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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. : 123/1998D

Date of Order : 13.1.2000

Bhanwar Lal Nayak S/o Shri Ramdev Ramji, aged about 53 years, resident of Karamchari Colony, Plot No. 9 Sati Jati Banglo No. 8, Residency Road, Jodhpur, at present employed on the post of LDC in the office of F O D C/o 56 APO.

..Applicant.

Versus

1. Union of India through Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
 2. The Director General of Ordnance Services, Master General of Ordnance Branch, Army Headquarters, DHQ Post Office, New Delhi.
 3. The Commandant, 6th Field Ordnance Depot. C/o 56 APO.
- ..Respondents.

Mr. J.K. Kaushik, counsel for the applicant.

Mr. Ram Narain, Adv., Brief holder for
Mr.P.P. Choudhary, counsel for the respondents.

CORAM :

Hon'ble Mr. A.K.Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

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

The applicant has filed this OA with the prayer that the impugned order dated 2.9.1997 Annexure A/1 be declared illegal and be quashed. The respondents be directed to fix the pay of the applicant in accordance with the existing rules taking into account the OM dated 8.2.1983 read with OM dated 25.11.58 by granting 17 advance increments with all consequential benefits including the arrears of difference of pay alongwith market rate of interest.

2. Notice of the OA was given to the respondents who have filed their reply to which no rejoinder was filed by the applicant.

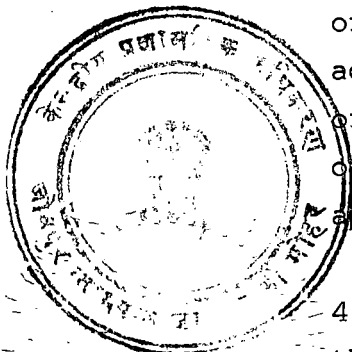
3. It is alleged by the applicant that he served the Indian Army for a period of 17 years from 22.3.1966 to 31.3.1983 in the trade of Wireless Operator ~~and~~ Signaller. On fulfilling the term of engagement he was discharged from service and was granted military pension according to rules. It is further

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alleged by the applicant that he got an opportunity of reemployment on the post of LDC against ex-servicemen quota on 9.8.1984. The applicant submitted his willingness for fixation of his pay in accordance with the OM dated 8.2.1983 but the pay of the applicant was not fixed in terms of the OMs issued from time to time by Government of India on the subject. The applicant made representations for fixation of pay. Respondent No. 3 recommended the case of the applicant for fixation of his pay after allowing him 17 increments but the proposal was turned down in view of communication dated 2nd September, 1997 Annexure A/1. It is further alleged by the applicant that at the time of his release he was drawing Rs. 260/- basic pay + Rs. 30/- as classification pay which formed part of substantive pay for all purposes. Therefore, fixation of pay on reemployment at the minimum of the pay scale i.e. Rs. 260/- is wrong and has caused hardship to the applicant which entitles him to claim 17 advance increments, ^{one} for each year of service rendered by him in Army. He has also stated that in case of Mohinder Singh, LDC who was similarly situated candidate, 21 advance increments were sanctioned and his pay was fixed at maximum of the pay scale whereas the applicant has been denied the benefit of advance increments and has thus been discriminated. The applicant has prayed for the relief as mentioned above.



4. The respondents have filed their reply stating therein that the applicant is not entitled to the benefit of advance increments in view of the communication of Audit Authority as the pay of the applicant has been fixed at the minimum of the pay scale i.e. Rs. 260/- which pay he was drawing in earlier employment. It is also stated by the respondents that case of the applicant was favourably recommended but was turned down by the authorities. The applicant did not exercise option within the stipulated period in terms of Government of India OM dated 8.2.1983 and, therefore, he is not entitled to the relief which he has claimed.

