

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

(ALLAHABAD BENCH)

ALLAHABAD.

Original Application No.1513 of 1992.

Shri Karan Singh Applicant.

Versus.

Union of India & others... .. Respondants.

Hon'ble Mr. A.K. Sinha, Member (Judicial).

J u d g m e n t.

1. The applicant aforementioned, a discharged employee from Indian Air Force, on being re-employed as a postal assistant in the Department of Postal Service at Mathura Postal Division with effect from 28.11.81, has by this application u/s 19 of the Administrative Tribunals Act, 1985 (hereinafter called the Act) for fixation of his pay with a direction to the respondents to sanction the initial pay of the applicant within a period of 6 months besides arrears of pay and allowances and costs.

2. Admittedly, the applicant is a discharged military personnel having been discharged from regular Air Force from the post of corporal on April 30, 1978 and was re-employed as a Postal Assistant w.e.f. 28.11.1981. His pay was provisionally fixed at Rs.260/-per month in the pre-revised scale of pay of Rs.260-8-300 EB 340-10-360-12-420-EB-480. It is alleged that the applicant is a confirmed Postal Assistant and full 11 years have since passed he is still drawing the same starting pay except that from 1.1.86 with the revision of the scale as per recommendation of the forth pay revision commission the applicant is

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is paid Rs.975/- per month in the scale of pay of Rs.975-1660.

3. The applicant, on his re-employment, immediately gave a declaration in Appendix 'B' form on October 1982 to his appointing Authority that he was drawing a pension of Rs.114/-per month and was also paid lump-sum amount of D.C.R.G of Rs.2862/-vide P.P.O. No.5/23890/78 by DDA (pension) Allahabad.

4. It is submitted that as per Art. 526 (c) of the Civil Service Regulation consequent upon the liberalisation of pension rules etc, pension upto Rs.125/-has to be ignored while fixing pay and allowances of a discharged Military personnel on being re-employed in the Civil Services. According^{to} the applicant, as per sub-rule (b) of Art. 526 of the CSR, it is clearly mentioned that 'the initial pay, on re-employment, should be fixed at the minimum stage of the scale of pay prescribed for the post'. According to the own admission of the applicant, this has been done and the applicant has got no grievance in this regard. The applicant has also admitted that the benefit of sub-rule (c) to Art.526 CSR as regards drawal of pension sanctioned to him and to retain the other retiral benefits on his re-employment have been allowed to him.

5. The grievance of the applicant is that the rule provides that 'where it is felt that the fixation of initial pay of the re-employed officer at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed by allowing one increment for each year of service which the officer has rendered before retirement in a post not lower than in which he is employed', and this, according to the applicant has not been followed in his case while fixing his pay as a Postal Assistant. It is submitted that prior to his retirement/discharged from

from regular Air Force as corporal, he had been drawing Rs.359/- in the scale of pay of Rs.310-7-380-8-390 besides Rs.15/- as good conduct pay w.e.f 1.1.1973. It has been further submitted that in the present post as Postal Assistant his pay has been fixed at the minimum scale of Rs.260/-p.m. without considering the fact that as compared to the pay which he had been drawing in his military service, the pay fixed here was grossly inadequate causing hardship to the applicant.

6. The learned counsel for the applicant, drew my attention towards paragraph 4 (iv) of the O.A. at page 5 and submitted that on consideration of the rule above quoted, the disbursing officer had fixed the pay of the applicant Rs.284/-adding three advance increment in the scale of Rs.260-480 and even issued Initial Pay Slip and placed the same before the Director of Accounts (postal) U.P. for formal approval but the latter, without assigning any reason and setting out any short-comings therein rejected the same and since then the matter is lying in suspense. It is further submitted that after completing 5 years of his service as Postal Assistant, the applicant will be completing 16 years of his service (including the period rendered in military service), the applicant is entitled to get time bound promotion and selection grade scale and he is being denied the benefit of FR.24 also. It is submitted that inspite of several representations to the respondents vide Annexures A-3 to A-6 but when nothing transpired, the applicant filed this case.

