

Central Administrative Tribunal  
Calcutta Bench

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OA No.1479 of 1996

Date of Order: 5.2.2002

Present: Hon'ble Mr. B.P. Singh, Member(A)  
Hon'ble Mr. Kuldip Singh, Member(J)

...

DILIP MR SINHA SARKAR

VS

D/O POST

For the applicant : Mr.S. Patra  
Mr.C.S.Saha  
Mr.Susanta Kanjilal, Counsels

For the Respondents : Mr. B. Mukherjee, Counsel

ORDER

The applicant has filed this OA assailing the orders dated 8.10.96 and 9.12.96 vide which the claim of the applicant for arrears of pay and allowances had not been sanctioned on the plea that the applicant had left the Army Service at his own request. So the relevant orders of fixation of pay for counting the past services rendered by the applicant while in Armed Force is not to be counted.

2. The facts in brief are the applicant, was working as Store Clerk and was posted at Bangalore in the ADM Branch A.Sc. Centre (South) Unit. While he was serving in the Army, a representation was made by his father for his release from the Army Service on compassionate ground. The said representation given by his father is at Annexure-A of the page 13 of the paper book. This representation was considered sympathetically by the department vide order dated 6.6.67 (Annexure-B page 14-17 of the application) and the applicant was discharged from Military Service by the competent authority, in consequence at his own request before fulfilling the conditions of his employment

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after serving four years and onemonth. Subsequent to that the applicant applied for a post of a clerk in the department of the respondents vide letter dated 31.1.70 which is at Page No.26 of the paper book which shows that the applicant was selected and was given appointment vide another order dated 17.11.1970. Vide Annexure-D, the applicant's pay was fixed at a higher stage in the scale above the minimum equal to number of completed years of service as combatant clerk as per the decision contained in Government of India's decision 7 and 8 below FR-27. The applicant started drawing pay in accordance with the pay fixed vide Annexure-D.

3. Subsequent to that the applicant also applied for arrears on the basis of the pay fixation. But in the year 28.12.95, an observation of Circle IFA was made by the authorities according to which an objection was taken that since the applicant was discharged from service by the competent authority at his own request, it was interpreted by the observer that, "in other words, his discharge from service may be clarified as resignation from service". The observer finding the same as resignation from service ~~and~~ also observed that he is not entitled to <sup>get</sup> any advance increment for the Military Service for four years. Therefore the fixation of pay along with <sup>increment for</sup> the four years, in accordance with the rules under FR, according to the observer appears to be irregular. In accordance with the observations, the impugned order was passed on 8.10.96 and 9.12.96.

4. The short question in this case is whether the circumstances under which the applicant had left the Army Service can be treated as resignation and he is not entitled to the benefit of fixation of pay under FR 27 or not.

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4. The plea of the department that since the applicant had been discharged at his own request so it should be treated as his resignation. But this interpretation as being applied by the respondents does not appear to be in consonance with the discharge order issued by the Army authorities nor ~~it appears to be~~ <sup>in the</sup> a denial on the part of the respondents about the increments and the arrears of the increments appears to be in consonance with FR 27. The relevant provision under FR and SR which are applicable to the applicant at this relevant time is produced below:

“(8) Fixation of pay ex-combatant clerks released on compassionate grounds... It has been decided that the benefit envisaged in Order(7) above may also be granted to excombatant clerks released from Armed Forces on thier own request or on compassionate or medical grounds.”

A perusal of the same would show vide CM dated 2.3.74 the Government of India, Ministry of Finance had observed that the ex-combatant clerks released from Armed Forces on their own request or on compassionate or medical grounds are ~~entitled for increments as fixating pay. kr~~ <sup>entitled for increments as fixating pay. kr</sup> envisaged in Order 7.

5. In view of the circumstances we find that the plea taken by the department as given in the observation reiterated by the observer cannot stand, in view of the clear decision given by the Government of India in its decision in CM dated 2.3.74 under FR 27.

6. In the result, the OA deserves to be allowed and accordingly the OA is allowed and the impugned orders are hereby quashed. The pay as already has been fixed shall be granted <sup>within eight weeks of this order</sup> to the applicant with all consequential benefits.

No Costs

*K. V. S. S.*  
Member (A)

*S. V. S.*  
Member (A)