5. We have heard the learned counsel for the parties and have gone through the case file. From the record, it appears that in the earlier employment the applicant was drawing Rs. 260 + ^{as pay} Rs. 30/- as classification pay and thus his total pay for all purposes was Rs. 290/- per month whereas his pay on reemployment has been fixed at the minimum of the pay scale i.e. Rs. 260/-. Pay fixation of Army men reemployed is regulated in terms of Government of India, Ministry of Defence OM No. 8(34)-Est.III/57, dated 25.11.1958 ^{which} reads as follows :-

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" 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 than in which he is re-employed."

6. Subsequently, Ministry of Defence issued another OM in the year 1978, which laid down that on re-employment the pay fixation was to be done ignoring pension to the extent of Rs. 125/- per month. Subsequently, another O.M. was issued on 08.2.1983, which laid down that while fixing the pay of a re-employed pensioner pension to the extent of Rs. 250/- is to be completely ignored which has also been relied upon by the respondents as Annexure R/1. This OM clearly lays down that the pay of the pensioners who were re-employed earlier than the date of issue of the OM will be refixed on their exercising option in this regard but this does not speak about such option in respect of pensioners who were re-employed after the issuance of the OM Annexure R/1. Therefore, in the instant case, no option was required to be exercised by the applicant. In fact on his re-employment his pay should have been fixed keeping in view the OM of 1958 and the OM dated 8th February, 1983 Annexure R/1. It may be noted that the applicant before his release from Army was drawing Rs. 290/- per month as his pay. Therefore, fixation of his pay at the minimum of the pay scale of the post of LDC was not in accordance with circulars on the subject and thus fixation of pay has caused him hardship. The applicant had rendered 17 years of service in the Army. Therefore, in our opinion, he is entitled to 17 advance increments in terms of the OMs cited above. There is nothing on record to show on what basis the Audit Authorities had come to the conclusion that the applicant is not entitled to advance increments in view of entire pension having been ignored. The circular of the year 1958 has not been superseded which speaks of pay fixation after grant of advance increments in case pay fixation at the minimum of the scale caused hard ship to the applicant. All subsequent OMs on the subject are in continuance thereof. Therefore, the OM of 8th February, 1983 can not be read in isolation. It has got to be read alongwith OM of the year 1958. Thus in our view, the respondents have erred in fixing the pay of the applicant at the minimum of the pay scale of the post of re-employment.

7. While passing Annexure A/1 dated 2.9.1997, the respondents have stated that matter relating to OM dated 8.2.1983 is pending

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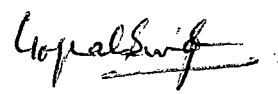
before Hon'ble the Supreme Court but no details as to in which SLP or in which Appeal the said OM has been questioned before the Supreme Court has been mentioned by the applicant. Therefore, the arguments on behalf of the learned counsel for the respondents that the matter is subjudice before Hon'ble Supreme Court does not carry weight. In view of this, the rejection of the claim of the applicant by the respondents on the ground of pendency of SLP on the subject is difficult to be sustained.

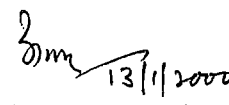
8. In our view, the applicant is entitled to pay fixation after grant of 17 advance increments for the 17 years service that he had rendered to Army during his earlier employment. The OA deserves to be accepted accordingly.

9. The OA is, therefore, accepted. The order dated 2.9.1997 Annexure A/1 is hereby quashed and the respondents are directed to fix the pay of the applicant by granting him 17 advance increments in terms of OM dated 25.11.1958 and OM dated 8.2.1983 with all consequential benefits including the arrears of difference of pay within a period of three months from the date of communication of this order.

10. The prayer of the applicant for grant of interest on the amount of arrears of difference of pay is hereby rejected.

11. The parties are left to bear their own costs.



(GOPAL SINGH)
MEMBER (A)

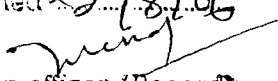

(A.K. MISRA)
MEMBER (J)

Lib - 28/1/98.

R/Copy
on 28/1/2000
by
(B. Khan)

Copy of order sent to
Counsel for Respondents
Article 110 39
dt- 3/2/2000

Part II and III destroyed
in my presence on 25-9-06
under the supervision of
section officer [] as per
order dated 23/8/06


Section officer (Record)