7. The respondents have appeared on notices and filed their counter affidavit repudiating the claim of the applicant while admitting the following facts:-

(i) The applicant was discharged from regular air force service on substantive rank of corporal on 30.4.78 after having completed 15yrs-10days service.

(ii) The applicant has been re-employed as postal assistant w.e.f.28.11.81 and his pay has been fixed at Rs.260/-p.m. being the minimum in the scale of pay

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pay of Rs.260-480/-.

(iii) The applicant has been confirmed vide order dt.18.8.88 in the said post.

(iv) With the enforcement of the recommendation of the fourth pay revision commission w.e.f.1.1.86 the pay of the applicant has accordingly been revised in the scale of pay Rs.975-1660 at the stage of Rs.1050/- as per initial pay slip.

8. The contention of the learned counsel for the respondent is that the pay of the applicant has been rightly fixed as per rules at the minimum scale of pay ignoring his pension Rs.114/-p.m. which he was granted for the service at the military job and thus his pay was fixed at Rs.260/-plus Rs.114/-p.m.and the detailed calculation is mentioned at paragraph 6 of the counter affidavit. It was further submitted that consequent upon the revision of pay, the pay of the applicant has been revised w.e.f 1.1.86 in the scale of Rs.975-1660 and fixed at Rs.1050/-p.m. and he has also been granted three increments. It is submitted that even the Audit Party verified the matter and did not raise any objection. On the basis of all these material facts, the contention is that there is no merit in the application, the same be rejected.

9. After having gone through the pleadings of the parties and considering the submissions of the learned counsels of the parties, it appears to me that on re-employment, pay should be fixed taking into account the pension received for the previous employment. The portion of pension ignored for pay fixation in respect of those who retired before attaining the age of 55 yrs, is-

(a) In the case of Civilian pensioners who held posts below Group 'A' and ex-servicemen who held posts below commissioned officer rank, at the time of retirement, ~~entire~~ pension

(b) In case of Civil Pensioners who held Group 'A' post and service officers of the Defence Force ~~Rs.500/-~~.

The rule above quoted as in Swamy's Hand Book 1993 in this regard, further states clearly that 'pay fixation (i) for cases covered by (a) above should be fixed at the minimum

minimum scale, and (ii) in cases covered by (b) above, it should be fixed at the same stage as drawn last before retirement; if there is no stage, at the lower stage; or at the maximum if the pay last drawn is more than the maximum of the re-employed post scale or at the minimum if it is more than the last pay. It is further mentioned in the rule that the nonignorable part of the pension will be deducted from the pay so fixed.

10. Taking into consideration the above quoted rule in this regard, it appears to me that the applicant's case is covered by (b) of the above quoted rule and his pay should have been fixed at the same stage as last drawn before retirement and if there is no such stage then at a lower stage and it appears that the disbursing officer had had rightly fixed the pay of the applicant at Rs.284/- adding three increments in the scale of pay of Rs.260-480 (pre-revised). Moreover, it has not been shown or explained in court as to on what basis the Director of Accounts did not approve of the initial pay slip issued by the disbursing officer in favour of the applicant.

11. On a consideration of the submissions and in conspectus of the pleadings of the parties, the application is disposed of with the following observations:

- (i) the respondents are directed to reconsider the representation of the applicant as regards his pay fixation.
- (ii) The pay of the applicant shall be fixed in accordance with sub-rule (b) quoted above which lays down that pay should be fixed at the same stage as last drawn before retirement and if there is no such stage then at a lower stage.
- (iii) The military pension of Rs.114/-p.m. shall be added over and above the pay so determined in the scale of pay.

With this observation the application is disposed of with a direction to complete the pay fixation of the applicant in the light of the above observation within two months

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two months from the receipt of this order. There will, however, be no order as to costs.

Allahabad:
Dated 26th August, 1993.

Shri K. S. Singh
Member (Judicial).
26-8-1993.