019 of the Full Bench of Ernakulam Bench of the Tribunal as well the judgment of Hon'ble Apex Court in the case of Gurcharan Singh (supra) as discussed in para 19 above. Further, such circular cannot be cited as the guidelines of the Government which will have binding effect. It is a circular issued by one Regional P.F. Commissioner which is defective and the applicants cannot claim parity on the basis of that circular. There is another instance furnished at page 43 of the OA in which protection of pay was allowed while ignoring the pension drawn from the defence establishment. It is seen that this order mentions that it is subject to review by audit and subject to further clarification by Government of India. Such interpretation is legally unsustainable. Similar order at page 42 of the OA was subject to review by audit and it is prima facie wrong and it is not as per the letter dated 15.9.2015 (Annexure-6) issued by the higher authorities of the Department of Post. In any case, if a decision in respect of some employee has been taken wrongly fixing his pay on wrong interpretation of the OM dated 5.4.2010, it cannot be a basis for the applicants to claim similar benefit which are legally not sustainable.

22. In this case, the applicants have retired from defence service and re-employed under the respondents after 1.1.2006 and their pay has been correctly fixed as per the clause 4(b)(i) of the Central Civil Service (Fixation of Pay of Re-Employed Pensioners) Orders, 1986 as amended by the DOPT OM dated 5.4.2010 and as discussed above, it is in accordance with the Full Bench judgment dated 27.3.2019 of the Ernakulam Bench of the Tribunal and also the judgment of Hon'ble Apex Court in the case of Gurcharan Singh (supra) as discussed in para 17, 18 and 19 of this order. Hence, the DOPT OM dated 5.4.2010 will be applicable for the applicants' case and as per the para 4(b)(i) as amend in the DOPT's OM dated 5.4.2010, the applicants will not be entitled for protection of last pay drawn by them at the time of their re-employment. Hence, both the issues listed in para 16 of this order are decided accordingly against the applicants.

23. In view of the facts as well as the case laws discussed above and following the order dated 27.8.2017 of Bangalore Bench of the Tribunal in the OA No. 27/2017, in which the facts are similar to the applicants in the present OA and the respondents being from the Department of Post, we are of the view that the OA is liable to be dismissed. Accordingly, the OA is dismissed. Under the circumstances, there will be no order as to cost.

9. In view of the above judgment and facts of the case being similar to the instant case, the OA is accordingly dismissed, but in the circumstances without order to cost.

(C. V. SANKAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(CSK)