

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

NEW DELHI

* * *

C.A. NO. 737/92

DATE OF DECISION : 20.08.1992

Shri G.R. Rathuri and
Shri J.S. Bist

...Applicants

vs.

Union of India & Ors.

...Respondents

COURT

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicants

...Shri K.L. Bhatia,
Counsel

For the Respondents

...Shri R.M. Bagai,
Counsel

1. Whether Reporters of local papers may be allowed
to see the Judgement?

2. To be referred to the Reporter or not?

JUDGEMENT

The applicants, S/Shri G.R.Rathuri and J.S.Bist are Ex-Servicemen who are employed in the Civil Department in Opto Electronics Factory Dehradun as Lower Division Clerk and Store Keeper respectively. The grievance of the applicants is that their pay has been refixed since December, 1991. The applicants have prayed that they be allowed to draw pay and allowances in accordance with FO Part-2 No.1904 dt.5.11.1990 and No.1697 dt.25.9.1990 as has been paid to them during the month of October and November, 1991 along with

(13)

arrears with a further direction to the respondents not to reduce any amount on account of pay and allowances or emoluments been paid to them for the last many years paid in November, 1991. They have also prayed for a further direction that no recovery be effected or no refund be ordered from the pay and allowances on account of so called excess payment.

2. The facts are that the applicants retired from the military service at the age of 44 and 41 years respectively. After retirement, they have been given civil employment in Opto Electronics Factory, Dehradun. The pay of the re-employed pensioners is governed by CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986. In accordance with the Rule 16 of the said order, Ex-Combatant Clerks on their re-employment as LDC or Junior Clerks in the civil posts and Ex-Storemen in the Armed Forces on their re-employment as storesmen in civil posts shall have the option to get their pay fixed quoted below under Orders 4 and 5/ ~~above~~ or in accordance with the procedure of Rule 16 indicated in sub-para 2/ The initial pay in such cases shall be fixed in the time scale of the re-employed posts at a stage equivalent to the stage that would have been reached

6

✓

...3...

by putting in the civil post, the number of completed years of service rendered in the post in the Armed Forces. The pay so fixed will not be restricted to the pre retirement pay. The fixation of pay in these cases shall be done by invoking the provisions of FR 27. It is the case of the applicants that they gave option for fixation of their pay on their re-employment under the provisions of para-16 w.e.f. 31.7.1989. The grievance of the applicants as read in para 4.8 is that the various allowances that the applicants had been getting during the last one year continuously have been reduced considerably and the amount of pension taken into account while fixing the pay at the time of re-employment is not now being taken into account for the purpose of determining the various allowances and secondly, the amount payable to the applicants on account of various allowances has been reduced considerably. The applicants submitted representations, but to no effect and the respondents are considering to make recovery of huge amount from the applicants.

3. The respondents contested the application and stated that the applicants were originally serving in the Armed Forces.

After retirement, they have been given simple employment of Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979. On their re-employment, the fixation of pay is done by the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986.

There are three type of cases of Ex-Servicemen for fixation of pay on re-employment. One is Group-A officer and number 2 is Ex-Combatant Clerk/Storesman and number three is other categories of re-employed persons like the applicants.

In the category in which the applicants belong, the entire pension and pension equivalent on retirement are ignored as provided under Rule 4(d)(i) and hence the re-employed pensioners shall be allowed to initial pay of re-employment at the minimum of the scale of pay of the re-employed posts.

Applicant No.1 was holding the post of Havaldar-Operator Switch Board and Line prior to his re-employment and so he is to draw pay only in the prescribed scale of the pay for the post he has been re-employed; i.e., as LDC in Opto Electronic Factory. No protection of scale of pay of the post held by him prior to retirement from army is to be given. In this case, the pension is to be fully ignored and his pay will be fixed initially on re-employment at the minimum of scale of

(16)

pay. The applicant No.2 was holding the post of Nayak in the trade of Wireless Operator/Exchange Operator in Armed Forces prior to his re-employment with Ordnance Factory, Dehradun. Thus according to the respondents, the pay of the applicants was wrongly fixed initially as per the provisions of fixation of pay of re-employed pensioners. Their entire pension and pensionary benefits were to be ignored since the applicants were not working as Combatant Clerks/Storesmen in the Armed Forces prior to their retirement. The respondents after realising the mistake have only corrected the same after giving due opportunity of hearing to the applicants.

