

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/468/2015

HYDERABAD, this the 5th day of July, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



V. Amarnath Reddy,
S/o. Late V. Lakshmana Reddy,
Aged 49 years,
Occ: LDC, No.15296340N
Artillery Centre, Hyderabad ó 500 031.

...Applicant

(By Advocate :Sri K. Sudhakar Reddy)

Vs.

1. The Union of India rep. by
The Director General of Artillery (Arty-10),
General Staff Branch,
IHQ of MoD (Army),
Room No.402, B Wing,
Sena Bhavan, New Delhi ó 110 011.
2. The Controller of Defence Accounts,
No.1, Staff Road, Secunderabad ó 500 009.

....Respondents

(By Advocate : Sri T. Sanjay Reddy for T. Hanumantha Reddy,
Sr. PC for CG)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Admn. Member)

Through Video Conferencing:



2. The O.A. has been filed by the applicant seeking fixation of pay based on the pay scale he was granted as Ex-Serviceman in the rank of Hawaldar/Clerk.

3. The brief facts of the case are that the applicant, who is an Ex-Serviceman in the rank of Hawaldar/Clerk was re-employed by the respondents as LDC on 31.12.2004. The pay of the applicant was fixed at the minimum of the pay scale of LDC without taking the last pay drawn by the applicant as Hawaldar/Clerk in the Defence organization. With the advent of VI Pay Commission, the benefit which ought to be given to the applicant has not been extended. Aggrieved over non-fixation of the pay scale in LDC cadre by reckoning the last pay drawn as Hawaldar/Clerk, the O.A. has been filed.

4. The contentions of the applicant are that the pay of Ex-Serviceman has to be fixed as per CCS (Fixation of Pay of Re-employed pensioners) Orders 1986, DOPT O.Ms dated 11.11.2008 & 26.6.2014 & FR 22. The Ministries of Labour and Finance vide their letters dated 9.1.2014 & 3.7.2014 have fixed the pay of Ex-Servicemen as per the above cited Memos. The applicant represented on 21.7.2014, which was rejected on 29.10.2014 & 26.12.2014. The applicant has also given details of certain Ex-Servicemen, who were re-employed by the Postal Department, Income Tax Department and



Ministry of Labour as per annexures annexed to the O.A, whose pay was fixed based on the last pay drawn in the respective defence organization. The claim of the applicant is that he has been discriminated in as much as he has not been granted the benefit whereas other similarly situated employees in other departments have been extended the benefit. The applicant relied on the judgements of the Honøble Supreme Court and that of co-ordinate Bench of this Tribunal at Calcutta in O.A. No.867/2003 dated 6.7.2006 in support of his contentions.

5. The respondents in their reply have stated that as per clause 4 (d) of CCS (Fixation of Pay of Re-employed pensioners) Orders 1986, the Ex-Servicemen, who held the post below the rank of Commissioned Officer in Defence forces are eligible to draw full pension. Consequently, as per clause 4(d)(1) read with Rule 4(d), the pay of the applicant was fixed at the minimum of pay scale of the re-employed post i.e. LDC in the pay scale of Rs.3050-4590/-. The DOPT vide Memo dated 5.4.2010 has ordered fixation of pension of personnel, who were re-employed prior to 1.1.2006 as per O.M. dated 11.11.2008, which states that pay shall be fixed as per Rule 60 of CCS(RP) Rules, 2008 and Rule 7 of CCS (RP) Rules, 2008. The applicant was appointed in 2004 and, therefore, his pay was fixed as per the O.M. dated 11.11.2008. The Department of Expenditure has issued fitment tables in accordance with Rule 7 of CCS (RP) Rules, 2008 and the pay of the applicant as on 1.1.2006 was revised based on the fitment table. The applicant has pointed out that the pay of other



similarly situated employees in other departments was fixed based on the last pay drawn by them in the Defence organization where they served. Such decisions of other organizations would not be relevant to the case of the applicant, since the said employees were all appointed between 2006 to 2013 whereas the applicant was appointed in 2004 prior to implementation of VI Pay Commission recommendations. The respondents also averred that the judgements cited by the applicant are not relevant.

6. Heard Sri K. Sudhaker Reddy, learned counsel for the applicant and Sri T. Sanjay Reddy representing Sri T. Hanumantha Reddy, learned Senior Panel Counsel for the respondents, and perused the pleadings on record.

7(I) The dispute is about fixation of the pay of the applicant based on the last pay drawn by him as an Ex-Serviceman in the rank of Hawaldar/ Clerk. The applicant was re-employed on 31.12.2004 as LDC in the respondent's organization. The rule which governs the fixation of pay of a re-employed pensioners is mentioned in CCS (Fixation of Pay of Re-employed Pensioners) Orders 1986. The relevant provisions which apply to re-fixation are extracted hereunder:

“(a) Rule 4(a) Re-employed pensioners shall be allowed to draw pay only in the prescribed scales of pay or the posts in which they are re-employed. No protection of the scales of pay of the posts held by them prior to retirement shall be given.

