

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

DATE OF ORDER . 28.10.1999.

O.A. No. 340 OF 1995.

Ali Mohammed S/o Shri Ismail Khan aged about 52 years, R/o Mohalla Chokhati, Jai Hind School Ki Gali, Bikaner at present employed on the post of Office Clerk (TOAS) employed in Group C category of post in the office of T.D.E. Bikaner.

.....APPLICANT

Mr.J.K.Kaushik

For the applicant.

VERSUS

1. Union of India through Secretary to the Government of India, Ministry of Telecommunication (Department of Telecommunication), Sanchar Bhawan, New Delhi-1.
2. The Chief General Manager, Rajasthan Circle, Jaipur.
3. General Manager Telecom (West) Jodhpur Shastri Nagar.
4. Telecom District Engineer, Bikaner (Raj.).
5. The Director General Telecom, Ministry of Telecommunication (Department of Telecommunication) Sanchar Bhawan, 20, Ashoka Road, New Delhi-1.

.....RESPONDENTS

Mr.N.K.Khandelwal,Adv.Brief Holder for
Mr.M.S.Singhvi

For the respondents.

CORAM

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR. N.P.NAWANI, ADMINISTRATIVE MEMBER

28/10/1999

PER HON'BLE MR.A.K.MISRA :

The applicant has moved this O.A. with the prayer that the impugned orders dated 4.10.1993 (Annex.A/1) and dated 6.9.1994 (Annex.A/2) be quashed. The respondents be directed to fix the applicant's pay in accordance with the existing rules taking into account the O.M. dated 8.2.1983 Read with O.M. dated 25.11.1958 by granting 17 advance increments with all consequential benefits including arrears of difference of pay alongwith interest at the market rate.

2. Notice of the O.A. was given to the respondents who have filed their reply to which no rejoinder was filed by the applicant. However, the applicant filed one additional affidavit to which an affidavit was filed by the respondents.
3. As per the pleadings of the parties following are the admitted facts.
4. The applicant was in military service before his discharge and was drawing pay at the rate of Rs. 314/- in the pay scale of Rs. 250-330 with classification pay and good service pay. He was drawing Rs. 341/- per month at the time of his discharge. The applicant was reemployed on the post of Office Assistant later-on known as TOA in the pay scale of Rs. 260-480 w.e.f. 3.1.1981. This is also an admitted fact that the pay of the applicant on his re-employment was fixed at the rate of Rs. 268/- per month.
5. The contest between the parties is in respect of fixation of pay on re-employment. The contention of the applicant is that his pay is required to be fixed as per the O.Ms in force and he



entitled to get 17 increments for the seventeen years service that he had rendered in the military. On the other hand, it is contended by the respondents that the pay of the applicant has been fixed as per rules. The applicant is not entitled to get his pay fixed as per his claim because he has suffered no hardship in respect of fixation of his pay by the respondents.

6. We have heard the learned counsel for the parties and have gone through the case file.

7. In order to appreciate the rival contentions of the parties, it would be useful to quote relevant portions of the O.Ms on the subject. Para 1 of Government of India, Ministry of Finance O.M.8(34)-Est.III/57, dated 25th November, 1958 reads as follows :-

"1. The initial pay, on re-employment, should be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed. In cases, where it is felt that the fixation of initial pay at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which the Government servant has rendered before retirement in a post not lower than that in which he is re-employed."

8. Subsequently, Ministry of Finance, Government of India, issued another O.M. No. F 5(14)-E/III(B)77 dated 29.7.1978 on the subject of fixation of pay of re-employed pensioners and general policy thereof. This Circular came in force on the date of its issue. By this O.M. pension to the extent of Rs.125/- was to be ignored in fixation of pay.

9. The case of the respondents is that the pay fixation of the applicant has been done as per the O.M. dated 29.7.1978 because the applicant was discharged in the year 1979 and was reemployed in the

2/11/

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year 1981.

10. The claim of the applicant is that his pay is required to be fixed as per the O.M. dated 8.2.1983 issued by the Ministry of Defence in which it is clearly mentioned that the pension to the extent of 250/- rupees is to be completely ignored. This O.M. was issued to all the circles (Postal and Telecom etc.) by the Director General of Posts and Telecom, New Delhi, vide its letter dated 2.9.1983 for doing the needful. The applicant moved to the concerned authority vide its letter dated 9.11.1983 (Annex.A/5) for fixation of his pay as per the DGPT letter dated 2.9.1983. In this letter, he has specifically prayed that his pay as per the aforesaid O.M. be fixed. He has also given the details of his service particulars etc. but his pay was not fixed in terms of the O.M. dated 8.2.1983. The applicant has also stated in para 4.5 of his O.A. that he had submitted a representation Annex.A/5 for fixation of his pay and thereafter submitted many representations for fixation of his pay. In reply to this para, the respondents have not specifically said that no such representation was ever received from the applicant. All what they have said is that the pay of the applicant was correctly fixed and he was informed accordingly. No case of hardship was ~~made~~ out. But in our opinion the letter of the applicant dated 9.11.1983 can be termed as an option for fixation of his pay in terms of O.M. dated 2.9.1983. The relevant portions of the O.M. is quoted below :-

"Sub-Fixation of pay of re-employed pensioners-General policy thereof-question of ignoring Rs.250/- in the case persons retiring before attaining the age of 55.

The undersigned is directed to refer to this Ministry's O.M. No. 2(7)/78/6664 D (Civ-I), dated 30.8.88 and to say that the question of raising the limit of the present ceiling/pension which has to be ignored in fixing of pay



(B)

of re-employment of ex-servicemen, who retire before attaining the age of 55, has been under the consideration of the Government for sometime. The President is pleased to decide that in case of these ex-service men retiring before attaining the age of 55, the pension as indicated below may be ignored in fixing their pay of re-employment.