4. I have heard the learned counsel for both the parties at length and have gone through the record of the case. During the course of the arguments, the learned counsel for the applicants has filed their discharge certificates. They have also filed the option given on 3.7.1990 by Shri J.S.Bist and on 8.11.1989 by Shri G.R.Raturi that they want to be governed under the provisions of Para-16 of the OM dt.31.7.1986 as amended from time to time for the purposes of fixation of pay. Shri Bist has also filed a

J

...6...

(12)

certificate in which it is mentioned that when he was not required to work on operational duties, he also worked as a Clerk and also did some typing work. The learned counsel for the applicants has also filed the rules governing the fixation of pay of re-employed pensioners. The controversy in this case is that though applicant No.1 was working as Havaldar Operator Switch Board and Line and applicant No.2 was holding the post of Nayak in the trade of Wireless Operator/Exchange Operator in Armed Forces, the learned counsel wants to assert that they should be treated at par with Combatant Clerks/Storemen and the pay be fixed in accordance with sub rule 2 of Rule 16, referred to above. The discharge certificates filed by the applicants do not show that they were working as Combatant Clerks/Storemen. The learned counsel for the respondents has filed extract from the Defence Services Regulations in which trade category has been shown and the in signal category the trade of Operator Red Line and Operator Switch Board and Line is mentioned while in group second, there is a category of Clerks Store and Clerks (GD). Thus the two trades are different in nature. The applicants cannot claim themselves to be ex-Combatant Clerks/Storemen.

16

12

Merely because they have served in the army, they cannot adopt the title of Combatent Clerks and Storesmen in the Air Force. The respondents have also filed certain discharge certificates which go to show that those persons who are employed as Ex-Combatent Clerks are specifically mentioned in that trade. Here the question is not of equating the trade to actually what post was held by the applicants, while they were serving in the army is relevant for the fixation of pay under Rule 16. On the basis of their option, the pay was earlier fixed, but subsequently when the mistake was detected, the applicants were given a show cause notice. Not only this, but the applicant No.1 is the Chairman of the Clerical Association of respondent No.3 as the representative of the concerned employees including applicant No.2 and he was sent to the office of Chief Controller of Accounts, Ordnance Factory Board, Calcutta to discuss the matter on 29.6.1991 for one week on Government duty. Applicant No.1 was duly heard by the concerned officials and thereafter the over payment was stopped since December, 1991. Thus the applicants have been given due opportunity to represent themselves and their point has been considered by

6

...8...

(19)

the respondents. It cannot be accepted that the Telegraphists/Telephone Operators of the Armed Forces when re-employed as Clerks are also entitled to the benefit of refixation of pay under Para 16 of the CCS (Fixation of Pay of Re-employed Pensioners) Order, 1986. In fact the benefit is admissible to only such pensioners who are re-employed as Telephone Operators in the Department of Tele Communications only as the post of Telecom Office Assistant/Telephone Assistant in the Department of Tele Communications are identical and their jobs are interchangeable. Thus the applicants cannot have any grievance on this account also because at no point of time in the Army service, they held the post of LDC or Stores Clerk. The earlier fixation done by the respondents was under the misconception and the mistake has been corrected after giving due opportunity to the applicants. The association has also been heard at length.

argued by

5. The grievance as/ the learned counsel is also to the effect that once the pay fixation has been done and approved, then subsequently it cannot be modified or reversed. The Telephone Operator may come in the same cadre and in the same pay scale as Clerk and Store Keeper

employed in the Air Force, but the benefit which has been given to Combatent Clerks and Store Keepers cannot be extended to those belonging to Signal Branch and are re-employed as Clerks/Storesmen. The benefit of F.R. 27, therefore, cannot be accorded in such cases.

6. Having given a careful consideration to all these aspects of the matter, I do not find that any case is made out to interfere. The application is, therefore, devoid of merit and is dismissed leaving the parties to bear their own costs.

J. P. Sharma
20.8.92
(J.P. SHARMA)
MEMBER (J)

AKS