(b) Rule 4(b) In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scales of pay of the re-employed post.

(c) Rule 4(d)(i) In the case of Ex-Servicemen who held posts 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 retirement, the entire pension and pension equivalent of retirement benefits shall be ignored.

(d) Accordingly, the Rule 4(d)(i) read with Rule 4(b) the fixation of pay or the minimum of the scale of the re-employed post of Rs.3050-75-3950-80-4590 is in accordance with the orders in vogue at that time.



e) Further, DOPT OM No.3/19/2009-Esst.(Pay-II), dated 05-04-2010 clarifies at point No.(iv) 'Fixation of personnel/officers re-employed prior to 01-01-2006 and who were in employment as on 01-01-2006 and who were in employed before 01-01-2006, in the case of personnel/officers who were re-employed before 01-01-2006 and who were working in the Central Government organizations on re-employment basis as on 01-01-2006, their pay will be fixed in accordance with the provisions of DOPT OM No.03/13/2008-Esst(Pay-II) dated 11-11-2008. This OM stipulates that re-employed persons who become eligible to elect revised pay structure shall exercise option in the manner laid down in Rule 60 CCS (RP) Rules, 2008 and their pay shall be fixed in accordance with the provision of Rule 7 of CCS (RP) Rule, 2008. In this context, it is clarified that in accordance with the provisions of Rule 7 of CCS (RP) Rules, 2008 Department of Expenditure issued fitment tables corresponding to each pre-revised pay Scale Vide OM No.1/1/2008-IC dated 30-08-2008. In the case of those personnel/Officers as well, who re-employed basis as on 01-01-2006 and who were working in the civilian organizations on re-employment basis as on 01-01-2006, their pay will be fixed with reference to the fitment table of the pre-revised civilian pay scale in which they were re-employed and corresponding to the stage in the pre-revised by scales as on 01-01-2006.

f) This pay fixation was already carried out by this office and same is being allowed to the employees on monthly salary bill.

(g) This Circular No.119012/2014-Estt(Pay) dated 26.6.2014 issued by Ministry of Finance on admissibility of CCS (RP) Rules to re-employed personnel with a direction to read with OM No.03/13/2008-Estt (Pay-II) dated 11.11.2008 and the same was further clarified by DOPT OM No.3/19/2009-Estt (Pay-III) dated 5.4.2010 as re-produced in the above paragraph."

(II) As per Rule 4 (d) (i) read with 4 (b), the pay of the applicant has to be fixed at the minimum of the LDC pay scale, in which he is



re-employed since he worked in a rank below that of a Commissioned Officer. However, learned counsel for the applicant has brought to the notice of this Tribunal the cases of employees engaged by Postal Department, Income Tax Department & Ministry of Labour wherein the pay scale in the re-employed post was fixed based on the last pay drawn in the Defence Organization. We have gone through the said Memos. The respondents have not clarified in their reply statement as to why the same benefit could not be extended to the applicant. The Memos of the different departments referred to, have referred to the Government orders dated 11.11.2008 & 26.6.2014. The respondents are claiming that as per the cited O.Ms, the applicant is not eligible. They ought to have elaborated as to why the applicant is not eligible. In the absence of such clarification, it is obviously a discrimination against the applicant in granting the same benefit as was granted by other departments to similarly situated employees. The applicant is an Ex-Serviceman and those who got the benefit in different departments referred to are also Ex-Servicemen. The applicant joined in 2004 whereas the others joined after 2006. As the applicant and the other similarly situated employees working in other departments belong to the same category, it is well settled in law that artificial segmentation of such employees is not permitted as per the judgement of the Honøble Supreme Court in the case of *D.S. Nakara*. The applicant has also cited the judgements of the Honøble Supreme Court in *Gopalakrishna Sarma & Others vs State of Rajasthan* 1993 SCC (L&S) 544 and the judgement of the co-ordinate Bench of this Tribunal at Calcutta in OA No.867/2003 dated 6.7.2006 in support of



his contentions stating that the applicant has been discriminated though similarly situated. The respondents have failed to oppose the contention that the applicant is similarly situated to that of the Ex-Servicemen employed in other departments in the light of the judgments cited by the applicant. Hence, we are of the view that the impugned orders dated 26.12.2014 & 29.10.2014 are liable to be set aside. We hereby set aside the same and direct the respondents to re-examine the same in the light of the Govt. Memos referred to by the applicant and also in the light of the judgements cited by the applicant and take a uniform decision within a period of three months from the date of this order, by a reasoned order.

With the above direction, the O.A. is disposed of. No order as to costs.

(B.V. SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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