- (i) in the case of service Officers, the first Rs.250/- of pension
- (ii) in the case of personnel below Commissioned Officer rank, the entire pension:

Note : - The pension for the purpose of these orders includes pension equivalent of gratuity and other forms of retirement benefits.

2. These orders will take effect from 25th January, 1983 and the existing limits of military pensions to be ignored in fixing pay of re-employed pensioners will, therefore, cease, to be applicable to cases of such pensioners as are re-employed on or after that date. In the case of the persons who/already on/are re-employment, the pay may be re-fixed on the basis of these orders with immediate effect provided they opt to come under these orders. If they so opt, their terms would be determined afresh as if they have been re-employed for the first time from the date of the orders. The option should be exercised in writing within a period of six months from the date of these orders. The option once exercised shall be final."

11. A bare reading of the aforesaid O.M. leads to the conclusion that pension ~~of the applicants~~ is to be ignored completely. The provisions of the O.M. shall be applicable to those persons who were re-employed earlier than the date of issue of the O.M. provided they exercise their option in respect of fixation of their pay within six months. In this case, the applicant had exercised his option by his letter dated 9.11.1983, therefore, his pay ought to have been fixed in terms of the O.M. dated 8.2.1983 ignoring his pension. The applicant was re-employed in the pay scale of Rs. 260-480. ^{part} By ignoring the pension, the pay of the applicant would have been fixed at Rs.268/- per month whereas he retired drawing pay at the rate of Rs. 341/- per month. This naturally caused him hardship and consequently he is entitled to fixation of his pay by grant of one increment for each completed year of service during



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his earlier employment which as per his service record was 17 years 11 months and 29 days. The cases of persons re-employed subsequent to the issue of the aforesaid O.M. were to be dealt-with as per this O.M. and the cases of those persons employed earlier than issue of this O.M. were to be dealt-with as per the option received. On exercise of option, both the categories of re-employed persons i.e. employed earlier than the date of O.M. and later than the date of O.M. were to be treated at par. Since the respondents have not disputed the fact of applicant's option, the case of the applicant will be governed by the O.M. dated 8.2.1983.

12. It was contended by the respondents that the applicant while he was serving in Army was drawing his pay in the scale of Rs. 250-330 but on re-employment his pay was fixed in the higher pay scale, therefore, he is not entitled to get any benefit in respect of advance increments for the service that he had rendered in the army in the matter of fixation of his pay. But, we are not in agreement with the respondents in this respect. On this subject, we would like to quote Government of India, Ministry of Finance, O.M. F.6 (8)-E.III/63, dated 11th April, 1963 & O.M., dated 19th March, 1968 which reads as follows :-



"Fixation of pay of re-employed Ex-combatant Clerks and Ex-combatant Store-keepers- The service rendered as a combatant-clerk (sepoy and above and equivalent ranks in Navy and Air Force) may be treated as equivalent to service as L.D.Cs/Junior Clerks in Civil Departments irrespective of the pay drawn in the Armed Forces and that when such persons are absorbed in posts of L.D.Cs/Junior Clerks in Civil Departments after their release/retirement in the Armed Forces, their initial pay in the posts of L.D.C./Junior Clerks may be fixed at a higher stage in the scale above the minimum equal to the number of completed years of service as combatant clerks. Similar benefit is admissible to ex-combatant storemen re-employed as storemen in civil posts. The pension and pension equivalent of gratuity, if any, which does not exceed Rs. 15 per mensem will be ignored. In respect of pensionary benefits exceeding Rs. 15 p.m. pensionary benefits up to Rs. 15 p.m. may be ignored. Such

re-employed persons will, however, have the option to get their pay fixed under these provisions or under the provisions of M.F., O.M., dated the 25th November, 1958 explained in previous paragraphs in this lesson. The option should be exercised within three months of re-employment. The power to fix the pay in such cases rests with the Administrative Ministries."

13. This O.M. clearly goes to show that a person who before his discharge was a combatant clerk or a sepoy shall be treated as equivalent to L.D.C./Junior Clerk in civilian department irrespective of pay drawn. This means, pay scales of earlier post and the pay scale of the post on which the applicant has been re-employed is of no consequence because the Government has notified the rank of a combatant clerk or sepoy equivalent to L.D.C./Junior Clerk. Therefore, the argument advanced by the learned counsel for the respondents does not help the respondents.



14. In view of the above discussion, we are of the opinion that the pay of the applicant should have been fixed in terms of O.M. 2(1)/830DO (Civ-I) dated 8.2.1983, issued by the Ministry of Defence (Annex.A/4). In other words, the applicant is entitled to seventeen advance increments in terms of his seventeen years service in the army before his discharge. The O.A. deserves to be accepted accordingly.

15. The O.A. is, therefore, accepted. The Impugned order dated 4.10.1993 (Annex.A/1) and 6.9.1994 (Annex.A/2) passed by the respondents are hereby quashed. The respondents are hereby directed to fix the applicant's pay in accordance with the existing Rules, Circulars and O.M. dated 8.2.1983, by granting seventeen advance increments with all consequential financial benefits of arrears of

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pay to the applicant. The applicant shall, however, not be entitled to get interest on arrears of pay etc. as per the above direction.

16. The respondents are directed to comply the orders within a period of **three months** from the date of communication of this order. The parties are left to bear their own costs.



Abhaya
(N.P.NAWANI)
Adm.Member

28/10/99
(A.K.MISRA)
Judl.Member

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